Staff Report Item 16

To:	Ava Community Energy Authority
From:	JP Ross, Vice President Local Development
Subject:	*Two Resolutions of the Board of Directors of Ava Community Energy Authority* *Resolution 1 authorizes the CEO to negotiate and execute:* *1) A Power Purchase Agreement with Greenbridge LLC for developing, owning and operating solar and storage projects at City Critical Municipal Facilities* *2) An Asset Purchase Agreement with Greenbridge LLC to transfer existing project development assets from Ava to recover expenses incurred by Ava to secure NEM2.0 and progress projects to Notice to Proceed* *Resolution 2:* *1) Authorizes the CEO to negotiate and execute Power Purchase Agreements with participating Cities for Ava to sell solar energy generation and energy services purchased from Greenbridge and passed through to the benefitting Cities* *2) Approves the use of the previously approved Local Development budget of $7M to provide Solar and Storage incentives for Critical Municipal Facilities*
Date:	November 20, 2024

Summary/Recommendation

Adopt resolutions authorizing the CEO to enter into Power Purchase Agreements (PPAs) with Greenbridge LLC and participating Cities to deliver solar energy and resilience services to Cities participating in the Critical Municipal Facilities Program. In addition, provide authorization for Ava to use previously approved Local Development funding as an incentive for participating solar and storage projects.

Financial Impact

The PPA would have minimal budget impact as Ava is acting as pass-through entity for PPAs, which will pay back project development costs over time. The Asset Purchase agreement will recover Ava's development and expenses for projects reaching Notice to Proceed.

The Fiscal Year 2023 budget approved seven million ($7M) for the Critical Municipal Facilities Program, part of which would be allocated toward these projects. The current portfolio of projects and proposed incentive levels would utilize approximately $2.5M in incentives leaving funding available for future rounds of the Critical Municipal Facilities Program.

Analysis and Context

The Resilient Municipal Critical Facilities Program ("Program") resulted from a desire by Ava to reduce barriers to solar and solar + storage deployments for local governments in our territory. Local governments often do not have the available staff time, financial resources, or technical expertise to advance these types of projects and may have relatively small facilities with commensurately small projects that cannot take advantage of bulk purchasing. Similarly, solar and storage contractors face high customer acquisition and initial project development costs, which are relatively higher for smaller facilities that cannot support larger solar deployments.

Recognizing these barriers, Ava has undertaken this Program with the following goals:

- Reduce the burden and associated costs to both local governments and developers for site identification, evaluation, and design work by EBCE conducting this initial work with the services of established solar design and engineering firms
- Reduce costs by aggregating sites into a larger portfolio for volume purchasing power
- Reduce PPA contracting costs by Ava serving as a single counterparty for all the customers and sites in the portfolio
- Comply with local government public contracting requirements with uniform contractual terms such as prevailing wage
- Reduce project drop-out risk by obtaining formal city council resolutions from Cities to execute contracts as long as Ava can provide PPA pricing that results in net financial benefits

With the goals stated above, Ava began working with its member cities in 2019 to assemble a list of hundreds of critical facilities across its service territory, ranging from

fire stations, police stations, emergency operation centers, to libraries and community centers. An initial portfolio-level assessment examined each site's natural hazard exposure, service to the community, and solar and battery potential, providing a set of key sites with preliminary energy resilience system sizes. This preliminary assessment identified an aggregated capacity of approximately 10 MW of solar and 25 MWh of storage across Ava's member cities. After subsequent rounds of engagement with city leaders, facility managers and other stakeholders Ava selected four cities to develop a proof of concept pilot to confirm that Ava could deliver value as a centralized procurement entity for behind the meter solar + storage projects.

The solar and solar + storage systems are intended to be designed and operated with the following benefits in mind:

1. Provide resiliency back-up for critical loads in the event of grid outages for sites with battery storage.
2. Reduce customer energy bills through Time-of-Use (TOU) energy and demand charge reductions.
3. Manage battery discharge during TOU periods to reduce both customer bills and EBCE wholesale energy procurement requirements (i.e., resource adequacy capacity requirements).
4. Reducing reliance on existing diesel-powered generators, minimizing CO2 equivalent emissions.

Portfolio Cost Effectiveness and PPA pricing

In order to facilitate procurement of energy projects on behalf of member agencies, Ava utilized Government Code Section 4217.10 which allows for the expedited procurement of energy conservation projects by municipal agencies as long as the energy project can provide financial savings over the operating lifetime.

Therefore, Ava has a requirement that any solar + storage portfolio that we bring to a city shall not increase costs over the lifetime of the project compared to current and future projected electricity costs.

City Cost Effectiveness Savings Calculation

Estimated site utility costs during term without projects
(-) Estimated site utility costs during term with projects
= Estimated City utility bill savings
(-) cumulative PPA payments for the projects
= Cumulative net energy bill savings to City

Figure 1: Project Cost Effectiveness Measure

PPA Development

Ava determined that the best way to minimize costs for cities would be to develop a standardized 'Ava PPA' that Ava could sign with both the cities and the selected development and ownership counterparty. This structure, called a sleeve, allows Ava to be the buyer of energy services from a developer and a seller to our cities, while minimizing risk to Ava.

Ava developed a standard PPA in collaboration with city attorneys that was issued in a Request for Offers (RFO) so that developers would understand the terms of engaging with Ava and our member agencies in this Program.

Pre-Development Investment to Reduce Risk (and Cost)

A key to reducing risk (and cost) for developers in any solar projects is to ensure that customer will sign the agreement and projects are buildable. Ava resolved the first issue with the pre-negotiated PPA and city council resolutions confirming city participation with projects that meet Government Code Section 4217.10. The final piece was to determine which projects would be buildable. Therefore, Ava issued a solicitation in April 2021 for engineering and project development services to assist Ava in compiling the best portfolio of sites for development.

Ava contracted with engineering consulting firms ARUP and EcoMotion to work with Ava and city staff to compile all available documentation on city facilities, develop preliminary pricing estimates and complete site visits on all possible sites to determine which sites could be built. The firms then worked with Ava to develop a Request for Offers with sufficient detail so developers could provide Ava with a firm PPA price without needing to expend resources to visit all the portfolio sites.

2022 Request For Offers

Ava issued an RFO on August 26, 2022, to solicit proposals to deliver cost effective solar + storage Power Purchase Agreements (PPAs) for the Program.

The 2022 portfolio consisted of four (4) city-specific portfolios (for JPA members San Leandro, Berkeley, Hayward, and Fremont) representing 22 facilities and approximately 2.3 MW of solar photovoltaics and 1.9MWh of battery storage. Ava was able to secure $2M in Federal funding from congressionally-directed spending to support the development of these projects.

EBCE received three bids in response to the 2022 RFO for solar and storage PPAs and attempted to negotiate a PPA with Sunwealth LLC ("Sunwealth"). Ava received authorization to negotiate and execute a PPA with Sunwealth at the January 2023 Ava Board of Directors meeting. However, Ava and Sunwealth were not able to agree on the terms of the PPA.

Program Expansion and Interconnection Applications to Secure NEM2.0

Considering the strong support from participating Cities for the Program, Ava staff resolved to re-issue another RFO. Ava had reached out to staff in all remaining EBCE

member agencies to determine when cities would have the ability to participate in the Program. The four Cities of Emeryville, Livermore, Oakland, and Pleasanton passed city council resolutions to participate in the Program. Ava worked with City staff to compile additional sites for the Program with a revised portfolio of eight Cities with 61 sites totaling over 10MW of PV and 20MWh of battery systems.

In April of 2023 California revised the Net Energy Metering (NEM) regulations for grid tied solar projects, moving from NEM 2.0 to NEM 3.0. This lowered the value of solar and storage projects to Ava's customers by 10-30%. Considering the importance of cost effectiveness of the Program for our Cities, Ava initiated a consulting services agreement with Gridscape to submit Interconnection applications for all 61 sites that had been submitted by the eight participating Cities. Ava received approval in January 2023 from the Board to enter into a consulting services agreement with Gridscape and successfully submitted Interconnection Agreements for those sites by March 15, 2023. Under the terms of the NEM agreements Projects will need to reach Commercial Operate by April 2026 to receive NEM2.0.

2023 Request for Offers

Ava combined the portfolios of all eight participating Cities and released a revised RFO in November of 2023. The portfolio contained 61 sites with approved NEM2.0 interconnection applications as well as an additional 48 sites that bidders had the option to bid on.

	Sites with Interconnection Applications	Additional Sites
# of Sites	61	48
MW PV	10.2 MW	As proposed by respondent
MWh Storage	20.9 MWh	As proposed by respondent

Figure 2: Portfolio sizes issued in the revised 2023 RFO for eight Cities

Ava received four bids and 2 bidders were shortlisted. Shortlisted bidders were provided site level energy usage and pre-development assets from Ava in order to provide detailed designs and associated costs to develop the solar and storage projects. After reviewing bids and interviewing respondents Ava selected Greenbridge LLC (Greenbridge) as the project owner. Greenbridge has selected Gridscape as their project developer to complete engineering, procurement, construction and operation of the solar and storage projects. Greenbridge is a North Carolina based commercial and Utility Scale renewable energy financing and development platform. Greenbridge was founded in 2020 by former GE Capital leadership and has funded over $1B in projects. Gridscape is a local developer, located in Fremont, that has extensive experience developing solar + storage microgrids for public agencies including the City of Fremont and has committed to Ava's union wage requirements in developing these projects.

Pre-Development work and Asset Purchase Agreement

Considering the tight timelines associated with executing the Power Purchase Agreements and completing project construction for NEM2.0 projects prior to April of 2026 Ava decided to progress with early development activities to progress projects through to the permitting stage. This would allow Ava and our counterparties to refine project designs, achieve firm pricing and deliver permit ready designs to keep projects on schedule for April 2026 Commercial Operation. The Ava Board approved a Consulting Services Agreement with Gridscape at the July 2024 Board meeting to complete this work. Ava took on this work at risk considering the PPA had yet to be executed with Greenbridge. In order to recover the expenses associated with this work, Ava and Greenbridge have negotiated an asset purchase agreement, which will provide payment from Greenbridge to Ava for the work completed to date. Once projects achieve Notice to Proceed ("NTP") Greenbridge will pay Ava for the development assets such as the Interconnection Applications and permit ready design sets for the associated project.

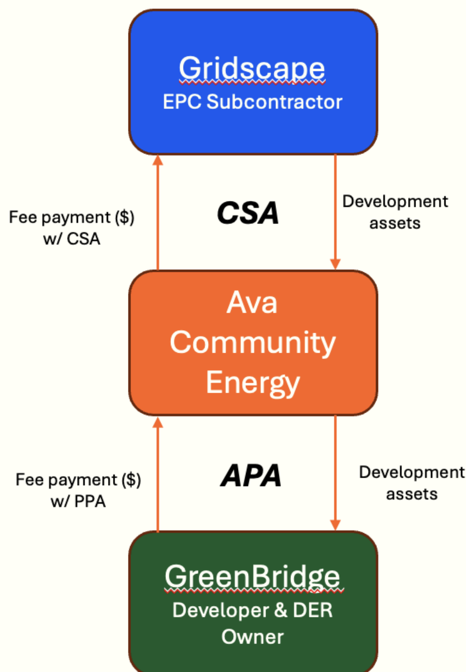

Figure 3: Structure of the Asset Purchase Agreement

Final Portfolio and Pricing Structure between NEM2.0 and NEM3.0 projects

Ava has been working with City staff and Gridscape to refine the project designs and receive City design approval on the placement of the solar and storage systems. Project designs have been adjusted based on City department siting requests, such as using carports for shade structures, placement of systems and minimizing impacts to City services. These changes have impacted project complexity and pricing and Cities have

continued to work through internal approval processes for participating in the Program. The Cities of Emeryville and Pleasanton have decided to not participate in this round of the Program and the final list of projects has declined to 34 projects totaling 5.8MW of PV and 11.9MWh of Storage. The challenging reality of achieving Commercial Operation Date for all projects by April 2026 has resulted in a need to prioritize projects between NEM2.0 and NEM3.0 based on project complexity and the savings differentials associated with projects being on NEM2.0 versus NEM3.0.

City	# NEM 2.0 Projects	# NEM3.0 Projects	Total Project Count	PV Capacity (kW)	Battery Capacity (kWh)
Berkeley	2		2	202	387
Fremont	2	4	6	303	697
Hayward	3	1	4	218	387
Livermore	2	4	6	2,814	5,954
Oakland	5	4	9	1,466	2,786
San Leandro	5	2	7	880	1,780
Grand Total	**19**	**15**	**34**	**5,883**	**11,992**

Figure 4: Final Portfolio

Project Type	Project Count
Airport	1
City Hall	3
Community Center	7
Corp Yard	5
Fire station	11
Library	4
Parking Lot*	1
Police Station	1
Water Service	1
Total	34

Figure 5: Final Portfolio by type

In order to lock pricing for Cities that ensures cost neutrality Ava and Greenbridge have agreed to a 2-tier pricing structure between NEM2.0 and NEM3.0 projects. NEM2.0 projects have been prioritized for site visits and permit designs which confirm pricing,

while NEM3.0 project pricing is based on conceptual designs only. Therefore, Greenbridge has committed to firm pricing on NEM2.0 projects, and a pricing cap on an adjustment to NEM3.0 pricing that may change based on confirmed final project designs. This pricing structure ensures Cities achieve cost neutrality on the projects. If NEM3.0 pricing on projects is above the pricing cap the City has the right to terminate the project to maintain portfolio savings.

Ava is pricing the PPA with Cities with a 2.5% surcharge to cover Ava administrative expenses like billing and project management, legal fees, extra-ordinary charges and a fund to cover the potential expense of removing systems at the end of the term if Greenbridge does not cover that expense.

Use of Local, Union Labor

Greenbridge and Ava have committed to developing these projects using local, union labor to the extent legally permitted and financially feasible. Greenbridge has committed to hiring contractors and sub-contractors residing in Alameda and San Joaquin counties and to paying prevailing wages in each jurisdiction. Furthermore, Greenbridge has committed to using Union Labor when Union labor can (i) use local hires, (ii) meet project delivery milestones and (iii) be priced to meet portfolio cost neutrality requirements for each City. The current pricing of projects in the portfolio assumes the use of Union Labor on these projects. In the event that the developer cannot find union labor that meets these requirements, they will provide notice to Ava and provide an alternative proposal that meets requirements (i)-(iii) above.

PPA and Asset Purchase Agreement Authorization

Ava staff is requesting authorization from the Board to complete negotiations and execute a PPA and Asset Purchase Agreement with Greenbridge that meets the obligations listed above. The structure of the PPA and associated Asset Purchase Agreement are shown below. The PPA with Greenbridge requires Ava to execute PPAs with participating Cities to become fully effective. Ava has been working with City staff and City Counsel to come to agreement on City specific provisions for each of the six Cities. Ava has structured to current version of all PPAs to manage risk to Ava between the parties.

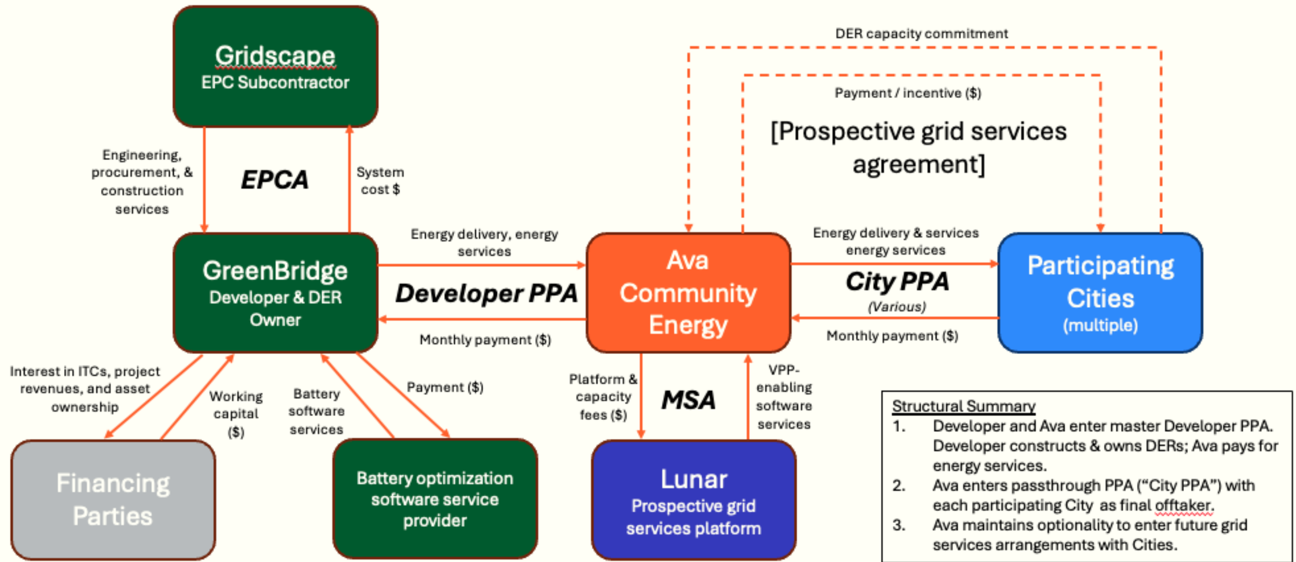

Figure 6: Ava PPA Sleeve Structure

<u>Critical Municipal Facility Program Resilience Incentive Authorization</u>

In June of 2024 the Ava Board approved $7M for the Critical Municipal Facilities Program. In addition, Ava has been developing a solar and storage incentive program for residentail customers and community resilience hubs that will launch in early 2025. Staff has discussed the design of the upcoming incentive program at multiple Board and Executive Committee meetings (provide dates). Ava proposes the make the solar and storage incentive for Community Resilience Hubs available to City Critical Municipal Facilities, providing consistency across Ava's solar and storage incentive programs.

The Solar and Storage incentives would be structured with an upfront incentive for NEM3.0 projects to account for the lower total bill savings that will occur under the NEM3.0 tariff and an ongoing incentive over 5 years for all projects. Projects will be monitored by Ava's grid services management platform with Lunar energy and will be dispatched for grid services after prioritizing Resilience, Battery reserve margin and facility bill savings.

The incentives for participating projects are expected to total $2.5M dollars across all NEM2.0 and NEM3.0 projects leaving additional incentives available for future rounds of the program. These incentives are expected to be delivered through upfront and ongoing bill credit to the Cities. However, Ava is negotiating the option to utilize incentives in form of a pre-payment which would significantly increase the magnitude of bill savings to the Cities through lower PPA payments. Ava reserves the right to utilize the Pre-Payment as long as sufficient bill savings are achieved.

NEM status	Upfront Incentive	Ongoing* Incentive
NEM2.0	$0	$2/kWh/month
NEM3.0	$400/kWh	$2/kWh/month
*ongoing incentives over 5 year term		

Figure 7: CMF Program Incentives

Committee Recommendation

This matter was brought to the Finance and Administrative sub-committee on November 13th as an informational item, however there was not quorum at the meeting.

Attachments

A. Resolution authorizing the CEO to negotiate and execute Power Purchase Agreements with each of the cities participating in the critical municipal facilities program and to provide incentives for the program
B. Resolution authorizing the CEO to negotiate and execute a Power Purchase Agreement and Asset Purchase Agreement with Greenbridge LLC
C. Draft Ava/Greenbridge Power Purchase Agreement (PPA)
D. Draft Ava/City Power Purchase Agreement (PPA)
E. Draft Ava/Greenbridge Asset Purchase Agreement (APA)
F. PowerPoint Presentation

RESOLUTION NO. R-2024-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE POWER PURCHASE AGREEMENTS WITH EACH OF THE CITIES PARTICIPATING IN THE CRITICAL MUNICIPAL FACILITIES PROGRAM AND TO PROVIDE INCENTIVES FOR THE PROGRAM

WHEREAS Ava Community Energy Authority ("Ava") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Powers Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the Joint Powers Agreement ("JPA") in March of 2020. The city of Stockton was added as a member to Ava in September of 2022. The city of Lathrop was added as a member to Ava in October of 2023. San Joaquin County was added as a member to Ava in July 2024. On October 24, 2023, Ava legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

WHEREAS Ava has been developing the Resilient Critical Facilities Program ("The Program") to develop cost effective solar + storage Power Purchase Agreements ("PPAs") on municipal critical facilities to deliver resilience and energy security to member agencies and their residents,

WHEREAS Seven member agencies; Berkeley, Fremont, Hayward, Livermore, Oakland, Pleasanton and San Leandro have all passed city council resolutions to participate in The Program as long as Ava can deliver solar + storage projects that do not cost more than cities would pay for grid supplied electricity during the course of the PPAs,

WHEREAS Ava has developed a portfolio of sites and a standard form PPA to use for solar and storage resilience projects

WHEREAS Ava issued a Request for Offers ("RFO") on November 15, 2023, to solicit proposals to deliver cost effective solar + storage PPAs for The Program,

WHEREAS Ava received a conforming bid that met Ava's requirements for cost effectiveness, installation quality and long-term ownership capabilities from Greenbridge LLC ("Project Owner") and Ava is in the process of negotiating the final details of the PPA

WHEREAS Ava has incorporated City specific requests on site design for the projects

WHEREAS Ava has incorporated City specific terms from City Counsel on the Ava PPA's with participating Cities

WHEREAS Timeliness is of the essence in signing the PPA with Cities to achieve project Commercial Operation date milestones

WHEREAS Ava has allocated $7M in the FY24/25 Local Development budget to support the Critical Municipal Facilities Program

NOW, THEREFORE, THE BOARD OF DIRECTORS OF AVA COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute Power Purchase Agreements with each of the Cities participating in the Program.

Section 2. Ava is approved to use the previously approved $7M budget to offer solar and storage incentives for Resilience projects participating in the Program.

ADOPTED AND APPROVED this 20th day of November, 2024.

____

Jack Balch, Chair

ATTEST:

____

Adrian Bankhead, Clerk of the Board

RESOLUTION NO. R-2024-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE A POWER PURCHASE AGREEMENT AND ASSET PURCHASE AGREEMENT WITH GREENBRIDGE LLC

WHEREAS Ava Community Energy Authority ("Ava") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Powers Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the Joint Powers Agreement ("JPA") in March of 2020. The city of Stockton was added as a member to Ava in September of 2022. The city of Lathrop was added as a member to Ava in October of 2023. San Joaquin County was added as a member to Ava in July 2024. On October 24, 2023, Ava legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

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WHEREAS Ava issued a Request for Offers ("RFO") on November 15, 2023, to solicit proposals to deliver cost effective solar + storage PPAs for The Program,

WHEREAS Ava received a conforming bid that met Ava's requirements for cost effectiveness, installation quality and long-term ownership capabilities from Greenbridge LLC ("Project Owner") and Ava is in the process of negotiating the final details of the PPA

WHEREAS Ava initiated pre-development work at Ava's expense on project sites in order to secure Net Energy Metering 2.0 Interconnection Agreements with PG&E that will be re-imbursed by the Project Owner once projects achieve Notice to Proceed

WHEREAS Timeliness is of the essence in signing the PPA and Asset Transfer Agreement with the developers.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF AVA COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute a 20 or 25 year Power Purchase Agreement with Greenbridge LLC for the development and operation of Ava's Resilient Critical Municipal Facilities Program.

Section 2 The CEO is hereby authorized to negotiate and execute an Asset Purchase Agreement with Greenbridge, LLC to transfer existing project development assets from Ava related to the Program.

ADOPTED AND APPROVED this 20th day of November, 2024.

____

Jack Balch, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

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AVA COMMUNITY ENERGY – GREEN BRIDGE

POWER PURCHASE & SERVICE AGREEMENT
(CRITICAL MUNICIPAL FACILITIES)

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POWER PURCHASE & SERVICE AGREEMENT

This Power Purchase and Service Agreement (this "**Agreement**") is entered into as of [____], 2024 (the "**Execution Date**") between [____], a [____]("**Seller**") and Ava Community Energy, a California joint powers authority ("**Ava**"). Seller and Ava are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**".

RECITALS

WHEREAS, Seller is in the business of developing, constructing, owning, operating, and maintaining renewable energy facilities;

WHEREAS, Ava wishes to engage Seller to develop, construct, own, operate, and maintain multiple photovoltaic solar facilities (each, a "**Generating Project**", and collectively the "**Generating Projects**") and battery energy storage facilities (each, a "**Storage Project**", and collectively the "**Storage Projects**") at a variety of locations, as more particularly described in one or more addenda to be attached hereto and incorporated herein (each, a "**City Portfolio Addendum**" or "**CPA**");

WHEREAS, Seller desires to sell, and Ava desires to purchase, the Product on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 ***Contract Definitions***. All capitalized terms used in this Agreement shall have the meanings ascribed to them in **Schedule I** to this Agreement.

1.2 ***Rules of Interpretation***. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

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(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
CITY PORTFOLIO ADDENDA; SCOPE OF TRANSACTION

2.1 ***City Portfolio Addenda***. On the Execution Date, the Parties shall populate and attach hereto a CPA substantially in the form attached hereto as **Exhibit A** for each of the seven (7) City Portfolios hereunder, which shall specify (i) the mutually agreed upon terms for the purchase and sale of the Product, and (ii) City-Specific Terms that are only applicable to the Projects included in the applicable City Portfolio. Each CPA shall become part of and is hereby incorporated into this Agreement. Any reference to this Agreement shall be a reference to this Agreement together with all duly executed CPAs. In the event of a conflict or inconsistency between the provisions of this Agreement and any CPA, the provisions of the CPA shall control. Each CPA may be amended at any time upon mutual agreement of the Parties confirmed in writing.

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The Parties agree that an amended CPA executed by both Parties shall supersede any prior CPA to the extent provided in such amendment and shall be effective from the date stated in the amended CPA.

2.2 ***Scope of Transaction***. Ava and Seller acknowledge and agree that following the execution of this Agreement, Ava shall enter into seven (7) different power purchase agreements with seven (7) different Cities, under the terms of which Ava shall be the "seller" entity and the City shall be the "purchaser" entity and which shall be in form and substance similar to this Agreement (each a "**City Agreement**" and together, the "**City Agreements**"). Ava shall serve as the intermediary between this Agreement and the City Agreements, whereby each City shall be the ultimate off-taker, and the Seller shall provide the underlying Project output and other performance obligations as required under the terms of this Agreement and the applicable CPA. Each City Portfolio shall be governed by the terms of its own CPA. In the event of an underperformance or default with respect to a single City Portfolio, such underperformance or default shall not be considered to implicate or in any way effect any other City Portfolio or the continued performance obligations of Ava and Seller, respectively, with respect to all other City Portfolios or Projects thereunder as provided under the terms of this Agreement and all relevant CPAs.

2.3 ***Information Sharing and Shared Learning***. Seller understands and acknowledges that Ava is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Ava's portfolio of assets to meet the Cities' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, subject to the confidentiality requirements set forth in Article 22, upon Ava's reasonable request, Seller agrees to share with Ava the applicable meter data for the Projects, including hourly charging and discharging data for the PPA Portfolio.

ARTICLE 3
PURCHASE AND SALE OF PRODUCT

3.1 ***Purchase and Sale of Product***. Subject to the terms and conditions of this Agreement, during the applicable Delivery Period, Ava shall purchase all Product produced by or associated with each Project at the applicable Contract Price, and Seller shall supply and deliver to Ava all Product produced by or associated with each Project. At its sole discretion, Ava may during the Term resell or use for another purpose all or a portion of the Product, provided that no such resale shall relieve Ava of any of its obligations hereunder or modify any of Seller's obligations hereunder. During the Term, Ava shall have the exclusive right to offer, bid or otherwise submit the Product, or any component thereof, from the Projects after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Ava has no obligation to purchase from Seller any Project Energy that is not or cannot be delivered to the Delivery Point as a result of an Outage of the applicable Project or an event of Force Majeure.

3.2 ***Delivery of Project Energy***. Subject to the provisions of this Agreement, with respect to each Generating Project, for the duration of the applicable Delivery Period, Seller shall supply and deliver the Product to Ava at the Delivery Point, and Ava shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be

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responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Project Energy to the Delivery Point. Title to and risk of loss related to the Project Energy shall pass and transfer from Seller to Ava at the Delivery Point. Throughout the term, Seller warrants that all Product delivered to Ava shall be free and clear of all liens, security interests, claims, and encumbrances of any kind.

3.3 ***Environmental Benefits***. During the Term, Ava shall have all right, title, and interest in and to all Environmental Attributes, Energy Incentives, and all other incentives associated with the PPA Portfolio and the Project Energy ("**Environmental Benefits**"); *provided*, however, that all Tax Benefits shall remain with Seller. Seller agrees to convey and hereby conveys all such Environmental Benefits to Ava as included in the delivery of the Product from the PPA Portfolio. Seller agrees to (i) promptly provide assistance to and cooperate with Ava in all commercially reasonable respects in any applications for Environmental Benefits hereunder, (ii) promptly assign to Ava any Environmental Benefit that is initially credited or paid to Seller, and (iii) comply in all material respects with all Applicable Law relating to the acquisition and maintenance of the Environmental Benefits. Title to and risk of loss related to the Environmental Attributes transferred to Ava shall pass and transfer from Seller to Ava upon the transfer of such Environmental Attributes in accordance with WREGIS.

(a) Impairment of Environmental Benefits. Seller shall not take any action or suffer any omission outside of acts or omissions as a part of normal operations that would have the effect of materially reducing or impairing the value to Ava of the Environmental Benefits. Seller shall promptly notify Ava of any event, action or omission of which Seller is aware that could have the effect of materially reducing or impairing the value of the Environmental Benefits. Upon the occurrence of any such event, action or omission, Ava and Seller shall consult as necessary to prevent reduction or impairment of the value of Environmental Benefits.

3.4 ***Future Environmental Attributes***.

(a) The Parties acknowledge and agree that as of the Execution Date, environmental attributes sold under this Agreement are restricted to Environmental Attributes (as such term is defined herein); however, Future Environmental Attributes may be created by a Governmental Authority after the Execution Date. Subject to this Section 3.4(a), in such event, Ava shall bear all costs and risks associated with the transfer, qualification, verification, registration, and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of notice from Ava of Ava's intent to claim such Future Environmental Attributes, the Parties shall determine in good faith the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liabilities, or alter any Project, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Ava has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Ava elects to receive Future Environmental Attributes pursuant to Section 3.4(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery, and risk of loss mechanism, and (ii) appropriate allocation of any additional costs to Ava, as set forth above (in

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any event subject to the Compliance Expenditure Cap set forth in Section 11.2); provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

ARTICLE 4
TERM; EARLY TERMINATION

4.1 ***Effective Date; Term***. This Agreement shall be effective upon the later of (x) the Execution Date, and (y) the date upon which at least one of the City Agreements has been executed and delivered, respectively, by Ava and a City (the "**Effective Date**") and shall end upon the expiration of the final City Term ("**Term**"); provided, that prior to the Effective Date those rights and obligations hereunder expressly arising upon the Execution Date (including Article 20 (Indemnification), Article 23 (Confidentiality), and the defined terms in **Schedule I** used in the foregoing provisions) shall be effective as of the Execution Date. With respect to each City Portfolio (and Seller's performance obligations associated therewith), this Agreement shall be effective as of the applicable City Effective Date, and shall end upon the expiration of all Project Terms for each Project contemplated under the applicable City Agreement (the "**City Term**"). With respect to each Project, the Product supply period ("**Delivery Period**") commences on the Commercial Operation Date of the Project and continues for, depending on the Project and as set forth in each CPA, either twenty (20) or twenty-five (25) years (the "**Initial Term**"), unless terminated earlier pursuant to the provisions of this Agreement. Thereafter, the term of this Agreement may be extended as it applies to such Project, upon mutual written consent, for successive five (5)-year periods (each such period a "**Renewal Term**", and together with the Initial Term, the "**Project Term**"). No less than ninety (90) days prior to the end of the Initial Term, Ava shall provide written notice to Seller as to its desire to continue for any subsequent Renewal Term, upon which the Parties shall negotiate in good faith for sixty (60) days the revised terms, if any, applicable to such Renewal Term. If the Parties do not mutually consent to the Renewal Term after such sixty (60)-day period, then the applicable Project Term will expire at the end of the Initial Term.

4.2 ***Early Termination of Projects***.

(a) Early Termination Events. With respect to each Project, prior to Construction Start, the applicable Party specified below shall have the right to withdraw the affected Project from the applicable City Portfolio upon the occurrence of any of the following events, so long as the terminating Party provides reasonably sufficient evidence to the other Party demonstrating the occurrence of such event (each, an "**Early Termination Event**"):

(i) Either Party may withdraw an affected Project from the applicable City Portfolio under this Section 4.2 if (A) the EPC Contractor encounters extraordinary subsurface conditions that were not reasonably anticipated by either Party as of the Effective Date, such as bedrock or water pipes, which have a material adverse impact on the development costs associated with such Project, and such costs cannot be adequately mitigated or eliminated by Seller using commercially reasonable efforts; (B) Seller discovers historical or cultural artifacts on the Project Site and as a result, Seller is unable to perform its obligations under this Agreement in compliance with Applicable Law; (C) Seller discovers Adverse Environmental Conditions on the Project Site and the terminating Party obtains an opinion from an independent third-party

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consultant (at the sole expense of the terminating Party) that such Adverse Environmental Conditions cannot be adequately mitigated or eliminated by Seller using commercially reasonable efforts; or (D) the applicable City terminates or otherwise withdraws the affected Project from the City Agreement. Notwithstanding any provisions in this Section 4.2(a)(i), (X) Ava may not withdraw, and may not allow a City to withdraw, every Project from a given City Portfolio pursuant to subclause (D) of this Section 4.2(a)(i) (provided, for the avoidance of doubt, Ava or the applicable City may withdraw all but one (1) Project from a City Portfolio pursuant to such subclause (D)), and (Y) if either Party withdraws an affected Project pursuant to subclause (D) of this Section 4.2(a)(i), Seller shall have the right to adjust the Renewable Rate in accordance with Section 10.1(d).

(ii) Only Seller may withdraw an affected Project from the applicable City Portfolio under this Section 4.2 if (A) the Local Electric Utility denies Seller's application for interconnection or easements necessary to enable Seller to transmit Project Energy to the Delivery Point, or the Project Site is otherwise disqualified due to acts or omissions of Ava or the applicable City, despite Seller's use of commercially reasonable efforts; (B) the AHJ rejects Seller's application for a Governmental Approval on non-administrative or prejudicial grounds, despite Seller's exercise of commercially reasonable efforts; (C) Seller discovers or has reasonable grounds to believe that title to the Project Site is unclear, defective or encumbered by adverse claims, restrictions or liens, and can provide evidence supporting documentation or evidence of such belief; or (D) any portion of the Project Site is damaged by fire, earthquake, flood or other casualty in a manner that has a material adverse effect on the installation or operation of the Project at the Project Site and such damage cannot be readily remedied.

(b) Procedures. Upon any such withdrawal of a Project due to an Early Termination Event, the applicable Project Addendum shall be deemed withdrawn from this Agreement, and (1) neither Party shall have any liability to the other Party with respect to the withdrawn Project other than those that survive this Agreement, and (2) Ava shall have the right to deliver a Relocation Request in accordance with Section 16.2. In the case of a claim by either Party that a Project meets the qualification for an Early Termination Event, the other Party may in good faith challenge such a claim in its reasonable judgment. Any disagreement between the Parties regarding the applicability of an Early Termination Event asserted by a Party shall be subject to the dispute resolution provisions of Section 23.8.

ARTICLE 5
PROJECT DEVELOPMENT; MILESTONES

5.1 ***Generally***. Seller shall develop, design, engineer, construct, install, and commission each Project in a timely fashion and in accordance with the terms of this Agreement, Prudent Operating Practice, and Applicable Law.

5.2 ***Development Progress Reports***. With respect to each City Portfolio, starting on the City Effective Date until all Projects within such City Portfolio have achieved COD, Seller shall provide quarterly progress reports (a "**Progress Report**") to Ava which describe Seller's progress in achieving Construction Start and the COD Conditions Precedent for each Project therein. The form of Progress Report is set forth in **Exhibit E**. Seller agrees to regularly scheduled meetings between representatives of Ava and Seller to review the Progress Reports and discuss Seller's

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construction progress. Seller shall also provide Ava with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Construction Start or COD for any Project within ten (10) Business Days of receipt of such request from Ava.

5.3 ***Project Design Approval***. With respect to each Project, no later than ninety (90) days prior to the Estimated Construction Start Date, Seller shall deliver to Ava a Design Plan in accordance with the requirements set forth in **Exhibit C**, which shall be subject to approval by Ava in its reasonable discretion. Within sixty (60) days following the date on which the Design Plan is received by Ava, Ava shall provide written notice to Seller either (a) accepting the Design Plan, or (b) rejecting the Design Plan, along with its commercially reasonable explanation for doing so, including, but not limited to, (i) any operational issues at the applicable Project Site, or (ii) substantial revisions to the original draft design plan upon which indicative price was based. If Ava rejects the Design Plan under clause (b) above, within thirty (30) days of receipt of Ava's rejection, Seller shall modify the Design Plan to address Ava's objections (such modified plan, the "**Modified Design Plan**") and submit such Modified Design Plan to Ava for approval in its reasonable discretion. Within fifteen (15) days following the date on which the Modified Design Plan is received by Ava, Ava shall provide written notice to Seller indicating its acceptance or rejection of the Modified Design Plan. If Ava accepts the Modified Design Plan, such Modified Design Plan shall be deemed the applicable Design Plan for such Project. If Ava rejects the Modified Design Plan, the Parties shall resolve their differences in accordance with the dispute resolution procedures set forth in Section 23.8.

5.4 ***Construction Start***.

(a) Construction Start. With respect to each Project, "**Construction Start**" shall be deemed to have occurred once Seller has (i) engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of such Project may begin and proceed to completion without foreseeable interruption of material duration, (ii) delivered to Ava a Design Plan which has been approved by Ava in its reasonable discretion in accordance with Section 5.3, (iii) delivered to Ava the Development Security for such City Portfolio in accordance with Section 14.1, and (iv) executed an EPC Contract and issued thereunder a notice to proceed that authorizes the EPC Contractor to mobilize the Project Site and begin physical construction of the Project at the Project Site. The date of Construction Start will be evidence by and subject to Seller's delivery to Ava of a certificate substantially in the form attached as **Exhibit F** hereto, and the date certified therein shall be the "**Construction Start Date**". With respect to each Project, Seller shall cause Construction Start to occur by the applicable Construction Start Deadline.

(b) Force Majeure Delay. If Seller's timely achievement of Construction Start is impacted by an event of Force Majeure ("**Force Majeure Delay**"), Seller shall be entitled to extend the Construction Start Deadline on a day-for-day basis for no more than one hundred twenty (120) days ("**FM Delay Cure Period**") so long as Seller provides to Ava written notice of Force Majeure in accordance with the requirements set forth in Section 12.3 on or before the Construction Start Deadline. Upon Ava's written request, Seller shall provide reasonable documentation demonstrating to Ava's reasonable satisfaction that the Force Majeure Delay was the result of a Force Majeure event and did not result from Seller's actions or failure to take commercially reasonable actions. Notwithstanding anything to the contrary in this Agreement, Seller shall

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receive no extension under the FM Delay Cure Period if and to the extent that (i) the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, including the failure to perform due diligence on its suppliers consistent with Prudent Operating Practice, or does not otherwise satisfy the requirements of a Force Majeure event, (ii) Seller failed to provide the requested documentation required under the immediately preceding sentence, or (iii) Seller failed to provide written notice of such Force Majeure Delay to Ava as required under Section 12.3.

(c) Termination for Construction Delay. If Seller has not achieved Construction Start by the Construction Start Deadline (subject to any FM Delay Cure Period thereto) for any reason, Ava shall have the right to declare a Seller Event of Default in accordance with Section 13.1(a)(ii) and terminate the applicable Project.

5.5 ***Interconnection***. With respect to each Project, Seller shall, at its own cost and expense, (a) negotiate and enter into an Interconnection Agreement with the Local Electric Utility, and any other easements or agreements necessary to enable Seller to transmit Project Energy to the Delivery Point, (b) comply with all terms and conditions contained in the Interconnection Agreement as necessary for the safe and reliable delivery of Product, (c) arrange, schedule, and be responsible for any and all electric distribution and transmission service, including any Governmental Approvals required for the foregoing, and (d) be responsible for all costs of interconnecting the Project to the Transmission System. Seller shall (x) fulfill all contractual, metering, and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Local Electric Utility's applicable tariffs and the CAISO tariff, and (y) implement all applicable CAISO standards and requirements, in the case of each of (x) and (y), so as to be able to deliver the Product to Ava. Seller shall have and maintain throughout the applicable Delivery Period interconnection capacity available or allocable to the Project under the Interconnection Agreement that is no less than the Project Capacity.

5.6 ***Commercial Operation***.

(a) Commercial Operation Deadline. With respect to each Project, Seller shall cause the Commercial Operation Date to occur by the applicable Commercial Operation Deadline.

(b) Force Majeure Delay. If Seller's timely achievement of the Commercial Operation Date is impacted by a Force Majeure Delay, Seller shall upon its provision of written notice to Ava on or before the Commercial Operation Deadline, be entitled to an FM Delay Cure Period. For the avoidance of doubt, no COD Delay Damages shall be owed during such FM Delay Cure Period. Upon Ava's written request, Seller shall provide reasonable documentation to Ava's reasonable satisfaction that the Force Majeure Delay was the result of a Force Majeure event and did not result from Seller's actions or failure to take commercially reasonable actions, including the failure to perform due diligence on its suppliers consistent with Prudent Operating Practice. Notwithstanding anything to the contrary in this Agreement, Seller shall receive no extension under the FM Delay Cure Period if and to the extent that (i) the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure event, (ii) Seller failed to provide the requested documentation required under the immediately preceding sentence or (iii) Seller failed to provide written notice of such Force Majeure Delay to Ava as required under Section 12.3.

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(c) COD Delay Notice; COD Delay Cure Period. Seller shall provide Ava with advanced notice of any delay in achieving the Commercial Operation Date by the Commercial Operation Deadline, including a true and reasonably detailed explanation or the cause of such delay ("**COD Delay Notice**") at least sixty (60) days in advance of the Commercial Operation Deadline (or, if Seller's anticipation of such delay does not arise until after such advanced window, then as soon as reasonably practicable following such anticipation arising). If the Project has not achieved COD by the Commercial Operation Deadline (subject to any FM Delay Cure Period thereto), then Seller may avoid a Seller Event of Default for the duration of the COD Delay Cure Period by paying to Ava the COD Delay Damages for each day of such delay; provided, that such COD Delay Damages shall be paid to Ava in advance on a monthly basis, and a prorated amount shall be returned to Seller if the Commercial Operation Date occurs during the month for which COD Delay Damages were paid in advance. Prior to the expiration of the COD Delay Cure Period, as long as Seller has provided the COD Delay Notice to Ava and paid COD Delay Damages to Ava in accordance with this Section 5.6(c), Seller's failure to achieve the Commercial Operation Date by the Commercial Operation Deadline shall not be deemed a Seller Event of Default. Upon (A) Seller's failure to provide a COD Delay Notice to Ava in accordance with this Section 5.6(c), (B) Seller's failure to timely pay COD Delay Damages in accordance with this Section 5.6(c), or (C) Seller's failure to achieve the Commercial Operation Date prior to the expiration of the COD Delay Cure Period, in each case for any reason other than a Force Majeure Delay or Ava's fault or negligence, Seller shall be deemed a Defaulting Party pursuant to Section 13.1(a)(iii) and Ava shall have the right to declare a Seller Event of Default and terminate the applicable Project.

(i) *Acknowledgement of Liquidated Damages*. Each Party agrees that (A) the damages that Ava would incur due to Seller's delay in achieving the Commercial Operation Deadline would be difficult or impossible to predict with certainty, and (B) the COD Delay Damages are an appropriate approximation of such damages.

(d) COD Conditions Precedent. With respect to each Project, Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement, to develop the Project, and to deliver the Product to Ava pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Commercial Operation Date (collectively, the "**COD Conditions Precedent**") and must be satisfied and confirmed via written notice ("**COD Completion Notice**") from Seller to Ava at least five (5) days prior to the Commercial Operation Date, to Ava's reasonable satisfaction:

(i) Seller has delivered to Ava (A) a completion certificate from an officer of Seller certifying the achievement of the Commercial Operation Date substantially in the form of **Exhibit G**, and (B) a certificate from a Licensed Professional Engineer substantially in the form of **Exhibit H** setting forth the Installed Capacity as of the Commercial Operation Date;

(ii) An Interconnection Agreement between Seller and the Local Electric Utility shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Ava;

(iii) An O&M Contract between [Seller] and the O&M Contractor shall have been executed and delivered and be in full force and effect and a copy of the O&M Contract delivered to Ava;

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(iv) Seller has provided Ava with login credentials or access to applicable Software granting access to view applicable network operations of the Project;

(v) All applicable regulatory authorizations, approvals, and permits required for operation of the Project, including the final building inspection approval, have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(vi) Seller has delivered to Ava the Performance Security for the applicable City Portfolio in accordance with Section 14.2;

(vii) Insurance requirements for the Project pursuant to Section 19.1 have been met, with evidence provided in writing to Ava;

(viii) As of the Commercial Operation Date, no Seller Event of Default shall have occurred and be continuing and remain unsolved; and

(ix) Seller has paid Ava all amounts owing under this Agreement, if any, including COD Delay Damages.

(e) Pre-Operational Testing. No later than five (5) Business Days prior to conducting a pre-operational test to determine the Installed Capacity of the Project in accordance with Section 5.6(d)(i)(B) (the "**Pre-Operational Test**"), Seller shall notify Ava of the date on which it intends to retain a Licensed Professional Engineer to perform such Pre-Operational Test. Ava and the applicable City shall have the right to be present during any such Pre-Operational Test.

(f) Confirmation of Commercial Operation Date. Within five (5) Business Days following the date on which the COD Completion Notice is received by Ava, Ava shall either (i) provide notice to Seller accepting the COD Completion Notice, or (ii) if reasonable cause exists for doing so, notify Seller that the COD Conditions Precedent have not been achieved along with a description of the deficiencies. If Ava does not provide notice under either (i) or (ii) above, the COD Completion Notice shall be deemed accepted at the end of such five (5) Business Day period. If the COD Conditions Precedent have not been satisfied and Ava delivers notice under clause (ii) above, Seller shall promptly perform corrective measures to achieve the deficient COD Conditions Precedent. Upon completing such corrective measures, Seller shall issue a new COD Completion Notice for Ava's consideration. If Seller disputes Ava's notice, the Parties shall resolve their differences in accordance with Section 23.8. For the avoidance of doubt, the COD Conditions Precedent will have been achieved either when stated in a COD Completion Notice that is accepted by Ava in its reasonable discretion or when so determined via the dispute resolution procedures in Section 23.8. On or promptly following the Commercial Operation Date (in no event later than five (5) Business Days thereafter), Ava shall provide a notice to Seller confirming the occurrence of the Commercial Operation Date.

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ARTICLE 6
PROJECT SITE ACCESS AND MAINTENANCE

6.1 ***Access Rights***. With respect to each Project, effective on the Effective Date, Ava hereby grants to Seller and its agents, employees, and contractors a Non-Exclusive Sublicense.

6.2 ***Maintenance of the Projects***. Subject to the warranties set forth in Section 8.2, Seller covenants and agrees to the following:

(a) O&M Services. With respect to each Project, Seller shall (i) perform any and all maintenance and repair activities necessary to maintain the Projects in good operating condition, including, but not limited to (A) remedying ordinary wear and tear, to the extent such wear and tear has a material adverse effect on the functioning of the Projects, and (B) except as otherwise limited under the scope of this Agreement, all repairs for damages occurring outside of ordinary exposure and usage; (ii) respond to maintenance requests received by Ava in a timely manner; (iii) monitor the Projects via remote monitoring on an ongoing basis, and conducting any necessary maintenance tasks revealed by such monitoring; and (iv) provide regular updates to Ava regarding the state of issue resolution, scheduled maintenance, and any other information relevant to the performance of the Projects.

(b) Liability for Repairs. All maintenance and repairs, whether scheduled or unscheduled, which are required for the operation of the Projects in accordance with this Agreement shall be undertaken at Seller's sole cost and expense; provided, however, if Ava, the applicable City, or any invitee thereof, is responsible for any damage or loss of the use of any Project outside of warrantied or normal wear and tear, then Ava shall bear sole responsibility for reasonable charges to remedy such damage to or loss of the use of the Project, the cost of which shall be included within the monthly invoice subject to Seller first receiving a written estimate of the cost of such repairs.

6.3 ***Role of Cities in Project Site Maintenance***.

(a) Maintenance of Premises. Pursuant to the terms of the applicable City Agreement, Ava shall cause each City, at the City's sole cost and expense, to maintain the applicable Project Sites, Property, and Improvements located in such City in good condition and repair. Ava shall use commercially reasonable efforts to cause each City to (i) maintain each Project Site's interconnection to the Transmission System, (ii) with respect to each Project, maintain electric service with the Local Electric Utility, (iii) maintain the electrical infrastructure located on the Property, or any other electrical infrastructure located prior to the Delivery Point which is under the reasonable control of the City, including any of the City's equipment that utilizes Project Energy, and (iv) cooperate with Seller to comply with any technical standard of the Local Electric Utility. Notwithstanding the foregoing, in no event shall Ava have any responsibility to satisfy any of the foregoing obligations if the applicable City fails to do so.

(b) Alterations of Premises. To the extent Ava receives proper notice thereof from the applicable City, Ava shall provide notice to Seller no less than twenty-five (25) days in advance of such City's performance of any alterations or repairs (or, if Ava does not receive notice from the City until after such advance window, then as soon as reasonably possible after receiving

notice thereof) to any Project Site or Improvement which may adversely affect the operation and maintenance of the applicable Project. Upon Seller's request at least ten (10) days prior to the City initiating such alterations or repairs, Ava shall promptly deliver to City any of Seller's reasonable requests to mitigate any adverse effect of such alterations or repairs. If any alteration or repair has a permanent and material adverse effect on such Project's ability to operate in accordance with the terms of this Agreement, Ava shall have the right to deliver a Relocation Request in accordance with Section 16.2.

(c) Insolation. The Parties agree and acknowledge that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations hereunder. Pursuant to the terms of the City Agreement, Ava shall cause the City to agree to (i) not cause or permit any interference with each Generating Project's Insolation, and (ii) to the extent within such City's reasonable control, ensure that vegetation on the Property which is adjacent to a Generating Project is regularly pruned or otherwise maintained to prevent interference with the Generating Project's Insolation. Within five (5) Business Days of the applicable Commercial Operation Date for each Project, Seller shall deliver to Ava a shade report from Suneye or a comparable entity; provided, that Ava shall use commercially reasonable efforts to cause City to deliver any necessary approvals or acknowledgements in connection with the preparation of such shade report and Seller has received any approvals or acknowledgements necessary for the preparation of such shade report. If the Insolation of any Generating Project is materially reduced during the applicable Project Term due to new obstructions or vegetation, and the applicable City fails to remove or otherwise remedy such obstructions or vegetation within thirty (30) days of receipt of notice thereof, the Expected Project Energy shall be reduced in proportion to the reduction in Insolation.

6.4 ***Outages***.

(a) Planned Outages. With respect to each City Portfolio, at least ninety (90) days prior to the start of the first City Contract Year, and on an annual basis thereafter, Seller shall submit to Ava a schedule of proposed Planned Outages ("**Planned Outage Schedule**") for all Projects within such City Portfolio for the following City Contract Year, the form of which shall be reasonably acceptable to Ava. Within sixty (60) days following its receipt of the Planned Outage Schedule, Ava shall notify Seller in writing on any reasonable request for changes to the Planned Outage Schedule, and Seller shall accommodate Ava's requests regarding the timing of any Planned Outage in accordance with Prudent Operating Practice. Seller may propose changes to any previously schedule Planned Outage by providing notice to Ava at least thirty (30) days prior to such Planned Outage. Ava shall review each such change and advise Seller within fifteen (15) days following Ava's receipt thereof as to whether such change is accepted, in Ava's reasonable discretion, or Ava may propose alternate dates for the request change.

(i) *Planned Outage Hours*. Except as otherwise mutually agreed upon by the Parties: (A) the number of Planned Outage hours in any given City Contract Year shall not exceed one hundred twenty (120) hours, plus such additional hours as are reasonably necessary for Seller to comply with maintenance required by Applicable Law; and (B) Seller shall use commercially reasonable efforts to conduct Planned Outages during each Project's non-peak production periods.

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(b) Ava-Requested Outages. With respect to each Project, Ava may request, upon three (3) days' advanced written notice, that Seller suspend the delivery of Project Energy from the Project to the Delivery Point for the duration specified in such notice (each such event, an "**Ava-Requested Outage**"); provided, however, that except as otherwise mutually agreed by the Parties, the number of Ava-Requested Outage hours for each Project in any given City Contract Year shall not exceed one-hundred twenty (120) hours (the "**Ava-Requested Outage Cap**"). For the avoidance of doubt, Ava shall have no obligation to pay for any Project Energy that would have been delivered during the duration of an Ava-Requested Outage, so long as such outages do not exceed the Ava-Requested Outage Cap for the applicable City Contract Year.

(c) Forced Outage. Seller shall take prompt action and use commercially reasonable efforts to cure any circumstance contributing to a Forced Outage that materially reduces a Project's ability to deliver Product hereunder. To the extent that any Forced Outage causes a shutdown of all electricity service at the Premises such that the applicable Project Site is unable to procure adequate replacement electricity from the Local Electric Utility during such Forced Outage, upon Ava's request and at Ava's sole cost and expense, Seller shall use commercially reasonable efforts to provide access to a generator or other temporary alternative power to the Project Site until such Forced Outage is resolved. In the event of any Forced Outage hereunder, Seller shall notify Ava as soon as reasonably practicable but in no event later than three (3) hours after such Forced Outage occurs. Such notice shall generally describe the nature of the Forced Outage, the expected duration, and any other pertinent information that assists Ava in planning for the decreased output of the affected Project as a result of the Forced Outage. Seller shall promptly inform Ava of any change in the expected duration of the Forced Outage. Seller shall return the Project to service as soon as possible, consistent with Prudent Operating Practice, after the Forced Outage ceases to exist.

(i) *Communication*. If either Party receives information from CAISO or the Local Electric Utility indicating that maintenance will be performed on the Transmission System which may result in a Forced Outage or otherwise have a material adverse effect on a Project, such Party shall deliver notice of such information to the other Party.

6.5 ***Health and Safety***. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of each Project. If Seller becomes aware of any circumstances relating to a Project that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give notice to Ava's emergency contact identified on Exhibit I of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Project, or suspending the supply of Project Energy to Ava.

ARTICLE 7
TAXES; PROPERTY OWNERSHIP; FIXTURES

7.1 ***Allocation of Taxes and Charges***. Seller shall pay or cause to be paid all taxes on or with respect to the Project or on or with respect to the sale and making available of Product to Ava that are imposed on Product prior to its delivery to Ava at the Delivery Point. Ava shall pay or cause to be paid all taxes on or with respect to the Property or on or with respect to the delivery to and purchase by Ava or Product that are imposed on Product at and after its delivery to Ava at

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the Delivery Point (other than withholding or other taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the taxes due and then seek and receive reimbursement from the other for such taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular tax, Ava shall provide Seller with all necessary documentation within thirty (30) days after the Execution Date to evidence such exemption or exclusion. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it its exempt under Applicable Law.

7.2 ***Cooperation***. Each Party shall use commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

7.3 ***Tax Benefits***. During the Term, Seller shall have all right, title, and interest in and to all Tax Benefits associated with the PPA Portfolio. Seller shall use commercially reasonable efforts to maximize the value received for each Project from the ITC and applicable ITC adders that are relevant to Project pricing.

7.4 ***Ownership of Projects***.

(a) Ownership; Personal Property. Throughout the Term, Seller shall be the legal and beneficial owner of each Project, and each Project will remain the personal property of Seller and will not attach to or be deemed part of, or fixture to, the applicable Project Site or any Improvement on which such Project is installed. Each of Seller and Ava agree that Seller is the tax owner of each Project and all tax filings and reports shall be filed in a manner consistent with this Agreement. Each Project will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

(b) Notice to Ava Lienholders. Ava shall use commercially reasonable efforts to place all parties having a Lien on the applicable Project Sites or any Improvement on which a Project is installed on notice of the ownership of such Project and the legal status or classification of such Project as personal property. If any mortgage or fixture filing against any Project Site could reasonably be construed as prospectively attaching any Project as a fixture on such Project Site, Ava shall provide a disclaimer or release from such lienholder.

(c) Fixture Disclaimer. With respect to each Project Site, if Ava is the fee owner of such Project Site, Ava consents to the filing of a disclaimer of any Project thereon as a fixture of the Project Site in the office where records are customarily filed in the jurisdiction where the Project Site is located. If Ava is not the fee owner, Ava shall obtain consent from the fee owner such that Seller shall have the right to file such a disclaimer in accordance with the terms thereof.

7.5 ***Covenants and Obligations Regarding Liens***. Ava shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, step order, lien (including mechanics, labor or materialmen's lien), charge, security interest, encumbrance or claim (each, a

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"**Lien**") on or with respect to the Projects or any portion thereof to any Person other than a Financing Party. Seller shall not directly or indirectly cause, create, incur, assume or suffer to exist any Lien on or with respect to any equipment or property of Ava or the applicable City, other than those Liens that Seller is permitted by Applicable Law to place on Ava's interest in a Project Site due to Ava's non-payment of amounts due under this Agreement. If either Party breaches its obligations under this Section 7.5, such breaching Party shall (i) promptly notify the other in writing, (ii) cause any Lien within fifteen (15) days of breaching Party having received written notice thereof to be discharged and released of record without cost to the other Party, and (iii) indemnify the non-breaching Party against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such Lien.

ARTICLE 8
PERFORMANCE GUARANTEES; WARRANTIES

8.1 ***Guaranteed Energy Production***.

(a) Guaranteed Energy Production. With respect to each City Porfolio, starting on the second (2nd) City Contract Year, Seller shall be required to deliver to Ava no less than eighty five percent (85%) of the Expected City Energy (which shall be based on a projected P90 value of such energy production and shall be as set forth in the applicable CPA) measured as a rolling average of three consecutive City Contract Years ("**Measurement Period**"), commencing on the third City Contract Year (the "**Guaranteed Energy Production**"). For purposes of determining whether Seller has achieved the Guaranteed Energy Production, and beginning with the fourth City Contract Year, Seller shall be deemed to have delivered to Ava the "**Adjusted Energy Production**", which shall consist of (i) all Project Energy (measured in kWh) actually delivered by Seller to Ava during the Measurement Period, and (ii) any energy in the amount it could have delivered to Ava but was prevented from delivering to Ava by reason of (A) the occurrence of an event of Force Majeure (so long as such event of Force Majeure was properly declared in accordance with Section 12.3), (B) Planned Outage, (C) Ava-Requested Outage, and/or (D) Forced Outage. For each City Contract Year, Seller shall be deemed to have achieved the Guaranteed Energy Production if the Adjusted Energy Production is greater than or equal to eighty-five percent (85%) of the Expected City Energy. If Seller fails to achieve the Guaranteed Energy Production amount in any City Contract Year, Seller shall pay Ava damages calculated in accordance with Section 8.1(b).

(b) In any City Contract Year, in the event that Seller fails to achieve the Guaranteed Energy Production, and as Ava's sole and exclusive remedy therefor, Seller shall pay Ava the Guaranteed Energy Damages accrued during such year; provided, however, that Seller shall have no obligation to pay Guaranteed Energy Damages in excess of seventy-five percent (75%) of the applicable City Generating Payment for such City Contract Year. The Parties specifically recognize that Ava's damages associated with any Guaranteed Energy Damages will be difficult to quantify. The Guaranteed Energy Damages contemplated in this Section 8.1 are a fair and reasonable calculation of such damages, shall be deemed to constitute liquidated damages, and do not constitute a penalty.

8.2 ***Seller Performance Warranties***.

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(a) Workmanship Warranty. Seller warrants that each Project will be fit for its intended purpose and free from defects in design, materials, and workmanship for a period of three (3) years, starting on the Commercial Operation Date. If the Project (or any component or portion thereof) fails to conform to the foregoing warranty, Seller shall, at its own expense, remedy such defect in a timely manner.

(b) Roof Damage Warranty. Seller warrants that no damage will be inflicted on the roof of any Improvement on which any Project ("**Project Roof**") is installed as a result of the installation or maintenance of the Project ("**Roof Damage Warranty**"). With respect to each Project, Seller shall provide such Roof Damage Warranty starting on the Construction Start date and ending on the date that is the later of (i) ten (10) years after Seller's most recent performance of installation or maintenance activities on such Project Roof or (ii) the expiration of any then-effective installer warranty on the applicable Project Roof. In the event that Seller damages any Project Roof during the term of the Roof Damage Warranty, Seller shall promptly repair and remedy such damage to the reasonable satisfaction of Ava.

(c) Equipment Warranty. With respect to each Project, Seller warrants that on the Commercial Operation Date, all Project Equipment will be (i) new, (ii) Error-Free, (iii) provided by a Tier 1 Supplier, and (iv) with respect to each Storage Project only, (A) benefits from a manufacturer's warranty (including an energy retention warranty), and (B) includes all of the components, functionality, and other material features that affect performance and the user experience (i.e., data acquisition and operating controls) of a standard, high-quality storage facility.

(d) No Implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND EXPLICITLY DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IMPLIED WARRANTIES OF CUSTOM OR USAGE.

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ARTICLE 9
ADDITIONAL SELLER OBLIGATIONS

9.1 ***WREGIS***. Seller shall take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all RECs corresponding to all Project Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Ava for Ava's sole benefit. Seller shall transfer the RECs to Ava. Seller shall comply with all Applicable Law, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Ava and Ava shall be given sole title to all such WREGIS Certifications. In addition:

(a) With respect to each Project, prior to the Commercial Operation Date, Seller shall register the Project with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the applicable Delivery Period. Seller shall transfer the WREGIS Certificates using Forward Certificate Transfers (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Ava or the account(s) of a designee that Ava identifies by notice to Seller ("**Ava's WREGIS**

Account"). Seller shall be responsible for all expenses associated with registering each Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Ava's WREGIS Account.

(b) If (i) WREGIS changes the WREGIS Operating Rules after the Execution Date, (ii) WREGIS applies the WREGIS Operating Rules in a manner that is inconsistent with this Section 9.1 after the Execution Date, or (iii) WREGIS ceases to be in operation as of the Commercial Operation Date of any Project, the Parties shall promptly modify this Section 9.1 as reasonably required to cause and enable to Seller to transfer to Ava a quantity of WREGIS Certificates (or its equivalent, if WREGIS ceases to be in operation) for each given calendar month that corresponds to the Project Energy in the same calendar month.

9.2 ***Green-e Certification***. Seller shall execute all documents or instruments reasonably required by Ava in order for the Projects to be eligible for Green-E certification.

9.3 ***Subcontractors***. Seller may locate and procure the services of properly licensed and qualified subcontractors for the performance of any portion of Seller's obligations under this Agreement; provided, however, that no such engagement shall relieve Seller of any of its duties, responsibilities, obligations or liabilities hereunder, and Seller shall be liable for such subcontractors to the same extent as if Seller performed the services itself. Prior to engaging any subcontractor, Seller shall ensure that such subcontractor is sufficiently qualified and experienced equal to the standard observed by a competent practitioner of the profession in which the subcontractor is engaged.

(a) Prevailing Wage Requirement. Seller shall use best efforts to ensure that all contractors, subcontractors, and employees hired or contracted by Seller which will perform construction work or otherwise provide services on any Project Site related to the construction of any Project are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any. Nothing herein shall require Seller or its subcontractors or contractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Ava agrees that Seller's obligations under this Section 9.3(a) will be satisfied upon the execution of a project labor agreement related to construction of the Projects.

(b) Local Requirement. Seller shall ensure that each contractor and subcontractor hired or contracted by Seller which will perform construction work or otherwise provide services on any Project Site related to the construction of any Project (such work or services, the "**On-Site Services**", and each such contractor or subcontractor, an "**On-Site Contractor**") utilizes Local Hires to carry out seventy-five percent (75%) or more of the total hours spent performing On-Site Services (the "**Local Requirement**"). For the avoidance of doubt, the Local Requirement shall apply to each On-Site Contractor, regardless of the total number of persons performing such On-Site Services on behalf of such On-Site Contractor.

(c) Union Requirement. Seller shall ensure that each On-Site Contractor utilizes union labor in the performance of On-Site Services (the "**Union Requirement**"). Notwithstanding the foregoing, if Seller determines in its reasonable discretion that a Project will

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not achieve COD by the Commercial Operation Deadline due to its adherence to the Union Requirement, Seller shall provide written notice to Ava as soon as practicable and not less than sixty (60) days prior to the applicable Construction Start Date indicating (i) its efforts to utilize union labor, including a summary of the estimated costs and any delays associated with using union labor, and (ii) the anticipated date it would achieve COD if it were to adhere to the Union Requirement. Within five (5) Business Days of receiving such notice, Ava shall provide written confirmation to Seller indicating whether it will (a) waive the Union Requirement with respect to the applicable Project, or (b) provide an extension to the Commercial Operation Deadline. For the avoidance of doubt, if Ava waives the Union Requirement for any Project in accordance with this Section 9.3(c), Seller shall not be excused from its obligation to comply with the Local Requirement.

(d) Reporting Requirement. Within ten (10) days of Ava's reasonable request, Seller shall provide Ava with a written report detailing its compliance with the Union Requirement and the Local Requirement.]

9.4 ***Measurement; Meter***. Each Project's electricity output during the Project Term shall be measured by the applicable City's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). The Meter shall be installed, commissioned, and operated by Seller throughout the applicable Project Term at Seller's sole cost and expense. Throughout the Project Term, Seller shall provide reasonable access to the Meter and measurement data associated therewith to Ava and the applicable City.

9.5 ***Station Use***. Seller shall be responsible for procuring and paying for all Station Use. Seller shall indemnify and hold harmless Ava from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the Local Electric Utility, and shall take any additional measures to ensure Station Use is supplied by the Local Electric Utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

ARTICLE 10
INVOICING AND PAYMENT

10.1 ***Billing and Payment Terms***.

(a) Prepayment. On or prior to the date upon which twenty percent (20%) of the Generating Projects in the PPA Portfolio have achieved COD (measured on the basis of Guaranteed Nameplate Capacity), Ava, in its sole discretion, shall have the right to make a prepayment of future amounts owed under this Agreement in an amount of up to Four Million Dollars ($4,000,000) (the "**Prepayment**"). If Ava makes the Prepayment, beginning on the three (3) month anniversary of the Prepayment Date, and for the following two hundred forty (240) months (the "**Credit Period**"), Seller shall receive a credit towards its Monthly Payment (such credit, the "**Prepayment Credit**"), which shall be reflected as a line item reduction on Seller's monthly invoice delivered in accordance with Section 10.2. Each Prepayment Credit shall be calculated in an amount equivalent to enabling Ava to achieve an internal rate of return of eight percent (8%) on the Prepayment and associated Prepayment Credits over the Credit Period.

(i) If this Agreement is terminated prior to the expiration of the Credit Period for any reason, Seller shall owe Ava a reimbursement payment for any remaining uncredited portion of the Prepayment on a pro rata basis, which shall be measured by multiplying (A) the actual Prepayment amount made by Ava, by (B) the number of remaining months in the Credit Period, divided by the total number of months in the Credit Period as specified in Section 10.1(a) (the "**Prepayment Reimbursement**").

(b) Project Savings. Throughout the Term, with respect to each City Portfolio, Seller shall provide Ava with Project Savings. The Parties acknowledge and agree that the Renewable Rates set forth in the table in Section 10.1(c) below have been calculated in a manner to ensure that each City Portfolio achieves estimated Project Savings greater than zero dollars ($0) over the Delivery Term.

(c) Calculation of Monthly Payment. On a monthly basis during the PPA Portfolio Delivery Period, Ava shall pay Seller a Monthly Payment for all Product delivered under the PPA Portfolio, which shall be calculated in accordance with the following:

(i) With respect to each City Portfolio, (A) for each Tranche A Project therein, multiply (1) all PV Energy delivered to Ava at the Delivery Point during the applicable City Contract Month ("**Delivered Energy**"), by (2) the applicable Tranche A PPA Rate for such City Portfolio set forth in the table below; (B) for each Tranche B Project therein, multiply (1) all Delivered Energy by (2) the applicable Tranche B PPA Rate for such City Portfolio set forth in the table below (the sum of (A) and (B) for all Projects, the "**City Generating Payment**"); and (C) multiply (1) the Storage Rate for such City Portfolio, as set forth in the applicable CPA, by (2) the Availability Adjustment for such month (as determined under Exhibit B) (such product, the "**City Storage Payment**"). The City Storage Payment constitutes the entirety of the amount due to Seller from Ava for the Storage Product. Notwithstanding the foregoing, the Parties acknowledge and agree that (X) the Renewable Rates set forth in the following table shall be subject to an annual escalator of two and one-half percent (2.50%) (the "**Annual Escalator**"), and (Y) other than with respect to such Annual Escalator, such Renewable Rates are to remain fixed for the duration of the Term, except as otherwise set forth in Section 10.1(d).

RENEWABLE RATES BY CITY PORTFOLIO							
	Berkeley	**Fremont**	**Hayward**	**San Leandro**	**Livermore**	**Oakland**	**Pleasanton**
Tranche A PPA Rate	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]
Tranche B PPA Rate	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]	$[XX]

(ii) The sum of the City Generating Payment and the City Storage Payment shall constitute the "**City Monthly Payment**", and the sum of the City Monthly Payment

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for all seven (7) Cities hereunder, less the Prepayment Credit, if applicable, shall constitute the "**Monthly Payment**".

(d) Adjustments to Renewable Rate. With respect to both the Tranche A PPA Rate and the Tranche B PPA Rate, in the event that any Project is terminated or withdrawn from the applicable City Portfolio due to an Early Termination Event under subclause (D) of Section 4.2(a)(i), the Parties shall negotiate in good faith a revised Renewable Rate for the affected City Portfolio and execute an amendment reflecting such revised Renewable Rate in accordance with Section 23.4; provided, however, that such revised Renewable Rate shall provide the City Portfolio with estimated Project Savings greater than zero dollars ($0).

(e) Adjustments to Tranche B PPA Rate. Prior to Construction Start, with respect to the Tranche B PPA Rate only, upon Seller's delivery to Ava of a reasonably documented design change for any Tranche B Project, Seller may increase the Tranche B PPA Rate for the affected City Portfolio in an amount up to the applicable threshold set forth in the table below (the "**City Price Threshold**"); provided, however, in the event that Seller increases the Tranche B PPA Rate pursuant to this Section 10.1(e) in excess of the City Price Threshold, Ava may, in its reasonable discretion, terminate or withdraw such Tranche B Project from the affected City Portfolio in order to achieve estimated Project Savings greater than zero dollars ($0) over the Delivery Term at such increased Tranche B PPA Rate, upon which (i) such increased Tranche B PPA Rate shall take effect, and (ii) neither Party shall have any liability to the other Party with respect to the withdrawn Project other than those that survive this Agreement. Any adjustment to the Tranche B PPA Rate made in accordance with this Section 10.1(e) shall be reflected in an amendment executed by both Parties in accordance with Section 23.4.

CITY PRICE THRESHOLDS BY CITY PORTFOLIO							
City Portfolio	**Berkeley**	**Fremont**	**Hayward**	**San Leandro**	**Livermore**	**Oakland**	**Pleasanton**
Threshold	[XX]	[XX]	[XX]	[XX]	[XX]	[XX]	[XX]

10.2 ***Invoicing***. On a monthly basis during the PPA Portfolio Delivery Period, Seller shall deliver to Ava an invoice for the Monthly Payment and any other amounts incurred hereunder no later than thirty (30) days after the end of the applicable monthly billing period. Failure to deliver such invoice within seventy-five (75) days of the end of the applicable monthly billing period shall constitute a waiver of Ava's obligation to compensate Seller for any Product delivered during such month. Such invoice shall include sufficient details such that Ava can reasonably confirm the accuracy of such invoice, including, among other details, (a) records of data from the Meter indicating all PV Energy, Discharging Energy, and Storage Capacity, and (b) the Monthly Payment owed, including, if applicable, any Prepayment Credit applied thereto. Subject to Section 10.3, all invoices issued by either Party pursuant to this Agreement shall be payable by the other Party within forty-five (45) days of receipt. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date shall be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or

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before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the lesser of (x) five percent (5%) or (y) the maximum amount permitted under Applicable Law (the "**Interest Rate**").

10.3 ***Payment Adjustments; Billing Errors***. Payment adjustments shall be made if Seller or Ava discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 10.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data. If the required adjustment is in favor of Ava, Ava's next Monthly Payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment to Ava's next monthly invoice. Adjustments in favor of either Ava or Seller shall bear interest, until settled in full, in accordance with Section 10.2, accruing from the date on which the adjusted amount should have been due.

10.4 ***Billing Disputes***. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any computational error within twelve (12) months of the date of such invoice, or adjustment to such invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 10.3 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the 12-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

10.5 ***Books and Records***. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Applicable Law. Upon ten (10) Business Days' notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds ten thousand dollars ($10,000). Unless otherwise required by Applicable Law or agreed to by the Parties in writing, an electronic copy of any record shall be deemed an original.

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ARTICLE 11
CHANGES IN LAW; COMPLIANCE EXPENDITURE CAP

11.1 ***Changes in Law***. Subject to Section 11.2 below, in the event that any Change in Law occurring after the Execution Date results in this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Seller and Ava enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, the Parties shall engage in such negotiations in good faith. If the Parties are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 23.8. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, an event of Force Majeure, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

11.2 ***Compliance Expenditure Cap***. With respect to each Project, if a Change in Law has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement or the applicable CPA (any action required to be taken by Seller to comply with such Change in Law, a "**Compliance Action**"), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Project Term to comply with all such obligations shall be capped at One Hundred Dollars ($100) per kW of such Project's Guaranteed Nameplate Capacity or Storage Inverter Power, as applicable, in aggregate over the Project Term (the "**Compliance Expenditure Cap**"). If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide notice to Ava of such anticipated out-of-pocket expenses. If, within fifteen (15) Business Days after receiving Seller's notice, Ava does not agree in writing to reimburse Seller for all costs and expenses of Compliance Actions in excess of the Compliance Expenditure Cap, Seller's obligation to take any and all applicable Compliance Actions, and deliver any and all Product that may not be delivered in the absence of such Compliance Actions, shall be waived.

ARTICLE 12
FORCE MAJEURE; BUDGETARY NON-APPROPRIATION

12.1 ***Definition of Force Majeure***.

(a) "**Force Majeure**" means an event or circumstance that prevents a Party (the "**Affected Party**") from performing, in whole or in part, an obligation under this Agreement that (a) is not reasonably anticipated by the Affected Party as of the Execution Date, (b) is not within the reasonable control of the Affected Party, (c) is not the result of the negligence, fault or failure to act by the Affected Party, and (d) could not be overcome or its effects mitigated by the use of due diligence by the Affected Party. Force Majeure includes the following types of events and circumstances (but only to the extent that such events or circumstances satisfy the requirements in

the preceding sentence): tornado, hurricane, lightning, tsunami, flood, earthquake or other acts of God; fire; explosion; invasion, acts of terrorism, war (declared or undeclared) or other armed conflict; riot, revolution, insurrection or similar civil disturbance; global pandemic (except as excluded below); sabotage; strikes, walkouts, lock-outs, work stoppages or other labor disputes (in each case, not attributable to the actions of Seller); and action, inaction or restraint by a Governmental Authority other than the applicable City that materially impairs the Affected Party's ability to perform its obligations under this Agreement and does not result from the action or inaction of the Affected Party (or any affiliate thereof), provided that the Affected Party has used and continues to use its commercially reasonable efforts to timely request and diligently pursue the applicable action or inaction of such Governmental Authority.

(b) Notwithstanding the foregoing, none of the following shall constitute Force Majeure: (i) Seller's ability to sell, or Ava's ability to purchase, energy, capacity or Environmental Attributes at a more advantageous price than what is provided under this Agreement; (ii) inability to obtain any supply of goods or services, unless due to an independent event of Force Majeure; (iii) economic hardship, including lack of money; (iv) the increased cost of electricity, materials, equipment, steel, labor services or transportation; (v) delays in customs or similar regulatory clearance, unless due to an independent event of Force Majeure; or (vi) any equipment failure unless due to an independent event of Force Majeure.

12.2 ***No Liability if Force Majeure Occurs***. The Affected Party shall not be considered to be in default in the performance of its obligations hereunder to the extent that the failure or delay of its performance is due to an event of Force Majeure, and the other Party shall be excused from its corresponding performance obligations for the period of the Affected Party's failure or delay of performing; provided, that the Affected Party's excuse from performance is limited to those Projects that are affected by Force Majeure. The burden of proof for establishing the existence and consequences of Force Majeure lies with the Affected Party. With respect to each Project, if the event of Force Majeure occurs during the applicable Delivery Period and impacts the ability of such Project to deliver some or all of the Product, then the applicable Project Term shall automatically be extended on a day-for-day basis for the duration of the event of Force Majeure.

12.3 ***Notice of Force Majeure***. Within two (2) weeks of becoming aware of the event of Force Majeure, the Affected Party shall provide the other Party with written notice describing in detail the occurrence giving rise to the event of Force Majeure, including the nature, cause, estimate date of commencement thereof, the affected Projects, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the event of Force Majeure. Upon written request from Ava, Seller shall provide documentation demonstrating to Ava's reasonable satisfaction that each day of the claimed delay was the result of Force Majeure and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The Affected Party shall promptly notify the other Party in writing of the cessation or termination of such event of Force Majeure, all as known or estimated in good faith by the Affected Party.

12.4 ***Mitigation of Force Majeure Event***. The suspension of a Party's performance under this Agreement due to a claim of Force Majeure shall be limited to Projects that are materially affected by such event of Force Majeure and must be of no greater scope and of no longer duration than is required by the event of Force Majeure. The Affected Party shall take, or

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cause to be taken, such actions as may be necessary to void, nullify or otherwise mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any event of Force Majeure.

12.5 ***Force Majeure Failure***. Subject to Section 12.2, with respect to each Project, during the Delivery Period, Ava shall have the right, but not the obligation, to either (x) terminate the applicable Project in accordance with Section 12.7 below or (y) relocate the applicable Project in accordance with Section 16.2, in each case, after the occurrence of the following (each, a "**Force Majeure Failure**"): (1) due to an event of Force Majeure, Seller is unable to meet its obligations under this Agreement for a period greater than ninety consecutive (90) days; or (2) the Project is (i) destroyed by an event of Force Majeure and Seller is unable to rebuild the Project within one (1) year, or (ii) is rendered permanently inoperable by an event of Force Majeure.

12.6 ***Budgetary Non-Appropriation Event***. Notwithstanding anything to the contrary contained herein, the Parties acknowledge that a City may be unable to appropriate funds for the procurement of the Product hereunder for a particular fiscal year due to constitutional limitations on municipal appropriations (such occurrence, a "**Budgetary Non-Appropriation Event**"). If (i) a Budgetary Non-Appropriation Event occurs with respect to any City hereunder during the Delivery Period of any Projects within the applicable City Portfolio, and (ii) Ava does not otherwise have appropriated funds available to make its Monthly Payment applicable to such City Portfolio in any given month, then (x) Ava shall notify Seller of the starting date of such Budgetary Non-Appropriation Event (the "**Non-Appropriation Start Date**") within forty five (45) days of its receipt of the invoice for the first month affected by such Budgetary Non-Appropriation Event, and (y) as a result, Ava shall have no obligation to accept delivery of or pay Seller for any Product delivered for the period starting on the Non-Appropriation Start Date and ending on the date on which the Budgetary Non-Appropriation Event ends ("**Non-Appropriation Period**"), which shall be confirmed by Ava in a writing timely delivered to Seller after the applicable City properly appropriates funds for payment hereunder. For the avoidance of doubt, during the Non-Appropriation Period, Seller shall have no obligation to deliver any Product from the applicable City Portfolio. If the Non-Appropriation Period lasts longer than one hundred eighty (180) days, and Ava does not otherwise have funds available for such purpose, Ava may, at its sole discretion, terminate the affected City Portfolio in accordance with Section 12.7. If the Non-Appropriation Period lasts longer than one (1) year, and Ava does not otherwise have funds available for such purpose, Seller may terminate the affected City Portfolio in accordance with Section 12.7.

12.7 ***No-Fault Termination***. If either Party terminates one or more Projects (the "**Affected Projects**") due to a Force Majeure Failure in accordance with Section 12.5 or a Budgetary Non-Appropriation Event in accordance with Section 12.6, then upon any such termination (1) neither Party shall have any liability to the other Party with respect to such Affected Projects other than those that survive this Agreement, and (2) Ava shall have the option to (a) deliver to Seller a Relocation Request in accordance with Section 16.2, (b) exercise the Buyout Option in accordance with Section 16.1, or (c) instruct Seller to perform the Removal Services in accordance with Section 16.3. Notwithstanding the foregoing, the occurrence and continuation of an event of Force Majeure or a Budgetary Non-Appropriation Event shall not, to the extent an Event of Default exists during the continuation of an event of Force Majeure or Non-Appropriation

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Period, as applicable, limit either Party's ability to declare an Event of Default pursuant to Article 13 and receive a Termination Payment, to the extent applicable.

ARTICLE 13
DEFAULTS; REMEDIES; TERMINATION

13.1 ***Seller Events of Default***.

(a) Seller Project Default. With respect to the affected Project only, Seller shall be deemed a Defaulting Party upon the occurrence of any of the following (each, a "**Seller Project Default**"):

(i) Seller refuses after notice and cure periods to execute or unreasonably conditions or delays the execution of any document required for Ava to obtain any Environmental Benefits related to the Project;

(ii) Seller fails to achieve Construction Start by the Construction Start Deadline (subject to any FM Delay Cure Period thereto);

(iii) Seller fails to (A) deliver a COD Delay Notice in accordance with Section 5.6(c) or (B) achieve the Commercial Operation Date by the Commercial Operation Deadline (subject to any FM Delay Cure Period or COD Delay Cure Period thereto);

(iv) A Forced Outage lasting longer than two hundred seventy (270) days occurs with respect to such Project; provided, however, that this Section 13.1(a)(iv) shall not apply to a Forced Outage caused solely by an event of Force Majeure;

(v) Due to acts or omissions of Seller, a mechanics' Lien is filed against the Project, and such Lien has not been discharged, bonded or contested by Seller in good faith by proper legal proceedings within twenty (20) days of receipt of notice thereof;

(vi) Seller fails to complete the Removal Services by the applicable Removal Deadline in accordance with Section 16.3(b); or

(vii) If any of the following occurs with respect to any Storage Project during the applicable Delivery Period:

(A) in any rolling two (2)-year period, the average Monthly Storage Availability over such period is less than seventy percent (70%);

(B) Seller fails to achieve an Efficiency Rate of at least seventy percent (70%) during any Storage Capacity Test, provided, Seller shall have the right to cure such failure by achieving an Efficiency Rate equal to or greater than seventy percent (70%) during a Storage Capacity Test in the immediately following six (6)-month period (such period, the "**Efficiency Rate Cure Period**");

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(C) Seller fails to achieve a Current Storage Capacity greater than the Guaranteed Storage Energy Capacity provided in the applicable CPA for the applicable City Contract Year, provided, Seller shall have the right to cure such failure by achieving a Current Storage Capacity equal to or greater than the Guaranteed Storage Energy Capacity provided in the applicable CPA for the applicable City Contract Year in the immediately following six (6)-month period (such period, the **"Storage Energy Capacity Cure Period"**).

(b) Ava's Remedies for Seller Project Default. If a Seller Project Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Ava may perform any and all of the following actions: (i) suspend performance under this Agreement with respect to such Project, (ii) accelerate all amounts owing between the Parties with respect to such Project, (iii) withhold a portion of any payments due to Seller under this Agreement in an amount attributable to such Project, (iv) terminate the Project under the applicable CPA; (v) in accordance with Section 14.4, draw upon any Security Deposit in satisfaction of any amounts payable under this Section 13.1(b); and (vi) exercise any other right or remedy available at law or in equity, including specific performance or injunction relief, except to the extent such remedies are expressly limited under this Agreement. Upon the withdrawal of any Project hereunder, Ava shall have the option to (x) require Seller to perform the Removal Services in accordance with Section 16.3 at Seller's sole expense, or (y) exercise the Buyout Option in accordance with Section 16.1.

(c) Seller City Default. With respect to the affected City Portfolio(s) only, Seller shall be deemed a Defaulting Party upon the occurrence of any of the following (each, a "**Seller City Default**"):

(i) The failure by Seller to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after notice thereof; and

(ii) Seller fails to achieve the Guaranteed Energy Production measured and calculated in accordance with Section 8.1(a) for three (3) or more consecutive City Contract Years.

(d) Ava's Remedies for Seller City Default. If a Seller City Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Ava may perform any and all of the following actions: (i) suspend performance under this Agreement with respect to such City Portfolio, (ii) accelerate all amounts owing between the Parties with respect to such City Portfolio, (iii) withhold all payments due to Seller under this Agreement which are attributable to the City Portfolio, (iv) terminate the applicable CPA upon providing written notice to Seller, and, upon any such termination of the CPA, demand payment from Seller of the City Termination Payment, (v) in accordance with Section 14.4, draw upon any Security Deposit in satisfaction of any amounts payable under this Section 13.1(d), and (vi) exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

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Upon the termination of any CPA hereunder, Ava shall have the option to (a) require Seller to perform the Removal Services in accordance with Section 16.3 at Seller's sole expense, or (b) exercise the Buyout Option in accordance with Section 16.1.

(e) Seller Portfolio Default. Seller shall be deemed a Defaulting Party under this Agreement upon the occurrence of any of the following (each, a "**Seller Portfolio Default**"):

(i) Seller delivers to Ava, without Ava's prior consent, energy or other product from a resource outside of the PPA Portfolio;

(ii) Any representation or warranty made by Seller herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Seller is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) The failure by Seller to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 13.1), and such failure is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Seller is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) A Bankruptcy Event occurs with respect to Seller;

(v) Seller fails to satisfy the collateral requirements pursuant to Article 14, after notice and expiration of the cure periods set forth therein, including the failure to replenish the Security Deposit in accordance with this Agreement or the occurrence of a Letter of Credit Default;

(vi) Seller fails to maintain any insurance required pursuant to Section 19.1 of this Agreement;

(vii) Seller assigns this Agreement or any of its rights hereunder other than in compliance with Section 22.1; and

(viii) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferring entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Ava.

(f) Ava's Remedies for Seller Portfolio Default. If a Seller Portfolio Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Ava may perform any and all of the following actions: (i) suspend performance under this Agreement, (ii) accelerate all amounts owing between the Parties, (iii) withhold all payments due to Seller under this Agreement, (iv) terminate this Agreement upon providing written notice to Seller, and, upon any such termination of the CPA, demand payment from Seller of the Portfolio

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Termination Payment and the Prepayment Reimbursement, if applicable, (v) in accordance with Section 14.4, draw upon any Security Deposit in satisfaction of any amounts payable under this Section 13.1(f), and (vi) exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, that no termination may occur unless and until written notice has been delivered to any Financing Party for which Ava has received notice in accordance with Section 21.2. Upon any termination hereunder, Ava shall have the option to (a) require Seller to perform the Removal Services in accordance with Section 16.3 at Seller's sole expense, or (b) exercise the Buyout Option in accordance with Section 16.1. For the avoidance of doubt, if a Seller Portfolio Default occurs which Ava nonetheless believes, in its reasonable judgment, should be reclassified as a Seller City Default instead, Ava may, in its sole discretion, deem the Seller Portfolio Default to be a Seller City Default and terminate only the affected City Portfolio and otherwise exercise the remedies available under Section 13.1(d) instead.

13.2 ***Ava Events of Default***.

(a) Ava Project Default. With respect to the affected Project only, Ava shall be deemed a Defaulting Party upon the occurrence of any of the following (each, an "**Ava Project Default**"):

(i) Due to the acts or omissions of Ava, Seller indirectly loses its rights to use and enjoy the Project Site under the Non-Exclusive Sublicense, unless the Parties can agree to Relocate the Project in accordance with Section 16.2;

(ii) The occurrence of any act or omission by Ava that operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Seller to lawfully conduct required operations on the Project Site;

(iii) The occurrence of any act or omission by Ava or any third party under Ava's control that materially interferes with the development, construction or operation of any Project, provided that such default is not remedied within ten (10) Business Days after notice thereof.

(b) Seller's Remedies for Ava Project Default. If an Ava Project Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Seller may perform any and all of the following actions: (i) suspend performance under this Agreement with respect to such Project, (ii) accelerate all amounts owing between the Parties with respect to such Project, (iii) withhold a portion of any payments due to Ava under this Agreement in an amount attributable to such Project, (iv) withdraw the applicable Project from the applicable City Portfolio; and (v) exercise any other right or remedy available at law or in equity, including specific performance or injunction relief, except to the extent such remedies are expressly limited under this Agreement. Upon any termination hereunder, Ava shall have the option to (I) require Seller to perform the Removal Services in accordance with Section 16.3 at Ava's sole cost and expense, or (II) exercise the Buyout Option in accordance with Section 16.1.

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(c) Ava Portfolio Default. Ava shall be deemed a Defaulting Party under this Agreement upon the occurrence of any of the following (each, an "**Ava Portfolio Default**"):

(i) The failure by Ava to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after notice thereof;

(ii) Any representation or warranty made by Ava herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Ava is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) The failure by Ava to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 13.2), and such failure is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Seller is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) A Bankruptcy Event occurs with respect to Ava;

(v) Ava assigns this Agreement or any of its rights hereunder other than in compliance with Section 22.1;

(vi) Ava consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferring entity fails to assume all the obligations of Ava under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Seller;

(d) Seller's Remedies for Ava Portfolio Default. If an Ava Portfolio Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Seller may perform any and all of the following actions: (i) suspend performance under this Agreement, (ii) accelerate all amounts owing between the Parties, (iii) withhold all payments due to Ava under this Agreement, (iv) terminate this Agreement upon providing written notice to Seller, and, upon any such termination of the CPA, demand payment from Ava of the Portfolio Termination Payment, and (v) exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. For the avoidance of doubt, if an Ava Portfolio Default occurs which Seller nonetheless believes, in its reasonable judgment, should be reclassified as an Ava Project Default instead, Seller may, in its sole discretion, deem the Ava Portfolio Default to be an Ava Project Default and terminate only the affected Project(s) and otherwise exercise the remedies available under Section 13.2(b) instead. In addition, upon paying the Portfolio Termination Payment pursuant to this Section 13.2(d), Ava shall have the option to (a) require Seller to perform the Removal Services in accordance with Section 16.3, the costs of which will

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be shared evenly between the Parties, or (b) exercise the Buyout Option in accordance with Section 16.1.

ARTICLE 14
SECURITY DEPOSITS; SECURITY INTEREST

14.1 ***Seller Development Security***. To secure its obligations under this Agreement, with respect to each City Portfolio, Seller shall deliver the Development Security to Ava within ten (10) Business Days of the applicable City Effective Date. Seller shall maintain the Development Security in full force and effect, and shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Ava collects or draws down any portion of the Development Security as a result of a Seller Event of Default under this Agreement, until the earlier of (a) Seller's delivery of the Performance Security, or (b) the early termination of expiration of the applicable CPA. With respect to each City Portfolio, upon the earlier of (x) the first Project's achievement of COD, or (y) sixty (60) days after the early termination or expiration of the applicable CPA, Ava shall return the Development Security to Seller, less the amounts drawn thereon in accordance with this Agreement.

14.2 ***Seller Performance Security***. To secure its obligations under this Agreement, with respect to each Project, Seller shall deliver to Ava the Performance Security on or before the first Project's Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Ava collects or draws down any portion of the Performance Security as the result of a Seller Event of Default under this Agreement, until a) this Agreement has been terminated or has expired in accordance with its terms, and (b) all payment and performance obligations of Seller then due and payable under this Agreement have been paid or performed in full. Following the occurrence of both (a) and (b), Ava shall promptly return to Seller the Performance Security, less any amounts drawn thereon in accordance with this Agreement.

14.3 ***Letter of Credit Default***. If a Security Deposit is in the form of a Letter of Credit, the occurrence of any of the following events shall be deemed a "**Letter of Credit Default**": (a) the issuer of such Letter of Credit ceases to be a Qualified Institution; (b) the issuer indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to (i) the applicable Commercial Operation Deadline (with respect to the Development Security) or ii) the expiration of the Delivery Period (with respect to the Performance Security); or (c) the issuer fails to honor Ava's properly documented request to draw on such Letter of Credit by such issuer. Upon the occurrence of a Letter of Credit Default, Seller shall have five (5) Business Days to post or deliver a new Security Deposit that satisfies the requirements of this Article 14.

14.4 ***Entitled Draws on Security Deposit***. At any time during the Term, upon the occurrence of a Seller Event of Default continuing after all the expiration of all applicable cure periods hereunder (or any early termination resulting therefrom), Ava may perform one or more of the following actions to satisfy any damages or other amounts owed by Seller hereunder (each such action, an "**Entitled Draw**"): (a) exercise any of its rights and remedies with respect to any Security Deposit issued by Seller to Ava under this Agreement; (b) draw on any outstanding Letter of Credit and retain any cash then held by Ava as a Security Deposit under any CPA with respect to any City Portfolio; and (c) liquidate any Security Deposit then held for the benefit of Ava free

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from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller; provided, that Ava shall apply any proceeds realized from each Entitled Draw to reduce Seller's obligations under this Agreement, and Seller shall remain liable for any amounts owed to Ava thereafter; provided, further, that Ava shall be obligated to return any surplus proceeds in excess of the Entitled Draw after Seller's obligations hereunder have been satisfied. For the avoidance of doubt, in performing an Entitled Draw, Ava may draw upon any Security Deposit then held for the benefit of Ava under this Agreement, regardless of the Project associated with the applicable Seller Event of Default.

(a) In no event shall an Entitled Draw by Ava be deemed a waiver of any rights that Seller otherwise has to dispute such Entitled Draw, and Seller shall retain all rights and remedies it may have in that respect under this Agreement or at law to dispute any such underlying claim by Ava and to seek the return of any such funds from Ava if Seller prevails in the dispute. To the extent the basis for the Entitled Draw by Ava is in connection with an alleged Seller Event of Default under Sections 13.1(a)(vi) or 13.1(c)(i), and such Entitled Draw satisfies the full amount of Seller's unpaid obligations related to the alleged Seller Event of Default, and Seller replenishes the Security Deposit as required by this Agreement, the alleged Seller Event of Default shall be deemed cured and any right on the part of Ava to terminate this Agreement, in whole or in part, related to the alleged specific Seller Event of Default shall be waived and extinguished.

14.5 ***First Priority Security Interest in Cash or Cash Equivalent Collateral***. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Ava a present and continuing first-priority security interest ("**Security Interest**") in, and Lien on, and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 14.1 and 14.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Ava, and Seller agrees to take all action as Ava reasonably requires in order to perfect Ava's Security Interest in, and Lien on, such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

ARTICLE 15
OPERATION OF STORAGE PROJECTS

15.1 ***Storage Services***.

(a) Storage Implementation; Facilities. The Parties shall collaborate in the implementation of an "**Energy Management System**" or "**EMS**" software-based solution for the provision of the Storage Services. Seller shall provide, install, maintain, repair, and replace (as necessary), at its own cost and expense, the Storage System as required to integrate the Storage Projects with the Software and perform the Storage Services on behalf of Ava. The Software shall employ a secure authorization methodology for assigning account access. Seller shall maintain policies, procedures, and audit practices around information security and privacy consistent with Prudent Operating Practice, and server site locations shall meet Prudent Operating Practice around customer data security and privacy.

(b) Scope of Storage Services. Seller shall provide the following services (the "**Storage Services**"): (i) ongoing, real-time remote collection and analysis of data provided

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through the Software and the remote management of the Storage Projects through the Monitoring App; (ii) Project Savings for Ava and the Cities through optimal deployment of the PPA Portfolio's energy storage and distributed energy generation capacity, including Load Modification; and (iii) responsive technical support for issue resolution.

(c) Monitoring App. As part of the Storage Services, Seller shall provide Ava with access to real-time and historical data through a designated web portal or mobile application (any such portals or applications collectively, the "**Monitoring App**"). The Monitoring App is intended to be used for energy monitoring and visualization purposes only and does not control or otherwise influence the operation of any equipment. In addition, within (1) Business Day after the end of each calendar month, Seller shall deliver to Ava a report containing the hourly submetered or battery inverter charge and discharge data, measured in kWh, for the preceding calendar month.

(d) Load Modification Dispatch Report. With respect to each Storage Project, at least thirty (30) days prior to the Commercial Operation Date, and on or before February 20 of each year of the Delivery Period thereafter, Seller shall deliver to Ava a Load Modification Dispatch Report containing the forecasted and historical data set forth in Exhibit K for such Storage Project, which shall subject to approval by Ava in its reasonable discretion.

15.2 ***Grid Services.***

(a) Ava and Seller acknowledge that the Storage Systems are capable of generating revenue through demand response, capacity or wholesale energy (collectively, "**Grid Services**" and individually, a "**Grid Service**").

(b) At any time during the Term, Ava shall have the right to enroll Storage Systems into a contract with a third-party distributed energy resources management provider (the "**Grid Services Agreement**") for the provision of front of the meter virtual power plant optimization services or other Grid Services. Upon Ava's execution of such an agreement with such an agreement with a service provider (the "**Grid Services Provider**"), Seller shall (1) negotiate in good faith the terms of an integration agreement with such Grid Services Provider, the terms of which shall be approved by Ava in its reasonable discretion, and (2) provide such Grid Services Provider with reasonable access to Storage Systems and work together in good faith to integrate the Grid Services Provider with the Storage System.

15.3 ***Storage Management***.

(a) Seller shall at all times during the Term retain all other aspects of operation and maintenance of the Storage Projects in accordance with Prudent Operating Practice and Applicable Law and adhering to all operational data, interconnection, and telemetry requirements applicable to such Storage Project. Seller shall take any and all action necessary to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from a Generating Project to the applicable Storage Project Maintenance of the Storage Projects.

(b) Seller shall not replace existing batteries (unless for critical maintenance purposes) or increase the capacity of any Storage Project without the prior written consent of Ava;

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provided, however, that Seller may, in accordance with Sections 8.2(c) and [17.4(f)], add or replace batteries in order to maintain the Current Storage Capacity available to Ava at the Delivery Point.

15.4 ***Storage Availability***.

(a) During the Delivery Period, each Storage Project shall maintain a Monthly Storage Availability of no less than ninety percent (90%) (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit B.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Ava's Monthly Payment shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit B).

15.5 ***Storage Capacity Tests.***

(a) With respect to each Storage Project, prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit B. Thereafter, Seller and Ava shall have the right to additional Storage Capacity Tests in accordance with Exhibit B.

(b) Ava shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Ava shall be responsible for all costs, expenses, and fees payable or reimbursable to its representatives(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit B, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit B. The Current Storage Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Current Storage Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including for purposes of determining the applicable City Storage Payment.

ARTICLE 16
POST-PROJECT TERM OBLIGATIONS

16.1 ***Buyout Option***.

(a) Generally. Upon the occurrence of any Buyout Date with respect to any Project hereunder, Ava shall have the right, but not the obligation, to exercise its option to purchase such Project (the "**Buyout Option**") for a purchase price equal to the Fair Market Value of the Project (the "**Buyout Option Price**"). To exercise such Buyout Option, Ava shall, not less than one hundred twenty (120) days and not more than one hundred and eighty (180) days prior to the proposed Buyout Date, provide written notice to Seller of Ava's intent to exercise the Buyout Option with respect to the applicable Project on such Buyout Date. Within thirty (30) days of receipt of Ava's notice, Seller shall send written notice to Ava that sets forth the Buyout Option Price for the Project, which notice shall also include Seller's determination of Fair Market Value and reasonably detailed documentation supporting such determination. Ava shall then have a

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period of ninety (90) days after receipt of such notice from Seller to confirm its decision to either (a) exercise the Buyout Option, (b) decline the Buyout Option or (c) dispute Seller's determination of Fair Market Value in accordance with Section 16.1(c) below.

(b) Confirmation of Buyout Option. If Ava confirms its exercise of the Buyout Option in writing to Seller (whether without or after an appraisal rendered in accordance with Section 16.1(c) below) or upon a Transition Event, the Parties shall perform the following actions (together, the "**Buyout Option Conditions Precedent**"): (1) the Parties shall execute all documents necessary to (A) transfer title to the Project to Ava on the purchase date, as-is, where is, free and clear of all Liens arising by, through or under Seller, and (B) assign to Ava [the applicable O&M Contract,] any manufacturer warranties, permits, Interconnection Agreements, as-built designs, and any other documentation reasonably requested by Ava for the Projects, which are in effect as of the Buyout Date, (2) Ava shall pay the Buyout Option Price to Seller. Upon satisfaction of the Buyout Option Conditions Precedent, the applicable provisions of the CPA and corresponding Non-Exclusive Sublicense shall terminate automatically.

(c) Determination of Fair Market Value. If, within thirty (30) days of receipt of the Buyout Option notice described in Section 16.1(a) above, Ava disputes Seller's determination of Fair Market Value in writing, then each Party shall, at its own cost, select an Independent Appraiser to determine the Fair Market Value of the Project under a written valuation opinion delivered to the Parties. Such valuation opinions shall consider the price that an independent third party would be willing to pay for the Project in place and in use (but not, for clarity, including any revenues expected under this Agreement) in an arm's length transaction, as well as the age, location, size, equipment type, and anticipated duration. The Fair Market Value of the Project shall be the simple average of the two values provided in the written valuation opinions and shall be binding on the Parties for purposes of determining the Buyout Option Price.

16.2 ***Relocation of a Project.*** With respect to each Project, at any time during the Project Term, Ava shall have the right to propose in writing the relocation of the applicable Project to a new Project Site upon the occurrence of a No-Fault Relocation Event or an Ava Fault Relocation Event (a "**Relocation Request**"). If such Relocation Request is practically feasible and preserves the economic value of the Agreement for Seller, as determined by Seller in its reasonable discretion, the Parties shall seek to negotiate in good faith an amendment to the applicable CPA for the relocation of such Project. Upon the successful relocation of the Project due to an Ava Fault Relocation Event, any Ava Event of Default associated with the original Project Site shall be deemed to have been cured, if applicable, and Seller shall have no right to declare an Ava Event of Default associated therewith. The costs associated with any relocation performed due to an Ava Fault Relocation Event shall be borne entirely by Ava, whereas the costs and expenses associated with any relocation performed due to a No-Fault Relocation Event shall split evenly between the Parties. If the Parties are unable to reach an agreement on the relocation of the Project within one hundred twenty (120) days of Seller's receipt of the Relocation Request, then such Relocation Request shall be withdrawn and the applicable Project may be terminated in accordance with this Agreement.

(a) For purposes of this Section 16.2, an "**Ava Fault Relocation Event**" shall be deemed to have occurred if (A) the applicable City (i) terminates the City Agreement, or otherwise withdraws the Project from the City Agreement; or (B) an Ava Event of Default occurs,

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and such Ava Event of Default could reasonably be cured by moving the Project to a different Project Site. A "**No-Fault Relocation Event**" shall be deemed to have occurred if (i) an Early Termination Event occurs, or (ii) a Force Majeure Failure occurs.

16.3 ***Removal of Projects***.

(a) Estimation of Removal Costs. Not less than one hundred fifty (150) days prior to the expiration of each Project Term (or, in the event of an early termination, as soon as reasonably practicable after receiving notice of such termination) Seller shall provide Ava with a written estimate of the cost to perform the Removal Services on the applicable Project Site. Within thirty (30) days after Ava's receipt of such written estimate, the Parties shall meet and confer to resolve any concerns regarding such estimated costs.

(b) Performance of Removal Services. Upon instruction from Ava, and in connection with the early termination or expiration of a Project Term hereunder, Seller shall, at its own cost and expense, within ninety (90) days after the applicable termination or expiration (the "**Removal Deadline**"), perform the following actions to remove the Project from the Premises (the "**Removal Services**"): (i) remove all tangible property comprising the Project, personal property of Seller, and all other equipment, (ii) ensure that the Project Site be returned to substantially its original condition (excluding ordinary wear and tear) including by (x) removing the Project's mounting pads or other support structures and (y) repairing and restoring the roof and the roof membrane, subject to Section 8.2(b); provided, if Ava exercises the Buyout Option, upon the satisfaction of the Buyout Option Conditions Precedent in accordance with Section 16.1(b), Ava shall have no right to instruct Seller to perform, and Seller shall have no obligation to perform, the Removal Services. Ava shall ensure that Seller is given sufficient access, space, and cooperation as reasonably necessary to facilitate the Removal Services. If Seller fails to remove or commence substantial efforts to remove a Project by the Removal Deadline, Ava may, at its option, remove the Project to a public warehouse and restore the Project Site to its original condition (other than ordinary wear and tear) at Seller's sole expense, the costs related to which Seller shall reimburse Ava within thirty (30) days of receipt of an invoice thereof. This provision shall survive the expiration or termination of this Agreement and any CPA hereunder.

16.4 ***Abandonment***. If Seller fails to commence the Removal Services by the applicable Removal Deadline, any property not removed from the Project Site shall be deemed abandoned by Seller, and shall become the property of the applicable City and the City may, at its option, remove the Project or Project Equipment from the Project Site and deliver it to a warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. If the City removes the Project from the Project Site after the Removal Deadline, Ava shall be entitled to declare a Seller Project Default pursuant to Section 13.1(a)(vi) and, upon the request of the applicable City, make an Entitled Draw on the applicable Security Deposit in order to reimburse such City for the cost of such Removal Services within thirty (30) days of receipt of an invoice thereof. The City shall have no liability to Seller for any property deemed abandoned pursuant to this Section 16.4. This provision shall survive the expiration or termination of this Agreement and any CPA hereunder.

16.5 ***Transition Services***. Upon the expiration or termination of this Agreement or any CPA hereunder by Ava prior to the end of the applicable Initial Term as a result of a Seller City

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Default or Seller Portfolio Default and written request from Ava (a "**Transition Event**"), Seller shall perform the following work (the "**Transition Work**"): (a) take commercially reasonable efforts to transition the Projects under the terminated Agreement or CPA to Ava or any other Person designated by Ava, and otherwise facilitate the prompt and orderly transition of the performance of its obligations under the Agreement from Seller to Ava or its designee until the earlier of (i) ninety (90) days after the expiration or termination of the Agreement or applicable CPA or (ii) the Transition Work is completed to the reasonable satisfaction of Ava (the "**Transition Period**"); and (b) continue to perform its obligations under the Agreement during the pendency of such Transition Period as requested by Ava; provided, however, that in addition to payment of the Buyout Option Price, Ava shall reimburse Seller for the costs directly incurred by Seller as result of the Transition Work, including for the avoidance of doubt any costs incurred during the Transition Period. This provision shall survive the expiration or termination of this Agreement and any CPA hereunder.

ARTICLE 17
REPRESENTATIONS, WARRANTIES, AND COVENANTS

17.1 ***Seller Representations and Warranties***. As of the Execution Date, Seller represents and warrants as follows:

(a) Seller is a [limited liability company], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the requisite power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfilment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of a default under any Applicable Law presently in effect having applicability to Seller, subject to any Governmental Approvals that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a part or by which any of its property is bound.

(d) This Agreement has been duly executed by Seller. This Agreement is a legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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17.2 ***Ava's Representations and Warranties.*** As of the Execution Date, Ava represents and warrants to Seller the following:

(a) Ava is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations, and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Ava are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and all Applicable Law.

(b) Ava has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Ava's performance under this Agreement. The execution, delivery and performance of this Agreement by Ava has been duly authorized by all necessary action on the part of Ava and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Ava or any other party to any other agreement with Ava.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Ava with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Ava, the documents of formation of Ava or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Ava is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Ava. This Agreement is a legal, valid and binding obligation of Ava enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Ava is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

17.3 ***General Covenants***. Each Party covenants to and for the benefit of the other Party that throughout the Term:

(a) Each Party shall maintain (or obtain from time to time, as required) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement.

(b) Each Party shall undertake its obligations under this Agreement in compliance with:

(i) all Applicable Law, including, but not limited to, those related to workplace safety, employment discrimination, prevailing wage, non-discrimination and non-preference, and conflicts of interest;

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(ii) Prudent Operating Practices, and

(iii) all applicable operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO and the Local Electric Utility, and (iv) all applicable requirements of the CPUC, CARB, FERC, NERC, and WECC (including WECC Scheduling Practices).

(c) In connection with activities undertaken pursuant to this Agreement, the Parties shall comply with all applicable international trade laws and regulations, including without limitation the U.S. Export Administration Regulations ("**EAR**"), 15 C.F.R. Pts. 730-774, and trade and economic sanctions administered by the United States Treasury Department's Office of Foreign Asset Controls ("**OFAC Sanctions**"), 31 C.F.R. Pts. 501-599 (collectively, "**Trade Laws**").

17.4 ***Covenants of Seller***. Through the Term, Seller covenants to and for the benefit of Ava that throughout the Term:

(a) Seller shall (i) acquire and maintain all permits and Governmental Approvals necessary for the construction, operation, and maintenance of the Projects consistent with this Agreement, including, without limitation, (A) environmental clearance under the California Environmental Quality Act or other environmental law, or (B) any approvals required by the AHJ where each Project Site is located, (ii) notify Ava of any material modifications or lapse in renewal of Governmental Approvals, and (iii) at Ava's request, provide to Ava digital copies of any Governmental Approvals. For the avoidance of doubt, Ava is solely a purchaser of the Product and does not intend to be the lead agency for any Project.

(b) As of the Commercial Operation Date for each Project and for the duration of the applicable Delivery Period, Seller shall obtain and maintain the O&M Contract with the applicable O&M Contractor, and shall use diligent and commercially reasonable efforts to administer and enforce the O&M Contract for each Project substantially in accordance with its terms and Prudent Operating Practices; provided, however, that (i) the obligations under this Section 17.4(b) shall be waived by Ava if the O&M Contract is assigned pursuant to Section 16.1 or Seller is unable to reasonably comply with such obligations as a result of any action or inaction by Ava and (ii) Seller may substitute, replace or modify the O&M Contract or O&M Contractor in a manner consistent with Prudent Operating Practice.

(c) Seller shall deliver the Product to Ava free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any Person.

(d) Throughout the Term, all personnel performing operation and maintenance services for the Projects shall be licensed and in good standing, and sufficiently qualified, experienced, and trained in accordance with Prudent Operating Practices.

(e) Seller shall not discriminate against any subcontractor, employee or applicant for employment, or in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliates or marital status in the recruitment or selection for training, including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

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(f) None of Seller, its employees, subcontractors or agents (the "**Seller Representatives**") have been suspended, barred, or excluded from, or ineligible for, receiving federal or state funds. Seller shall notify Ava if a Seller Representative is suspended, barred, excluded, or determined to be ineligible for receiving state or federal funds at any time during the Term within thirty (30) days of Seller receiving knowledge thereof.

(g) If any product being offered, delivered or supplied to Ava or at any Project Site in connection with this Agreement is listed in the Hazardous Substances list of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Seller shall include a Material Safety Data Sheet ("**MSDS**") with delivery or shipment to the applicable Project Site. Each MSDS shall include the contract/purchase order number and identify the "Ship To Address." Seller shall ensure all shipments and containers comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the Hazardous Substance, name and address of the manufacturer, and the appropriate hazard warning regarding potential physical safety and health hazards.

(h) Seller shall implement and cause its direct and indirect contractors, subcontractors, and suppliers that are responsible for fulfilling Seller's obligations under this Agreement to implement policies and procedures reasonably designed to ensure compliance with applicable Trade Laws.

(i) Seller shall not procure Project Equipment or otherwise use in any Project any equipment or services of any Person that is: (A) organized under the laws, ordinarily resident in, or located in a country or territory that is the subject of comprehensive OFAC Sanctions (which as of the date of this Agreement comprise Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine); (B) designated on a sanctioned parties list administered by the United States, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, Sectoral Sanctions Identification List, and the U.S. Commercial Department's Entity List, Denied Parties List, Unverified List, and Military End-User List; or (C) owned or controlled by parties described in clause (A) or (B) of this section.

(ii) Seller shall not use Modern Slavery in connection with any Project, and will not permit, and will use commercially reasonable efforts to prevent, the use of Modern Slavery by its direct and indirect contractors, subcontractors, suppliers or any other Persons involved in Seller's supply chain for the Projects hereunder (collectively, the "**Supply Chain Parties**").

(iii) Seller covenants that none of the Project Equipment or any components or materials incorporated therein are, have been or will be mined, manufactured, or produced in the Xinjiang Region of the People's Republic of China or by any entity listed in the U.S. Department of Homeland Security's UFLPA Entity List, available at https://www.dhs.gov/uflpa-entity-list (such entities, the "**UFLPA Entities**"), and that no Modern Slavery is, has been, or will be used at any stage of the process where any Project Equipment or

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any components or materials incorporated therein are, have been, or will be so mined, manufactured, or produced.

(iv) Seller undertakes that, with respect to all imports of Project Equipment and any components or materials incorporated therein, whether past or future, Seller shall confirm that the Supply Chain Parties are aware of the UFLPA and are maintaining documentary evidence to support the representations and covenants in this Section 17.4, including, but not limited to, the supply chain documentation referenced in the Department of Homeland Security's Best Practices for Applicability Reviews: Importer Responsibilities, first published on February 29, 2024, and other relevant Department of Homeland Security Publications (the "**Supply Chain Documentation**"). If Seller or any Supply Chain Party receives a detention notice from the Customs and Border Protection ("**CBP**") for any Project Equipment or any components or materials incorporated therein, or upon Ava's reasonable request, Seller shall procure, or shall cause the Supply Chain Parties to procure, Supply Chain Documentation that support the representations and covenants in this Section 17.4 and will provide such documentation within five (5) days of Ava's reasonable request.

(v) If Seller or any Supply Chain Party receives a CBP detention notice for any Project Equipment or if there are any other reasonable grounds to believe that any breach of any of the requirements set forth in this Section 17.4 has occurred, or will occur, then, within ten (10) Business Days after (1) written notice from Ava, or (2) Seller becoming aware of such events, Seller will deliver a Remedial Action Plan to Ava. Seller will have thirty (30) days from the date of Ava's written approval of the Remedial Action Plan to substantially implement such plan.

(vi) Seller shall cooperate with reasonable requests for information related to City's periodic review of Ava's performance or to enable Ava to furnish required information to a Governmental Authority. Such requests for information shall be made upon no less than forty-five (45) days' advance written notice to Seller.

17.5 ***Covenants of Ava***. Throughout the Term, Ava covenants to and for the benefit of Seller that throughout the Term:

(a) With respect to each City Portfolio, (a) Ava shall have the requisite right, power, and authority under the applicable City Agreement to grant the Non-Exclusive Sublicenses in accordance with **Exhibit D**, and (b) such grant of each Non-Exclusive Sublicense does not violate any Applicable Law and is not inconsistent with and with not result in a breach or default under any agreement by which Ava is bound or which affects the Project Sites.

(b) No portion of the Project Energy shall be used to heat a swimming pool.

ARTICLE 18
INSURANCE

18.1 ***Required Insurance***. At all times during the Term, the Parties shall maintain insurance policies in accordance with the following terms. No obligation provided under this Article 19 shall limit the obligations of Seller or Ava under the indemnification provisions set forth in Article 20.

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(a) Seller Insurance. As of the Execution Date and throughout the Term, Seller shall obtain and maintain in full force and effect coverage in the amounts and types set forth in **Exhibit J**.

(b) City Insurance. Each City is a self-insured public agency. Upon Seller's request, Ava shall use commercially reasonable efforts to request and obtain from each City certificates of insurance evidencing such City's insurance coverage applicable to the Project Site.

(c) Insurance Policy Requirements. Each policy of insurance maintained by Seller shall (1) be with insurers (i) of recognized responsibility authorized to do business in the state of California, and (ii) with an A.M. Best Rating of no less than A-VII; (2) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice; and (3) provide for waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

(d) No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of each Party to the other shall not be limited by insurance.

ARTICLE 19
INDEMNIFICATION; LIMITATIONS OF LIABILITY

19.1 ***Indemnity by the Parties***. To the fullest extent permitted by law, each Party (the "**Indemnifying Party**") shall defend, indemnify, and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its successors and assigns, and their elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "**Indemnified Party**") from and against any and all third-party claims, liability or losses ("**Claims**"), including but not limited to those losses arising from (a) personal injury or death, (b) damage to property, (c) taxes for which the Indemnifying Party is responsible under this Agreement, (d) fines or penalties payable by the Indemnified Party, (e) the Indemnifying Party's violation of Applicable Law, (f) breach of the confidentiality requirements set forth in Article 22, and (g) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or in the case of Seller, Ava's use of any service, technology or good provided by Seller to Ava under this Agreement infringes any patent, trademark, copyright or other intellectual property right, including trade secret rights, of a third-party, except as may arise solely from the negligence, willful misconduct or violation of Applicable Law by Ava, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify, and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

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(a) Design Professional Services. To the extent that a portion of Seller's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section 19.1(a) shall be subject to any applicable limitations mandated by Civil Code Section 2782.8.

19.2 ***Notice and Participation in Third Party Claims.*** The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted under a Claim as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 19.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 19.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party. All of the Parties' obligations under this Section 19.2 are intended to apply to the fullest extent permitted by Applicable Law and shall survive the expiration or sooner termination of this Agreement.

19.3 ***Environmental Indemnification.***

(a) Seller Indemnity. Seller shall indemnify, defend, and hold harmless each of Ava and its affiliates, contractors, agents, and employees from and against all liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Seller or its of its affiliates, contractors, agents, or employees, to the extent such liabilities do not result from the negligence or willful misconduct of Ava or a City.

(b) Ava Indemnity. With respect to each City Portfolio, Ava shall indemnify, defend, and hold harmless Seller, its affiliates, contractors, agents, and employees from and against all liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Ava, a City, or any of Ava or a City's affiliates, contractors, agents or employees, to the extent such liabilities do not result from the negligence or willful misconduct of Seller.

(c) Notices. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

19.4 ***Limitations of Liability***.

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(a) Waiver of Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR EXPRESS MEASURE OF DAMAGES HEREIN, INCLUDING ANY TERMINATION PAYMENT, (B) A THIRD PARTY INDEMNITY CLAIM, OR (C) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTIAL OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT BY STATE, IN TORT OR IN CONTRACT.

(b) Cumulative Remedies. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

(c) Exclusive Remedies. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(i) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATION HARM OR LOSS.

ARTICLE 20
[RESERVED]

ARTICLE 21
ASSIGNMENT; FINANCING ACCOMMODATIONS

21.1 ***Prohibitions on Assignment***. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall have the right to assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The foregoing notwithstanding, either Party may, without the prior written consent of the other Party, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements to any Financing Party in accordance with Section 21.2, (b) transfer or assign this Agreement to an affiliate of such Party, or (c) with respect to Ava only, transfer or assign this Agreement to any Person with an Investment

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Grade credit rating at the time of assignment; provided, however, that in the case of any transfer or assignment pursuant to clauses (b) or (c) above, any such transferee or assignee agrees in writing to be bound to the terms and conditions of this Agreement; provided, further, if any transfer or assignment by Seller only pursuant to clause (b) above is to a Person whose creditworthiness is lower than that of Seller as of the Execution Date, then Seller shall provide a guaranty agreement in favor of Ava, in form and substance reasonably satisfactory to Ava, guaranteeing all performance and payment obligations of such assignee or transferee under this Agreement, or shall otherwise remain jointly and severally liable for all obligations of the assignee or transferee hereunder.

21.2 ***Collateral Assignment***. Subject to the provisions of this Section 21.2, Seller has the right to assign this Agreement, any CPA or any Non-Exclusive Sublicense as collateral for any financing or refinancing of any Projects. In connection with any financing or refinancing of any Project by Seller, Ava shall in good faith work with Seller and any Financing Party to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). Each Collateral Assignment Agreement must be in form and substance agreed to by Ava, Seller, and the applicable Financing Party, such agreement not to be unreasonably withheld. Ava will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Ava, Seller, and the applicable Financing Party:

(a) Ava shall give notice of a Seller Event of Default to the Person(s) to be specified by Financing Party in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Seller Event of Default; provided that such notice shall be provided to Financing Party at the time such notice is provided to Seller and any additional cure period of Financing Party agreed to in the Collateral Assignment Agreement shall not commence under Financing Party has received notice of such Seller Event of Default;

(b) Financing Party will have the right to cure a Seller Event of Default if Financing Party sends a written notice to Ava before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Financing Party's receipt of notice of such Seller Event of Default from Ava, indicating Financing Party's intention to cure. Financing Party must remedy or cure such Seller Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days;

(c) Following a Seller Event of Default, Ava may require Seller (or Financing Party, if Financing Party has provided the notice set forth in subsection (b) above) to provide to Ava a report concerning: (i) the status of efforts by Seller or Financing Party to develop a plan to cure the Seller Event of Default; (ii) impediments to the cure plan or its development; (iii) if a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and (iv) any other information which Ava may reasonably require related to the development, implementation, and timetable of the cure plan. Seller or Financing Party must provide the report to Ava within ten (10) Business Days after notice from Ava requesting the report. Ava will have no further right to require the report with respect to a particular Seller Event of Default after such Seller Event of Default has been cured;

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(d) Financing Party shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Financing Party will receive prior notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;

(f) If this Agreement is transferred to Financing Party pursuant to subsection (b) above, Financing Party must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption;

(g) If Financing Party elects to transfer this Agreement, the Financing Party must cause the transferee to assume all of Seller's obligations arising under this Agreement arising after the date of such assumption as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to any Financing Party's cure of any Events of Default under this Agreement in accordance with this Section 22.2, if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Financing Party or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Ava having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Financing Party's written request, Ava must enter into such replacement agreement with Financing Party or Financing Party's designee, or (ii) if Financing Party or its designee, directly or indirectly, takes possession of, or title to, the Projects after any such rejection or termination of this Agreement, promptly after Ava's written request, Financing Party must itself or must cause its designee to promptly enter into a new agreement with Ava having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Financing Party, directly or indirectly, takes possession of, or title to, the Projects (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Ava, such approval not to be unreasonably withheld.

ARTICLE 22
CONFIDENTIALITY

22.1 ***Definition of Confidential Information***. The following constitutes "**Confidential Information**," whether oral or written, which is delivered by Seller to Ava or by Ava to Seller, including: (a) the pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Ava stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv)

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information that the recipient independently developed without a violation of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Ava intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted.

22.2 ***Duty to Maintain Confidentiality***. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of law, (b) pursuant to an order of a court, or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Applicable Law, order, ruling, regulatory request, accounting disclosure rule or standard or any CAISO rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. The Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Ava shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure under the California Public Records Act.

22.3 ***Irreparable Injury; Remedies***. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect the Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

22.4 ***Disclosure to Financing Parties, etc***. Notwithstanding anything to the contrary in this Article 23, Confidential Information may be disclosed by Seller to any actual or potential Financing Party or investor or any of its affiliates, and Seller's actual agents, consultants, contractors or trustees, so long as the Person to whom Confidential Information is disclosed is either (x) bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or (y) agrees in writing to be bound by the confidentiality provisions of this Article 23 to the same extent as if it were a Party.

22.5 ***Press Releases***. Neither Party shall issue (or cause its affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this section and to the extent the information is not prohibited from disclosure under Applicable Law, press release does not

include records released by Ava, including annual comprehensive financing reports; memorandums or reports to Ava's board members; documentations submitted to regulatory agencies; disclosures related to public financings; and productions of records required by subpoena, court order or under the California Public Records Act.

ARTICLE 23
MISCELLANEOUS

23.1 ***Notices***.

(a) Addresses for Delivery of Notices. Any notice required, permitted or contemplated hereunder shall be in writing and shall be addressed to the Party to be notified at the address set forth on **Exhibit I** or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder.

(b) Acceptable Means of Delivering Notice. Each notice required, permitted or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such notice was deposited in the United States mail; (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (iii) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery without any bounce back or rejection; or (iv) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, notices of Outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

23.2 ***Account Manager***. Seller must assign an account manager to Ava to facilitate the contractual relationship and to be fully responsible and accountable for fulfilling Ava's requirements. Seller represents and warrants that such Person will ensure that Ava receives adequate support, problem resolution assistance, and required information on a timely basis.

23.3 ***Entire Agreement; Integration; Exhibits***. This Agreement, together with the Schedules, CPAs, and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Ava with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The CPAs and Exhibits attached hereto are integral parts hereof and are made part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

23.4 ***Amendments***. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representations of Seller and Ava;

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provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

23.5 ***No Waiver***. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

23.6 ***Governing Law; Venue***. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Alameda County, California.

23.7 ***No Agency, Partnership, Joint Venture or Lease***. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers, employees or agents of Ava. Under this Agreement, Seller and Ava intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the PPA Portfolio or any business related to the PPA Portfolio. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement, or, to the extent set forth herein, any Financing Party).

23.8 ***Dispute Resolution***. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally, and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either (x) thirty (30) days of initiating such discussions or (y) forty (40) days after notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at law or in equity. The Parties shall cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

23.9 ***Survival***. The provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation the provisions enumerated in this Section 23.9, will survive termination of this Agreement: (i) obligations to pay by either Party that have accrued prior to termination or expiration and (ii) Section 10.5 (Books and Records), Section 16.3 (Removal Services), Section 16.4 (Abandonment), Section 16.5 (Transition Services), Section 19.1 (Indemnification), and Article 22 (Confidential Information).

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23.10 ***Severability***. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

23.11 ***Mobile-Sierra***. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.,* 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Applicable Law.

23.12 ***No Recourse to Members of Ava***. Ava is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Ava shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any action, or assert any remedies against any of Ava's constituent members, or the employees, directors, officers, consultants or advisors of Ava or its constituent members, in connection with this Agreement.

23.13 ***Further Assurances***. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement, and to carry out the intent of this Agreement.

23.14 ***Service Contract***. The Parties intend this Agreement to be a "service contract" within the meaning of Code Section 7701(e)(3). Ava shall not take the position on any tax return or in any other filings suggesting that it is anything other than a buyer of electricity from the PPA Portfolio.

23.15 ***Forward Contract***. The Parties intend that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Ava and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a

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provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

23.16 ***Counterparts; Electronic Signatures***. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

[SELLER]

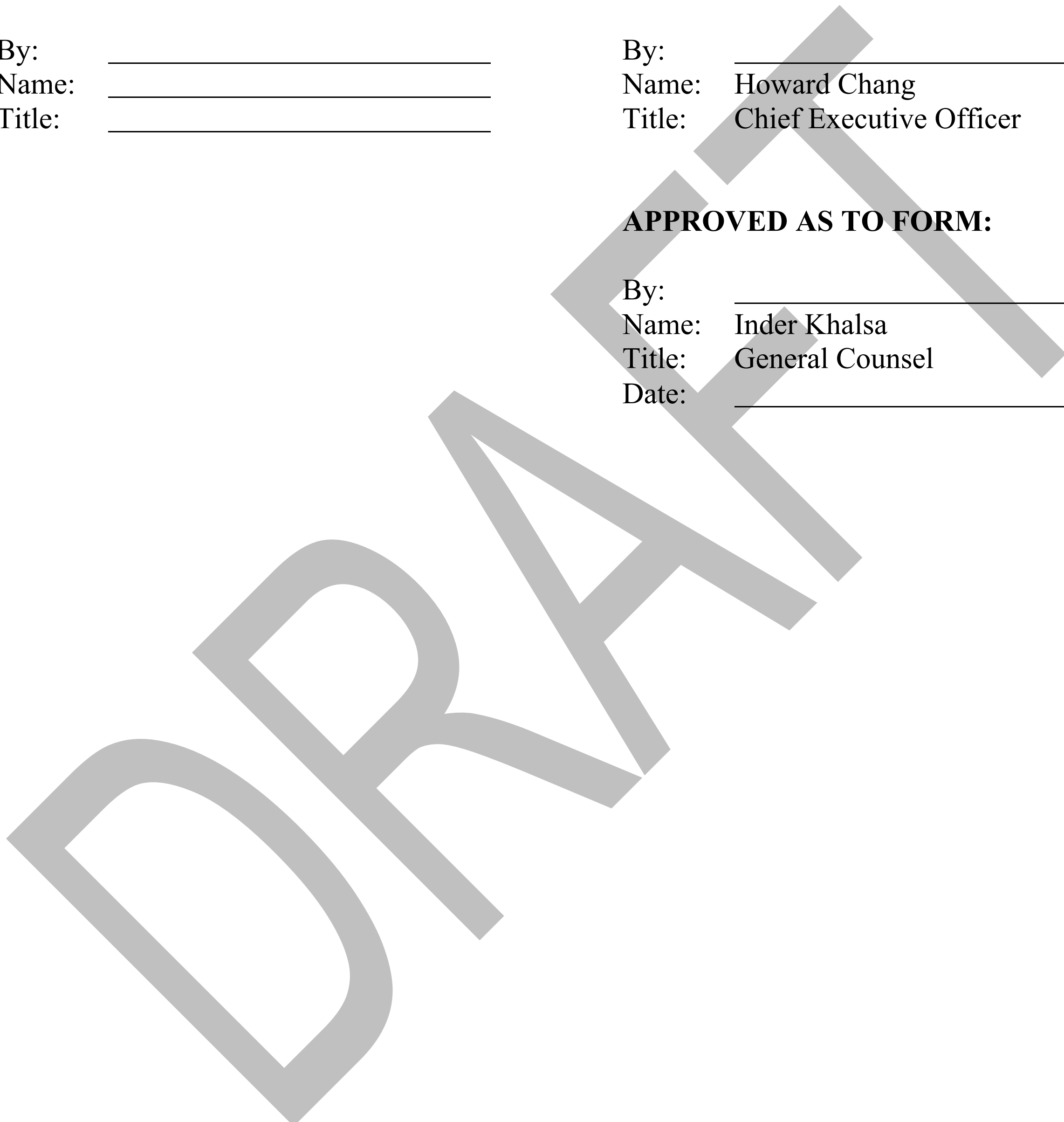
By: ____________________________
Name: ____________________________
Title: ____________________________

Ava Community Energy Authority, a California joint powers authority

By: ____________________________
Name: Howard Chang
Title: Chief Executive Officer

APPROVED AS TO FORM:

By: ____________________________
Name: Inder Khalsa
Title: General Counsel
Date: ____________________________



Schedule I

Defined Terms

"**Adverse Environmental Conditions**" means (i) the existence or the continuation of the existence of Environmental Contamination (including, without limitation, a sudden or non-sudden accidental or non-accidental Environmental Contamination), or exposure to or release of any substance, chemical, material, pollutant, Hazardous Substance, odor or audible noise or other release or emission in, into or onto the environment at, in, by or related to the Project Site, (ii) the environmental aspect of the transportation, storage, treatment or disposal or materials in connection with the Project, or (iii) the violation, or alleged violation, of any Environmental Law, permits or licenses of, by or from any Governmental Authority relating to environmental matters connected with the applicable Project Site.

"**Ancillary Services**" means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, contingency reserves, other products associated with electric generation and Energy that a Project is capable of providing and all other beneficial attributes and outputs of such Project not required for the operation of the Project.

"**Anticipated COD Date**" has the meaning set forth in Section 9.3(c).

"**Applicable Law**" means all national, state, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, and requirements of all regulatory and other Governmental Authorities.

"**Authority Having Jurisdiction**" or "**AHJ**" means any agency, organization, office or Person responsible for enforcing the requirements of a statute, regulation, code or standard, or for approving equipment, materials, an installation or a procedure in relation to a Project.

"**Ava Event of Default**" means an Ava Project Default or an Ava Portfolio Default, or any or all of the foregoing as the context may require.

"**Avoided Utility Cost**" means the greater of (a) the cost incurred by Ava to acquire replacement kWh in an amount equal to the Guaranteed Energy Shortfall less the applicable Renewable Rate and (b) zero (0).

"**Bankruptcy Event**" means with respect to any entity, the occurrence of any of the following: such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in 60 days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

"**Business Day**" means any day except a Saturday, Sunday or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice or payment or performing a specified action.

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"**Buyout Date**" means, with respect to each Project, [June 1st] of each calendar year during the applicable Delivery Period.

"**Buyout Option**" has the meaning set forth in Section 16.1(a).

"**CAISO**" means the California Independent System Operator or any successor entity performing similar functions.

"**CAISO Tariff**" means the California Independent System Operator Cooperation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the Federal Energy Regulatory Commission (or any successor government agency).

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that a Project can accept at or deliver to the applicable Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules.

"**CEC**" means the California Energy Commission or any successor entity performing similar functions.

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Execution Date of any Applicable Law, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Execution Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation) or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

"**Charging Energy**" means the PV Energy and/or grid energy, net of Station Use, delivered to the Storage Project as measured by the Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**City**" means either the City of Berkeley, California; the City of Fremont, California; the City of Hayward, California; the City of Livermore, California; the City of Oakland, California; the City of Pleasanton, California; and the City of San Leandro, California or any or all of the foregoing as the context may require.

"**City Agreement**" has the meaning set forth in Section 2.2.

"**City Contract Capacity**" means, with respect to each City Portfolio, the sum of the Guaranteed Nameplate Capacity of each Generating Project and Storage Inverter Power of each Storage Project within such City Portfolio.

"**City Contract Month**" means, with respect to each City Portfolio, any calendar month during the applicable City Term, commencing on the first calendar month to occur subsequent to the Commercial Operation Date of the first Project to achieve COD and ending on the last day of such calendar month.

"**City Contract Year**" means, with respect to each City Portfolio, any consecutive twelve (12) month period during the applicable City Term, commencing on the Commercial Operation

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Date of the first Project to achieve COD and ending on the last day of such twelve (12)-month period.

"**City Effective Date**" means, with respect to each City Portfolio, the date that the underlying City Agreement has been executed and delivered, respectively, by Ava and the applicable City.

"**City Portfolio**" means, with respect to each City, all Projects located within such City, as set forth in the applicable CPA, on a collective basis.

"**City Price Threshold**" has the meaning set forth in Section 10.1(e).

"**City-Specific Terms**" means, with respect to each City Portfolio, those terms set forth in Attachment IV to the applicable CPA.

"**City Termination Payment**" has the meaning set forth in Section 4.1.

"**City Termination Payment**" has the meaning set forth in Attachment III to the applicable CPA.

"**COD Delay Cure Period**" means (a) with respect to Tranche A Projects, a period of up to forty five (45) days, and (b) with respect to Tranche B Projects, a period of up to one hundred twenty (120) days.

"**COD Delay Damages**" means, with respect to each Project, for each day after the Commercial Operation Deadline that the applicable Project has not achieved COD, liquidated damages in an amount equal to the total Development Security required for such Project hereunder, divided by (x) for Tranche A Projects, forty-five (45), or (y) for Tranche B Projects, one hundred twenty (120), provided that the COD Delay Damages shall not exceed the Development Security for such Project hereunder.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

"**Commercial Operation Date**" or "**COD**" means, for each Project, the date upon which Seller has confirmed that all COD Conditions Precedent have been fulfilled, subject to Ava's reasonable satisfaction.

"**Commercial Operation Deadline**" has the meaning set forth in the applicable Project Addendum.

"**Construction Start**" has the meaning set forth in Section 5.4(a).

"**Construction Start Deadline**" has the meaning set forth in the applicable Project Addendum.

"**Contract Price**" has the meaning set forth in the applicable CPA.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**Credit Period**" shall have the meaning set forth in Section 10.1(a).

"**Credit Rating**" means, with respect to any Person, the rating then assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit

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enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating assigned to such Person as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Current Storage Capacity**" means, with respect to each City Portfolio, the total capacity (in kWh) of all Storage Projects thereunder, initially equal to the amount set forth in the applicable CPA, as the same may be adjusted from time to time pursuant to Exhibit B to comply with Ava's written request or reflect the results of the most recently performed Storage Capacity Test for each Storage Project.

"**Delivery Period**" has the meaning set forth in Section 4.1.

"**Delivery Point**" has the meaning set forth in the applicable CPA.

"**Design Plan**" has the meaning set forth in Exhibit C.

"**Development Security**" means, with respect to each City Portfolio, (i) cash or (ii) a Letter of Credit, in each case in the amount of $100/kW of City Contract Capacity, which shall be provided on a CPA-by-CPA basis.

"**Discharging Energy**" means, with respect to a Storage Project, all Energy delivered to the applicable Delivery Point from the Storage Project, net of Station Use, as measured by the Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Domestic Content Requirements**" means any and all requirements for obtaining the Domestic Content Adder under Code Section 48(a)(12) or 48E(a)(3)(B), including the requirements set forth in IRS Notice 2023-38 (2023-22 I.R.B. 872), IRS Notice 2024-41 (20241-24I.R.B. 1615) or any corresponding provision or provisions of succeeding law.

"**EAR**" has the meaning set forth in Section 17.3(c).

"**Effective Date**" has the meaning set forth in Section 4.1.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Storage Project, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit B-1.

"**Electrical Losses**" means, with respect to any Project, all transmission or transformation losses between the Project and the applicable Delivery Point, including, as applicable, losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to a Storage Project, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

"**Electric System Upgrades**" means any upgrades, including Network Upgrades, Distribution Upgrades or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by CAISO or the Local Electric Utility, as applicable, to electrically interconnect a Project to the Local Electric Utility's electric system in accordance with this Agreement.

"**Energy**" means electrical energy generated by a Generating Project.

"**Energy Community Bonus**" means the increased ITC rate available to energy property placed in service in an Energy Community.

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"**Energy Incentives**" means any of the following: (i) a payment made by a utility or state or local Governmental Authority based in whole or in part on the cost of size of the PPA Portfolio, such as a rebate; (ii) a performance-based incentive paid as a stream of periodic payments by a utility or Governmental Authority based on the production of the PPA Portfolio; and (iii) any other attributes, commodity, revenue stream or payment in connection with the PPA Portfolio; provided, that Energy Incentives shall not include Renewable Energy Credits or any incentives, payments or revenue associated with the Self-Generation Incentive Program.

"Energy Management System" or **"EMS"** has the meaning set forth in Section 15.1.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the PPA Portfolio and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from a Project, (ii) production tax credits associated with the construction or operation of a Project and other financial incentives in the form of credits, reductions or allowances associated with a Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by a Project for compliance with local, state or federal operating or air quality permits.

"**Environmental Contamination**" means the presence of a Hazardous Substance in a concentration exceeding legally allowable limits in violation of Applicable Law, including Environmental Law.

"**Environmental Law**" means any Applicable Law related to (a) the prevention, abatement or elimination of pollution, (b) the protection or preservation of the environment (including air, soil, land surface, subsurface strata, ground water, surface water, coastal water, and wetlands), wildlife (including endangered, threatened or protected species, migratory birds and bald or golden eagles), wildlife habitat, cultural resources, or natural resources, and (c) the use, generation, handling, treatment, storage, disposal, release, transportation or regulation of, or exposure to, Hazardous Substances.

"**EPC Contract**" means, with respect to each Project, one or more commercially negotiated contract(s) for the engineering, procurement, construction, and installation of the applicable Project, which shall be entered into by and between Seller and an EPC Contractor.

"**EPC Contractor**" means [Gridscape], or any other contractor proposed by Seller and approved by Ava in its reasonable discretion.

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"**Error-Free**" means the Project Equipment (i) is free from material defects in design, materials, and workmanship, (ii) substantially conforms to the specifications set forth in this Agreement, including the Design Plan, and (iii) functions as designed.

"**Estimated Construction Start Date**" has the meaning set forth in the applicable CPA.

"**Event of Default**" means an Ava Event of Default or a Seller Event of Default, as the context may require.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected City Energy**" has the meaning set forth in the applicable CPA.

"**Fair Market Value**" means the value of a Project, as determined by an Independent Appraiser, which would be exchanged in an arms' length transaction between an informed and willing buyer under no compulsion to buy and an informed and willing seller under no compulsion to sell; provided, however, that in such determination: (i) each Project shall be assumed to be in the condition in which it is required to be maintained and returned under this Agreement, taking in account ordinary wear and tear, and such value has not been diminished due to the existence of any damage history, which shall not include ordinary wear and tear; (ii) each Project shall be valued on an installed basis; and (iii) costs of removal of a Project from the current location shall not be a deduction from, or addition to, such valuation.

"**Financing Party**" means any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Projects, whether that financing or refinancing takes the form of private debt (including back-leverage debt), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person providing financing or refinancing for the Project, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale-leaseback or leveraged leasing structure) with respect to the Projects.

"**Forced Outage**" means the shutdown or unavailability of a Project, or a portion thereof, other than as a Planned Outage. A Forced Outage shall not include any outage that may be deferred consistent with Prudent Operating Practice and without causing safety risk or damage to equipment or material additional cost.

"**Future Environmental Attributes**" means any and all generation attributes (excluding Environmental Attributes, Incentives or Tax Benefits) under the RPS regulations or under any and all other Applicable Law, intergovernmental compact, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the generation of electrical energy by the PPA Portfolio and its displacement of conventional energy generation.

"**Generating Project**" means any individual solar photovoltaic generating Project listed in the applicable CPA, located at the applicable Project Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, (ii)

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Charging Energy to the corresponding Storage Project, and (iii) Discharging Energy to the Delivery Point.

"**Governmental Approval**" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable Environmental Law, that are required for the development, use, and operation of any Project hereunder.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"Grid Services" has the meaning set forth in Section 15.2.

"**Guaranteed Efficiency Rate**" has the meaning set forth in the applicable CPA.

"**Guaranteed Energy Damages**" means liquidated damages in an amount equal to the product of (a) the applicable Avoided Utility Cost, multiplied by (b) the Guaranteed Energy Shortfall.

"**Guaranteed Energy Production**" has the meaning set forth in Section 8.1(a).

"**Guaranteed Energy Shortfall**" means, with respect to any City Contract Year, the difference between (a) the product of (i) Expected City Energy, and (ii) 0.85; and (b) the Adjusted Energy Production.

"**Guaranteed Nameplate Capacity**" means, with respect to each City Portfolio, the amount of generating capacity of all Generating Projects thereunder, and the Storage Inverter Power of all Storage Projects thereunder, as measured in kW at the applicable Delivery Point, set forth on the CPA.

"Guaranteed Storage Energy Capacity" has the meaning set forth in the applicable CPA.

"**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

"**Improvements**" means any buildings and other improvements on the Project Site other than the Project.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the PPA Portfolio such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the PPA Portfolio, and (iii) any other attributes, commodity, revenue stream or payment in connection with the PPA Portfolio (such as

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ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the PPA Portfolio, provided that Incentives shall not include RECs. Notwithstanding the foregoing, Incentives as defined herein shall not include any incentives, payments, or revenue associated with the Self-Generation Incentive Program (SGIP).

"**Independent Appraiser**" means an individual who is a member of a national or regional accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of renewable energy generation systems (with respect to a Generating Project) or battery energy storage systems (with respect to a Storage Project) of the size and age and with the operational characteristics of the applicable Project. Except as may be otherwise agreed by the Parties, an Independent Appraiser shall not be (or within ten (10) years before his or her appointment have been) a director, officer, or employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties.

"**Initial Term**" has the meaning set forth in Section 4.1.

"**Installed Capacity**" means, with respect to any Project that has achieved COD, the maximum dependable operating capability of such Project to deliver Project Energy at the Meter, and adjusted for Electrical Losses to the Delivery Point (up to but not in excess of the Project Capacity).

"**Interconnection Agreement**" means, with respect to a Project, the interconnection agreement entered into by Seller pursuant to which the Project will be interconnected with the Transmission System, and pursuant to which Seller's interconnection facilities and any other interconnection facilities will be constructed, operated, and maintained during the applicable Project Term.

"**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

"**IRS**" means the U.S. Internal Revenue Service.

"**ITC**" means the investment tax credit under Section 48 or Section 48E of the Code.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Ava is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

["**kW**" means kilowatts in alternating current, unless expressly stated in terms of direct current.

"**kWh**" means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.]

"**Letter of Credit**" means an irrevocable, standby letter of credit issued by a Qualified Institution, the form of which shall be mutually agreeable to the Parties.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Ava, licensed in the State of California.

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"**Load Modification**" means the reduction of a City's aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance through the use and implementation of a Load Modifying Resource.

"**Load Modification Dispatch Report**" means, with respect to each Storage Project, an annual plan specifying on a monthly basis the hours of the day during which Storage Project will be discharged as Discharging Energy, the form of which shall be acceptable to Ava in its reasonable discretion as described in Exhibit K.

"**Load Modifying Resource**" means each Storage Project that is capable of being dispatched to provide Load Modification and that is not subject to demand charge rates.

"**Local Electric Utility**" means Pacific Gas and Electric Company, an investor-owned utility headquartered in San Francisco, California.

"**Local Hires**" means individuals who reside in either Alameda County or San Joaquin County.

"**Local Requirement**" has the meaning set forth in Section 9.3(b).

"**Measurement Period**" has the meaning set forth in Section 8.1.

"**Minimum Efficiency Rate**" means [__].

"**Modern Slavery**" means all work or service that is exacted from any person under the menace of any penalty and for which such person has not offered him or herself voluntarily, such as any form of forced labor, child labor, indentured labor, bonded labor (including debt bondage, trafficked or slave), prison labor, or trafficking in persons.

"**Monthly Payment**" has the meaning set forth in Section 10.1(c).

"**Moody's**" means Moody's Investors Service, Inc.

"**MSDS**" has the meaning set forth in Section 17.4(g).

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Exclusive Sublicense**" has the meaning set forth in Exhibit D.

"**O&M Contract**" means, with respect to each Project, one or more commercially negotiated contract(s) for the performance of operation and maintenance services, which shall be entered into by and between Seller and an O&M Contractor.

"**O&M Contractor**" means [Gridscape], or any successor thereto, as proposed by Seller and approved by Ava in its reasonable discretion.

"**OFAC Sanctions**" has the meaning set forth in Section 17.3(c).

"**Operating Restrictions**" has the meaning set forth in Exhibit B-3.

"**Outage**" means a Planned Outage, Ava-Requested Outage (to the extent such outages do not exceed the Ava-Requested Outage Cap for the applicable City Contract Year) or Forced Outage, or any or all of the foregoing as the context may require.

"**Parties**" and "**Party**" have the meanings set forth in the Preamble.

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"**Performance Security**" means, with respect to each City Portfolio, (i) cash or (ii) a Letter of Credit, in each case in the amount of $200/kW of City Contract Capacity, which shall be provided on a CPA-by-CPA basis.

"**Permitted Transferee**" means a Person that satisfies, or is controlled by another Person that satisfies, the following requirements: (i) a tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB0 from Fitch or Baa3 from Moody's; and (ii) at least three (3) years of experience in the ownership and operations of power generation facilities and battery energy storage facilities similar to the Projects, or has retained a third party with such experience to operate the Projects.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**Planned Outage**" means the shutdown or unavailability of a Project, or a portion thereof, for inspection or maintenance in accordance with a Planned Outage Schedule, as set forth in Section 6.4(a).

"**Portfolio Termination Payment**" has the meaning set forth in Attachment III to the applicable CPA.

"**PPA Portfolio**" means, collectively, all Projects contemplated under this Agreement.

"**PPA Portfolio Delivery Period**" means the period starting on the first Commercial Operation Date to occur with respect to any Project hereunder and ending upon the expiration or early termination of all City Terms hereunder.

"**Premises**" means all the real property and improvements within a Project Site, including without limitation, the Project Site and Project located on such Project Site.

"**Prepayment**" shall have the meaning set forth in Section 10.1(a).

"**Prepayment Credit**" shall have the meaning set forth in Section 10.1(a).

"**Prepayment Date**" means the date on which Ava makes the Prepayment.

"**Product**" means PV Energy, Storage Capacity, Environmental Attributes, Capacity Attributes, and Ancillary Services.

"**Project**" means any individual Generating Project or Storage Project.

"**Project Addendum**" means any individual Attachment V to the applicable CPA.

"**Project Capacity**" means (a) with respect to a Generating Project, the Guaranteed Nameplate Capacity of such Project, and (b) with respect to a Storage Project, the Storage Inverter Power of such Project.

"**Project Energy**" means, with respect to a Project, the PV Energy and Discharging Energy, as applicable, during the monthly billing period contemplated under this Agreement, net of Electrical Losses and Station Use, as measured by the Meter, which Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

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"**Project Equipment**" means PV modules, PV inverters, PV racking, battery modules, battery inverters, charge controllers, electrical panels, electrical disconnects, electric meters, transformers, and any other supporting equipment, structures, and security features, each to the extent applicable for any given Project.

"**Project Roof**" shall have the meaning set forth in Section 8.2(b).

"**Project Savings**" means the savings realized on City's utility bill(s) directly attributable to the operation of the Project.

"**Project Site**" means, with respect to a Project, the real property upon which such Project shall be installed, as described or depicted in the applicable CPA.

"**Property**" has the meaning specified in the applicable CPA.

"**Prudent Operating Practice**" means (a) the applicable practices, methods, and acts required by or consistent with Applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the solar industry during the relevant time period with respect to distributed generation generating facilities with integrated storage in the Western United States or (b) any of the practices, methods, and acts that, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to distributed generation generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with Applicable Laws, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PV Energy**" means that portion of Energy that is produced by the solar photovoltaic facilities, as measured by a dedicated solar production meter.

"**Qualified Institution**" means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's.

"**Renewable Energy Credit**" or "**REC**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"**Renewable Rate**" means the Tranche A PPA Rate or the Tranche B PPA Rate, or any or all of the foregoing as the context may require.

"**Renewal Term**" has the meaning set forth in Section 4.1.

"**Roof Damage Warranty**" shall have the meaning set forth in Section 8.2(b).

"**Round-Trip Efficiency Factor**" means (a) if the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, one hundred percent (100%), (b) if the Efficiency Rate is less than the Guaranteed Efficiency Rate but greater than or equal to the Minimum Efficiency Rate, the Efficiency Rate, or (c) if the Efficiency Rate is less than the Minimum Efficiency Rate, zero percent (0%).

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"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of the McGraw-Hill Companies, Inc.).

"**Security Deposit**" means either the Development Security or the Performance Security, as applicable.

"**Seller's Delivery Equipment**" means utility lines, cables, conduits, transformers, wires, meters, monitoring equipment, and other necessary appurtenances.

"**Seller Event of Default**" means a Seller Project Default, a Seller City Default, or a Seller Portfolio Default, or any or all of the foregoing as the context may require.

"**Software**" means any software or computer programs that are used by Seller to view, manage, control, operate or otherwise maintain the Projects.

"**Station Use**" means, with respect to a Project, Energy (including PV Energy or Discharging Energy) that is used within such Project to power the lights, motors, cooling equipment, control systems, and other electrical loads that are necessary for operation of the Project, except, with respect to a Storage Project, during periods in which such Storage Project is charging or discharging.

"**Storage Capacity**" means, with respect to a Storage Project, the maximum dependable operating capability of the Storage Project to discharge electric energy (in kWh).

"**Storage Capacity Test**" means any test or retest of the capacity of a Storage Project conducted in accordance with the testing procedures, requirement, and protocols set forth in Exhibit B-1.

"**Storage Contract Output**" means the total output (in MWh) of the Storage Project initially equally to the amount set forth in the applicable CPA, as the same may be adjusted from time to time pursuant to Exhibit B.

"Storage Inverter Power" means the maximum nameplate discharge power rating, in kilowatts, of a Storage System.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Project.

"**Storage Project**" means any individual energy storage system or collective of energy storage systems listed in the applicable CPA (including the operational requirements of the energy storage facility), located at the applicable Project Site and including mechanical equipment and associated facilities and equipment required to deliver Discharging Energy, as such Storage Project may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Storage Project Output**" means, with respect to any Storage Project, the total output (in MWh) of the Storage Project initially equal to the amount set forth in the applicable Project Addendum, as the same may be adjusted from time to time pursuant to Exhibit B.

"**Storage Rate**" has the meaning set forth in the applicable CPA. The Storage Rate will be calculated in each CPA as the product of (a) the sum of the Storage Inverter Power of all Storage

Systems to be deployed under the CPA, and (b) a per-kilowatt rate which shall begin at $[ ] and shall increase two and one-half percent (2.50%) each year.

“Storage Services” has the meaning set forth in Section 15.1.

“**Storage System**” means, collectively, the Storage Projects, the Software, and any other software or hardware utilized by Seller in the performance of the Storage Services.

“**Stored Energy Level**” means, with respect to a Storage Project, at a particular time, the amount of electric energy in the Storage Project available to be discharged as Discharging Energy, expressed in kWh.

“**Tax Benefits**” means investment or production tax credits, and any other state, local and/or federal production tax credit, ITC or other investment tax credit, depreciation benefit, tax exemption, and/or tax deduction specific to the production of renewable energy and/or investments in or ownership of generating facilities or battery energy storage systems utilizing renewable energy resources; provided, however, that “Tax Benefits” shall exclude any federal grants awarded to Ava by the U.S. Department of Energy.

“**Term**” has the meaning set forth in Section 4.1.

“**Termination Payment**” has the meaning set forth in the applicable CPA.

“**Tier 1 Supplier**” means a “Tier 1 Module Manufacturer” as listed from time to time by BloombergNEF, published on a quarterly basis, or if no longer published, a similar publication mutually agreed upon by the Parties.

“**Transmission Provider**” means any Person or Persons transmitting or transporting the Project Energy on behalf of Seller or Ava to or from the Delivery Point.

“**Trade Laws**” has the meaning set forth in Section 17.3(c).

“**Tranche A PPA Rate**” means, with respect to each City Portfolio, the applicable contract rate for Tranche A Projects set forth in Section 10.1(c).

“**Tranche B PPA Rate**” means, with respect to each City Portfolio, the applicable contract rate for Tranche B Projects set forth in Section 10.1(c).

“**Transition Event**” has the meaning set forth in Section 16.5.

“**Transition Period**” has the meaning set forth in Section 16.5.

“**Transition Work**” has the meaning set forth in Section 16.5.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Union Requirement**” has the meaning set forth in Section 9.3(b).

“**WECC**” means the Western Electricity Coordinating Council.

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"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

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EXHIBIT A
FORM OF CITY PORTFOLIO ADDENDUM

City Portfolio Addendum [No. __]

This City Portfolio Addendum No. [__] ("**CPA**") is made and entered into as of the Execution Date by and between [_____]("**Seller**") and Ava Community Energy Authority, a California joint powers authority ("**Ava**") pursuant to that certain Power Purchase & Service Agreement (Critical Municipal Facilities), dated as of [___], between Seller and Ava (the "**PPA**"). Seller and Ava may be referred to individually as a "**Party**" and collectively as the "**Parties**". Capitalized terms not otherwise defined in this CPA shall have the meaning set forth in the PPA.

The following attachments are hereby incorporated into this CPA:

Attachment I	CPA Summary (PDF)
Attachment II	Expected City Energy Schedule (Excel Sheet)
Attachment III	Termination Payment Schedule (Excel Sheet)
Attachment IV	City-Specific Terms
Attachment V	Project Addenda (PDF)

As of the Execution Date, Seller represents and warrants that, to the best of its knowledge and after conducting a reasonable investigation under the circumstances, the information and specifications regarding the Projects set forth in [__]of this CPA are accurate in all material respects. Seller acknowledges and agrees that Ava is relying on the truthfulness, completeness, and accuracy of the terms herein in entering into this CPA.

For the avoidance of doubt, this CPA and any obligations, representations, warranties, covenants or other requirements under this CPA shall only be applicable with respect to the Projects specified in Attachment [__] hereto.

[*Signature Page Follows*]

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IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this CPA and the PPA and intending to be legally bound hereby, Seller and Ava have executed this CPA as of the Execution Date.

SELLER:

[______]

By: ___________________________________

Name: [INSERT NAME]
Title: [INSERT TITLE]

AVA:

AVA COMMUNITY ENERGY AUTHORITY

By: ___________________________________

Name: Howard Chang
Title: Chief Executive Officer

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Attachment I

CPA Summary

[*To be included in an PDF attached hereto.*]

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Attachment II

Expected City Energy Schedule

[*To be included in an Excel sheet attached hereto.*]

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Attachment III

Termination Payment Schedule

[*To be included in an Excel sheet attached hereto.*]

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Attachment IV

City-Specific Terms

[*To be provided by the applicable City.*]

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Attachment V

Form of Project Addendum

- [*To be included in an PDF attached hereto.*]

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EXHIBIT B
STORAGE PROJECT ADDENDUM

This Exhibit B sets forth the terms and conditions related to the operation of each Storage Project, as contemplated within the Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in the Agreement.

Exhibit B-1: Storage Capacity Tests

Exhibit B-2: Storage Project Availability

Exhibit B-3: Operating Restrictions

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EXHIBIT B-1
STORAGE CAPACITY TESTS

I. ***Storage Capacity Test Notice and Frequency***.

A. COD Storage Capacity Test. With respect to each Storage Project, upon no less than ten (10) Business Days' prior notice to Ava, Seller shall schedule and complete a Storage Capacity Test prior to COD. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit B and shall establish the initial Current Storage Capacity hereunder based on the actual capacity of the Storage Project determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following COD, once per City Contract Year, Seller shall perform a Storage Capacity Test for the Storage Project and shall give Ava ten (10) Business Days' prior notice of such test; provided, however, during an Efficiency Rate Cure Period under Section 13.1(a)(vii)(B) or during a Storage Energy Capacity Cure Period under Section 13.1(a)(vii)(C), Seller shall be entitled to perform up to three (3) additional Storage Capacity Tests at its sole cost. At least twice per City Contract Year, Ava shall have the right to schedule and complete a Storage Capacity Test. In addition, Ava shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than ten (10) Business Days' prior written notice to Seller if Ava provides data with such notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test.

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit to Ava a testing report detailing results and findings of the test. The report shall include Storage Project meter readings and plant log sheets verifying the operating conditions and output of the Storage Project.

II. ***Storage Capacity Test Procedures.***

A. GENERAL. Each Storage Capacity Test (including the initial Storage Capacity Test and all reperformances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit B. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit B as a "**SCT**". Ava or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Ava's sole cost).

B. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

1. Purpose of Test. Each SCT shall: (1) determine an updated Current Storage Capacity; (2) determine the amount of Energy required to fully charge the Storage Project; (3) determine the Storage Project charge ramp rate; (4) determine the Storage Project discharge ramp rate; and (5) determine an updated Efficiency Rate.

2. Test Elements. Each SCT shall include the following test elements:

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a) The measurement of Charging Energy exclusive of Station Use and Electrical Losses, as measured by the Storage Project meter or other mutually agreed meter, that is required to charge the Storage Project up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");

b) The measurement of Discharging Energy exclusive of Station Use and Electrical Losses, as measured by the Storage Project meter or other mutually agreed meter, that is discharged from the Storage Project to the Delivery Point until the Stored Energy Level reaches zero (0) MWh as indicated by the battery management system ("**Energy Out**");

c) Electric output at Maximum Discharging Capacity at the Storage Project meter (MW);

d) Electrical input at Maximum Charging Capacity at the Storage Project meter (MW);

e) Amount of time between the Storage Project's electrical output going from zero (0) to Maximum Discharging Capacity;

f) Amount of time between the Storage Project's electrical input going from zero (0) to Maximum Charging Capacity;

g) Amount of energy required to go from the Minimum Stored Energy Level to the Maximum Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

3. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Project, at fifteen (15)-minute intervals:

a) Discharge time (minutes);
b) Charging energy (MWh);
c) Discharging energy (MWh); and
d) Stored Energy Level (MWh).

4. Site Conditions. During each SCT, the following conditions at the Project Site shall be measured and recorded simultaneously at thirty (30)-minute intervals:

a) Relative humidity (%);
b) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Project; and
c) Ambient air temperature (°F).

5. Test Showing. Each SCT must demonstrate that the Storage Project:

a) Operated for at least two (2) consecutive hours at Maximum Discharging Capacity;
b) Operated for at least two (2) consecutive hours at Maximum Charging Capacity; and

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c) Has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level;

6. Test Conditions.

a) *General*. At all times during a SCT, the Storage Project shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at the Maximum Discharging Capacity and Maximum Charging Capacity.

b) *Abnormal Conditions*. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Section B.7 below.

c) *Instrumentation and Metering*. Seller shall provide all instrumentation, metering, and data collection equipment required to perform the SCT. The instrumentation, metering, and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

7. Incomplete Test. If any SCT is not completed in accordance herewith, Ava may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be repeated in its entirety. Notwithstanding the foregoing, if Seller is unable to complete a SCT due to an event of Force Majeure or the actions or inactions of Ava, the applicable City, or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

8. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Ava a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II. A through C, including copies of the raw data taken during the test;

(3) the level of Current Storage Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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Within ten (10) Business Days after receipt of such report, Ava shall notify Seller in writing of either Ava's acceptance of the SCT results or Ava's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Section II.B.7.

9. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to Construction Start, Seller shall deliver to Ava for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit B-2 with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Storage Project ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Ava for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Ava, shall be deemed an amendment to this Exhibit B-2.

10. Adjustment to Current Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first two (2) hours of discharge, shall be the Current Storage Capacity, which shall be expressed in MWh AC, and shall be the new Current Storage Capacity until updated pursuant to a subsequent Storage Capacity Test.

11. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Section II. B(2)(a) above) divided by the total amount of Energy In (as reported in Section II.B(2)(b) above), measured at the Storage Project meter location, exclusive of Electrical Losses to the Delivery Point and separately metered Station Use associated with battery cooling and other thermal management equipment, and expressed as a percentage, shall be the new Efficiency Rate.

C. SUPPLEMENTARY STORAGE CAPACITY TEST PROTCOL

1. Conditions Precedent to SCT

- *Control System Functionality:* The Storage Project control system shall be successfully configured to receive data from the battery system and to exchange DNP3 data with a Remote Terminal Unit (RTU) provided, installed, commissioned, owned, and operated by Ava.

- *Communications:* RTU testing should be successfully completed prior to SCT. The interface between Ava's RTU and the Storage Project SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between Seller's control system and Ava's RTU and the ability to record SCADA data.

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- *Commissioning Checklist*: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.

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EXHIBIT B-2
STORAGE PROJECT AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[MNTHHRS_m - UNAVAILHRS_m]}{[MNTHHRS_m]}$$

where:

m = relevant month "m" in which availability is calculated;

$MNTHHRS_m$ is the total number of hours in the month;

$UNAVAILHRS_m$, is the total number of hours in the month during which the Storage Project was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an "**Excused Event**"): an event of Force Majeure, Storage Capacity Test, Planned Outage, Ava-Requested Outage (to the extent such outages do not exceed the Ava-Requested Outage Cap for the applicable City Contract Year), Forced Outage, or the Operating Restrictions. To be clear, hours of unavailability caused by any Excused Event will not be included in $UNAVAILHRS_m$ for such month. Any other event that results in unavailability of the Storage Project for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Storage Project is available, but for less than the full amount of the Storage Inverter Power, the $UNAVAILHRS_m$ for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Inverter Power.

Availability Adjustment

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

a) AA = 100%

b) If the Monthly Storage Availability is less than 90% but greater than or equal to 70%, then:

AA = 100% - [(90% - Monthly Storage Availability) x 2]

(ii) If the Monthly Storage Availability is less than 70%, then:

AA = 0

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EXHIBIT B-3
OPERATING RESTRICTIONS

The Parties will develop and finalize the following limitations and restrictions on operation (the "**Operating Restrictions**") for each Storage Project prior to the applicable Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Project than as set forth below, unless agreed to by Ava in writing, (ii) will, at a minimum, include the rules, requirements, and procedures set forth in this Exhibit B-3, and (iii) may include Storage Project Scheduling, Operating Restrictions, and Communications Protocols.

Interconnection Capacity Limit:	
Maximum Stored Energy Level:	
Minimum Stored Energy Level:	
Maximum Charging Capacity:	
Minimum Charging Capacity:	
Maximum Discharging Capacity:	
Minimum Discharging Capacity:	
Maximum State of Charge (SOC):	100%
Minimum State of Charge (SOC):	25%
Ramp Rate:	
Annual Cycle Limit:	365 cycles with no monthly cap
Daily Dispatch Limits:	Charging: 2 per day Discharging: 2 per day
Maximum Time at Minimum Stored Energy Level:	
Grid Charging of Storage Facility:	Yes
Other Operating Limits:	N/A
Battery Back-up Reserve:	20%

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EXHIBIT C
DESIGN PLAN COMPONENTS

In accordance with Section 5.3, Seller shall deliver to Ava each of the following items (collectively, the "**Design Plan**"):

- A design & construction schedule;

- All drawings, plans, and specifications for the construction of the Project, including specification sheets for all Project Equipment;

- Production estimation reports from Heliscope (or any comparable entity proposed by Seller and approved by Ava in its reasonable discretion); and

- Each of the following design elements:
    - Detailed Array Plan
    - Electrical Site Plan (including stringing diagram)
    - Lighting Plan
    - BPM Plan (underground work – civil)
    - DC Single Line Diagram/Three Line Diagram
    - Lighting Diagram
    - Trench Details
    - Wiring Detail Drawings & Electrical Details
    - Inverter/Transformer/BESS Elevation Details
    - Conduit Entry Details
    - Junction Box/Pull box details
    - Grounding Line Diagram
    - Grounding Layout (if applicable)
    - Fence Grounding Details (if applicable)
    - Power Cable & Conduit Schedule
    - Voltage Drop & System Loss Analysis
    - Fault Current Calculations
    - Equipment PAD Structural Drawing
    - Structural Drawings including PV post layout & attachment details
    - Structural Equipment Datasheets
    - NEC Labels & Sign Details
    - Bill of Quantities (PDF & Excel)
    - Stamped Electrical Design
    - Stamped Structural Design

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EXHIBIT D
SUBLICENSE

Project Site Sublicense

I. **Non-Exclusive Site License**. With respect to each Project, effective on the applicable City Effective Date, Ava hereby grants to Seller, and Seller's agents, employees, contractors (the "**Sublicensees**"), and assignees a non-exclusive, non-transferable, irrevocable sublicense (each, a "**Non-Exclusive Sublicense**") under and on all of the same terms and conditions of the license between Ava as licensee, and the applicable City, as licensor, from the City for access to, on, over, under, and across each applicable Project Site during the Sublicense Term (as defined below) with respect to the following:

(a) The Project Site for the limited purpose of satisfying Seller's obligations as set forth in this Agreement;

(b) The right to use of additional space within the Premises as reasonably necessary for installation, interconnection, operation, maintenance, repair, replacement, and removal of (i) the Project on or from the Project Site, and (ii) Seller's Delivery Equipment running between each Project and the Delivery Point; and

(c) The non-exclusive temporary license over, across and upon portions of the Property owned by the City that lie outside of the Project Site for the limited purposes [described in the applicable City Agreement].

The access rights granted hereunder shall in each instance be subject to all of the terms of the applicable City Agreement, including, without limitation, [Section 8(a)] and [Exhibit 3] thereof.

II. **Sublicense Term**. The term of each Non-Exclusive Sublicense shall commence on the applicable City Effective Date and shall expire on the date that is the earlier of (x) one hundred fifty (150) days after the expiration or early termination of the applicable City Term, and (y) removal of the Project in accordance with Section 16.4 (the "**Sublicense Term**"). [In the event [Ava's license from the City for access to, on, over, under, and across the Project Site is terminated for any reason whatsoever, this Non-Exclusive Sublicense shall terminate simultaneously with such termination in each case subject to the terms of Section 13.2 of this Agreement.

III. **Access Notification**. Seller and its employees, agents, and contractors shall provide reasonable advanced notice prior to entry which shall be, at minimum, no less than twenty (20) days, to Ava (or its designee) of Seller's intent to access the Property under the applicable Non-Exclusive Sublicense; provided, however, in the event that Seller needs to access the Property due to the occurrence of a Forced Outage, Planned Outage, or event of Force Majeure, Seller shall only be required to provide as much reasonable advance notice as is practicable under the circumstances prior to such entry. Ava may delay or deny access to Seller for good cause by providing written

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notice of such delay or denial no more than ten (10) days after Ava receives notice of Seller's intent to exercise access rights, provided, however, that Seller shall not be liable for breaches of its obligations under this Agreement resulting from such delay or denial, and further, promptly upon Seller's written demand therefor, Ava shall reimburse Seller's out of pocket costs incurred in connection with the delay or denial.

II. **Obligations of Ava**. During the Sublicense Term, Ava shall (i) use commercially reasonable efforts to preserve and protect Seller's rights under the Non-Exclusive Sublicense, and (ii) not interfere, or permit any third parties under Ava's control to interfere, with such rights or access.

III. **Assignment**. The rights and license granted to Seller hereunder do not confer to Seller the right to grant to others the right or license to assign this Non-Exclusive Sublicense other than as expressly provided in the Agreement.

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EXHIBIT E
PROGRESS REPORT FORM

Progress Reporting Form

In accordance with Section 5.2, Seller shall deliver a quarterly Progress Report for each City Portfolio until each Project within such City Portfolio has achieved COD. Each Progress Report must include the following items:

a) Description of any material planned changes to each Project and/or the corresponding Project Site.

b) With respect to each Project, a Gantt chart schedule showing progress on achieving Construction Start and COD.

c) An updated, fully populated copy of the attached Excel file titled [Exhibit E to Developer PPA - Progress Report Form.xlsx], which shall include (i) a summary of activities during the previous calendar quarter, (ii) a forecast of activities scheduled for the current calendar quarter, and (iii) with respect to each Project, progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements, and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

d) Any other documentation reasonably requested by Ava.

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EXHIBIT F
FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Ava**") in accordance with the terms of that certain Power Purchase & Services Agreement dated as of the Execution Date (the "**Agreement**") by and between Seller and Ava. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Ava the following:

1. To the extent reasonably necessary for the physical construction of the applicable Project to begin and proceed to completion without reasonably foreseeable interruption of material duration, all major contractors have been engaged and all major equipment and supplies for such Project have been ordered;

2. Seller has delivered to Ava a Design Plan which has been approved by Ava in its reasonable discretion in accordance with Section 5.3;

3. Seller has delivered to Ava the Development Security for such City Portfolio in accordance with Section 14.1;

4. A notice to proceed under the applicable EPC Contract that authorizes the EPC Contractor to mobilize the Project Site and begin physical construction of the Project at the Project Site has been issued;

5. Construction Start (as defined in Section 5.4(a) of the Agreement and evidenced by representations 1 through 4 above) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

6. the Construction Start Date occurred on [Date] (the "**Construction Start Date**"); and

7. the precise Project Site on which the Project is located is, which must be within the boundaries of the previously identified Site: ____.

[*Signature page follows]*

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this ________ day of _____________, 20__.

[_______________________________]

By: ________________________________

Printed Name: ________________________

Title: _______________________________

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EXHIBIT G
FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification of Commercial Operation Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Ava**") in accordance with the terms of that certain Power Purchase & Services Agreement dated as of the Execution Date (the "**Agreement**") by and between Seller and Ava. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Seller hereby certifies and represents to Ava the following:

1. Commercial Operation occurred on: _______ [date]

2. The Project is fully operational, reliable and interconnected, fully integrated, and synchronized with the Transmission System.

3. The Project Equipment has been installed, tested, and is capable of generating output in accordance with the manufacturer's specifications.

4. The Project is substantially complete and capable of delivering Project Energy as described in the Agreement.

5. The Local Electric Utility has provided permission to operate the Project.

6. Seller reasonably believes that the COD Conditions Precedent set forth in Section 5.6(d)(ii) through (viii) of the Agreement have been satisfied in full.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this ________ day of _____________, 20__.

[________________________________]

By: _________________________________

Printed Name: ________________________

Title: ______________________________

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EXHIBIT H
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Ava Community Energy, a California joint powers authority ("**Ava**") in accordance with the terms of that certain Power Purchase & Services Agreement dated as of the Execution Date (the "**Agreement**") by and between [Entity name, state of formation, type of entity] ("**Seller**") and Ava. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify and represent to Ava the following:

- [Seller has installed equipment for the Generating Project with a nameplate capacity of no less than one hundred percent (100%) of the Guaranteed Nameplate Capacity.

The Generating Project's testing included a performance test demonstrating peak electrical output of no less than one hundred percent (100%) of the Guaranteed Nameplate Capacity for the Generating Project at the Delivery Point, as adjusted for ambient conditions on the date of such testing.]

- [Seller has installed equipment for the Storage Project with a nameplate capacity of no less than one hundred percent (100%) of the Current Storage Capacity.

The Storage Project is fully capable of charging, storing, and discharging energy up to no less than one hundred percent (100%) of the Current Storage Capacity and receiving instructions to charge, store, and discharging energy, all within the operational constraints and subject to the applicable Operating Restrictions.]

EXECUTED by [*Licensed Professional Engineer*]

this ________ day of _____________, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: ___________________________________

Printed Name: ________________________

Title: _________________________________

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EXHIBIT I
NOTICES

[Seller]	Ava Community Energy Authority
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** Street: City: Attn: Phone: Email: avacmf@avaenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: Federal Tax ID Number:
Invoices: Attn: Phone: Email:	**Invoices:** Attn: Phone: Email:
Payments: Attn: Phone: Email:	**Payments:** Attn: Phone: Email:
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Email:	**Credit and Collections:** Attn: Phone: Email:
Emergency Contact: Attn: Phone: Email:	**Emergency Contact:** Attn: Phone: Email:
With additional Notices of an Event of Default to: Attn: Phone: Email:	**With additional Notices of an Event of Default to:** Attn: Phone: Email:

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EXHIBIT J
INSURANCE REQUIREMENTS

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of Ava, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverages and provisions. The Parties agree that all insurance coverages required under this Exhibit and Agreement may be met by a combination of Seller and its contractor's total insurance coverages:

1. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to Ava. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Seller shall not reduce or limit Seller's contractual obligation to indemnify and defend the Indemnified Parties.

2. EVIDENCE OF COVERAGE: Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and content reasonably satisfactory to Ava, evidencing that all required insurance coverage is in effect. The required certificate(s) and endorsements must be sent as set forth in the notices.

   The Seller shall not receive a notice to proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by Ava. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, insurance policies and coverage(s) written on a claims-made basis:

   - Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/phase of this Agreement and acceptance of all work provided under this Agreement.

   - The retroactive date must be before the execution date of the contract or the beginning of contract work.

   - If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Seller must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. ADDITIONAL INSURED: All insurance required herein with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be

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endorsed to name as additional insured: Ava or, its elected officials, officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the work shall be covered as insureds under the same coverage as provided Ava as respects their ownership of the property and the work to be done thereon.

5. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to Ava. Acceptance of Seller's insurance by Ava shall not relieve or decrease the liability of Seller hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller.

6. SUBCONTRACTORS: Seller shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this **<u>Exhibit 5</u>**. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

7. JOINT VENTURES: If Seller is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:

   - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies.

   - Coverage shall be at least as broad as in the ISO forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".

8. NOTICE OF CANCELLATION:

   All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Ava insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to Ava or their designated agent.

9. SELF-INSURANCE:

   Ava acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self-insurance shall be approved in writing by Ava upon satisfactory evidence of financial capacity. Seller's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs

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or self-insurance retentions. Ava acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by Seller under this Agreement.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

   a. Each occurrence – $2,000,000

   b. General aggregate - $2,000,000

   c. Personal Injury - $2,000,000

2. General liability coverage shall include:

   a. Project Sites and Operations

   b. Personal Injury liability

   c. Severability of interest

3. Automobile Liability Insurance

   For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

   a. Statutory California Workers' Compensation coverage including broad form all states coverage.

   b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

5. Professional Errors and Omissions Liability Insurance

   a. Coverage shall be in an amount of not less than two million dollars ($2,000,000) per occurrence/aggregate.

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b. If coverage contains a deductible or self-retention, it shall not be greater than two hundred fifty thousand dollars ($250,000) per occurrence/event.

c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

6. Claims Made Coverage

If coverage is written on a claims' made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

a. Policy retroactive date coincides with or precedes the consultant's start of work (including subsequent policies purchased as renewals or replacements).

b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

    a. Each occurrence - $2,000,000

    b. General aggregate - $4,000,000

    c. Products/Completed Operations aggregate ** - $4,000,000

    d. Personal Injury - $2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

a. Project Sites and Operations

b. **Products/Completed Operations with limits of four million dollars ($4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by Ava.

c. Contractual Liability expressly including liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.

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d. Personal Injury liability

e. Ava's and Seller's protective liability

f. Severability of interest

g. Explosion, Collapse, and Underground Hazards (X, C and U)

h. Broad Form Property Damage liability

3. General liability coverage shall include the following endorsements, copies of which shall be provided to Ava:

a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with Ava.

b. X C & U (Explosion, Collapse and Underground) Endorsement:

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation and testing at the entity's site. The coverage shall be in the amount of the value of the completed project and materials.

D. <u>OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS</u>

Without limiting the Seller's indemnification of Ava, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

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1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

   a. Each occurrence - $2,000,000

   b. General aggregate - $4,000,000

   c. Personal Injury - $2,000,000

2. General liability coverage shall include:

   - Project Sites and Operations
   - Personal Injury liability
   - Severability of interest

3. Automobile Liability Insurance

   For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

   - Statutory California Workers' Compensation coverage including broad form all-states coverage.
   - Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

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EXHIBIT K
LOAD MODIFICATION DISPATCH REPORT

In accordance with Section 15.1(d), Seller shall deliver to Ava a CSV or Excel file containing the data fields bulleted below (each, a "**Load Modification Dispatch Report**") with respect to each Storage Project at the cadence described in #1-3 below:

1. Load Modification Dispatch Report – Initial Forecast
At least thirty (30) days prior to the estimated Commercial Operation Date, Seller shall deliver a forecast for each Storage Project containing the rate schedule / sector, configuration, and Forecasted Values data fields detailing the expected hourly storage generation performance for the current calendar year.

2. Load Modification Dispatch Report – Subsequent Forecast
On or prior to February 20 for each calendar year following the Storage Project's Commercial Operation Date, Seller shall deliver a forecast for such Storage Project containing the rate schedule / sector, configuration, and Forecasted Values data fields detailing the expected hourly storage generation performance for the current calendar year.

3. Load Modification Dispatch Report – Annual Historicals
On or prior to February 20 for each calendar year following the Storage Project's Commercial Operation Date, Seller shall deliver a historical report for such Storage Project containing the rate schedule / sector, configuration, and Actual Values data fields detailing the actual hourly storage generation performance for the immediately preceding calendar year.

Load Modification Dispatch Report data fields

- Rate schedule / sector
- Configuration (Standalone/Paired with Solar)
- "Forecasted Values" data fields (for #1 and #2 above)
  - Number of units
  - Aggregate energy capacity (kWh)
  - Aggregate power rating (kw)
  - Date & Timestamp
  - Forecasted / Simulated Charge Events - Number of charge events in the interval
  - Forecasted / Simulated Discharge Events - Number of discharge events in the interval
  - Forecasted / Simulated Energy Stored - AC kWh stored in the interval
  - Forecasted / Simulated Energy Discharged - AC kWh discharged in the interval
  - Forecasted / Simulated Metered Load (kWh)
  - Forecasted / Simulated Solar output if available
  - Forecasted / Simulated Energy discharged to grid (kWh)
- "Actual Values" data fields (for #3 above)
  - Number of units
  - Aggregate energy capacity (kWh)
  - Aggregate power rating (kw)
  - Date & Timestamp

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- Actual Energy Stored - AC kWh stored in the interval
- Actual Energy Discharged - AC kWh discharged in the interval
- Actual Metered Load (kWh)
- Actual Solar output if available
- Actual Energy discharged to grid (kWh)

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AVA COMMUNITY ENERGY – [CITY]

POWER PURCHASE & SERVICE AGREEMENT (CRITICAL MUNICIPAL FACILITIES)

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RENEWABLE ENERGY & STORAGE POWER PURCHASE AGREEMENT

This Renewable Energy & Storage Power Purchase Agreement (this "**Agreement**") is entered into as of [____], 2024 (the "**Effective Date**") between [City], a [municipality] ("**City**") and Ava Community Energy, a California joint powers authority ("**Ava**"). City and Ava are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**".

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WHEREAS, City wishes to engage Ava, whether directly or indirectly through one or more subcontractors, to develop, construct, operate, and maintain multiple photovoltaic solar Projects (each, a "**Generating Project**", and collectively, the "**Generating Projects**") and battery energy storage Projects (each, a "**Storage Project**", and collectively, the "**Storage Projects**") on a portfolio of Project Sites owned by City, as more particularly described in one or more addenda to be attached hereto and incorporated herein (each, a "**Project Site Addendum**" or "**PSA**");

WHEREAS, Ava desires to sell, and City desires to purchase, the Product on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

Section 1.1 ***Contract Definitions***. All capitalized terms used in this Agreement shall have the meanings ascribed to them in **Schedule I** to this Agreement.

ARTICLE 2
SCOPE OF TRANSACTION; PROJECT SITE ADDENDA

Section 2.1 ***Scope of Transaction***. This Agreement governs the relationship between City and Ava, as detailed under this Section 2.1. At Ava's discretion, any obligation of Ava under this Agreement may be performed by Ava's affiliates, agents, representatives, contractors, and/or subcontractors acting on Ava's behalf; provided, that Ava shall remain solely responsible for any work performed thereby. City and Ava acknowledge and agree that Ava has entered into that certain Power Purchase & Service Agreement, dated as of [___], 2024 with Developer (the "**Developer Agreement**") pursuant to which Ava has engaged Developer to develop, construct, own, operate, and maintain the Projects hereunder on substantially similar terms to those contained herein. Ava shall serve as the intermediary under this Agreement and the Developer Agreement, whereby the City shall be the buyer and recipient of the Product, and the Developer shall perform all obligations set forth in the Developer Agreement. Subject to the terms and conditions of this Agreement and each PSA, during the Term, Ava shall supply and deliver to City all of the Product it receives from the Developer that was produced by or associated with each Project, and City shall purchase all such Product at the Contract Price.

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Section 2.2 ***Delivery of Project Energy***. Subject to the provisions of this Agreement, with respect to each Generating Project, for the duration of the applicable Delivery Period, Ava shall supply and deliver the Product to the City at the Delivery Point, and City shall accept delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Ava shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Project Energy to the Delivery Point. Title to and risk of loss related to the Project Energy shall pass and transfer from Ava to City at the Delivery Point. City has no obligation to purchase from Ava any Project Energy that is not or cannot be delivered to the Delivery Point as a result of a Planned Outage, Forced Outage or a Force Majeure Event.

Section 2.3 ***Project Site Addenda***. On the Effective Date, the Parties shall populate and attach hereto a PSA substantially in the form attached hereto as **Exhibit II** for each Project Site hereunder, and each PSA shall become part of and is hereby incorporated into this Agreement. The terms of each such PSA shall, in addition to the terms of this Agreement, govern the obligations of each Party with respect to the Projects thereunder. Any reference to this Agreement shall be a reference to this Agreement together with all duly executed PSAs. In the event of a conflict or inconsistency between the provisions of this Agreement and any PSA, the provisions of the PSA shall control. Each PSA may be amended at any time upon mutual agreement of the Parties confirmed in writing. The Parties agree that any PSA amended in accordance with the foregoing sentence shall supersede any prior PSA to the extent provided in such amendment and shall be effective from the date stated in the amended PSA.

ARTICLE 3
TERM AND TERMINATION

Section 3.1 ***Effective Date; Term***. This Agreement is effective as of the Effective Date, and shall end upon the expiration of all Project Terms for each Project contemplated hereunder ("**Term**"). With respect to each Project, the Product supply period ("**Delivery Period**") commences on the Commercial Operation Date of the Project and ends on the twenty-fifth (25th) anniversary of such Commercial Operation Date (the "**Initial Term**"), unless terminated earlier pursuant to the provisions of this Agreement. Thereafter, the term of this Agreement may be extended as it applies to such Project, upon mutual written consent of the Parties, for successive five (5)-year periods (each such period, a "**Renewal Term**", and together with the Initial Term, the "**Project Term**"), up to a maximum Project Term of fifty (50) years. Between ninety (90) and one hundred eighty (180) days prior to the end of the Initial Term or any Renewal Term, City shall provide written notice to Ava as to its desire to continue for any subsequent Renewal Term, upon which the Parties shall negotiate in good faith for sixty (60) days the revised terms, if any, applicable to such Renewal Term. After such 60-day period, if the Parties have not mutually agreed upon the terms and conditions applicable to such Renewal Term, then the applicable Project Term will expire at the end of the then-current Initial Term or Renewal Term, as applicable.

Section 3.2 ***Early Termination of Projects***

(a) Early Termination Events. With respect to each Project, prior to Construction Start, the applicable Party specified below shall have the right to withdraw the affected Project from this Agreement upon the occurrence of any of the following events, so long

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as the terminating Party provides reasonably sufficient evidence to the other Party demonstrating the occurrence of such event (each, an "**Early Termination Event**"):

(i) Either Party may withdraw an affected Project under this Section 3.2(a) if (1) the EPC Contractor encounters extraordinary subsurface conditions that were not reasonably anticipated by either Party as of the Effective Date, such as bedrock or water pipes, which have a material adverse impact on the development costs associated with such Project, and such costs cannot be adequately mitigated or eliminated by Developer using commercially reasonable efforts; (2) Developer discovers historical or cultural artifacts on the Project Site and as a result, Developer is unable to perform its obligations under the Developer Agreement in compliance with Applicable Law; or (3) Developer discovers Adverse Environmental Conditions on the Project Site and the terminating Party provides an opinion from an independent third-party consultant that such Adverse Environmental Conditions cannot be adequately mitigated or eliminated by Developer using commercially reasonable efforts.

(ii) Only Ava may withdraw an affected Project under this Section 3.2(a) if (1) the Local Electric Utility denies Developer's application for interconnection or easements necessary to enable the delivery of Project Energy to the Delivery Point, or the Project Site is otherwise disqualified due to acts or omissions of City, despite Developer's use of commercially reasonable efforts; (2) the AHJ rejects Developer's application for a Governmental Approval on non-administrative or prejudicial grounds, despite Developer's exercise of commercially reasonable efforts; (3) Developer discovers or has reasonable grounds to believe that title to the Project Site is unclear, defective or encumbered by adverse claims, restrictions or Liens, and can provide evidence supporting documentation or evidence of such belief; or (4) any portion of the Project Site is damaged by fire, earthquake, flood or other casualty in a manner that has a material adverse effect on the installation or operation of the Project at the Project Site and such damage cannot be readily remedied.

(b) Procedures. Upon any such withdrawal of a Project due to an Early Termination Event, (1) the applicable PSA shall be deemed withdrawn from this Agreement, (2) neither Party shall have any liability to the other Party with respect to the withdrawn Project other than those that survive this Agreement, and (3) Ava shall have the right to (i) deliver to City a Relocation Request in accordance with Section 11.1, and/or (ii) adjust the Renewable Rate in accordance with Section 5.1(b). In the case of a claim by City that a Project meets the qualification for an Early Termination Event, Ava may in good faith challenge such a claim in its reasonable judgment. Any disagreement between the Parties regarding the applicability of an Early Termination Event asserted by City shall be subject to the dispute resolution provisions of Section 20.3.

ARTICLE 4
PROJECT DEVELOPMENT; MILESTONES

Section 4.1 ***Generally***. Ava shall (directly or indirectly through Developer) develop, design, engineer, construct, install, and commission each Project in a timely fashion and in accordance with the terms of this Agreement, Prudent Operating Practice, and Applicable Law.

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Section 4.2 ***Development Progress Reports***. With respect to each Project, starting on the Effective Date until all Projects hereunder have achieved COD, Ava shall provide quarterly progress reports (a "**Progress Report**") to City which describe Ava's progress in achieving Construction Start and COD for each Project therein. Ava shall also provide City with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Construction Start or COD for any Project within twenty (20) Business Days of receipt of such request from City.

Section 4.3 ***Project Design Approval***. With respect to each Project, no later than seventy-five (75) days prior to the Estimated Construction Start Date, Ava shall deliver to City (i) a design & construction schedule, (ii) all drawings, plans, and specifications for the construction of the Project, and (iii) production estimation reports from Helioscope (or any comparable entity) (the "**Design Plan**"), which shall be subject to approval by City in its reasonable discretion. Within thirty (30) days following the date on which the Design Plan is received by City, City shall provide written notice to Ava either (i) accepting the Design Plan, or (ii) rejecting the Design Plan, along with its commercially reasonable explanation for doing so, including, but not limited to, (x) any operational issues at the applicable Project Site, or (y) substantial revisions to the original draft design plan upon which indicative pricing was based. If City rejects the Design Plan under clause (ii) above, within thirty (30) days of receipt of City's rejection, Ava (directly or indirectly through Developer) shall modify the Design Plan to address City's objections (such modified plan, the "**Modified Design Plan**") and submit such Modified Design Plan to City for approval in its reasonable discretion. Within fifteen (15) days following the date on which the Modified Design Plan is received by City, City shall provide written notice to Ava indicating its acceptance or rejection of the Modified Design Plan. If City accepts the Modified Design Plan, such Modified Design Plan shall be deemed the applicable Design Plan for such Project. If City rejects the Modified Design Plan, the Parties shall resolve their differences in accordance with the dispute resolution procedures set forth in Section 20.3.

Section 4.4 ***Construction Start***.

(a) Construction Start. With respect to each Project, "**Construction Start**" shall be deemed to have occurred once Ava and/or Developer has (i) engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of such Project may begin and proceed to completion without foreseeable interruption of material duration, (ii) delivered to City a Design Plan which has been approved by City in its reasonable discretion in accordance with Section 4.3, and (iii) executed an EPC Contract and issued thereunder a notice to proceed that authorizes the applicable contractor to mobilize the Project Site and begin physical construction of the Project at the Project Site. The date of Construction Start will be evidenced by and subject to Ava's delivery to City of written notice indicating the occurrence of Construction Start, and the date stated in such notice shall be the "**Construction Start Date**".

Section 4.5 ***Obligation to Interconnect***. Ava shall, directly or indirectly through Developer, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Local Electric Utility as needed to enable the transmission of Project Energy to the Delivery Points. City shall not be responsible for any costs under the Interconnection Agreement or any other agreements between Ava or Developer and the Local

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Electric Utility, including but not limited to the costs of any upgrades to the Transmission System associated with the interconnection of the Project. In no event shall City be required to maintain the interconnection Projects including metering Projects or for the cost and expense associated therewith.

Section 4.6 ***Commercial Operation***.

(a) Commercial Operation Deadline. With respect to each Project, Ava shall cause the Commercial Operation Date to occur no later than ninety (90) days after the Construction Start Date ("**Commercial Operation Deadline**").

(b) Force Majeure Delay. If Ava's timely achievement of the Commercial Operation Date is impacted by a Force Majeure Event ("**Force Majeure Delay**"), Ava shall be entitled to extend the Commercial Operation Deadline on a day-for-day basis for no more than one-hundred twenty (120) days ("**FM Delay Cure Period**") so long as Ava provides to City written notice of a Force Majeure Event in accordance with the requirements set forth in Section 10.1 on or before the Commercial Operation Deadline. For the avoidance of doubt, no COD Delay Damages shall be owed during such FM Delay Cure Period.

(c) COD Delay Notice; COD Delay Cure Period. Ava shall provide City with advanced notice of any delay in achieving COD by the Commercial Operation Deadline ("**COD Delay Notice**") at least forty (40) days in advance of the Commercial Operation Deadline (or, if Ava's anticipation of such delay does not arise until after such advanced window, then as soon as reasonably practicable following such anticipation arising). If the Project has not achieved COD by the Commercial Operation Deadline (subject to any FM Delay Cure Period thereto), then Ava may avoid an Ava Event of Default for the duration of the COD Delay Cure Period by passing through to the City the COD Delay Damages received from Developer pursuant to Section 5.6. Prior to the expiration of the COD Delay Cure Period, as long as Ava has provided the COD Delay Notice to City and passed through all COD Delay Damages received from Developer in accordance with this Section 4.6(c), Ava's failure to achieve COD by the Commercial Operation Deadline shall not be deemed an Ava Event of Default. Upon either (A) Ava's failure to timely pass through the COD Delay Damages, or (B) Ava's failure to achieve COD prior to the expiration of the COD Delay Cure Period, in each case for any reason other than a Force Majeure Delay or City's fault or negligence, Ava shall be deemed a Defaulting Party pursuant to Section 13.1(a) and City shall have the right to declare an Ava Event of Default and terminate the applicable Project.

(i) *Acknowledgement of Liquidated Damages*. Each Party agrees that (1) the damages that City would incur due to Ava's delay in achieving COD by the Commercial Operation Deadline would be difficult or impossible to predict with certainty, and (2) the prorated COD Delay Damages passed through pursuant to Section 5.6 are an appropriate approximation of such damages.

(d) COD Confirmation; Commissioning Tests. With respect to each Project, Ava shall (A) take all actions and obtain all approvals necessary to meet the obligations of this Agreement, to develop the Project, and to deliver the Product to City pursuant to the terms of this Agreement, and (B) use commercially reasonable efforts to cause Developer to comply with all applicable CAISO and Local Electric Utility requirements for pre-operational testing. No later than

three (3) Business Days prior to conducting a pre-operational test in connection with Commercial Operation of the Project (a "**Commissioning Test**"), Ava shall notify City of the date on which it intends to retain a Licensed Professional Engineer to conduct such Commissioning Tests. City shall have the right to be present during any such Commissioning Test, and to receive copies of an Installed Capacity Certificate issued by the Licensed Professional Engineer thereafter. Ava may change the date for such Commissioning Tests upon three (3) days' advanced written notice of the Commissioning Test. On or promptly following the Commercial Operation Date (but in no event later than ten (10) Business Days thereafter), Ava shall provide notice to City confirming the occurrence of the Commercial Operation Date.

ARTICLE 5
INVOICING AND PAYMENT

Section 5.1 ***Billing and Payment Terms.***

(a) Calculation of Monthly Payment. On a monthly basis during the Delivery Period, City shall pay Ava a Monthly Payment for all Product delivered hereunder, which shall be calculated in accordance with the following:

(i) With respect to each Project, the "**PV Payment**" shall be determined as follows: (A) if such Project is a Tranche A Project, multiply (i) all PV Energy delivered to City at the Delivery Point during the applicable Contract Month, by (ii) $[XX] (the "**Tranche A PPA Rate**"); or (B) if such Project is a Tranche B Project, multiply (i) all PV Energy delivered to City at the Delivery Point during the applicable Contract Month, by (ii) $[XX] (the "**Tranche B PPA Rate**"). The "**Storage Payment**" shall be calculated by multiplying (i) $[XX]/kW (the "**Storage Rate**") by (ii) the Storage Inverter Power for such Project. Notwithstanding the foregoing, the Parties acknowledge and agree that (1) the Renewable Rates and the Storage Rate set forth in this Section 5.1(a)(i) shall be subject to an annual escalation of two and one-half percent (2.50%) (the "**Annual Escalator**"), and (2) other than with respect to such Annual Escalator, such Renewable Rates are to remain fixed for the duration of the Term, except as otherwise set forth in Section 5.1(b) and 5.1(c).

(ii) The sum of the PV Payment and the Storage Payment shall constitute the "**Project Monthly Payment**", and the sum of all Project Monthly Payments for all Projects hereunder shall constitute the "**Monthly Payment**".

(b) Adjustments to Renewable Rate. With respect to both the Tranche A PPA Rate and the Tranche B PPA Rate, in the event that any Project is terminated or withdrawn from this Agreement due to an Early Termination Event or a City Event of Default, then Ava may revise the applicable Renewable Rate, the amount of which shall be at its sole discretion so long as such revised Renewable Rate provides the City Portfolio with estimated Optimization Savings that result in cost neutrality. Upon Ava's delivery of written notice to City of such revised Renewable Rate in accordance with the foregoing, such revised Renewable Rate shall take effect under this Agreement, and neither Party shall have any liability to the other with respect to the withdrawn Project(s) other than those that survive this Agreement. Any adjustment to the Renewable Rate(s) made in accordance with this Section 5.1(b) shall be reflected in an amendment executed by both Parties in accordance with Section 20.18.

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(c) Adjustments to Tranche B PPA Rate. Prior to Construction Start, with respect to the Tranche B PPA Rate only, upon Ava's delivery to City of a reasonably documented design change for any Tranche B Project, Ava may increase the Tranche B PPA Rate, the amount of which shall be at its sole discretion so long as such revised Tranche B PPA Rate provides the City Portfolio with estimated Optimization Savings that result in cost neutrality; provided, however, in the event that the revised Tranche B PPA Rate would cause estimated Optimization Savings to no longer be cost neutral, the Parties may, upon mutual agreement, terminate or withdraw one or more Tranche B Projects from the City Portfolio in order to achieve estimated Optimization Savings that result in cost neutrality over the Portfolio Delivery Period at such increased Tranche B PPA Rate, upon which such revised Tranche B PPA Rate shall take effect under this Agreement, and neither Party shall have any liability to the other with respect to the withdrawn Project(s) other than those that survive this Agreement. Any adjustment to the Tranche B PPA Rate made in accordance with this Section 5.1(c) shall be reflected in an amendment executed by both Parties in accordance with Section 20.18.

(d) City Pricing Incentives.

(i) *One-Time Storage Incentive*. Within sixty (60) days of the date on which the final Tranche B Project achieves COD, Ava shall deliver to City a one-time incentive payment (the "**Storage Incentive Payment**"), which shall be calculated by multiplying (i) the cumulative Storage Contract Capacity of all Tranche B Projects in the City Portfolio, by (ii) four hundred dollars ($400)/kWh. Such Storage Incentive Payment shall be delivered from Ava to City via cash, check, or ACH payment.

(ii) *Monthly Bill Credit.* On a monthly basis during the first five (5) years of the Initial Term, Ava shall credit the City in the form of a monthly bill credit to City's monthly invoice, which shall be calculated by multiplying (i) the City's Storage Contract Capacity, by (ii) two dollars ($2)/kWh (the product of (i) and (ii), the "**Monthly Bill Credit**"), provided, however, that no Monthly Bill Credit shall be applied during any Contract Month during which any of the following has occurred and is ongoing for the duration of such Contract Month: (a) City Project Default, (b) City Portfolio Default; (c) Forced Outage; and/or (d) Force Majeure Event (each, a "**Bill Credit Disqualifying Event**"). If a Bill Credit Disqualifying Event only applies to particular Projects and not the entire City Portfolio, the Monthly Bill Credit shall be adjusted on a pro rata basis based on the Storage Contract Capacity of the affected Projects. The Monthly Bill Credit shall be delivered from Ava to City in the form of a bill credit on a monthly invoice issued hereunder which reduces the Monthly Payment owed by the City.

(iii) *Elimination of City Pricing Incentives*. Notwithstanding the foregoing in this Section 5.1(d), at any time after the Effective Date, Ava may, at its discretion, eliminate or reduce the Storage Incentive Payment and/or the Monthly Bill Credit if it reasonably determines that such elimination or reduction will result in greater estimated Optimization Savings to City; provided, upon City's reasonable request, Ava shall deliver to City documentation and calculations supporting its determination hereunder.

Section 5.2 ***Monthly Invoices***. Ava shall invoice City on a monthly basis, the delivery of which shall be no later than forty-five (45) days following the end of the applicable monthly billing period. Failure to send such invoice within ninety (90) days following the end of the

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applicable monthly billing period shall relieve the City of any liability for payment of the Product for such month. Such monthly invoices shall provide the following information (collectively, the "**Invoice Information**"): (i) the records of data from the Meter indicating all PV Energy and Discharging Energy, as applicable; (ii) the Monthly Payment owed; (iii) the Monthly Bill Credit, if applicable; and (iv) any Optimization Savings accrued during the month, if any; provided, that if Ava has not received the Invoice Information from Developer within forty-five (45) days of the previous month's end, Ava may deliver an invoice to City based on historical trends, the amount owed under any such invoice shall be adjusted upon Ava's receipt of the Invoice Information from Developer.

Section 5.3 ***Payment Terms***. Subject to Section 5.5, all amounts due under this Agreement are due and payable net thirty (30) days following receipt of an invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date shall be considered late and will bear interest on the unpaid balance. Any undisputed portion of the invoice amount not paid within such thirty (30)-day period shall accrue interest at the lesser of (x) an annual rate of five percent (5%) or (y) the maximum amount permitted under Applicable Law (the "**Interest Rate**"). All payments shall be made in U.S. dollars.

Section 5.4 ***Payment Adjustments; Billing Errors***. Payment adjustments shall be made if City or Ava discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 5.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data. If the required adjustment is in favor of City, City's next Monthly Payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Ava, Ava shall add the adjustment to City's next monthly invoice. Adjustments in favor of either Party shall bear interest at the Interest Rate, until settled in full, accruing from the date on which the adjusted amount should have been due.

Section 5.5 ***Billing Disputes***. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any computational error within twelve (12) months of the date of such invoice, or adjustment to such invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 5.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party (other than Developer) and such third party corrects its information after the 12-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

Section 5.6 ***Pass Through Damages***. To the extent that Ava receives any COD Delay Damages, Guaranteed Energy Damages, or Ava Termination Payments from the Developer pursuant to the terms of the Developer Agreement, Ava shall pass through such amounts

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(collectively, the "**Pass-Through Damages**") to the City in full, less any reasonably incurred costs by Ava to (i) remedy the underlying default under the Developer Agreement, (ii) perform any Removal Services at the applicable Project Site, or (iii) collect such amounts from the Developer, including attorneys' fees (such costs, the "**Ava Pass-Through Costs**"). Upon Ava's delivery to the City of the applicable Pass-Through Damages, Ava's obligation to the City with respect to such incurred COD Delay Damages, Guaranteed Energy Damages or Ava Termination Payment (as applicable) under this Agreement shall be deemed satisfied in full and any corresponding default hereunder shall be deemed remedied, regardless of the amount of Ava Pass-Through Costs; provided, however, that in no event shall the Ava Pass-Through Costs exceed the amount of Pass-Through Damages. Such Pass-Through Damages shall be passed through from Ava to the City within ninety (90) days of receipt from the Developer in the form of a bill credit on a monthly invoice issued hereunder which reduces the Monthly Payment owed by the City.

Section 5.7 ***Books and Records***.

(a) Maintenance of Records. The Parties shall maintain any and all documents and records that demonstrate performance under this Agreement and any lease or license relating to the Projects, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to the other Party for a minimum period of two (2) years, or for any longer period required by Applicable Law, from the date of final payment to Ava pursuant to this Agreement. Unless otherwise required by law or directed otherwise by Ava in writing, an electronic copy of any record shall be deemed an original.

(b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available upon reasonable notice for inspection or audit at no cost to the requesting Party, at any time during regular business hours, upon written request by a designated representative of the requesting Party. The non-requesting Party shall provide copies of such documents to the requesting Party for inspection at a time and place that is convenient to the requesting Party.

Section 5.8 ***Taxes***. Each Party shall be responsible for its respective portion of the taxes hereunder; provided, however, that nothing shall obligate or cause either Party to pay or be liable to pay any taxes for which it is exempt under Applicable Law.

(a) City's Taxes. City is responsible for (1) payment of or reimbursement of Ava for all taxes assessed on the generation, sale, delivery or consumption of Energy sold under this Agreement and capacity provided by the Project or the interconnection of the Project to the utility's electricity distribution system, and (2) real property taxes for the property where the Project is located. If City is required by law or regulation to remit or pay taxes that are Ava's responsibility hereunder, then within ninety (90) days following written notice from City of the taxes paid and applicable amounts, Ava shall reimburse City for the amount of any such paid taxes. Nothing herein shall obligate or cause City to pay or be liable to pay any taxes for which it is exempt under Applicable Law.

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(b) Ava's Taxes. Ava is responsible for payment of or reimbursement of City for (1) income taxes or similar taxes imposed on Ava's revenues due to the sale of electricity or capacity under this Agreement, and (2) personal property taxes imposed on the Project, if any.

ARTICLE 6
PROJECT SITE ACCESS; PROPERTY OWNERSHIP

Section 6.1 ***Access Rights***.

(a) Non-Exclusive License. With respect to each Project Site, City hereby grants, subject to the terms of this Section 6.1, to Ava and to Ava's affiliates, employees, and contractors (the "**Licensees**"), a non-exclusive, irrevocable, sub-licensable license running with the Project Site (the "**Non-Exclusive License**") for access to, on, over, under, and across the Project Site from the Effective Date until the date that is one-hundred eighty (180) days after the earlier of (x) termination of the applicable PSA, or (y) the expiration of the applicable Project Term (the "**License Term**"), for the purposes of performing all of Ava's obligations and enforcing all of Ava's rights set forth in this Agreement and otherwise as required by the Licensees in order to effectuate the purposes of this Agreement (including, without limitation, subject to approval by the City in its reasonable discretion as to the specific location, the right to use additional space within the building as reasonably necessary for the installation, interconnection, operation, and maintenance of the Project Equipment, and any other necessary equipment and appurtenances running between the Project and the Delivery Point).

(b) Notification of Access. The Licensees shall provide proper notice to City and comply with City's site safety and security requirements, as set forth in Attachment A of the applicable PSA, when on the Project Site during the License Term. The Licensees shall provide reasonable advanced notice prior to entry which shall be, at minimum, no less than fourteen (14) days, to City or his or her designee of Licensee's intent to exercise the access rights set forth in this Section 6.1; provided, however, in the event of a Forced Outage, Force Majeure Event or other emergency, or if access is required in connection with a City-Requested Outage pursuant to Section 7.8, the Licensees shall provide as much reasonable advanced notice as is practicable under the circumstances prior to such entry. City will not charge rent for such right to access the Project Site. City may delay or deny access to Licensees for good cause by providing written notice of such delay or denial no more than ten (10) days after City receives notice of any Licensee's intent to exercise access rights; provided, however, if City delays or denies access to Licensees for any reason during the applicable Delivery Period, and such delay or denial has a material adverse effect on Ava's ability to satisfy the Guaranteed Energy Production and/or the Guaranteed Storage Availability, a City-Requested Outage shall be deemed to have occurred for the duration of such delay or denial.

(c) Maintenance of License. During the License Term, City shall preserve and protect the Licensees' rights under the Non-Exclusive License and Licensees' access to the Project Site and shall not interfere or permit any third parties under City's control to interfere with such rights or access. Notwithstanding anything to the contrary contained herein, Ava shall have the right to assign or sublicense the Non-Exclusive License to Developer and its agents, employees, and contractors, or to any Financing Party. The Financing Parties are intended third party beneficiaries of City's agreements in the Non-Exclusive License. Upon any rejection or earlier

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termination of the Agreement pursuant to any process undertaken with respect to Ava under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, City shall execute a new grant of Non-Exclusive License(s) in favor of the Financing Parties (or their designees) on substantially the same terms as this Non-Exclusive License and in a manner consistent with the City-Specific Terms included as Exhibit III. City will not take any action inconsistent with the foregoing.

(d) Rights of Licensees. With respect to each Project, the rights granted to the Licensees pursuant to the Non-Exclusive License for the duration of the License Term shall include the following, without limitation:

(i) To use City's water already available and accessible to the Project Site solely for cleaning the Projects in a manner that is not wasteful, including an automatic shut-off nozzle (it being understood and agreed that the Licensees' right to such water is non-exclusive in that City and other third parties may also access such water);

(ii) To connect and use the electrical systems and internet located upon the Project Site during the installation and construction of the Project, provided however, that internet access shall be granted under commercially reasonable conditions set forth by and subject to the approval of the applicable authority for the City, which approval shall not be unreasonably withheld;

(iii) After consultation with and written consent from City on the preferred method, timing, and specific vegetation to be impacted and upon issuance of any permit as required under Applicable Law to remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation; and

(iv) After consultation with and written consent from City on the preferred method, timing, and specific objects to be impacted and upon issuance of any permit as required by Applicable Law, remove any object on the Project Site that obstructs, interferes with or impairs the Project or its operations.

(v) In addition to the foregoing, City shall grant the Licensees a non-exclusive temporary license over, across, and upon portions of the real property owned by City that lie outside of the Project Site for the limited purposes set forth in subclauses (i)-(iv).

(e) Memorandum of License. City agrees that Ava, upon request to and approval from City, may record a memorandum of the Non-Exclusive License and Ava's rights under this Agreement, and any amendments, assignments or sublicenses thereto, in each instance in form and substance mutually acceptable to each Party in its reasonable discretion. With respect to each Project, the Parties shall finalize a form of memorandum of license prior to the applicable Commercial Operation Date that can be recorded by Ava in the public land records in the county in which the Project Site is located. Upon termination of this Agreement or any PSA hereunder, with respect to the affected Projects, the Parties shall execute and cause to be recorded a memorandum providing record notice of such termination.

(f) Ground-Mounted Generating Projects. The Parties acknowledge and agree that as of the Effective Date, no Generating Project hereunder is contemplated to be ground-

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mounted; provided, however, if, during the Term, as a result of a reasonably documented design change for any Tranche B Generating Project, such Project is redesigned by Ava to be ground-mounted and located within a secured, fenced area on the Project Site, City hereby grants to the Licensees an exclusive, sub-licensable license running with the Project Site (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use, and maintenance of the Project on such exclusively licensed area of the Project Site during the License Term.

Section 6.2 ***Ownership of Projects.***

(a) Ownership of Projects; Personal Property. Throughout the Term, Developer shall be the legal and beneficial owner of each Project, and each Project will remain the personal property of Developer and will not attach to or be deemed part of, or fixture to, the applicable Project Site or any Improvement on which such Project is installed. Each of Ava and City agree that Developer is the tax owner of each Project and all tax filings and reports shall be filed in a manner consistent with this Agreement. Each Project will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Notwithstanding the foregoing, in the event that Ava purchases one or more Projects from Developer pursuant to the terms of the Developer Agreement, all references to "Developer" in this Section 6.2 shall be deemed to refer instead to "Ava."

(b) Notice to City Lienholders. The City shall use commercially reasonable efforts to place all parties having a Lien on the applicable Project Sites or any Improvement on which a Project is installed on notice of the ownership of such Project and the legal status or classification of such Project as personal property. If any mortgage or fixture filing against any Project Site could reasonably be construed as prospectively attaching any Project as a fixture on such Project Site, the City shall provide a disclaimer or release from such lienholder.

(c) Fixture Disclaimer. With respect to each Project Site, if the City is the fee owner of such Project Site, City consents to the filing of a disclaimer of any Project thereon as a fixture of the Project Site in the office where records are customarily filed in the jurisdiction where the Project Site is located. If the City is not the fee owner, the City shall obtain such consent from the applicable fee owner. For the avoidance of doubt, in either circumstance Ava shall have the right to file such disclaimer.

Section 6.3 ***Covenants and Obligations Regarding Liens***. The City shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, step order, lien (including mechanics, labor or materialmen's lien), charge, security interest, encumbrance or claim (each, a "**Lien**") on or with respect to the Projects or any portion thereof to any Person other than a Financing Party. Ava shall not directly or indirectly cause, create, incur, assume or suffer to exist any Lien on or with respect to any equipment or property of City, other than those Liens that Ava is permitted by Applicable Law to place on the City's interest in a Project Site due the City's non-payment of amounts due under this Agreement. If either Party breaches its obligations under this Section 6.3, such breaching Party shall (i) promptly notify the other in writing, (ii) cause any Lien within fifteen (15) days of breaching Party having received written notice thereof to be discharged and released of record without cost to the other Party, and (iii) indemnify the non-breaching Party

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against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such Lien.

ARTICLE 7
PROJECT SITE MAINTENANCE

Section 7.1 ***General Covenants***. Each Party covenants to and for the benefit of the other Party that throughout the Term:

(a) Each Party shall maintain (or obtain from time to time, as required) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement.

(b) Each Party shall undertake its obligations under this Agreement in compliance with (i) all Applicable Law (including, but not limited to, those related to workplace safety, employment discrimination, prevailing wage, non-discrimination and non-preference, and conflicts of interest); (ii) Prudent Operating Practices; (iii) all applicable operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO and the Local Electric Utility; and (iv) all applicable requirements of the CPUC, CARB, FERC, NERC, and WECC (including WECC Scheduling Practices).

Section 7.2 ***Transmission and Distribution Maintenance Information***. If either Party receives information through CAISO or from the Local Electric Utility regarding maintenance that will have a material adverse effect on the Generating Project or which may result in a Forced Outage, it will provide the information promptly to the other Party.

Section 7.3 ***Use of Equipment***. Ava shall cause Developer to maintain and use its equipment in a safe and workmanlike manner at all times. Ava shall cause Developer to prevent or avoid conducting or permitting activities on, in or about the Project Site or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Project, Project Site or Improvements. Ava shall indemnify City for any loss or damage to the Project, Project Site or Improvements to the extent caused by or arising out of (i) Developer's breach of its obligations under this Section 7.3 or (ii) the acts or omissions of Developer or its employees, agents, invitees or separate contractors following Developer's failure to cure those actions contemplated under (i) or (ii) within sixty (60) Business Days' receipt of City's notice, which shall be provided no later than ten (10) Business Days from City becoming aware of such breach, act or omission.

Section 7.4 ***Insolation***. City acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Ava's performance of its obligations and a material term of this Agreement. City shall not cause or permit any interference with the Generating Project's Insolation and to the extent within its reasonable control shall ensure that vegetation on the Project Site adjacent to the Generating Project is regularly pruned or otherwise maintained to prevent interference with the Generating Project's Insolation. City shall provide necessary approvals or acknowledgements to enable the delivery of a shade report from SunEye (or a comparable entity) within the five (5) Business Days prior to the Commercial Operation Date. If the Insolation of the Project is materially reduced during the Term due to new obstructions or vegetation, the Expected Annual Contract Quantity shall be reduced in proportion to the decrease in Insolation. If City

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discovers any activity or condition that could diminish the Insolation of the Generating Project, City shall immediately notify Ava and cooperate with Ava in preserving and restoring the Generating Project's Insolation levels as they existed on the Effective Date and as allowed by state and local law and within the reasonable control of the City.

Section 7.5 ***Maintenance of Project Site***. City shall, at its sole cost and expense, maintain the Project Sites, Project Site and Improvements in good condition and repair. City, to the extent within its reasonable control, (i) shall ensure that the Project Site remain interconnected to the local utility grid at all times and (ii) shall not permit cessation of electric service to the Project from the local utility. City is fully responsible for and shall properly maintain in full working order and good repair, the electrical infrastructure on the City's side of the Delivery Point, including all of City's equipment that utilizes the Project's outputs. City shall cooperate with Ava and Developer to comply with any technical standard of the utility providing electrical power to the City.

Section 7.6 ***No Alteration of Project Site***. Not less than thirty (30) days prior to making any alterations or repairs to the Project Site (except for emergency repairs) or any Improvement that may have an Adverse Effect on the operation and maintenance of the Project, City shall inform Ava in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Ava within ten (10) days after having received such written request to mitigate such Adverse Effect. If any repair, alteration or Improvement results in a permanent and material adverse economic impact on the Project, City may request relocation of the Project under Article 11 hereof. To the extent that temporary disconnection or removal of the Project is necessary to perform such alterations or repairs, Ava shall use commercially reasonable efforts to cause Developer to perform such work, and any re-connection or re-installation of the Project, at City's cost. Ava shall use commercially reasonable efforts to cause Developer to make any alterations and repairs in a good and workmanlike manner, in compliance with all Applicable Law. For purposes of this Section 7.6, "**Adverse Effect**" means any set of circumstances or facts which impairs or limits the performance of the Project, including, but not limited to, any event, circumstance or fact that could (i) reduce the solar production of the Generating Project, (ii) adversely impact the performance of the Storage Project, (iii) violate the underlying Project Equipment's safety and operating standards, or (iv) void any warranty of the Project or the underlying Project Equipment.

Section 7.7 ***Project Repair and Maintenance***. Ava shall, directly or indirectly through Developer, cause the Projects to be operated and maintained in accordance with Prudent Operating Practices. Ava may cause Developer to suspend delivery of electricity from the Project to the Delivery Point for the purpose of maintaining and repairing the Project; provided that Ava shall cause Developer to use commercially reasonable efforts to (i) minimize any interruption in service to the City and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Ava's sole cost and expense, except that City shall reimburse Ava for the reasonable cost of any repairs or maintenance resulting from damage caused by City, its agents, employees or contractors. Ava will provide to City written schedules for scheduled maintenance for the Project (each a "**Planned Outage**") for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. City may provide comments no later than ten (10) days after receiving any such schedule, and Ava will in good faith take into account any such comments. Ava will deliver to City the final updated

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schedule of Planned Outages no later than ten (10) days after receiving City's comments. Ava shall be permitted to reduce deliveries of Product during any period of such Planned Outages; provided however, such Planned Outages shall not exceed one hundred twenty (120) hours in any calendar year, plus such additional hours as are reasonably necessary for Ava to comply with maintenance as required by Applicable Law. Notwithstanding the foregoing, Ava shall be permitted to reduce deliveries of Product during a (i) Forced Outage or (ii) a Force Majeure Event, as the result of either of which, Ava shall provide City written notice of such event, including the anticipated duration (if known). Except to the extent expressly provided under this Agreement, City shall have no obligations or liability with respect to the maintenance or repair of Project Equipment.

Section 7.8 ***City-Requested Outages***. Upon City's written request, Ava shall cause Developer to take the Project off-line for a total of five (5) days during each Contract Year (each event a "**City-Requested Outage**" and the five-day period the "**Outage Allowance**"). The Outage Allowance includes all City-Requested Outage hours undertaken by Developer for maintenance or repairs for which City is responsible pursuant to Section 7.7 or requested by City under this Section 7.8 (other than due to the fault or negligence of Ava). City's request shall be delivered at least five (5) days in advance. City is not obligated to accept or pay for electricity from the Project for City-Requested Outages up to the annual Outage Allowance. If City's aggregate hours for City-Requested Outages exceed the Outage Allowance in a given Contract Year, other than a Force Majeure Event, Ava shall cause Developer to reasonably estimate the amount of electricity, based on the daily average derived from consumption of Project Energy from the consecutive three weeks immediately preceding the latest City-Requested Outage, that would have been delivered to City during such excess City-Requested Outages, and City shall pay Ava for such amount in accordance with this Agreement.

Section 7.9 ***Use and Payment of Contractors and Subcontractors***. Ava may use properly licensed and qualified contractors and subcontractors to perform its obligations under this Agreement. Ava shall ensure that all contractors and subcontractors are sufficiently qualified and experienced equal to the standard observed by a competent practitioner of the profession in which the consultant or subcontractor is engaged. However, Ava shall be responsible for the quality of the work performed by its contractors and subcontractors. Ava shall pay when due all valid charges from all contractors, subcontractors, and suppliers supplying goods or services to Ava under this Agreement.

Section 7.10 ***Prevailing Wages; Hiring Requirements.***

(a) Prevailing Wage. In accordance with the terms of the Developer Agreement, Ava shall use reasonable efforts to ensure that all contractors, subcontractors, and employees hired or contracted by which will perform construction work or otherwise provide services on any Project Site related to the construction of any Project (such work or services, the "**On-Site Services**", and each such contractor or subcontractor, an "**On-Site Contractor**") are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any. Nothing in the Developer Agreement shall require Developer or its subcontractors or contractors to comply with, or assume liability created by inapplicable provisions of any California labor laws.

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(b) Hiring Requirements. In accordance with the terms of the Developer Agreement, Ava shall use commercially reasonable efforts to cause Developer and/or each On-Site Contractor to (i) hire individuals who reside in either Alameda County or San Joaquin County for the performance of the majority of total hours spent performing On-Site Services, and (ii) utilize union labor in the performance in On-Site Services.

Section 7.11 ***Notice of Hazardous Substances***. If any product being offered, delivered or supplied to the City or at the Project Site in connection with this Agreement is listed in the Hazardous Substances list of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Ava shall cause Developer to include a Material Safety Data Sheet ("**MSDS**") with delivery or shipment to the Project Site. Each MSDS shall include the contract/purchase order number and identify the "Ship To Address." Ava shall cause Developer to ensure all shipments and containers comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the Hazardous Substance, name and address of the manufacturer, and the appropriate hazard warning regarding potential physical safety and health hazards.

ARTICLE 8
PERFORMANCE GUARANTEES; WARRANTIES

Section 8.1 ***Guaranteed Energy Production.***

(a) Guaranteed Energy Production. Starting on the second (2nd) Contract Year, during each Performance Measurement Period, Ava shall be required to deliver to City no less than eighty-five percent (85%) of the Expected Annual Contract Quantity set forth on **Exhibit I** (the "**Guaranteed Energy Production**"). For purposes of determining whether Ava has achieved the Guaranteed Energy Production, Ava shall be deemed to have delivered to City the "**Adjusted Energy Production**", which shall consist of (1) all Project Energy (measured in kWh) actually delivered by Ava to City during the applicable Contract Year, and (2) any energy in the amount it could have delivered to City but was prevented from delivering to City by reason of (i) the occurrence of a Force Majeure Event (so long as such Force Majeure Event was properly declared in accordance with Section 10.1), (ii) Planned Outage, and/or (iii) Forced Outage ("**Lost Output**"). For each Contract Year, Ava shall be deemed to have achieved the Guaranteed Energy Production if the Adjusted Energy Production is greater than or equal to eighty-five percent (85%) of the Expected Annual Contract Quantity. If Ava fails to achieve the Guaranteed Energy Production amount in any Contract Year, Ava shall pay City damages calculated in accordance with Section 8.1(b). For purposes of this Section 8.1, "**Performance Measurement Period**" means each rolling three (3) Contract Year period starting on the second (2nd) Contract Year (i.e., Contract Years 2, 3, and 4 shall comprise the first such period, Contract Years 5, 6, 7 and shall constitute the second such period, etc.) during the Portfolio Delivery Period.

(b) Guaranteed Energy Damages. On or before the fifteen (15th) day of the first monthly billing period of the following Performance Measurement Period, City shall invoice Ava for all Guaranteed Energy Damages accrued, if any, during the preceding Performance Measurement Period, in accordance with the following:

(i) In any Performance Measurement Period, in the event that Ava fails to achieve the Guaranteed Energy Production, Ava shall pay City the Guaranteed Energy Damages accrued during such Performance Measurement Period; provided, however, that Ava shall have no obligation to pay Guaranteed Energy Damages in excess of seventy-five percent (75%) of the applicable PV Payments accrued during such Performance Measurement Period (the "**Guaranteed Energy Damages Cap**").

Section 8.2 ***Guaranteed Storage Availability.***

(a) Guaranteed Storage Availability. Starting on the second (2nd) Contract Year, during each Contract Month, Ava shall be required to maintain a Monthly Storage Availability greater than or equal to ninety percent (90%) (the "**Guaranteed Storage Availability**"). For purposes of determining the Monthly Storage Availability, a Storage Project shall be deemed to be available during the occurrence of any of the following events (each, an "**Excused Storage Event**"): (i) Force Majeure Event, (ii) Planned Outage, (iii) City-Requested Outage (to the extent such outages do not exceed the Outage Allowance for the applicable Contract Year), or (iv) Forced Outage. In each Contract Month, the "**Monthly Storage Availability**" shall be calculated for each Storage Project as a percentage based on the quotient of (A) (i) the total number of hours in the Contract Month, minus (ii) the total number of hours in such Contract Month during which the Storage Project was unavailable other than as a result of Excused Storage Event; divided by (B) the total number of hours in the Contract Month. Ava shall be deemed to have achieved the Guaranteed Storage Availability in a particular Contract Month if the Monthly Storage Availability is greater than or equal to 90%.

(b) Guaranteed Storage Damages. In any Contract Month, if Ava fails to achieve the Guaranteed Storage Availability, the following terms shall apply:

(i) If the Monthly Storage Availability for any Storage Project is less than 90% but greater than seventy percent (70%), Ava shall owe City liquidated damages ("**Guaranteed Storage Damages**") in an amount equal to the product of (A) the applicable Storage Payment for such Contract Month; multiplied by (B) (i) 90% minus the Monthly Storage Availability, multiplied by (ii) two (2). Such Guaranteed Storage Damages shall be passed through from Ava to the City in the form of a bill credit on a monthly invoice issued hereunder which reduces the Monthly Payment owed by the City.

(ii) If the Monthly Storage Availability for any Storage Project is less than seventy percent (70%), the applicable Storage Payment owed by City for such Contract Month shall be reduced to zero dollars ($0).

Section 8.3 ***Ava Performance Warranties***.

(a) Roof Damage Warranty. Ava warrants that no damage will be inflicted on the roof of any Improvement on which any Project ("**Project Roof**") is installed as a result of the installation or maintenance of such Project ("**Roof Damage Warranty**"). With respect to each Project, Ava shall provide such Roof Damage Warranty starting on the applicable Construction Start date and ending on the date that is the later of (x) ten (10) years after Ava's most recent performance of installation or maintenance activities on such Project Roof or (y) the expiration of

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any then-effective installer warranty on the applicable Project Roof. In the event that Ava or Developer damages any Project Roof during the term of the Roof Damage Warranty, Ava shall promptly repair and remedy such damage to the reasonable satisfaction of City.

(b) Workmanship Warranty. Ava warrants that each Project will be fit for its intended purpose and free from defects in design, materials, and workmanship for a period of [three (3) years][1], starting on the Commercial Operation Date. If the Project (or any component or portion thereof) fails to conform to the foregoing warranty, Ava shall, at its own expense, remedy such defect in a timely manner.

(c) Project Equipment Warranty. With respect to each Project, Ava warrants that on the applicable Commercial Operation Date, all Project Equipment will be (1) new, (2) Error-Free, (3) provided by a Tier 1 Supplier, and (4) with respect to each Storage Project only, (i) benefits from a manufacturer's warranty (including an energy retention warranty), and (ii) includes all of the components, functionality, and other material features that affect performance and the user experience of a standard, high-quality storage project.

Section 8.4 ***NO OTHER WARRANTY***. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AVA MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND EXPLICITY DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IMPLIED WARRANTIES OF CUSTOM OR USAGE.

ARTICLE 9
RECS AND INCENTIVES; OPTIMIZATION SAVINGS

Section 9.1 ***Renewable Energy Credits***. Upon purchasing the Product pursuant to this Agreement, City is entitled to the benefit of and will retain all ownership interests in the RECs associated with such Product. Ava is entitled to the benefit of and will retain all ownership in the Incentives. Ava shall cooperate with City in obtaining, securing, and transferring any and all RECs to the City. City is not obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Ava. Ava shall not make any filings or statements inconsistent with City's ownership interests in the RECs. If any RECs are delivered directly to Ava, Ava shall promptly pay or deliver such items to City. For the avoidance of doubt, so long as Ava cooperates in City obtaining all ownership interests in the RECs, Ava shall have the unrestricted right to obtain and utilize all other Incentives, Ancillary Services, and Capacity Attributes associated with the Product hereunder.

Section 9.2 ***Delivery of RECs***. Ava shall take, or cause to be taken, all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated

[1] **NTD**: Developer will not agree to a workmanship warranty of 15 years but offered a warranty of 3 years. Ava believes this is acceptable because Developer is providing a production guarantee on the PV and an availability guarantee on the BESS that lasts the duration of the Delivery Period for each Project. Further, it is unusual for Developers to offer workmanship warranties in the PPA context, so we view this as a win.

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with all RECs corresponding to all Project Energy are issued, tracked, and transferred in a timely manner to the City for the City's sole benefit. Ava shall transfer the RECs to the City. Ava shall comply with all Applicable Law, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to the City and the City shall be given sole title to all such WREGIS Certifications. In addition, with respect to each Project, prior to COD, Ava shall register the Project, or cause the Project to be registered, with WREGIS, and establish an account with WREGIS ("**Ava WREGIS Account**"), which Ava shall maintain until the end of the applicable Delivery Period. Ava shall transfer the WREGIS Certificates using Forward Certificate Transfers (as described in the WREGIS Operating Rules) from the Ava WREGIS Account to the WREGIS account(s) of the City or the account(s) of a designee that the City identifies by notice to Ava ("**City WREGIS Account**"). Notwithstanding the foregoing, in the event that the City does not have a City WREGIS Account, Ava shall deliver all RECs hereunder via Attestation Form.

Section 9.3 ***Optimization Savings***. Ava shall provide Optimization Savings with the Product. "**Optimization Savings**" means the savings realized on City's utility bill(s) directly attributable to the use of the Project and shall include, but not be limited to, savings that are realized from demand charge management, energy arbitrage, load shaping, and coincident peak, installed capacity tag mitigation, or any front of the meter savings, which shall be reflected in the form of a credit reduction to the applicable Monthly Payment on monthly invoices issued by Ava hereunder. For the avoidance of doubt, any City savings resulting from a rate or tariff switch, Monthly Bill Credit, Storage Incentive Payment or other upfront Ava incentives enabled by the presence and/or operation of the Project shall be considered Optimization Savings. Ava shall provide Optimization Savings in a commercially reasonable manner, but Ava shall have discretion over the manner in which Optimization Savings are provided, including which services comprising constituent parts of Optimization Savings to provide at any particular time, to accrue Total System Benefit. Ava shall have no obligation and makes no guarantees as to the amount of Optimization Savings that will be provided to the City hereunder.

Section 9.4 ***Grid Services***. Ava and City acknowledge that the Storage Projects are capable of generating revenue through demand response, capacity, and/or wholesale energy (collectively, the "**Grid Services**", and each a "**Grid Service**"). Grid Services may be provided through, to, or in connection with the CAISO, the Local Electric Utility, or an aggregator. Ava may enroll the Storage Project in Grid Services if (i) Ava provides advance written notice to the City and (ii) Ava determines, in its reasonable discretion, that such enrollment will not reduce the realized Optimization Savings or impair the Storage Project's twenty percent (20%) battery back-up reserve. If Ava enrolls the Storage Project in Grid Services, Ava shall receive any value resulting from the Grid Services provided, including revenues, environmental benefits, and grid reliability and resiliency.

ARTICLE 10
FORCE MAJEURE; BUDGETARY NON-APPROPRIATION EVENT

Section 10.1 ***Force Majeure Event***. If either Party reasonably is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event and without the fault or negligence of the Party relying thereon as justification for such delay, that Party will be excused from performing such obligations for the

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duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the Project to deliver electricity to the Delivery Point or to provide capacity, as applicable, the Term will be extended day-for-day for each day delivery is suspended due to the Force Majeure Event.

Section 10.2 ***Termination Due To Force Majeure***. With respect to each Project, after the Commercial Operation Date, either Party shall have the right, but not the obligation, to either (a) terminate the applicable Project or (b) relocate the applicable Project in accordance with Section 11.1, in each case, after the occurrence of the following (each, a "**Force Majeure Failure**"): (1) due to a Force Majeure Event, Ava is unable to meet its obligations under this Agreement for a period greater than ninety (90) consecutive days; or (2) the Project is (i) destroyed by a Force Majeure Event and Ava is unable to cause Developer to rebuild the Project within one (1) year, or (ii) is rendered permanently inoperable by a Force Majeure Event. For the avoidance of doubt, Force Majeure Delays occurring prior to the Commercial Operation Date shall be subject to the requirements in Section 4.6(b).

Section 10.3 ***Budgetary Non-Appropriation Event***. Notwithstanding anything to the contrary, due to the constitutional limitations levied on City, it may be unable to appropriate funds for the procurement of any utility services for a particular fiscal year (a "**Budgetary Non-Appropriation Event**"). If a Budgetary Non-Appropriation Event occurs with respect to City during the Delivery Period of any Project hereunder, then City shall notify Ava of the starting date of such Budgetary Non-Appropriation Event (the "**Non-Appropriation Start Date**") within thirty (30) days of its receipt of the invoice for the first month affected by such Budgetary Non-Appropriation Event. During a Budgetary Non-Appropriation Event, if City does not otherwise have other funds available to make payments otherwise due under this Agreement, City is not obligated to accept delivery of or pay for any Product delivered under this Agreement for the period starting on the Non-Appropriation Start Date until such Budgetary Non-Appropriation Event has terminated (such period, the "**Non-Appropriation Period**"), which shall be confirmed by City in a writing timely delivered to Ava after the City has properly appropriated funds for payment hereunder. For the avoidance of doubt, during the Non-Appropriation Period, Ava shall have no obligation to deliver any Product hereunder. City agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a Budgetary Non-Appropriation Event continues for more than one hundred eighty (180) days, Ava (but not City) may, at its sole discretion, terminate this Agreement.

Section 10.4 ***Exercise of City Permitting Authority***. After Construction Start, if City lawfully, fairly, and neutrally applies its authority to deny, suspend, revoke or terminate a certificate, permit, franchise, approval, authorization or power under Applicable Law (its "**Permitting Authority**"), and such lawful exercise of the City's Permitting Authority causes Ava or Developer to be unable to lawfully conduct operations on the Project Site (a "**Lawful Permitting Denial Event**"), then except where such exercise of Permitting Authority constitutes a City Project Default under Section 13.5(a) or 13.5(b), Ava may, at its sole discretion, terminate the Affected Projects in accordance with Section 10.5 below.

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Section 10.5 ***No-Fault Termination***. After Construction Start, if either Party terminates one or more Projects (the "**Affected Projects**") due to a Force Majeure Failure in accordance with Section 10.2, a Budgetary Non-Appropriation Event in accordance with Section 10.3, or a Lawful Permitting Denial Event in accordance with Section 10.4, then upon any such termination (1) neither Party shall have any liability to the other Party with respect to such Affected Projects other than those that survive this Agreement, and (2) Ava shall have the option to deliver a Relocation Request in accordance with Section 11.1. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event, Budgetary Non-Appropriation Event or Lawful Permitting Denial Event shall not, to the extent an Event of Default exists during the continuation of a Force Majeure Event or Non-Appropriation Period, as applicable, limit either Party's ability to declare an Event of Default pursuant to Article 13 and receive a Termination Payment, to the extent applicable.

ARTICLE 11
RELOCATION AND REMOVAL UPON TERMINATION

Section 11.1 ***Relocation Requests***. With respect to each Project, at any time during the Project Term, either Party shall have the right to propose in writing the relocation of the applicable Project to a new Project Site upon the occurrence of an EOD Relocation Event or No-Fault Relocation Event (a "**Relocation Request**"). If both Parties agree in their reasonable discretion that the Relocation Request is practically feasible and preserves the economic value of the agreement, the Parties shall seek to negotiate in good faith an agreement for the relocation of the Project, which relocated site shall be subject to the approval of Ava in its reasonable discretion and subject to the negotiation of a mutually acceptable license. Upon successful relocation of the Project due to an EOD Relocation Event, any Event of Default associated with the original Project Site shall be deemed to have been cured, if applicable, and the Non-Defaulting Party shall have no right to declare an Event of Default associated therewith. The costs associated with any relocation performed due to an EOD Relocation Event shall be borne entirely by the Defaulting Party, whereas the costs and expenses associated with any relocation performed due to a No-Fault Relocation Event shall be split evenly between the Parties; provided, if an relocation occurs during the Delivery Period, City shall be required to continue to make monthly PV Payments for the period of time between decommissioning of the Project at the original Project Site and the Commercial Operation Date of the Project at the new Project Site based upon a pro rata calculation of the Expected Annual Contract Quantity for such period. If the Parties are unable to reach agreement on relocation of the Project within one hundred twenty (120) days after the date of receipt of City's proposal, then such Relocation Request shall be deemed withdrawn and the applicable Project may be terminated in accordance with this Agreement. For purposes of this Section 11.1, an "**EOD Relocation Event**" shall be deemed to have occurred (a) with respect to either Party, if an Event of Default occurs, and such Event of Default could reasonably be cured by moving the Project to another Project Site; or (b) the City terminates or withdraws the applicable Project from this Agreement for any reason other than an Ava Event of Default. A "**No-Fault Relocation Event**" shall be deemed to have occurred if (i) any Early Termination Event occurs, or (ii) a Force Majeure Failure occurs.

Section 11.2 ***Removal Services.*** Upon the expiration or earlier termination of this Agreement or any PSA hereunder, Ava shall, directly or indirectly through Developer, at Ava's sole expense (unless expressly provided otherwise in this Agreement), within ninety (90) days

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after the applicable termination or expiration (the "**Removal Deadline**"), perform the following actions to remove the Project from the Project Site (the "**Removal Services**"): (i) remove all tangible property comprising the Project, personal property of Ava and/or Developer, and all other related equipment, (ii) ensure that the Project Site be returned to substantially its original condition (excluding ordinary wear and tear) including by (x) removing the Project's mounting pads or other support structures and (y) repairing and restoring the roof and the roof membrane, subject to Section 8.3(a). City shall ensure that Ava and/or Developer is given sufficient access, space, and cooperation as reasonably necessary to facilitate the Removal Services. This provision shall survive the expiration or termination of this Agreement and any PSA hereunder.

Section 11.3 ***Abandonment***. If Ava fails to commence the Removal Services by the applicable Removal Deadline, any property not removed from the Project Site shall be deemed abandoned by Ava and/or Developer, and shall become the property of City and City may, at its option, remove the Project and/or Project Equipment from the Project Site and relocate to a warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. If the City performs any Removal Services after the Removal Deadline in accordance with this Section 11.3, Ava shall reimburse City for the cost of such Removal Services (the "**Removal Costs**") within thirty (30) days of receipt of an invoice thereof. City shall have no liability to Ava or Developer for any property deemed abandoned per this Section 11.3. This provision shall survive the expiration or termination of this Agreement and any PSA hereunder.

Section 11.4 ***Ava Removal Security***. If a Credit Downgrade Event occurs with respect to Ava at any time during the Term, within forty five (45) days of such Credit Downgrade Event, Ava shall post or deliver to City a security deposit of $50/kW of Contract Capacity ("**Ava Removal Security**") in the form of a Letter of Credit or cash. If (i) Ava fails to commence the Removal Services by the applicable Removal Deadline, and (ii) fails to reimburse City for the cost of Removal Services within thirty (30) days of receipt in accordance with Section 11.3, then, to the extent such Ava Removal Security is available in accordance with this Section 11.4, City may draw on any outstanding Letter of Credit and retain any cash then held by City to satisfy any amounts owed by Ava with respect to the Removal Costs only; provided, that City shall be obligated to return any surplus proceeds in excess of the Removal Costs after Ava's obligations under Section 11.3 have been satisfied. Ava shall maintain the Ava Removal Security until (a) the Removal Services have been completed and (b) the Removal Costs have been paid or reimbursed by the responsible Party in full pursuant to the terms of this Agreement. Following the occurrence of both (a) and (b), City shall promptly return to Ava the Ava Removal Security, less any amounts drawn thereon in accordance with this Section 11.4.

ARTICLE 12
MEASUREMENT

Section 12.1 ***Meter***. Each Project's electricity output during the Term shall be measured by the applicable City's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). The Meter shall be installed, commissioned, and operated by Developer throughout the applicable Project Term at Developer's sole cost and expense. Throughout the Term, Developer shall provide reasonable access to the Meter and measurement data associated therewith to Ava and the City.

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ARTICLE 13
DEFAULTS, REMEDIES, AND DAMAGES

Section 13.1 ***Ava Project Defaults***. With respect to the affected Project only, Ava shall be deemed a Defaulting Party upon the occurrence of any of the following events (each, an "**Ava Project Default**"):

(a) The Project fails to achieve the Commercial Operation Date by the Commercial Operation Deadline (subject to any FM Delay Cure Period or COD Delay Cure Period thereto);

(b) A Forced Outage lasting longer than two hundred seventy (270) days occurs with respect to such Project; provided, however, that this Section 13.1(b) shall not apply to a Forced Outage caused solely by a Force Majeure Event; or

(c) Due to acts or omissions of Ava, a mechanics' Lien is filed against the Project, and such Lien has not been discharged, bonded or contested by Ava in good faith by proper legal proceedings within twenty (20) days of receipt of notice thereof.

Section 13.2 ***City's Remedies for Ava Project Default***. If a Ava Project Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, City may perform any and all of the following actions: (i) suspend performance under this Agreement with respect to such Project, (ii) accelerate all amounts owing between the Parties with respect to such Project, (iii) withhold a portion of any payments due to Ava under this Agreement in an amount attributable to such Project, and (iv) terminate the applicable PSA. Upon the termination of any PSA hereunder, Ava shall perform the Removal Services for such Project in accordance with Section 11.2 at Ava's sole expense.

Section 13.3 ***Ava Portfolio Defaults***. Ava shall be deemed a Defaulting Party under this Agreement upon the occurrence of any of the following events (each, a "**Ava Portfolio Default**"): Ava delivers to City, without City's prior consent, energy or other product from a resource outside of the City Portfolio;

(a) a Bankruptcy Event shall have occurred with respect to Ava;

(b) Ava fails to pay City any undisputed amount owed under this Agreement within sixty (60) days after receipt of notice from City of such past due amount;

(c) The failure by Ava to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default under this Article 13) and such failure is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Ava is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts; provided, that the cure period under this Section 13.3(c) may be extended by an additional subsequent period not to exceed ninety (90) days in the event that such Ava Portfolio Default is caused by a default of Developer under the Developer Agreement and Developer's Financing Party has stepped in to effectuate a cure after the expiration of the corresponding cure period set forth in the Developer Agreement); and

(d) Any representation or warranty made by Ava herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if Ava is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts; provided, that the cure period under this Section 13.3(c) may be extended by an additional subsequent period not to exceed ninety (90) days in the event that such Ava Portfolio Default is caused by a default of Developer under the Developer Agreement and Developer's Financing Party has stepped in to effectuate a cure after the expiration of the corresponding cure period set forth in the Developer Agreement).

Section 13.4 ***City's Remedies for Ava Portfolio Default***. If a Ava Portfolio Default has occurred and is continuing, and the following the expiration of any applicable cure period set forth therein, City may perform any and all of the following actions: (i) suspend performance under this Agreement, (ii) accelerate all amounts owing between the Parties, (iii) withhold all payments due to Ava under this Agreement, (iv) terminate this Agreement upon providing written notice to Ava, and upon any such termination, demand payment from Ava of the Termination Payment (as such amount may be adjusted in accordance with Section 5.6), and (v) exercise any other right or remedy available at law or in equity, except to the extent such remedies are expressly limited under this Agreement; provided, that no termination may occur unless and until written notice has been delivered to any Financing Party for which City has received notice in accordance with Section 18.2. Upon the termination of this Agreement, Ava shall perform the Removal Services for the entire City Portfolio in accordance with Section 11.2 at Ava's sole expense.

Section 13.5 ***City Project Default***. With respect to the affected Project only, City shall be deemed a Defaulting Party upon the occurrence of any of the following events (each, a "**City Project Default**"):

(a) Due to acts or omissions of the City, Ava indirectly loses its rights to use and enjoy the Project Site under the license, unless the Parties can agree to relocate the Project in accordance with Section 11.1, and except where such acts or omissions of the City constitute the lawful application of City's Permitting Authority pursuant to Section 10.4; and

(b) The occurrence of any act or omission by City that operates to suspend, revoke or terminate any certificate, permit, franchise, approval authorization or power necessary for Ava to lawfully conduct operations on the Project Site, except where such acts or omissions of the City (i) were initiated or caused by the City due to acts or omissions of Ava, Developer or any of their respective contractors, agents or employees, and (ii) constitute the lawful application of City's Permitting Authority pursuant to Section 10.4

Section 13.6 ***Ava's Remedies for City Project Default***. If a City Project Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Ava may perform any and all of the following actions: (i) suspend performance under this Agreement with respect to such Project, (ii) accelerate all amounts owing between the Parties with respect to such Project, (iii) withhold a portion of any payments due to City under this Agreement in an amount attributable to such Project, and (iv) terminate the applicable PSA. Upon the termination of any PSA hereunder, Ava shall perform the Removal Services for such Project in accordance with Section 11.2 at City's sole expense.

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Section 13.7 ***City Portfolio Default***. City shall be deemed a Defaulting Party under this Agreement upon the occurrence of any of the following events (each, a "**City Portfolio Default**"):

(a) a Bankruptcy Event shall have occurred with respect to City;

(b) City fails to pay Ava any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Ava of such past due amount;

(c) The failure by City to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Article 13), and such failure is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if City is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts); or

(d) Any representation or warranty made by City herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if City is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts).

Section 13.8 ***Ava's Remedies for City Portfolio Default***. If a City Portfolio Default has occurred and is continuing, and following the expiration of any applicable cure period set forth therein, Ava may perform any and all of the following actions: (i) suspend performance under this Agreement, (ii) accelerate all amounts owing between the Parties, (iii) withhold all payments due to City under this Agreement, (iv) terminate this Agreement upon providing written notice to City, and upon any such termination, demand payment from City of the City Termination Payment, and (v) exercise any other right or remedy available at law or in equity, except to the extent such remedies are expressly limited under this Agreement. Upon receiving payment of the City Termination Payment, Ava shall perform the Removal Services in accordance with Section 11.2 at City's sole expense.

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ARTICLE 14
REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 14.1 ***Ava Representations and Warranties***. Ava represents and warrants to City the following:

(a) Valid Existence. Ava is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations, and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members.

(b) No Conflicts. The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfilment of and compliance by Ava with the

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provisions of this Agreement will not conflict with or constitute a breach of a default under any Applicable Law present in effect having applicability to Ava, the documents of formation of Ava or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Ava is a party or by which any of its property is bound.

Section 14.2 ***City's Representations and Warranties***. City represents and warrants to Ava the following:

(a) Valid Existence. The City is a municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of California, and is qualified to conduct business in the City of [____].

(b) No Conflicts. The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfilment of and compliance by the City with any provisions of this Agreement will not conflict with or constitute a breach of a default under any Applicable Law present in effect having applicability to the City, the documents of formation of the City, or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which the City is a party or by which any of its property is bound.

(c) Licenses. (i) City has achieved Site Control for the Project Site such that City has the full right, power, and authority to grant the Licenses in Article 6, and (ii) such grant of the Licenses does not violate any Law applicable to City or the Project Site and is not inconsistent with and will not result in a breach or default under any agreement by which City is bound or that affects the Project Site.

(d) Other Agreements. Neither the execution and delivery of this Agreement by City nor the performance by City of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which City is a party or by which City is bound.

(e) Accuracy of Information. All information provided by City to Ava, as it pertains to (i) the Project Site, (ii) the Improvements on which the Project is to be installed, if applicable, (iii) City's planned use of the Project Site and any applicable Improvements, and (iv) City's estimated electricity requirements, if provided, is accurate in all material respects.

(f) City Status. City is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company. City is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Limit on Use. No portion of the electricity generated by the Project shall be used to heat a swimming pool.

Section 14.3 ***General Covenants***. Each Party covenants to and for the benefit of the other Party that throughout the Term:

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(a) Each Party shall maintain (or obtain from time to time, as required) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement.

(b) Each Party shall undertake its obligations under this Agreement in compliance with (i) all Applicable Law (including, but not limited to, those related to workplace safety, employment discrimination, prevailing wage, non-discrimination and non-preference, and conflicts of interest), Prudent Operating Practices, (ii) all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO and the Local Electric Utility, and (iii) all applicable requirements of the CPUC, CARB, FERC, NERC, and WECC (including WECC Scheduling Practices).

Section 14.4 ***Covenants of Ava***. Ava covenants to and for the benefit of City that throughout the Term:

(a) None of Ava, its employees, contractors or agents have been suspended, debarred, or excluded from, or ineligible from, receiving federal or state funds. Ava shall notify City if Ava is suspended, barred, excluded or determined to be ineligible for receiving state or federal funds at any time during the Term within thirty (30) days of Ava obtaining knowledge thereof.

(b) All personnel performing operation and maintenance services for the Projects shall be licensed and in good standing, and sufficiently qualified, experienced, and trained in accordance with Prudent Operating Practices.

(c) Pursuant to the Developer Agreement, starting on the Commercial Operation Date, Ava shall require Developer to post and maintain a performance security deposit of $200/kW of capacity for each Project ("**Developer Performance Security**") until all of Developer's payment and performance obligations under the Developer Agreement have been satisfied in full. Per the terms of the Developer Agreement, Ava shall be entitled to draw on such Developer Performance Security for a Project to satisfy any damages or other amounts owed by Developer to Ava under the Developer Agreement, including as reimbursement for Removal Costs.

ARTICLE 15
INSURANCE

At all times during the Term, the Parties shall maintain the following insurance, as applicable:

Section 15.1 ***Ava's Insurance***. Ava shall cause Developer to obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit IV of the applicable Addendum for the Term of this Agreement.

Section 15.2 ***City's Insurance***. City is a self-insured public agency. Upon Ava's or Developer's request, City shall deliver to Ava or Developer certificates of insurance evidencing the insurance coverage.

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ARTICLE 16
INDEMNIFICATION AND LIMITATIONS OF LIABILITY

Section 16.1 ***Indemnity by the Parties***. To the fullest extent permitted by law, each Party ("**Indemnifying Party**") shall defend, indemnify, and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its successors and assigns, and their elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "**Indemnified Party**") from and against any and all third-party claims, liability or losses ("**Claims**"), including but not limited to those losses arising from (i) personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this Agreement, (iv) fines or penalties payable by the Indemnified Party or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or, in the case of Ava, (i) City's use of any service, technology or good provided by Ava to City under this Agreement infringes any patent, trademark, copyright or other intellectual property right, including trade secret rights, of a third-party, except as may arise solely from the negligence, willful misconduct or violation of Law by the Indemnified Party, its officers, employees, subcontractors or agents or (ii) City's damages stemming from failure to release specific records pursuant to the California Public Records Act at Ava's direction that City not release such specific requested records related to this Agreement to the public. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify, and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

(a) Design Professional Services. To the extent that a portion of Ava's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Ava's obligations under this Section 16.1(a) shall be subject to any applicable limitations mandated by Civil Code Section 2782.8.

Section 16.2 ***Notice and Participation in Third Party Claims***. The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted under a Claim as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 16.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 16.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

All of the Parties' obligations under this Section 16.2 are intended to apply to the fullest extent permitted by Law and shall survive the expiration or sooner termination of this Agreement.

Section 16.3 ***Environmental Indemnification***.

(a) Ava Indemnity. Ava shall cause Developer to indemnify, defend, and hold harmless all of City's Indemnified Parties from and against all liabilities arising out of or relating to the existence at, on, above, below or near the Project Site of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Developer, Ava or any of their contractors, agents or employees, to the extent such liabilities do not result from the gross negligence or willful misconduct of City.

(b) City Indemnity. City shall indemnify, defend, and hold harmless Developer and all of Ava's Indemnified Parties from and against all liabilities arising out of or relating to the existence at, on, above, below or near the Project Site of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Developer, Ava or any of their contractors, agents or employees, to the extent such liabilities to not result from the gross negligence or willful misconduct of Developer or Ava.

(c) Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Project Site generally or any deposit, spill or release of any Hazardous Substance.

Section 16.4 ***Limitations on Liability***.

(a) No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR EXPRESS MEASURE OF DAMAGES HEREIN, INCLUDING ANY TERMINATION PAYMENT, (B) A THIRD PARTY INDEMNITY CLAIM, OR (C) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT BY STATE, IN TORT OR IN CONTRACT.

(b) Cumulative Remedies. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

(c) Exclusive Remedies. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED UPON

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AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED.

(d) Limitation on Ava Liability Prior to COD. Notwithstanding anything herein to the contrary, with respect to each Project, Ava's liability for Commercial Operation Delay Damages shall by capped in the aggregate at an amount equal to the Developer Performance Security.

ARTICLE 17
CHANGE IN LAW; COMPLIANCE EXPENDITURE CAP

Section 17.1 ***Changes in Law***. Subject to Section 17.2 below, in the event that any Change in Law occurring after the Effective Date results in this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Ava and the City entered into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, the Parties shall engage in such negotiations in good faith. If the Parties are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 20.4. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

Section 17.2 ***Compliance Expenditure Cap***. With respect to each Project, if a Change in Law has increased Ava's known or reasonably expected costs to comply with its obligations under this Agreement or the applicable PSA (any action required to be taken by Ava to comply with such Change in Law, a "**Compliance Action**"), then the Parties agree that the maximum amount of costs and expenses Ava shall be required to bear during the Project Term to comply with all such obligations shall be capped at One Hundred Dollars ($100) per kW of such Project's Guaranteed Nameplate Capacity or Storage Inverter Power, as applicable, in aggregate over the Project Term (the "**Compliance Expenditure Cap**"). If Ava reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Ava shall provide notice to the City of such anticipated out-of-pocket expenses. If, within ten (10) Business Days after receiving Ava's notice, the City does not agree in writing to reimburse Ava for all costs and expenses of Compliance Actions in excess of the Compliance Expenditure Cap, Ava's obligation to take any and all applicable Compliance Actions, and deliver any and all Product that may not be delivered in the absence of such Compliance Actions, shall be waived.

ARTICLE 18
ASSIGNMENT AND FINANCING

Section 18.1 ***Assignment***.

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(a) Restrictions on Assignment. This Agreement may not be assigned in whole or in part by City. Ava may, by providing prior written notice to City, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (i) any Financing Party, (ii) any entity through which Ava is obtaining financing from a Financing Party or (iii) any California joint powers authority (each, a "**Permitted Assignee**"); *provided*, that, Ava is not released from liability hereunder as a result of any assignment to a joint powers authority unless such joint powers authority assumes Ava's obligations hereunder by binding written instrument. Ava will provide prior written notice to City of any assignment of the Agreement by the Developer.

(b) Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and Permitted Assignees.

Section 18.2 ***Financing and Collateral Assignment***. The Parties acknowledge that Ava and/or Developer may obtain debt or equity financing or other credit support from lenders, investors, including tax equity investors, or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation, and maintenance of the Project and that Ava's obligations under the financing documents may be secured by, among other collateral, a pledge or collateral assignment of Ava's rights under this Agreement.

Section 18.3 ***Termination Requires Consent***. Ava and City agree that any right of Ava to terminate this Agreement is subject to the prior written consent of any Financing Party.

ARTICLE 19
CONFIDENTIALITY

Section 19.1 ***Confidential Information***. To the maximum extent permitted by Applicable Law, if either Party provides Confidential Information to the other or, if in the course of performing under this Agreement or negotiating this Agreement, a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Ava, financing, of this Agreement.

(a) Confidential Information does not include any information that (i) becomes publicly available other than through breach of this Agreement, (ii) is required to be disclosed to a Governmental Authority under Applicable Law or pursuant to a validly issued subpoena, (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by Applicable Law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by Applicable Law.

(b) The Parties acknowledge and agree that the Agreement and any transaction entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as

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confidential, the disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "confidential" that clearly contain information that is not Confidential Information.

Section 19.2 ***Permitted Disclosures***. Notwithstanding Section 19.1,

(a) a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants, counsel, and Financing Parties, and their respective consultants and counsel (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any Person to whom that Party discloses Confidential Information; and

(b) upon request or demand made to either Party hereto by a validly issued subpoena or any third party not a Party hereto and not otherwise subject to the provisions of Section 19.2(a) pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), the disclosing Party shall as soon as practical, prior to releasing any Requested Confidential Information, notify the other Party in writing via electronic mail that such request has been made. The other Party shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by the disclosing Party. If the other Party takes no such action within ten days after receiving the foregoing notice from the disclosing Party, the disclosing Party shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If the other Party takes or attempts to take such action, the disclosing Party shall provide timely and reasonable cooperation to the other Party, if requested by the other Party, and the other Party agrees to indemnify and hold harmless the disclosing Party and its Representatives from any claims, liability, award of attorneys' fees or damages, and to defend any action, claim or lawsuit brought against any of the disclosing Party or its Representatives for the disclosing Party's refusal to disclose any Requested Confidential Information.

Section 19.3 ***Miscellaneous***. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Article 19 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Article 19. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 19 but will be in addition to all other remedies available at Law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two years.

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Section 19.4 ***Goodwill and Publicity***. Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of renewable energy or storage involving this Agreement (except for filings or other statements or releases as may be required by Applicable Law) or (b) use any name, trade name, service mark or trademark, as applicable, of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the Project and its use, and each Party may promptly review, comment upon, and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Ava is entitled to place signage on the Project Site with written approval from City reflecting its association with the Project and to make public statements regarding the transactions contemplated by this Agreement and the Project and its use as part of the Ava's monthly, public board meetings. . Ava may not use the name of City or reference any endorsement from City in any fashion for any purpose, without the prior express written consent of City.

ARTICLE 20
GENERAL PROVISIONS

Section 20.1 ***Interpretation***. Unless otherwise defined or required by the context in which any term appears: (i) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement, (ii) the singular includes the plural and vice versa, (iii) the words "herein," "hereof", and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iv) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, (v) the words "include," "includes" and "including" mean include, includes and including "without limitation," (vi) references to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or"), (vii) words "herein," "hereunder," and "hereof" refer to the provisions of this Agreement as a whole and not to any particular portion or provision of this Agreement, and (viii) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders, and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires. The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "$" sign refer to United States dollars.

Section 20.2 ***Choice of Law; Venue***. The law of the State of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. In the event that a suit is brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of California in the County of Alameda or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California.

Section 20.3 ***Dispute Resolution***. The Parties shall negotiate in good faith and attempt to resolve expeditiously and inexpensively any dispute, controversy or claim arising out of or relating

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to this Agreement (a "**Dispute**") within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party. If the Parties are unable to resolve a Dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after submission of notice of the Dispute, the Parties shall submit the Dispute to mediation prior to seeking any and all remedies available at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

Section 20.4 ***Notices***. All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier or regular, certified or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier or five days after deposit in the mail. Notices must be sent to the Person identified on **Exhibit V** at the addresses set forth on **Exhibit V**. Each Party may designate a different Person and address by sending written notice to the other Party, to be effective no sooner than ten days after the date of submission of such notice designating a different Person and address.

Section 20.5 ***Survival***. The provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation the provisions enumerated in this Section 20.5, will survive termination of this Agreement:

(a) obligations to pay by either Party that have accrued prior to termination or expiration;

(b) obligations to repair damage caused by either Party under Article 7, Article 8 or otherwise;

(c) Section 5.6 (Pass Through Damages);

(d) Section 5.7 (Books and Records);

(e) Section 11.2 (Removal);

(f) Section 11.3 (Abandonment);

(g) Section 11.4 (Ava Removal Security)

(h) Article 13 (Defaults, Remedies, and Damages);

(i) Article 14 (Representations and Warranties);

(j) Article 16 (Indemnification and Limitations on Liability);

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(k) Article 19 (Confidentiality); and

(l) Article 20 (General Provisions).

Section 20.6 ***Compliance with All Laws***. The Parties shall at all times comply with all Applicable Laws. City shall at all times keep Ava fully informed of City's charter, codes, ordinances, and regulations and of all state and federal laws in any manner affecting the performance of this Agreement to ensure that the Parties shall at all times comply with all applicable local codes, ordinances, and regulations, as they may be amended from time to time. Examples of such regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq., the Fair Packaging and Labeling Act, and the standards and regulations issued there under.

Section 20.7 ***Good Faith & Fair Dealing***. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

Section 20.8 ***Cooperation***. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

Section 20.9 ***Construction***. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 20.10 ***Non-Discrimination***. Ava shall comply with all Applicable Laws, including City's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Ava shall not discriminate (i) against any subcontractor, employee or applicant for employment or (ii) in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations or marital status in the recruitment or selection for training, including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

Section 20.11 ***Non-Exclusive Contract***. This Agreement does not establish an exclusive contract between the City and the Ava for the purchase of electricity or power or any services. To the extent that the City has remained in compliance with and has not defaulted under any terms of

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this Agreement, the City expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Ava; and the unrestricted right to bid any such product, support or service.

Section 20.12 ***Further Assurances***. Each Party shall provide such information, execute and deliver any instruments and documents, and take such other actions as may be reasonably requested by the other Party, which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 20.13 ***Waivers***. No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 20.14 ***Non-Dedication of Projects***. Nothing in this Agreement may be construed as the dedication by either Party of its Projects or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's Projects or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Ava is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Ava does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Ava may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the Project in accordance with Section 11.2 of this Agreement.

Section 20.15 ***Service Contract***. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. City shall not take the position on any tax return or in any other filings suggesting that it is anything other than a City of electricity from the Project.

Section 20.16 ***No Agency, Lease, Joint Venture or Partnership***. No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other. Ava shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant or employee of City. Ava shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between City and Ava. No Person performing any services and/or supplying all goods shall be considered an officer, agent, servant or employee of City, nor shall any such Person be entitled to any benefits available or granted to employees of City. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Ava's work only, and not as to the means by which such a result is obtained. City does

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not retain the right to control the means or the method by which Ava performs work under this Agreement.

Section 20.17 ***Account Manager***. Ava must assign an account manager to City to facilitate the contractual relationship and to be fully responsible and accountable for fulfilling City's requirements. Ava represents and warrants that such account manager will ensure that City receives adequate support, problem resolution assistance, and required information on a timely basis.

Section 20.18 ***Entire Agreement, Modification, Severability***. This Agreement, together with all of the exhibits, constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of Applicable Law.

Section 20.19 ***Forward Contract***. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

Section 20.20 ***No Third-Party Beneficiaries***. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Ava or City, and do not imply or create any rights on the part of, or obligations to, any other Person.

Section 20.21 ***Disentanglement***. Ava shall cooperate with City to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Ava shall cooperate with City's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or City's activities. Ava shall return to City all City assets or information in Ava's possession. Ava shall deliver to City or its designee, at City's request, all documentation and data related to City, including, but not limited to, City data and client files, held by Ava, and Ava shall destroy all copies thereof not turned over to City, all at no charge to City.

Section 20.22 ***Accountability***. Ava will be the primary point of contact and assume the responsibility of all matters relating to this Agreement, including those involving the manufacturer, deliverer or any subcontractor, as well as payment issues. If issues arise, the Ava must act as soon as reasonably practicable to correct or resolve the issues.

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Section 20.23 ***Cooperation with Review***. Ava shall cooperate with City's periodic review of Ava's performance. Such review may be conducted on a bi-annual basis, in the reasonable discretion of City, upon no less than 60 days' advance written notice to Ava.

Section 20.24 ***Authority***. The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this Agreement.

Section 20.25 ***Counterparts***. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. The Parties agree that the digital signatures of the signatories included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Any digital signature shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record keeping system to the fullest extent permitted by Applicable Law.

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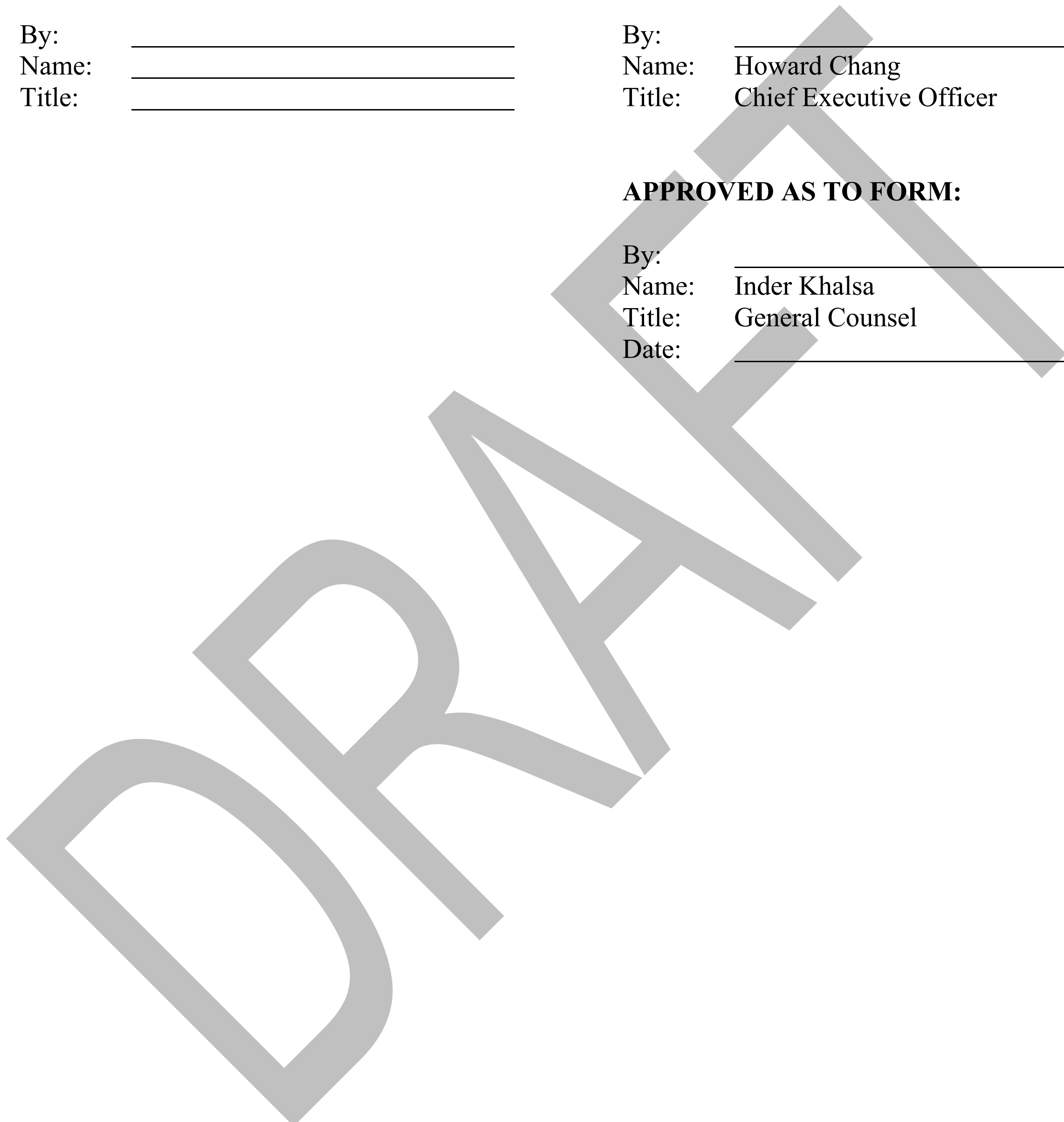
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[CITY]		**Ava Community Energy, a California joint powers authority**	
By:	______________________	By:	______________________
Name:	______________________	Name:	Howard Chang
Title:	______________________	Title:	Chief Executive Officer

APPROVED AS TO FORM:

By: ______________________
Name: Inder Khalsa
Title: General Counsel
Date: ______________________



Schedule I

Defined Terms

"**Adjusted Energy Production**" has the meaning set forth in Section 8.1(a)

"**Adverse Effect**" has the meaning set forth in Section 7.6.

"**Adverse Environmental Conditions**" means (i) the existence or the continuation of the existence of Environmental Contamination (including, without limitation, a sudden or non-sudden accidental or non-accidental Environmental Contamination), or exposure to or release of any substance, chemical, material, pollutant, Hazardous Substance, odor or audible noise or other release or emission in, into or onto the environment at, in, by or related to the Project Site, (ii) the environmental aspect of the transportation, storage, treatment or disposal or materials in connection with the Project, or (iii) the violation, or alleged violation, of any Environmental Law, permits or licenses of, by or from any Governmental Authority relating to environmental matters connected with the applicable Project Site.

"**Affected Projects**" has the meaning set forth in Section 10.5.

"**Agreement**" has the meaning set forth in the Preamble.

"**Ancillary Services**" means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, contingency reserves, other products associated with electric generation and Energy that a Project is capable of providing and all other beneficial attributes and outputs of the Project not required for the operation of the Project.

"**Annual Escalator**" has the meaning set forth in Section 5.1(a)(i).

"**Applicable Law**" means all national, state, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Governmental Approvals, licenses, permits, directives, and requirements of all regulatory and other Governmental Authorities.

"**Attestation Form**" means documentation provided by Ava to City transferring title to the RECs, specifying the Project, REC quantity, and REC vintage with respect to the RECs sold herein.

"**Authority Having Jurisdiction**" or "**AHJ**" means any agency, organization, office or Person responsible for enforcing the requirements of a statute, regulation, code or standard, or for approving equipment, materials, an installation or a procedure in relation to a Project.

"**Ava Event of Default**" means an Ava Portfolio Default or an Ava Project Default, or both, as the context may require.

"**Ava Pass-Through Costs**" has the meaning set forth in Section 5.6

"**Ava Portfolio Default**" has the meaning set forth in Section 13.3.

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"**Ava Project Default**" has the meaning set forth in Section 13.1.

"**Ava Removal Security**" has the meaning set forth in Section 11.4.

"**Ava Termination Payment**" means the corresponding amount set forth in Exhibit VI.

"**Ava WREGIS Account**" has the meaning set forth in Section 9.2.

"**Avoided Utility Cost**" means $[__]/kWh.

"**Bankruptcy Event**" means with respect to any entity, the occurrence of any of the following: such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in 60 days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

"**Bill Credit Disqualifying Event**" has the meaning set forth in Section 5.1(d).

"**Budgetary Non-Appropriation Event**" has the meaning set forth in Section 10.3.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required to close.

"**CAISO**" means the California Independent System Operator or any successor entity performing similar functions.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can accept at or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

"**CARB**" means the California Air Resources Board.

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation) or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

"**City**" has the meaning set forth in the Preamble.

"**City Portfolio**" means, collectively, all Projects contemplated under this Agreement.

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"**City Portfolio Default**" has the meaning set forth in Section 13.7.

"**City Project Default**" has the meaning set forth in Section 13.5.

"**City WREGIS Account**" has the meaning set forth in Section 9.2.

"**City-Requested Outage**" has the meaning set forth in Section 7.8.

"**City Termination Payment**" means the corresponding amount set forth in Exhibit VII.

"**Claims**" has the meaning set forth in Section 16.1.

"**COD Delay Cure Period**" means (a) with respect to Tranche A Projects, a period of up to forty five (45) days, and (b) with respect to Tranche B Projects, a period of up to one hundred twenty (120) days.

"**COD Delay Damages**" means, with respect to each Project, for each day after the Commercial Operation Deadline that the applicable Project has not achieved COD, liquidated damages in an amount equal to the Pass-Through Damages received from Developer pursuant to the Developer Agreement, less any reasonably incurred Ava Pass-Through Costs calculated in accordance with Section 5.6.

"**COD Delay Notice**" has the meaning set forth in Section 4.6(c).

"**Commercial Operation**" means that the Project is mechanically complete, capable of providing electricity to the Delivery Point at the capacity specified on the applicable Project Site Addendum, subject to the caveats set forth in this Agreement, and has permission to operate from the relevant Governmental Authority. The Project is fully operational, reliable, and interconnected, fully integrated and synchronized with the distribution system.

"**Commercial Operation Date**" or "**COD**" means, for each Project, the date upon which Commercial Operation has been achieved, as indicated via written notice from Ava to the City in accordance with Section 4.6(d).

"**Commercial Operation Deadline**" has the meaning set forth in Section 4.6(a).

"**Commissioning Test**" has the meaning set forth in Section 4.6(d).

"**Compliance Action**" has the meaning set forth in Section 17.2.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 17.2.

"**Confidential Information**" means, whether oral or written, which is delivered by the receiving Party or learning Party, including information that either the learning Party or the receiving Party stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other.

"**Construction Start**" has the meaning set forth in Section 4.4(a).

"**Construction Start Date**" has the meaning set forth in Section 4.4(a).

"**Contract Capacity**" means the sum of the Guaranteed Nameplate Capacity of each Generating Project and Storage Inverter Power of each Storage Project within the City Portfolio.

"**Contract Month**" means any calendar month during the Term, commencing on the first calendar month to occur subsequent to the Commercial Operation Date of the first Project to achieve COD hereunder.

"**Contract Price**" means the Renewable Rate or the Storage Rate, or both, as the context may require.

"**Contract Year**" means any consecutive twelve (12)-month period during the Term, commencing on the Commercial Operation Date of the first Project to achieve COD and ending on the last day of such twelve (12)-month period.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**Credit Downgrade Event**" means (a) the long-term, senior, unsecured debt rating of Ava (i) falls below BBB- from S&P and (ii) Baa3 from Moody's, or (b) Ava is no longer rated by either of S&P and Moody's.

"**Cumulative Storage Contract Capacity**" means the aggregate Storage Contract Capacity of all Storage Projects within the City Portfolio.

"**Delivery Period**" has the meaning set forth in Section 3.1.

"**Delivery Point**" means, with respect to each Project, the point where such Project is interconnected to City's existing electrical system.

"**Design Plan**" has the meaning set forth in Section 4.3.

"**Developer**" means, [Green Bridge], a [_____], or any successor thereto, in each case, with whom Ava is contracting for the installation, construction, operation, and maintenance of the Project.

"**Developer Agreement**" has the meaning set forth in Section 2.1.

"**Developer Performance Security**" has the meaning set forth in Section 14.4(c).

"**Discharging Energy**" means, with respect to a Storage Project, all Energy delivered to the applicable Delivery Point from the Storage Project, as measured by the Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Dispute**" has the meaning set forth in Section 20.3.

"**Early Termination Event**" has the meaning set forth in Section 3.2(a).

"**Effective Date**" has the meaning set forth in the Preamble.

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"**Electrical Losses**" means all transmission or transformation losses between the Project and the Delivery Point, including, as applicable, losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Project, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

"**Energy**" means electrical energy generated by the Generating Project.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project (to the extent of sales to City of Energy pursuant to Article 5), and its displacement of conventional energy generation. Environmental Attributes include, without limitation, RECs, and all of the following: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (Nox), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions.

"**Environmental Contamination**" means the presence of a Hazardous Substance in a concentration exceeding legally allowable limits in violation of Applicable Law, including Environmental Law.

"**Environmental Law**" means any Applicable Law related to (a) the prevention, abatement or elimination of pollution, (b) the protection or preservation of the environment (including air, soil, land surface, subsurface strata, ground water, surface water, coastal water, and wetlands), wildlife (including endangered, threatened or protected species, migratory birds and bald or golden eagles), wildlife habitat, cultural resources, or natural resources, and (c) the use, generation, handling, treatment, storage, disposal, release, transportation or regulation of, or exposure to, Hazardous Substances.

"**EOD Relocation Event**" has the meaning set forth in Section 11.1.

"EPC Contract" means, with respect to each Project, one or more commercially negotiated contract(s) for the engineering, procurement, construction, and installation of the applicable Project, which shall be entered into by and between Developer and an EPC Contractor.

"**EPC Contractor**" means [Gridscape] [2], or any other contractor proposed by Developer and approved by Ava in its reasonable discretion.

"**Error-Free**" means the Project Equipment (i) is free from material defects in design, materials, and workmanship, (ii) substantially conforms to the specifications set forth in this Agreement, including the Design Plan, and (iii) functions as designed.

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[2] **NTD:** Parties to confirm full entity name.

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"**Estimated Construction Start Date**" has the meaning set forth in the applicable PSA.

"**Event of Default**" means an Ava Event of Default or a City Event of Default, as the context may require.

"**Exclusive License**" has the meaning set forth in Section 6.1(f).

"**Excused Storage Event**" has the meaning set forth in Section 8.2(a).

"**Expected Annual Contract Quantity**" has the meaning set forth in **Exhibit I**.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Financing Party**" has the meaning set forth in Section 18.2.

"**FM Delay Cure Period**" has the meaning set forth in Section 4.6(b).

"**Force Majeure Delay**" has the meaning set forth in Section 4.6(b).

"**Force Majeure Event**" means any event or circumstance beyond the reasonable control of and without the fault or negligence of breaching Party, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; epidemic; pandemic or any of the following related to the Outbreak: (i) action by a Governmental Authority that is broader or more restrictive than those measures in effect on the Effective Date or (ii) new events, circumstances or conditions related to the Outbreak arising after Effective Date, provided that such new event, circumstance or condition related to the Outbreak directly impacts the breaching Party's ability to perform its obligations under this Agreement; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Ava's control or due to a Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event does not include economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, City's ability to buy the Product, or any component thereof at a lower price, or Ava's ability to sell the Product, or any component thereof, at a higher price, than under the Agreement); the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic Projects necessary to transfer funds to the payee Party; Ava's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project except to the extent such inability is caused by a Force Majeure Event; any equipment failure except if such equipment failure is caused by a Force Majeure Event; or the Outbreak or the effects or impacts of the Outbreak, except as set forth above.

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"**Force Majeure Failure**" has the meaning set forth in Section 10.2.

"**Forced Outage**" means an unexpected failure of one or more components of the Project that prevents Ava from generating Energy or making Project Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Generating Project**" has the meaning set forth in the Preamble.

"**Governmental Approval**" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable Environmental Law, that are required for the development, use, and operation of any Project hereunder.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental Authority Having Jurisdiction or effective control over a Party.

"**Grid Services**" has the meaning set forth in Section 9.4.

"**Guaranteed Energy Damages**" means liquidated damages in an amount equal to the product of (a) the applicable Avoided Utility Cost, multiplied by (b) the Guaranteed Energy Shortfall.

"**Guaranteed Energy Damages Cap**" has the meaning set forth in Section 8.1(b)(i).

"**Guaranteed Energy Production**" has the meaning set forth in Section 8.1(a).

"**Guaranteed Energy Shortfall**" means, with respect to each year in any Performance Measurement Period, the difference between (a) the product of (i) Expected Annual Contract Quantity, and (ii) 0.85; and (b) the Adjusted Energy Production.

"**Guaranteed Nameplate Capacity**" has the meaning set forth on the applicable PSA.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 8.2(a)

"**Guaranteed Storage Damages**" has the meaning set forth in Section 8.2(b)(i).

"**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

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"**Improvements**" means any buildings and other improvements on the Project Site other than the Project or the Project Equipment.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the Project such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the Project, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the Project (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the Project, provided that Incentives shall not include RECs.

"**Indemnified Party**" has the meaning set forth in Section 16.1.

"**Indemnifying Party**" has the meaning set forth in Section 16.1.

"**Initial Term**" has the meaning set forth in Section 3.1.

"**Insolation**" has the meaning set forth in Section 7.4.

"**Interconnection Agreement**" means the interconnection agreement entered into by Developer pursuant to which the Project will be interconnected with the Transmission System, and pursuant to which Developer's interconnection Projects and any other interconnection Projects will be constructed, operated, and maintained during the Term.

"**Interest Rate**" has the meaning set forth in Section 5.3.

"**Invoice Information**" has the meaning set forth in Section 5.2.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Ava is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**kW**" means kilowatts in alternating current, unless expressly stated in terms of direct current.

"**kWh**" means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**Lawful Permitting Denial Event**" has the meaning set forth in Section 10.4.

"**Letter of Credit**" means an irrevocable, standby letter of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- without an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, the form of which shall be mutually agreeable to the Parties.

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"**License Term**" has the meaning set forth in Section 6.1(a).

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Ava and reasonably acceptable to City, licensed in the State of California.

"**Licensees**" has the meaning set forth in Section 6.1(a).

"**Licenses**" has the meaning set forth in Section 6.1(f).

"**Lien**" has the meaning set forth in Section 6.3.

"**Local Electric Utility**" means Pacific Gas and Electric Company, an investor-owned utility headquartered in San Francisco, California.

"**Lost Output**" has the meaning set forth in Section 8.1(a).

"**Meter**" has the meaning set forth in Section 12.1.

"**Modified Design Plan**" has the meaning set forth in Section 4.3.

"**Monthly Bill Credit**" has the meaning set forth in Section 5.1(d).

"**Monthly Payment**" has the meaning set forth in Section 5.1(a)

"**Monthly Storage Availability**" has the meaning set forth in Section 8.2(a).

"**MSDS**" has the meaning set forth in Section 7.11.

"**NERC**" means the North American Electric Reliability Corporation.

"**No-Fault Relocation Event**" has the meaning set forth in Section 11.1.

"**Non-Appropriation Period**" has the meaning set forth in Section 10.3.

"**Non-Appropriation Start Date**" has the meaning set forth in Section 10.3.

"**Non-Exclusive License**" has the meaning set forth in Section 6.1(a).

"**On-Site Services**" has the meaning set forth in Section 7.10(a).

"**On-Site Contractor**" has the meaning set forth in Section 7.10(a).

"**Optimization Savings**" has the meaning set forth in Section 9.3.

"**Outage Allowance**" has the meaning set forth in Section 7.8.

"**Outbreak**" means the outbreak of coronavirus disease (COVID-19) that was first reported from Wuhan, China on or about December 31, 2019 and declared a "Public Health Emergency of International Concern" by the World Health Organization on January 30, 2020.

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"**Parties**" and "**Party**" have the meanings set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 8.1(a).

"**Permitted Assignee**" has the meaning set forth in Section 18.1.

"**Permitting Authority**" has the meaning set forth in Section 10.4.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**Planned Outage**" has the meaning set forth in Section 7.7.

"**Portfolio Delivery Period**" means the period starting on the first Commercial Operation Date to occur with respect to any Project hereunder and ending upon the expiration or early termination of all Project Terms hereunder.

"**Product**" means PV Energy, Storage Capacity, and RECs.

"**Progress Report**" has the meaning set forth in Section 4.2.

"**Project**" means any individual Generating Project or Storage Project.

"**Project Energy**" means the sum of PV Energy and Discharging Energy during the monthly billing period contemplated under this Agreement, net of Electrical Losses and Station Use, as measured by the Meter, which Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**Project Equipment**" means PV modules, PV inverters, PV racking, battery modules, battery inverters, charge controllers, electrical panels, electrical disconnects, electric meters, transformers, and any other supporting equipment, structures, and security features, each to the extent applicable for any given Project.

"**Project Monthly Payment**" has the meaning set forth in Section 5.1(a)(ii).

"**Project Roof**" has the meaning set forth in Section 8.3(a).

"**Project Site**" means, with respect to a Project, the real property upon which such Project shall be installed, as described or depicted in the applicable PSA.

"**Project Term**" has the meaning set forth in Section 3.1.

"**Prudent Operating Practice**" means (a) the applicable practices, methods, and acts required by or consistent with Applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the solar industry during the relevant time period with respect to distributed generation generating projects with integrated storage in the Western United States or (b) any of the practices, methods, and acts that, in

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light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to distributed generation generating projects with integrated storage in the Western United States. Prudent Operating Practice includes compliance with Applicable Laws, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PV Energy**" means that portion of Energy that is delivered directly to the Delivery Point from a Generating Project and is not Discharging Energy.

"**PV Payment**" has the meaning set forth in Section 5.1(a)(i).

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the Project, provided that RECs shall not include Incentives.

"**Relocation Request**" has the meaning set forth in Section 11.1.

"**Removal Costs**" has the meaning set forth in Section 11.3.

"**Removal Deadline**" has the meaning set forth in Section 11.2.

"**Removal Services**" has the meaning set forth in Section 11.2.

"**Renewable Rate**" means the Tranche A PPA Rate or the Tranche B PPA Rate, or any or all of the foregoing as the context may require.

"**Renewal Term**" has the meaning set forth in Section 3.1.

"**Representatives**" has the meaning set forth in Section 19.2.

"**Requested Confidential Information**" has the meaning set forth in Section 19.2(b).

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Project that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any CPUC decision and includes any local, zonal or otherwise locational attributes associated with the Project, in addition to flex attributes.

"**Roof Damage Warranty**" has the meaning set forth in Section 8.3(a).

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"**Site Control**" means that City: (A) is the fee simple owner of the Project Site; or (B) is the lessee of the Project Site pursuant to a lease which (i) has a term no shorter than the duration of the Initial Term, and (ii) authorizes City to act in all manners relating to the control and operation of the Project Site.

"**Station Use**" means:

(a) the Energy produced or discharged by the Project that is used within the Project to power the lights, motors, control systems, and other electrical loads that are necessary for operation of the Project; and

(b) the Energy produced or discharged by the Project that is consumed within the Project's electric energy distribution system as losses.

"**Storage Capacity**" means the maximum dependable operating capability of the Storage Project to discharge electric energy that can be sustained for four consecutive hours (in kWh).

"**Storage Contract Capacity**" means the nameplate Storage Capacity, in kWh, of a Storage Project, as specified in the applicable PSA.

"**Storage Inverter Power**" means the nameplate discharging power rating, in kilowatts, of a Storage Project, as specified in the applicable PSA.

"**Storage Payment**" has the meaning set forth in Section 5.1(a)(i).

"**Storage Project**" has the meaning set forth in the Recitals.

"**Storage Rate**" has the meaning set forth in Section 5.1(a)(i).

"**Term**" has the meaning set forth in Section 3.1.

"**Termination Payment**" means the Ava Termination Payment or City Termination Payment, or both, as the context may require.

"**Tier 1**" means, with respect to the Generating Project, any equipment offered by any Tier 1 Supplier and, with respect to a Storage Project, any battery storage system that (i) is offered by any Tier 1 Supplier, (ii) benefits from a manufacturer's warranty (including an energy retention warranty), and (iii) includes all of the components, functionality, and other material features that affect performance and the user experience (i.e., data acquisition and operating controls) of a standard, high-quality storage project.

"**Tier 1 Supplier**" means a "Tier 1 Module Manufacturer" as listed from time to time by *Bloomberg New Energy Finance's PV Market Outlook*, published on a quarterly basis, or if no longer published, a similar publication agreed upon by Ava and City in writing, and as agreed to by City.

"**Total System Benefit**" means the sum of all revenue and bill savings from Optimization Savings realized by the operation of the Project, net of any electricity expenses associated with the

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operation of the Project, as calculated by Ava. Total System Benefit does not include RECs or Incentives. A hypothetical calculation of Total System Benefit is as follows: [estimated cumulative Project Site utility expenses during the Term if the Project did not exist] less [estimated cumulative Project Site utility expenses during the Term with the Project in operation] less [cumulative Monthly Payments during the Term].

"**Tranche A PPA Rate**" has the meaning set forth in Section 5.1(a)(i).

"**Tranche A Project**" means a Project designated as such in the applicable PSA.

"**Tranche B PPA Rate**" has the meaning set forth in Section 5.1(a)(i).

"**Tranche B Project**" means a Project designated as such in the applicable PSA.

"**Transmission System**" means the transmission Projects operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**WECC**" means the Western Electricity Coordinating Council.

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EXHIBIT I

EXPECTED ANNUAL CONTRACT QUANTITY

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EXHIBIT II

FORM OF PROJECT SITE ADDENDUM

The Parties shall populate a form of this Exhibit II for each Project included within the applicable City Portfolio.

Project Name:

Type of Project: ☐ Generating Project ☐ Storage Project

Project Description: [*e.g., carport, rooftop, etc.*]

City/Site Owner:

Tranche: ☐ Tranche A ☐ Tranche B

Property: [*street address*]

Project Site Information:

- Description: [*to describe, including the legal description and any applicable Improvements*]
- Access points needed for Developer to install and service the Project:
- Construction assumptions (if any):
- Electrical diagrams: [*to be attached hereto*]
- Metering information:

Delivery Point:

Generating Project Terms (if applicable):

- Guaranteed Nameplate Capacity (kW): [__]

Storage Project Terms (if applicable):

- Storage Inverter Power (kW): [*as estimated prior to COD*]
- Storage Contract Capacity (kWh): [*as estimated prior to COD*]

Milestone Schedule:

- Estimated Construction Start Date:
- Construction Start Deadline:
- Estimated Commercial Operation Date:
- Commercial Operation Deadline:

PSA-Specific Terms:[3]

1. [***Buyout Option***.

(a) Generally. Upon the occurrence of any Buyout Date, City shall have the right, but not the obligation, to exercise its option to purchase the Project (the "**Buyout Option**") for a purchase price equal to the Fair Market Value of the Project (the "**Buyout Option Price**"). To exercise such Buyout Option, City shall, not less than one hundred eighty (180) days and not more than two hundred forty (240) days prior to the proposed Buyout Date, provide written notice to Ava of City's intent to exercise the Buyout Option with respect to the Project on such Buyout Date. Within ninety (90) days of receipt of City's notice, Ava shall send written notice to City that sets forth the Buyout Option Price for the Project, which notice shall also include Ava's determination of Fair Market Value and reasonably detailed documentation supporting such determination. City shall then have a period of forty five (45) days after receipt of such notice from Ava to confirm its decision to either (a) exercise the Buyout Option, (b) decline the Buyout Option or (c) dispute Ava's determination of Fair Market Value in accordance with Section 1(c) of this PSA below.

(b) Confirmation of Buyout Option. If City confirms its exercise of the Buyout Option in writing to Ava (whether without or after an appraisal rendered in accordance with Section 1(c) below), the Parties shall perform the following actions (together, the "**Buyout Option Conditions Precedent**"): (1) the Parties shall execute all documents necessary to (A) transfer title to the Project to City on the Buyout Date, as-is, where-is, free and clear of all Liens arising by, through or under Ava, and (B) assign to City any manufacturer warranties, permits, interconnection agreements, as-built designs, and any other documentation reasonably requested by City for the Projects, which are in effect as of the Buyout Date, and (2) City shall pay the Buyout Option Price to Ava. Upon satisfaction of the Buyout Option Conditions Precedent, the applicable provisions of this PSA shall terminate automatically and the Project shall be withdrawn from the Agreement.

(c) Determination of Fair Market Value. If, within forty five (45) days of receipt of the Buyout Option notice described in Section 1(a) above, City disputes Ava's determination of Fair Market Value in writing, then each Party shall, at its own cost, select an Independent Appraiser to determine the Fair Market Value of the Project under a written valuation opinion delivered to both Parties. Such valuation opinions shall consider the price that an independent third party would be willing to pay for the Project in place and in use (but not, for clarity, including any revenues expected under this Agreement) in an arm's length transaction, as well as the age, location, size, equipment type, and anticipated duration. The Fair Market Value of the Project shall be the simple average of the two values provided in the written valuation opinions and shall be binding on the Parties for purposes of determining the Buyout Option Price.

2. ***Defined Terms***. In addition to those terms defined in Schedule I, the following defined terms shall be deemed to apply only with respect to this PSA:

[3] **NTD:** The PSA-Specific Terms below shall only apply to the Fremont Family Resource Center Project and shall be deleted from the PSA for all other Projects.

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"**Buyout Date**" means, with respect to the Project, [July 1st] of each calendar year during the Delivery Period.

"**Fair Market Value**" means the value of the Project, as determined by an Independent Appraiser, which would be exchanged in an arms' length transaction between an informed and willing buyer under no compulsion to buy and an informed and willing seller under no compulsion to sell; provided, however, that in such determination: (i) the Project shall be assumed to be in the condition in which it is required to be maintained and returned under this Agreement, taking into account ordinary wear and tear, and such value has not been diminished due to the existence of any damage history, which shall not include ordinary wear and tear; (ii) the Project shall be valued on an installed basis; and (iii) costs of removing the Project from the Project Site shall not be a deduction from, or addition to, such valuation.

"**Independent Appraiser**" means an individual who is a member of a national or regional accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of renewable energy generation systems (with respect to the Generating Project) and battery energy storage systems (with respect to the Storage Project) of the size and age and with the operational characteristics of the Project. Except as may be otherwise agreed by the Parties, an Independent Appraiser shall not be (or within ten (10) years before his or her appoint have been) a director, officer, or employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties.]

Attachments:

- Attachment A: Project Site Safety & Security Requirements

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EXHIBIT III

CITY-SPECIFIC TERMS

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EXHIBIT IV

INSURANCE REQUIREMENTS

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Ava's indemnification of the City, the Ava shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverages and provisions:

1. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the City. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Ava shall not reduce or limit Ava's contractual obligation to indemnify and defend the Indemnified Parties.

2. EVIDENCE OF COVERAGE: Before commencing operations under this Agreement, Ava shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The required certificate(s) and endorsements must be sent as set forth in the notices.

   The Ava shall not receive a notice to proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the City. This approval of insurance shall neither relieve nor decrease the liability of the Ava.

3. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, insurance policies and coverage(s) written on a claims-made basis:

   - Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/phase of this Agreement and acceptance of all work provided under this Agreement.

   - The retroactive date must be before the execution date of the contract or the beginning of contract work.

   - If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Ava must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. ADDITIONAL INSURED: All insurance required herein with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City or, its elected officials, officers, agents, employees,

volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the work shall be covered as insureds under the same coverage as provided the City as respects their ownership of the property and the work to be done thereon.

5. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the City. Acceptance of Ava's insurance by City shall not relieve or decrease the liability of Ava hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Ava.

6. SUBCONTRACTORS: Ava shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this **Exhibit V**. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

7. JOINT VENTURES: If Ava is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:

- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies.

- Coverage shall be at least as broad as in the ISO forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".

8. NOTICE OF CANCELLATION:

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified City insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the City or their designated agent.

9. SELF-INSURANCE:

City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Ava. However, this shall not in any way limit liabilities assumed by the Ava under this Agreement. Any self-insurance shall be approved in writing by City upon satisfactory evidence of financial capacity. Ava's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions. City acknowledges that some insurance

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requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by Ava under this Agreement.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

    a. Each occurrence -$2,000,000

    b. General aggregate -$2,000,000

    c. Personal Injury -$2,000,000

2. General liability coverage shall include:

    a. Project Site and Operations

    b. Personal Injury liability

    c. Severability of interest

3. Automobile Liability Insurance

    For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

    a. Statutory California Workers' Compensation coverage including broad form all states coverage.

    b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

5. Professional Errors and Omissions Liability Insurance

    a. Coverage shall be in an amount of not less than two million dollars ($2,000,000) per occurrence/aggregate.

    b. If coverage contains a deductible or self-retention, it shall not be greater than two hundred fifty thousand dollars ($250,000) per occurrence/event.

    c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

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6. Claims Made Coverage

If coverage is written on a claims' made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

a. Policy retroactive date coincides with or precedes the consultant's start of work

(including subsequent policies purchased as renewals or replacements).

b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

a. Each occurrence -$2,000,000

b. General aggregate -$4,000,000

c. Products/Completed Operations aggregate ** - $4,000,000

d. Personal Injury -$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

a. Project Site and Operations

b. **Products/Completed Operations with limits of four million dollars ($4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by City.

c. Contractual Liability expressly including liability assumed under this Agreement. If the Ava is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.

d. Personal Injury liability

e. City's and Ava's protective liability

f. Severability of interest

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g. Explosion, Collapse, and Underground Hazards (X, C and U)

h. Broad Form Property Damage liability

3. General liability coverage shall include the following endorsements, copies of which shall be provided to City:

a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with City.

b. X C & U (Explosion, Collapse and Underground) Endorsement:

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation and testing at the entity's site. The coverage shall be in the amount of the value of the completed Project and materials.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

The following limits shall apply:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

a. Each occurrence -$2,000,000

b. General aggregate -$4,000,000

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c. Personal Injury -$2,000,000

2. General liability coverage shall include:

- Project Site and Operations
- Personal Injury liability
- Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage including broad form all-states coverage.
- Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

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EXHIBIT V

NOTICES[4]

[City]	Ava
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Ava CMF Phone: (833) 699-3223 Email: avacmf@avaenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: 081103072 Federal Tax ID Number: 82-2262960
Invoices: Attn: Phone: Email:	**Invoices:** Attn: Ava CMF Phone: (833) 699-3223 Email: finance@avaenergy.org With an additional copy to: structuredfinance@avaenergy.org
Payments: Attn: Phone: Email:	**Payments:** Attn: Ava CMF Phone: (833) 699-3223 Email: finance@avaenergy.org With an additional copy to: structuredfinance@avaenergy.org
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: River City Bank 2485 Natomas Park Drive, Suite 100, Sacramento, CA 95833 ABA: 121133416
Credit and Collections: Attn: Phone: Email:	**Credit and Collections:** Attn: Ava CMF Phone: (833) 699-3223 Email: finance@avaenergy.org With an additional copy to: structuredfinance@avaenergy.org

[4] **NTD:** Please note that we plan to redact financial information prior to submitting this PPA to the public record.

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[City]	Ava
Emergency Contact: Attn: Phone: Email:	**Emergency Contact:** Attn: Ava CMF Phone: (833) 699-3223 Email: avacmf@avaenergy.org
With additional Notices of an Event of Default to: Attn: Phone: Email:	**With additional Notices of an Event of Default to:** Attn: Ava CMF Phone: (833) 699-3223 Email: finance@avaenergy.org With an additional copy to: structuredfinance@avaenergy.org

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EXHIBIT VI

AVA TERMINATION PAYMENT SCHEDULE

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EXHIBIT VII

CITY TERMINATION PAYMENT SCHEDULE

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ASSET PURCHASE AGREEMENT

by and among

[AVA COMMUNITY ENERGY]

and

[GREEN BRIDGE]

dated as of [Date]

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT, dated as of [___] (the "Signing Date"), is made and entered into by and between [AVA COMMUNITY ENERGY], a [___] ("Seller") and [GREEN BRIDGE], a [____] ("Buyer"). Capitalized terms not otherwise defined herein have the meanings set forth in Section 1.1 hereof.

RECITALS

WHEREAS, Seller owns, beneficially and of record the Project Assets (as defined below); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the right, title and interest in and to the Project Assets (as defined below) pursuant to the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

ARTICLE I
DEFINITIONS

1.1 Definitions.

(a) Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

"Acquisition Proposal" has the meaning ascribed to it in Section 6.3.

"Actions" means any action, audit, suit, litigation, hearing, assessment, dispute, proceeding, mediation, arbitration, investigation, or other similar action of or before any Governmental Authority (in each case, whether civil, criminal or administrative).

"Affiliate" means as to an entity, any other entity that, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with such entity. For the purposes of this definition, "control" and its derivatives mean, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or otherwise.

"Agreement" means this Asset Purchase Agreement, the Disclosure Schedules and Exhibits hereto, as amended, modified or supplemented from time to time.

"ALTA Survey" means an ALTA/NSPS Land Title Survey (which shall include an overlay of the approved site plan of the Project and any other approved improvements, structures or

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Encumbrances to be located on the Project Real Property) meeting the "2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys", all in a form and substance reasonably acceptable to Buyer.

"Bankruptcy" means, with respect to a Person, that such Person (a) commences a voluntary case under the Bankruptcy Code; (b) files a petition seeking to take advantage of any Bankruptcy Laws; (c) consents to or fails to contest in a timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (d) applies for, or consents to or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; (e) admits in writing its inability to pay, or generally not paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (f) makes a general assignment for the benefit of creditors other than in the ordinary course of business; (g) takes any action for the purpose of effecting any of the foregoing; or (h) has a case or other proceeding commenced by a third party against it seeking (i) relief under any Bankruptcy Laws or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person of all or any substantial part of its assets, and such case or proceeding continues undismissed or unstayed for a period of sixty (60) days.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time, or any similar federal or state law for the relief of debtors.

"Bankruptcy Laws" means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions in effect from time to time.

"Base Purchase Price" means [________________________] dollars ($[________]).

"Books and Records" means all books, records, ledgers, reports, plans and files, documents, correspondence, studies, and other similar materials that are maintained by, or for, the Project, whether in hard-copy or electronic form; provided, however, that Books and Records do not include any information relating to bids received in connection with the transactions contemplated by this Agreement or information and analysis (including financial analysis) relating to such bids or any other information relating to Seller's preparation or negotiation of this Agreement, any marketing and advertising materials, or any investment or financing matters.

"Business Day" means any day other than a Saturday, Sunday or a legal holiday in the State of [__________________].

"Buyer" has the meaning ascribed to such term in the preamble of this Agreement.

"Buyer Burdensome Condition" means any requirement, term, obligation, condition or other measure imposed on Buyer, its Affiliates, or any of the Project Assets by a Governmental Authority in connection with any Required Approval or Project Permit that, individually or in the aggregate with all other such requirements, terms, obligations, conditions or other measures, (a) requires Buyer to sell or divest any of the Project Assets or other assets or businesses of Buyer or any of its Affiliates, (b) would reasonably be expected to be adverse to Buyer's ability to construct

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or operate the Project Assets or other assets or businesses of Buyer or any of its Affiliates in any material respect, including with respect to cost, (c) would prohibit or limit the ownership, leasing, licensing, construction, operation, or maintenance of any portion of the Project Assets or other assets or businesses of Buyer or any of its Affiliates, or (d) would otherwise reasonably be expected to have a Material Adverse Effect on the Project or Buyer.

"Buyer Conditions Precedent" has the meaning ascribed to such term in Section 3.2.2.

"Buyer Indemnitees" has the meaning ascribed to such term in Section 7.2(a).

"Buyer's Knowledge" means the actual knowledge of the individuals listed in Schedule 1.1(a).

"Change" has the meaning ascribed to such term in the definition of "Material Adverse Effect" below.

"Change Order" has the meaning ascribed to such term in the EPCA.

"Claim Limit" has the meaning ascribed to such term in Section 7.2(c)(iii).

"Claim Notice" means written notification pursuant to Section 7.3 of a Third-Party Claim as to which indemnity under Section 7.2 is sought by an Indemnified Party, enclosing a copy of all papers served, if any, and specifying the nature of and basis for such Third-Party Claim and for the Indemnified Party's claim against the Indemnifying Party under Section 7.2, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such Third-Party Claim.

"Claim Threshold" has the meaning ascribed to such term in Section 7.2(c)(iii).

"Closing" has the meaning ascribed to such term in Section 3.2.1.

"Closing Date" has the meaning ascribed to such term in Section 3.2.1.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Confidential Information" means all information, data, documents, agreements, files, and other materials (in any form or medium of communication, including whether disclosed orally or disclosed or stored in written, electronic, or other form or media) whether or not marked or otherwise identified as "confidential," which is obtained from or disclosed by or on behalf of the Seller or its Representatives or otherwise, and whether obtained before or after the date hereof relating directly or indirectly to the Project, including, without limitation, all notes, analyses, compilations, reports, forecasts, data, studies, samples, interpretations, summaries, and other documents and materials (in any form or medium of communication, whether oral, written, electronic, or other form or media) prepared by or for the Buyer which contain or otherwise reflect such information, data, documents, agreements, files, or other materials. The term "Confidential Information" as used herein does not include information that: (i) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of its disclosure directly or indirectly by the Buyer or its Representatives in violation of this Agreement); (ii) was

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available to the Buyer on a non-confidential basis from a source other than the Seller or its Representatives, provided that such source, to the Buyer's Knowledge, is not and was not bound by a confidentiality agreement with respect to such information or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary obligation; (iii) was in the Buyer's possession before receiving such information from the Seller, provided that such information, to the Buyer's Knowledge is not and was not subject to another confidentiality agreement and is not and was not prohibited from being disclosed by any other contractual, legal, or fiduciary obligation; or (iv) has been independently acquired or developed by the Buyer without reference to the Confidential Information and without violating any of its obligations under this Agreement.

"Consent" means any consent, approval, authorization, consultation, waiver, permit, grant, agreement, certificate, exemption, order, registration, declaration, filing, notice of, with or to any Person or under any Law, in each case required to permit the consummation of the Transactions.

"Consumer" shall mean a natural person party to a Consumer Agreement who leases, or agrees to purchase energy produced by, a Project.

"Consumer Agreement" means, with respect to a Project, the PPA, lease agreement, or other financing agreement between a Consumer and Seller, together with all ancillary agreements and documents thereto, each as attached to the applicable Work Order.

"Contract" means any written loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, obligation, commitment or instrument that is legally binding, including all amendments thereto.

"Data Room" shall mean the virtual data room hosted by [___________] to which Seller has been given access by Buyer.

"Disclosure Schedules" has the meaning ascribed to such term in the preamble to Article IV.

"Dollar" means such currency of the United States that at the time of payment shall be legal tender for the payment of public and private debts.

"Easements" means easements, rights-of-way, licenses, occupancy or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use or maintenance of the Project.

"Encumbrance" means any encumbrance, Lien, charge, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption or privilege or any agreement or other commitment, whether written or oral, to create any of the foregoing (excluding restrictions on transfer arising under securities Laws).

"Environmental Laws" shall mean all present and future Laws pertaining to or imposing liability or standards of conduct concerning environmental protection, human health and safety,

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contamination or clean-up or the use, handling, generation, release or storage of Hazardous Material, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substances Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended (to the extent relating to human exposure to Hazardous Materials), the National Environmental Policy Act, as amended, and all analogous state or local statutes, any state superlien Law and environmental clean-up Laws and all regulations adopted in respect of the foregoing Laws whether now or hereafter in effect.

[“EPCA” means that certain Engineering, Procurement and Constructions Terms and Conditions, by and between Seller and [___], substantially in the form of Exhibit C attached hereto, and together with the applicable Work Orders, for the installation of each Project.]

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

“Final Completion” has the meaning ascribed to such term in the EPCA.

“Fundamental Representations” means those representations and warranties contained in Section 4.1 (Organization, Authority and Qualification), Section 4.2 (Interests in Project Assets), Section 4.10 (Brokers), Section 4.11 (Title to Assets), Section 5.1 (Organization and Authority of Buyer), Section 5.5 (Brokers), Section 5.6 (Solvency; Fraudulent Conveyance), and Section 5.7 (Investigation by Buyer).

“GAAP” means United States generally accepted accounting principles consistently applied from period to period and throughout any period in accordance with the past practices of Seller.

“Governmental Authority” means any federal, state, local or other governmental, regulatory or judicial agency, authority, or other entity having legal jurisdiction over the Project or the Parties. For the purposes of this Agreement, homeowners’ or property owners’ associations are considered entities having legal jurisdiction over the Project.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered or issued by or with any Governmental Authority.

“Hazardous Material” means any substance, element, compound or mixture, whether solid, liquid or gaseous: (a) which is defined as “solid waste,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “contaminant,” “hazardous constituent,” “special waste,” “toxic substance,” or a word, term, or phrase of similar meaning or regulatory effect under any Environmental Law or is otherwise regulated under any Environmental Law; (b) which is otherwise hazardous and is subject to regulation by any Governmental Authority; (c) petroleum hydrocarbons or any petroleum product; (d) polychlorinated biphenyls (PCBs); (e) asbestos-containing materials; (f) radioactive materials; (g) lead; (h) mold; (i) mycotoxin; (j) urea formaldehyde foam insulation; (k) radon gas; (l) any solid waste or waste or substance that is listed, defined, designated or classified as, or otherwise

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determined by any Environmental Law to be, ignitable, corrosive, radioactive, dangerous, toxic, explosive, infectious, radioactive, mutagenic or otherwise hazardous.

"Indemnified Party" means any Person claiming indemnification under any provision of Article VII.

"Indemnifying Party" means any Person against whom a claim for indemnification is being asserted under any provision of Article VII.

"Indemnity Notice" means written notification pursuant to Section 7.3(b) of a claim for indemnity under Article VII by an Indemnified Party, specifying the nature of and basis for such claim, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such claim.

"Intellectual Property" means all intellectual property rights of every type, including all United States and foreign: (a) trademarks, service marks, trade names, Internet domain names, designs, logos, slogans and general intangibles of like nature, together with goodwill, registrations and applications relating to the foregoing; (b) patents and patent applications; (c) copyrights and copyright applications and registrations; and (d) trade secrets and other confidential information, technology, know-how, inventions, processes, formulae, algorithms, models and methodologies.

"Law" means any United States federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

"Leasehold Title Policy" means with respect to Seller's leasehold interest in the Project Real Property, an ALTA owner's title insurance policy issued by the Title Company, in the amount of the Base Purchase Price and together with such endorsements, and otherwise in such form, as Buyer may require in its sole and absolute discretion.

"Liabilities" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or determined or determinable, including those arising under any Law, Action or Governmental Order and those arising under any Contract, arrangement or undertaking (but excluding any future performance obligations under any such Contracts, arrangements or undertakings).

"Lien" means any mortgage, pledge, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other), or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, or any financing lease having substantially the same effect as any of the foregoing.

"Loss" means any and liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, fines, claims, penalties, actions, suits, judgments, costs, expenses and disbursements, (including reasonable legal, accounting, and engineering fees and expenses and reasonable costs of investigation), of whatsoever kind and nature, including those resulting from property injury, bodily injury, or death, in each case whether or not involving a third party claim.

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"Made Available" means posted to, and not removed from, the Data Room, as of one Business Day prior to the Closing Date; provided, however, that any documents or information that Buyer is required to provide to the Seller in order for Buyer's representation in Section 4.9 to be true, correct and complete shall be deemed to have been "Made Available" to Buyer for purposes of this Agreement.

"Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development (each, a "Change") that individually or in the aggregate is materially adverse to the business, financial condition or results of operations of the Project or Project Assets; provided, however, that none of the following shall be deemed (either alone or in combination) to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (a) any Change attributable to the execution of this Agreement, the disclosure or consummation of the Transactions, the taking of any action contemplated thereby, or the identity of Buyer, (b) any Change arising from or relating to any existing event, occurrence, state of facts or development with respect to which the Buyer has knowledge as of the date hereof (including any matter set forth in the Disclosure Schedules), (c) any Change in, or effects arising from or relating to, general business or economic conditions affecting the industry in which the Project operates, including, without limitation, changes in wholesale and/or utility electricity prices or renewable energy credits, (d) any Change in, or effects arising from or relating to, national or international political or social conditions, (e) any pandemic or outbreak of disease (including COVID-19 or any other coronavirus), (f) any Change in, or effects arising from or relating to, financial, banking, or securities markets, (g) any Change in, or effects arising from or relating to, changes in GAAP or Laws, (h) any Change in, or effects arising from or relating to, any seasonal fluctuations in the business, including, without limitation, changes in wholesale and/or utility electricity prices or renewable energy credits; or (i) any failure of Seller to achieve any projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics, provided that the underlying facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Material Adverse Effect may be taken into account in determining whether there has been a Material Adverse Effect; provided, however, that any such adverse effect described in the preceding clauses (c) through (f) shall be excluded only to the extent that such adverse effect does not disproportionately affect Seller relative to other Persons engaged in the industries in which Seller operates.

"Material Contracts" means each of the EPCA, the Work Orders, the Consumer Agreements, and all interconnection Contracts for electricity.

"NTP Fee Payment" has the meaning set forth in the Project Information Summary and represents the payment by Buyer to Seller in consideration of the Project Assets at Closing in an amount equal to one hundred percent (100%) of the Base Purchase Price.

"Parties" means Buyer and Seller collectively, and each of them may be referred to as a "Party".

"Permits" means each and every national, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including each and every environmental, land use, construction or operating permit and any agreement, consent or approval from or with any Governmental Authority that is required by any

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Law or that is otherwise necessary for the performance of the installation or for operation, maintenance and use of a Project.

"Permitted Encumbrances" means (a) Encumbrances imposed by law such as carriers', warehouseman's, mechanics', materialmen's, landlords', laborers' suppliers' and vendors' liens and other statutory liens securing obligations which are not yet delinquent or the validity of which are being contested in good faith by appropriate actions; (b) Encumbrances for Taxes, assessments and other governmental charges not yet delinquent or the validity of which are being contested in good faith by appropriate actions; (c) deposits to secure utility interconnection, the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business consistent with past practice; (d) all matters of record, reciprocal easement agreements and other encumbrances on title to real property that are disclosed on the title commitment and survey that were delivered to Buyer by Seller prior to the date of this Agreement and that do not and would not be reasonably expected to, individually or in the aggregate, materially impair the value of, or materially impair the construction or operation of the Project or the Project Real Property; (e) all applicable zoning, entitlement, conservation restrictions, land use restrictions and other governmental rules and regulations (other than any such Encumbrances created or enforceable due to a breach or violation of, or non-compliance with, any such ordinances, codes or other Law); (f) existing utility, access and other easements and rights of way of record; and (g) Encumbrances identified in Schedule 7.1.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity, or a Governmental Authority.

"Post-Closing Tax Period" means any Tax period or portion thereof that begins the day after the Closing Date.

"PPA" means that certain [Power Purchase Agreement], by and between the [Company] and [___], substantially in the form of Exhibit E attached hereto.

"Pre-Closing Tax Period" means any Tax period or portion thereof ending before the Closing Date (including the portion of any Straddle Period ending on the day preceding the Closing Date).

"Project" shall mean a ground mount or rooftop photovoltaic system including photovoltaic panels, racking systems, wiring and other electrical devices, conduit, weatherproof housings, hardware, inverters, remote operating equipment, connectors, meters, disconnects, over current devices and battery storage (including any replacement or additional parts included from time to time) and, unless the context otherwise requires a reference to such ground-mount or rooftop photovoltaic system only, shall include the applicable Consumer Agreement and/or Utility Program Agreement related to such photovoltaic system and all other related rights, Permits and manufacturer, installer and other warranties applicable thereto.

"Project Assets" means all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site), owned, entered into or leased by, or licensed to Seller,

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as of the specified date, in each case, which relate to or are used or held for use in connection with the Project, as set forth in Schedule 1.1(c) attached hereto.

"Project Capacity" has the meaning ascribed thereto in the Project Information Summary and refers to the design energy production capacity of the Project, as applicable, specified in direct and alternating current.

"Project Information Summary" means the information set forth in Exhibit F.

"Project Real Property" means the leasehold interests, easement interests, or other real property interests of Seller acquired pursuant to a Real Property Agreement.

"Project Real Property Owner" means the landlord or grantor that is the party to the applicable Real Property Agreement or the Person obtaining title or rights to the Project Real Property from such Person subsequent to the execution and recording of a memorandum of the applicable Real Property Agreement.

"Project Site" means the Project Real Property upon which the Project will be located.

"Purchase Price" means the result of (a) the Base Purchase Price, plus (b) any Change Order adjustments.

"Real Property Agreements" means, with respect to a Project, any contract to which the applicable Project Company is party that grants to such Project Company a real property interest in the applicable Project Site or that memorializes such real property interest in the applicable land records, in form and substance satisfactory to Buyer.

"Reports" means the reports listed in the Project Information Summary.

"Representatives" means the directors, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers and financial advisors) of Seller and Buyer and their Affiliates.

"Required Approvals" means the Consents set forth in Schedule 4.4.

"Required Permits" means the Permits set forth in Schedule 3.3(e).

"Seller" has the meaning ascribed to such term in the preamble of this Agreement.

"Seller Conditions Precedent" has the meaning ascribed to such term in Section 3.2.3.

"Seller Indemnitees" has the meaning ascribed to such term in Section 7.2(b).

"Seller's Knowledge" or "Knowledge of Seller" means the actual knowledge, after reasonable inquiry and investigation (as opposed to any constructive or imputed knowledge) of the individuals listed in Schedule 1.1(b).

"Signing Date" has the meaning ascribed to such term in the preamble of this Agreement.

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"SNDA" means a subordination, non-disturbance and attornment agreement to be entered into by and among, if applicable, Buyer, the Project Real Property Owner and any mortgagor parties.

"Subsidiaries" means, as of the relevant date of determination, with respect to any Person, a corporation, limited liability company or other Person of which 50% or more of the voting power of the outstanding voting equity securities or 50% or more of the outstanding economic equity interest is held, directly or indirectly, by such Person.

"Substantial Completion" has the meaning ascribed to such term in the EPCA.

"Substantial Completion Date" has the meaning ascribed to such term in the EPCA.

"Taxes" means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, ad valorem, stamp, occupation, windfall or other profits, environmental (under Section 59A of the Code), customs, assessments, charges, duties, tariffs, fees, levies, real property, personal property, capital stock, employment, social security (or similar), unemployment, disability, payroll, license, employee or other withholding taxes (together with any interest, penalties, additional amounts or additions to tax in respect of the foregoing).

"Taxing Authority" means any agency or political subdivision of any federal, foreign, state, local or municipal government entity with the authority to impose any Tax.

"Tax Return" means any report, return, document, declaration or other information or filing required to be supplied to any Taxing Authority or jurisdiction (foreign or domestic) with respect to Taxes.

"Third-Party Claim" has the meaning ascribed to such term in Section 7.3(a).

"Title Company" means [___].

"Transactions" means the transactions contemplated by or effectuated pursuant to this Agreement, the Assignment of Project Assets substantially in the form of Exhibit A attached hereto, and any other transactions reasonably contemplated or effectuated hereunder or thereunder.

"Transfer Taxes" has the meaning ascribed to such term in Section 6.4.

"Treasury Regulations" means the United States Treasury Regulations promulgated under the Code.

"Utility" means [___].

"Utility Program Agreement" means any interconnection, tariff or other program operated or provided by the Utility by which the Project receives payment for Project-generated electricity, renewable energy credits or other credits for energy supply to or for the benefit of customers.

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"Work" has the meaning ascribed to such term in the EPCA.

"Work Order" means those certain work orders issued pursuant to and defined in the EPCA.

ARTICLE II
PURCHASE AND SALE OF PROJECT ASSETS; CLOSING

2.1 Purchase and Sale of Project Assets. Upon and subject to the terms and conditions set forth in this Agreement and in consideration of the NTP Fee Payment, Seller shall sell, assign, convey and transfer at the Closing to Buyer, and Buyer shall purchase, acquire and accept at the Closing from Seller, all of the right, title and interest of Seller in and to the Project Assets, so that upon the Closing, Buyer shall own, directly, all of the Project Assets free and clear of all Encumbrances or other limitations whatsoever except for applicable restrictions on Buyer's ability to transfer under federal and state securities laws.

2.2 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the "Assumed Liabilities"), and no other Liabilities: all Liabilities in respect of the Material Contracts that are included in the Project Assets but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing.

2.3 Excluded Liabilities. Notwithstanding the provisions of Section 2.2 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "Excluded Liabilities"). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, any ancillary agreements and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller or relating to the Project, the Project Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.4; or (iii) other Taxes of Seller of any kind or description (including any Liability for Taxes of Seller that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Project or the Project Assets to the extent such Action relates to such operation on or prior to the Closing Date;

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(e) any Liabilities of Seller arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Seller;

(f) any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments;

(g) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

(h) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Project owing to financial institutions; and

(i) any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order.

2.4 Payments. In consideration of the purchase by Buyer and sale by Seller and its Affiliates of the Project Assets and the other matters set forth herein, on the Closing Date, Buyer shall pay Seller an amount equal to the NTP Fee Payment as set forth in Project Information Summary, which shall be paid by Buyer to Seller in United States Dollars by wire transfer of immediately available funds to the bank account designated by Seller by written notice to Buyer.

2.5 Documentation. Seller agrees to provide Buyer with a receipt, confirmation or other appropriate documentation reasonably requested by Buyer from time to time in order to evidence payments made by Buyer to Seller and for payments made pursuant to this Agreement.

2.6 Withholding. Notwithstanding any other provision of this Agreement, and acknowledging that absent a change in Tax law the Parties believe that withholding will not apply to amounts payable under this Agreement, Buyer shall be entitled to deduct and withhold from any amount otherwise payable pursuant to this Agreement such amounts as Buyer is required to deduct and withhold under any provision of the Code or any applicable Law. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

ARTICLE III
CLOSING; CLOSING DELIVERIES; CONDITIONS PRECEDENT

3.1 Closing.

3.1.1 Closing Date. The consummation of the purchase by Buyer, and the sale by Seller, of the Project Assets (the "Closing") shall take place (electronically) at such place as the Parties mutually determine, as soon as practicable but in no event later than the third (3rd) Business Day after the satisfaction or waiver of the Buyer Conditions Precedent and Seller Conditions Precedent (other than those conditions to be satisfied or waived at the Closing) or such other date and place as the Parties shall mutually agree (the "Closing Date"). The Closing shall be effective as of 11:59:59 P.M., Eastern Time, on the Closing Date. Documents to be delivered at the Closing

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shall be delivered to the place of Closing by electronic transmission on the Closing Date. Each of Buyer and Seller shall further deliver such other evidence, instruments, documents and certificates required to be delivered by such Parties pursuant to this Article III.

3.1.2 Buyer's Closing Deliveries. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller all of the following, in form and substance reasonably acceptable to Seller:

(a) the NTP Fee Payment, to an account or accounts designated in writing by Seller prior to Closing;

(b) a certificate, dated as of the Closing Date, executed by a duly authorized officer of Buyer, certifying as to the matters set forth in Sections 3.2.3(a) and 3.2.3(b);

(c) a certificate, dated as of the Closing Date, executed by a duly authorized officer of Buyer certifying that: (i) the Buyer has duly authorized the execution, delivery and performance by Buyer of this Agreement and the Transactions and the resolutions effecting such authorization remain in full force and effect as of the Closing Date, (ii) a true, accurate and complete copy of the resolutions of the Buyer duly authorizing the execution, delivery and performance by Buyer of this Agreement, and the Transactions, and that such resolutions are in full force and effect as of the Closing Date, and (iii) attached thereto is evidence of the incumbency of Buyer's officers or managers that executed this Agreement, any other agreement delivered on the Closing Date, and any certificate delivered in connection with the Closing; and

(d) a counterpart signature page to the Assignment of Project Assets, duly executed by Buyer substantially in the form of Exhibit A attached hereto.

3.1.3 Seller's Closing Deliveries. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer all of the following, in form and substance reasonably acceptable to Buyer:

(a) A Bill of Sale and Assignment Agreement for all Project Assets and Assumed Liabilities substantially in the form of Exhibit A attached hereto, duly executed by Seller, including duly executed transfer documentation in respect of the Project Assets as may be reasonably requested by Buyer;

(b) a certificate, dated as of the Closing Date, executed by a duly authorized officer or manager of Seller, certifying as to the matters set forth in Sections 3.2.2(a), 3.2.2(b) and 3.2.2(c);

(c) for the Seller, a certificate, dated as of the Closing Date, executed by a duly authorized signatory of Seller, certifying that: (i) attached thereto is a true, accurate and complete copy of Seller's Joint Powers Agreement and certifying that the Joint Powers Agreement remains in full force and effect, (ii) a true, accurate and complete copy of the resolutions of the Board of Directors of Seller duly authorizing the execution, delivery and performance by Seller of this Agreement, and the Transactions, and that such resolutions are in full force and effect as of the Closing Date, and (iii) the incumbency of Seller's officers or managers that executed the Agreement, any other agreement delivered on the Closing Date, and any certificate delivered in connection with the Closing;

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(d) except as set forth on Schedule 3.3(e), evidence that each Governmental Authority having jurisdiction with respect to the Project has approved the Project and issued all applicable Permits for the Project, in each case in a form and substance reasonably satisfactory to Buyer, that is final and non-appealable, and which remains in full force and effect;

(e) copies of all construction milestone certificates for the Project pursuant to the EPCA that have been obtained as of the Closing Date;

(f) certification of non-foreign status, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and Treasury Regulations Section 1.1445-2(b)(2) with respect to Seller (and its direct or indirect regarded owner, as applicable);

(g) for Seller, a properly completed and executed IRS Form W-9, dated as of the Closing Date and certifying that Seller is not subject to backup withholding;

(h) [a Phase I environmental report for such Project, or reliance letter related thereto, dated within one hundred eighty (180) days of the Closing Date, in form and substance reasonably satisfactory to Buyer;

(i) an ALTA Survey for the Project, dated within thirty (30) days of the Closing Date and certified to Seller, Buyer and the Title Company;

(j) an executed estoppel from each Project Real Property Owner to a Real Property Agreement, dated within ten (10) days of the Closing Date, substantially in the form of Exhibit D;

(k) a copy of a geotechnical report or pile load testing report for the Project, in form and substance reasonably satisfactory to Buyer;

(l) a Leasehold Title Policy in accordance with Section 4.8.1;

(m) title affidavits, mechanic's lien indemnifications and such other customary affidavits as the Title Company may reasonably require in order to issue the Leasehold Title Policy, each in form and substance approved by Buyer in its reasonable discretion;

(n) such conveyancing, recording, or transfer tax forms, returns or certificates, if any, as are required to be delivered or signed by Seller by applicable Law in connection with the proper consummation of the transactions contemplated by this Agreement;

(o) an executed SNDA, in form and substance reasonably satisfactory to Buyer;

(p) all other documents, instruments, agreements and certificates that the Title Company may require in connection with the proper consummation of the transactions contemplated by this Agreement or in order to issue the Leasehold Title Policy;

(q) confirmation of approval of the interconnection required for the Project by the Utility or applicable Governmental Authority;] and

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(r) such other agreements, amendments, certificates, instruments or documents, in form and substance reasonably acceptable to Buyer, as may be reasonably requested by Buyer to effect the Closing.

3.2 Conditions Precedent.

3.2.1 Generally. For purposes of this Agreement, Buyer's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by Buyer, of each of the Buyer Conditions Precedent, and Seller's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by Seller, of each of the Seller Conditions Precedent.

3.2.2 Buyer Conditions Precedent to the Closing. Unless and until the following conditions precedent (the "Buyer Conditions Precedent") are satisfied, or waived in writing by Buyer, Buyer shall not be obligated to effect the Closing hereunder:

(a) Representations and Warranties. The Fundamental Representations and the representations and warranties made by Seller in this Agreement that are qualified with respect to materiality, including by reference to Material Adverse Effect, shall be true and accurate in all respects, and the representations and warranties made by Seller in this Agreement, other than the Fundamental Representations, that are not so qualified shall be true and accurate in all material respects, in each case on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and accuracy of which shall be determined as of that specified date) as though made on and as of the Closing Date, and there shall have been delivered to Buyer a certificate to such effect, dated as of the Closing Date, signed by Seller.

(b) Performance. Seller shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing, and there shall have been delivered to Buyer a certificate to such effect, dated as of the Closing Date, signed by Seller.

(c) No Material Adverse Effect. There shall have been no Material Adverse Effect, nor shall any event or events have occurred, and no circumstances exist, that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(d) Closing Deliveries. Seller shall have delivered, or caused to be delivered, to Buyer all items required to be delivered pursuant to Section 3.1.3, in form and substance reasonably satisfactory to Buyer.

(e) No Proceedings. No order, injunction, judgment, decree or ruling of any Governmental Authority is in effect which restrains, hinders, or prohibits the consummation of the Transactions, nor shall there be pending, any action, suit, investigation or proceeding by or before any Governmental Authority which is reasonably likely to (i) restrain, hinder, prohibit or challenge the validity of the Transactions or (ii) prohibit the ownership, use, development and operation of the Project by Buyer.

(f) Legislation. No applicable Law shall have been enacted which prohibits or restricts the consummation of the Transactions.

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(g) No Claim Regarding Project Assets or Proceeds. There will not have been made or threatened by any third party any claim asserting that such third party (i) is the holder or the beneficial owner of the Project Assets or (ii) is entitled to all or any portion of the Purchase Price.

(h) Material Contracts. Each of the Material Contracts shall (i) have been duly and validly executed by each party thereto and (ii) be in full force and effect.

(i) Required Approvals. The Required Approvals have been duly obtained, made or given and are in full force and effect and are not subject to any pending appeals or requests for reconsideration or rehearing and all periods for filing an appeal or requesting reconsideration or rehearing have expired and none of the Required Approvals imposes any Buyer Burdensome Condition.

(j) Permits. Seller holds all right, title and interest in and to all of the Permits and all such Permits are in full force and effect, without default or noncompliance or, to Seller's Knowledge, any threat of default or noncompliance, thereunder.

3.2.3 Seller Conditions Precedent to the Closing. Unless and until the following conditions precedent (the "Seller Conditions Precedent") are satisfied, or waived in writing by Seller, Seller shall not be obligated to effect the Closing hereunder:

(a) Representations and Warranties. The Fundamental Representations and the representations and warranties made by Buyer in this Agreement that are qualified with respect to materiality, including by reference to Material Adverse Effect, shall be true and accurate in all respects, and the representations and warranties made by Buyer in this Agreement, other than the Fundamental Representations, that are not so qualified shall be true and accurate in all material respects, in each case on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and accuracy of which shall be determined as of that specified date) as though made on and as of the Closing Date, and there shall have been delivered to Seller a certificate to such effect, dated as of the Closing Date, signed by Buyer.

(b) Performance. Buyer shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Buyer at or before the Closing, and there shall have been delivered to Seller a certificate to such effect, dated as of the Closing Date, signed by Buyer.

(c) Closing Deliveries. Buyer shall have delivered, or caused to be delivered, to Seller all items required to be delivered pursuant to Section 3.1.2, in form and substance reasonably satisfactory to Seller.

(d) No Proceedings. No order, injunction, judgment, decree or ruling of any Governmental Authority is in effect which restrains, hinders or prohibits the consummation of the Transactions, nor shall there be pending, any action, suit, investigation or proceeding by or before any Governmental Authority which is reasonably likely to restrain, hinder, prohibit, delay or challenge the validity of any of the Transactions.

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(e) Legislation. No applicable Law shall have been enacted which prohibits or restricts the consummation of the Transactions.

3.3 Satisfaction of Conditions. Subject to the terms and conditions of this Agreement, each of the Parties hereto shall, and shall cause its Affiliates as appropriate, to use their commercially reasonable efforts to take, or to cause to be taken, all action and to do, or to cause to be done, all things necessary, proper or advisable to consummate, as promptly as practicable, the Transactions, including, but not limited to, the satisfaction of the conditions precedent listed in Section 3.2 that are within the control of such Party and the obtaining of all consents, waivers, authorizations, orders and approvals of third parties, including Governmental Authorities, required of it by this Agreement. Each Party shall, and shall cause its Affiliates as appropriate, to cooperate fully with the other Parties hereto in assisting such Parties to comply with this Section 3.3.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as otherwise set forth in a disclosure schedule relating to any particular representation and warranty (collectively, the "Disclosure Schedules"), Seller represents and warrants to Buyer that all of the statements contained in this ARTICLE IV are true as of the Closing Date.

4.1 Organization, Authority and Qualification. Seller is duly organized, validly existing and in good standing under the jurisdiction of its formation. Seller has all necessary power and authority to enter into, execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all requisite action on the part of Seller. This Agreement has been duly executed and delivered by Seller and, assuming due authorization, execution and delivery by the Buyer, this Agreement is a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally.

4.2 Interests in Project Assets.

(a) There are no outstanding options, warrants, rights, commitments, preemptive rights or agreements of any kind to which the Seller is a party to or by which the Seller is bound which would obligate the Seller to issue, deliver, purchase or sell any additional interests of any kind in the Project or Project Assets.

(b) Seller owns, directly, beneficially and of record, one hundred percent (100%) of the Project Assets, free and clear of all Encumbrances, except Permitted Encumbrances.

4.3 No Conflicts. The execution, delivery and performance of this Agreement by Seller does not and shall not: (a) violate, conflict with or result in the breach of the formation documents, operational documents or organizational approvals (or other comparable organizational documents) of Seller; (b) conflict with or violate any Law or Governmental Order applicable to Seller; (c) violate, conflict with or result in a breach of or default under (with or without due notice or lapse of time or both) any of the terms, conditions or provisions of any Material Contract;

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(d) result in the creation of any Encumbrance upon the Project Assets, or (e) give any Person the right to modify, terminate or accelerate any obligation under any Governmental Order or Material Contract.

4.4 Consents and Approvals. Except as set forth on Schedule 4.4, the execution, delivery and performance of this Agreement by Seller do not and shall not require any Consent of any Person, except: (a) as may be necessary as a result of any facts or circumstances relating to Buyer or any of its Affiliates; or (b) to the extent that the failure to obtain any such Consent would not reasonably be expected to have a Material Adverse Effect.

4.5 Litigation. No Action by or against the Seller is pending or, to the Knowledge of Seller, threatened, challenging the legality, validity or enforceability of this Agreement or the consummation of the Transactions. Except as set forth on Schedule 4.5, there are no (a) Actions pending against the Seller that affect or could reasonably be expected to affect the Project Assets or (b) outstanding Governmental Orders by which the Project Assets are bound.

4.6 Compliance with Laws; Permits.

(a) The Project is in compliance with all Laws applicable to the Project Assets in all material respects.

(b) Seller has all Permits necessary for the operation of the Project in compliance with all Laws and Governmental Orders in all material respects, and such Permits are valid and in full force and effect. No Action is pending or, to the Knowledge of Seller, threatened to revoke, suspend, cancel, terminate, or adversely modify any such Permit.

(c) The Project Information Summary, attached hereto and made a part hereof as Exhibit F, sets forth a true, correct and complete list of all Permits that have been obtained and issued in the name of Seller or the Project as of the Signing Date.

(d) The Project Information Summary, attached hereto and made a part hereof as Exhibit F, sets forth a true, correct and, to Seller's Knowledge, complete list of all Permits that have been applied for in the name of Seller or the Project, or are expected by Seller to be applied for in the name of Seller or the Project, but that have not been issued as of the Signing Date.

(e) The Permits listed on the Project Information Summary are, to Seller's Knowledge, all of the Permits required by Law for the development and construction of the Project as contemplated by this Agreement.

(f) Seller has provided to Buyer true, correct and complete copies of all Permits that have been obtained and issued in the name of Seller on or prior to the Closing Date, by making such copies available in the Data Room or by otherwise providing such copies to Buyer.

4.8 Real Property.

4.7.1 Title. As of the Signing Date, Seller holds good and valid leasehold interests and Easement or fee interests, as applicable, in the Project Site free and clear of all Encumbrances.

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4.7.2 Real Property Agreements. The Project Information Summary contains a true, correct and complete list of all Real Property Agreements. Seller has delivered to Buyer true, correct and complete copies of all Real Property Agreements and related recorded memorandums, to the extent such Real Property Agreement was entered into on or prior to the Closing Date.

4.7.3 Legal, Valid and Binding Agreements. Each Real Property Agreement constitutes a legal, valid and binding agreement of Seller and, to Seller's Knowledge, of each other party thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws relating to or affecting creditors' rights generally and general equitable principles.

4.7.4 Defaults; Breaches. Except as set forth in Schedule 4.8.4, (a) Seller is not in breach or default in any material respect under any Real Property Agreement and, to Seller's Knowledge, no other party to a Real Property Agreement is in breach or default in any material respect thereunder and (b) to Seller's Knowledge, no event has occurred which, with notice or lapse of time, or both, would constitute a breach or default in any material respect by Seller or any other party to a Real Property Agreement, or would permit the termination, modification or acceleration of a Real Property Agreement.

4.8.1 4.7.5 Recordation. Except as set forth in Schedule 4.8.5, all Real Property Agreements or a memorandum of lease with reference thereto has been recorded in the official real estate records of [___________].

4.7.6 Leasehold Title Policy. Seller shall be obligated, at Seller's sole cost and expense, to take (and hereby covenants to take) any and all actions as may be required by the Title Company to issue the Leasehold Title Policy (including without limitation satisfaction, elimination and removal of record of the applicable conditions, requirements and exceptions shown on the title commitment or any other title matters or encumbrances necessary for the Title Company to issue the Leasehold Title Policy), without exception for: (A) any Encumbrances other than Permitted Encumbrances (B) any title matter or Encumbrance that was voluntarily placed upon the Project Real Property or any part thereof by Seller or their Affiliates on or following the date of this Agreement, and (C) any other Encumbrance which can be satisfied or removed with the payment of a sum certain on or affecting the Project Real Property or any part thereof. Buyer shall pay directly to Title Company all premiums, fees and charges of the Title Company for or in connection with the issuance of the Leasehold Title Policy.

4.7.8 Other Project Assets. Except as set forth in Schedule 4.8.7, as of the Signing Date, Seller holds good and marketable title or valid license or usage rights in and to the Project Assets sufficient for their intended use for the Project, free and clear of all Encumbrances, other than Permitted Encumbrances.

4.7.9 Condemnation, Rezoning and Moratoriums. None of Seller or any of its Affiliates or to Seller's Knowledge, any predecessor in interest under any Real Property Agreement, has received written notice of condemnation, rezoning proceeding, solar moratoriums, taking or any similar proceeding against or relating to any portion of the Project.

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4.7.10 Options and Preferential Rights. Except as may be set forth in the Real Property Agreements, there are no outstanding options, rights of first offer, rights of first refusal or other preferential rights to lease or purchase the Project Real Property or any portion thereof or interest thereof.

4.7.11 Flood Plains and Significant Conditions. Except as disclosed on the ALTA Survey, no portion of the Project Real Property is located in any area designated as a flood plain or has been designated as an historical landmark by any Governmental Authority, and no cemetery, burial grounds or other matters of "archeological significance" are located on or a part of the Project Real Property.

4.7.12 Special Assessments. There exists no and are presently no pending, and Seller has not received written notice of, special assessments, special service area or district charges, drainage, improvement, water, preservation, user, conservation, transportation or other special district charges or assessments, impact fees, annexation fees, water or sewer bills, recapture, repayment or development charges or taxes of any nature with respect to the Project Real Property or any part thereof that are payable at Closing or that may or shall become due and payable after Closing.

4.9 Material Contracts. The Project Information Summary contains a true, correct and complete list of all Material Contracts. Seller has Made Available to Buyer a true and complete copy of each Material Contract, redacted with respect to any cost or pricing information. Each Material Contract is valid and binding on Seller and, to the Knowledge of Seller, is valid and binding on the other parties thereto. Except as set forth on Schedule 4.9, Seller and, to the Knowledge of Seller, the other parties thereto are not in material default or breach under any such Material Contract, and there are no pending claims affecting the Material Contracts as of which Seller has written notice. Seller has sufficient experience, expertise, and labor resources to oversee the Work in accordance with the requirements of the EPCA.

4.10 Brokers. Other than as set forth on Schedule 4.10, Seller shall be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Seller or its Affiliates.

4.11 Title to Assets. Seller has valid title to, or valid leasehold interests or other comparable contract rights in or relating to, all of the Project Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

4.12 Intellectual Property. The Seller owns or holds a valid and enforceable agreement, license, permit, certificate, franchise or other authorization or right to use the technology and Intellectual Property rights necessary to own, lease, operate, maintain and repair the Project Assets, and no actions by the Seller that have been performed or are expected to be performed under the Material Contracts infringe upon or misappropriate the Intellectual Property rights of any other Person

4.13 Environmental Matters. Seller has Made Available to Buyer all environmental assessment reports with respect to the Project. To Seller's Knowledge: (a) each Project is in

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material compliance with all applicable Environmental Laws and Permits; (b) no notice of violation of such Environmental Laws or Permits has been issued by any Governmental Authority with respect to the Project which has not been resolved; (c) there is no pending or threatened action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration in respect of any Environmental Laws or Permits with respect to the Project; (d) there has been no release of, or exposure to, any Hazardous Material on, from or related to the Project that has resulted in or could reasonably be expected to result in any material liability or material obligation with respect to the Project; and (e) no action has been taken by Seller or the Project that would cause the Project not to be in material compliance with all applicable Environmental Laws or Permits pertaining to Hazardous Materials.

4.14 Disclaimer. EXCEPT AS SET FORTH IN THIS ARTICLE IV, NONE OF SELLER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES MAKE OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF SELLER OR ITS AFFILIATES, ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

4.15 Insurance. The Project Information Summary contains a summary description of all material insurance policies maintained by or on behalf of the Seller in relation to the Project or Project Assets. Such insurance policies are in full force and effect and all premiums due and payable for such insurance policies have been paid. Neither the Seller nor any Affiliate of the Seller has received any written notice from the insurer under any such insurance policy disclaiming coverage to the Seller in relation to the Project or Project Assets, reserving rights with respect to a particular claim involving the Project or Project Assets or such policy in general, or canceling any such policy that has not been replaced on substantially similar terms. Except as set forth in Schedule 4.18, there is no Action pending or, to Seller's Knowledge, threatened in writing, in each case, involving the Project or Project Assets in respect of any insurance policy set forth in Schedule 4.18.

4.16 Reports. Seller has obtained and Made Available to Buyer all of the Reports listed in the Project Information Summary. Seller has delivered to Buyer a true, correct and complete copy of each final Report to the extent such Report was in the possession of Seller or its Affiliates on or prior to the Closing Date. To Seller's Knowledge, there has been no material change in any findings or conclusions of any final Report delivered by Seller to Buyer other than any for which Seller has, as of the Closing Date, redelivered such Report to Buyer in final form as revised to address such material change.

4.17 Seller Credit Support Obligations. Except as set forth on Schedule 4.17, there are no guaranties, letters of credit, performance or surety bonds or similar credit support arrangements issued by Seller or its Affiliates with respect to or for the account of the Project, including pursuant to the Material Contracts and the Real Property Agreements.

4.18 Sufficiency of Project Assets. Seller is not aware nor should reasonably be aware of any reason why the Project Assets are insufficient to enable the continued construction, development, interconnection, operation and maintenance of the Project at the Project Site and at the Project Capacity in accordance with Permits.

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ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as otherwise set forth in a Disclosure Schedules, Buyer represents and warrants to Seller that all of the statements contained in this ARTICLE IV are true as of the Closing Date.

5.1 Organization and Authority of Buyer. Buyer is a limited liability company organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has all necessary limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as conducted at the date of this Agreement. The execution and delivery of this Agreement by Buyer, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the Transactions have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and assuming due authorization, execution and delivery by Seller, this Agreement is a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally.

5.2 No Conflicts. Assuming that all Consents contemplated by Section 5.3 have been obtained, the execution, delivery and performance of this Agreement by Buyer does not and shall not: (a) violate, conflict with or result in the breach of the certificate of incorporation or bylaws (or similar organizational documents) of Buyer; (b) conflict with or violate any Law or Governmental Order applicable to Buyer; or (c) violate, conflict with or result in a breach of or default under (with or without due notice or lapse of time or both) any of the terms, conditions or provisions of any Contract to which Buyer or any of its Subsidiaries is a party immediately prior to the Closing or by which Buyer or any of its Subsidiaries or any of their respective properties or assets may be bound except, in the case of clauses (b) or (c), as would not, individually or in the aggregate, materially and adversely affect the ability of Buyer to carry out its obligations under, and to consummate the Transactions contemplated by, this Agreement.

5.3 Consents and Approvals. The execution, delivery and performance of this Agreement by Buyer does not and shall not require any Consent of any Person, except to the extent failure to obtain such Consent would not prevent or materially delay the consummation by Buyer of the Transactions.

5.4 Litigation. No Actions by or against Buyer or any of its Affiliates are pending or, to Buyer's Knowledge, threatened, challenging the legality, validity or enforceability of this Agreement or the consummation of the Transactions.

5.5 Brokers. Buyer shall be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Buyer.

5.6 Solvency; Fraudulent Conveyance. As of the Closing Date, the Buyer and each of its Subsidiaries (i) shall be able to pay their respective debts as they become due and (ii) shall own assets which have a fair saleable value (if sold as an entirety with reasonable promptness in an

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arm's length transaction under present conditions) in excess of their Liabilities (whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured or otherwise). The Buyer and each of its Subsidiaries shall have adequate capital to carry on their respective businesses, including as contemplated by the Transactions. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of the Buyer and its Subsidiaries.

5.7 Investigation by Buyer. Buyer and its counsel have conducted their own independent review and analysis of the Project Assets, and Buyer acknowledges that it has been provided access to the properties, premises and records of Seller applicable for this purpose. In entering into this Agreement, except for the representations and warranties of Seller expressly set forth in Article IV, Buyer has relied solely upon its own investigation and analysis and that of its counsel, and Buyer acknowledges that, other than in the case of fraud or willful misconduct, except for the representations and warranties of Seller expressly set forth in Article IV, none of Seller nor any of its directors, officers, employees, agents or advisors makes any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or Made Available to Buyer or any of its directors, officers, employees, agents or advisors. Without limiting the generality of the foregoing, none of Seller nor any of its directors, officers, employees, agents or advisors or any other Person has made a representation or warranty to Buyer, nor shall any of the foregoing have or be subject to any liability to Buyer or any of its directors, officers, employees, agents or advisors, with respect to (a) any projections, estimates, plans, forecasts, prospects or budgets (including the reasonableness of the assumptions underlying any of the foregoing) for the Project or (b) any material, documents or information relating to the Project Made Available to Buyer or its directors, officers, employees, agents or advisors in any "data room" or otherwise, except in the case of (a) or (b) as expressly and specifically covered by a representation or warranty set forth in Article IV.

5.8 Disclaimer. EXCEPT AS SET FORTH IN THIS ARTICLE V, NONE OF BUYER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES MAKE OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF BUYER OR ITS AFFILIATES. ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

ARTICLE VI
COVENANTS AND AGREEMENTS

6.1 Further Assurances; Post-Closing Cooperation. Subject to the terms of this Agreement, at any time or from time to time after the Closing, each of the Parties shall execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement or to otherwise effect the Transactions, including any assistance with account transitioning.

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6.2 Books and Records; Access.

(a) For a period of three (3) years after the Closing Date, each Party and their Affiliates shall preserve and retain all corporate, accounting, Tax, legal, auditing or other Books and Records relating to the Project Assets (including any documents relating to any governmental or non-governmental actions, suits, proceedings or investigations) relating to the Project Assets prior to the Closing Date. Notwithstanding the foregoing, during such three-year (3-year) period, Buyer may dispose of any such Books and Records which are offered to, but not accepted by, Seller.

(b) After the Closing Date, each Party and their Affiliates shall permit the other Party and its authorized Representatives to have reasonable access to, and to inspect and copy, all materials referred to in Section 6.2(a) and to meet with officers and employees of the other Party on a mutually convenient basis in order to obtain explanations with respect to such materials and to obtain additional information and to call such officers as witnesses; provided, however, that nothing in this Agreement shall limit any Party's or their Affiliates' rights of discovery.

(c) No later than the Closing Date, Seller shall deliver to Buyer any Books and Records (to the extent providing such to Buyer does not violate any Law) that have not previously been provided to Buyer.

6.3 Solicitation of Other Bids.

Unless and until this Agreement is terminated pursuant to Article VIII, Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. [For purposes hereof, "Acquisition Proposal" shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning a sale, acquisition, purchase, lease, exchange merger, other business combination transaction involving the Project or Project Assets or other disposition of any significant portion of the Project or Project Assets.]

(a) In addition to the other obligations under this Section 6.3, Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any written Acquisition Proposal received, together with the material terms and conditions of such Acquisition Proposal and the identity of the Person making the same.

(b) Seller agrees that the rights and remedies for noncompliance with this Section 6.3 shall include having such provision specifically enforced by any court having equity jurisdiction.

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6.4 Transfer Taxes. Any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer or other similar Taxes or governmental fees (including any interest or penalties related thereto) that may be payable with respect to the transfer of the Project Assets pursuant to this Agreement ("Transfer Taxes") shall be borne fifty percent (50%) by Seller and fifty percent (50%) by Buyer. Buyer shall prepare and in a timely manner file all returns in respect of Transfer Taxes; provided, however, that any such returns shall be subject to the approval of Seller, which approval shall not be unreasonably withheld, delayed or conditioned.

ARTICLE VII
INDEMNIFICATION AND SURVIVAL

7.1 Survival of Representations, Warranties, Covenants and Agreements. The representations and warranties contained in this Agreement (other than the Fundamental Representations) shall expire on the date that is the later of (a) the date on which Substantial Completion for the Project is achieved or (b) the first anniversary of the Closing Date. The Fundamental Representations shall survive until expiration of the applicable statute of limitations. The covenants and agreements that contemplate actions to be taken or not taken or obligations in effect after the Closing shall survive in accordance with their terms. Any representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to this Section 7.1 if a Claim Notice or Indemnity Notice (as applicable) shall have been timely given in good faith based on facts reasonably expected to establish a valid claim under this Article VII on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved as provided in this Article VII.

7.2 Indemnification.

(a) Subject to the provisions of this Article VII, from and after the Closing, Seller shall indemnify Buyer and its Affiliates, and their respective officers, directors, managers, employees, successors and assigns (collectively, the "Buyer Indemnitees") in respect of, and hold them harmless from and against, any and all Losses suffered, incurred or sustained by a Buyer Indemnitee by reason of or resulting from: (i) any inaccuracy or breach of a representation or warranty of the Seller contained in Article III of this Agreement; (ii) any nonfulfillment of or failure to perform any covenant or agreement on the part of Seller contained in this Agreement or any Material Contract, including, without limitation, with respect to Losses incurred by Buyer in connection with any delays in the prosecution of the Work performed by Seller or Seller's Affiliates, vendors, or subcontractors pursuant to the EPCA; (iii) any Excluded Asset or any Excluded Liability; or (iv) any Third-Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Project Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

(b) Subject to the provisions of this Article VII, from and after the Closing, Buyer shall indemnify Seller and its Affiliates, and their respective officers, directors, managers, employees, successors and assigns (collectively, the "Seller Indemnitees") in respect of, and hold them harmless from and against, any and all Losses suffered, incurred or sustained by a Seller Indemnitee by reason of or resulting from: (i) any inaccuracy or breach of a representation or

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warranty of Buyer contained in Article V of this Agreement; (ii) any nonfulfillment of or failure to perform any covenant or agreement on the part of Buyer, contained in this Agreement; or (iii) any Assumed Liability.

(c) The indemnity obligations of the Parties under this Article VII shall be limited as set forth in this Section 7.2(c).

(i) No indemnity shall be payable under this Article VII with respect to Losses for which the Indemnified Party has not provided the Indemnifying Party a Claim Notice or Indemnity Notice, as applicable, with respect to such claim, setting forth in reasonable detail the specific facts and circumstances pertaining thereto as soon as practical following the time at which the Indemnified Party discovered such claim (except the failure to promptly deliver such Claim Notice or Indemnity Notice shall not be a waiver of the Indemnified Party's rights under this Article VII except to the extent the Indemnifying Party is materially prejudiced by any delay in the delivery of such notice), and in any event prior to the expiration of the applicable survival period specified in Section 7.1.

(ii) No indemnity shall be payable under Section 7.2(a)(i) or Section 7.2(b)(i) until the aggregate of any individual Loss, or series of related Losses exceed $15,000 (the "Claim Threshold"), after which only such Losses in excess of such amount shall be recoverable; provided that the foregoing limitation shall not apply to claims for breach of Fundamental Representations.

(iii) No Buyer Indemnitee shall be entitled to any further indemnification under (x) Section 7.2(a)(i) after the aggregate of all Losses paid by Seller to all Buyer Indemnitees equals $250,000 (the "Claim Limit"); provided that the foregoing limitation shall not apply to claims for breach of Fundamental Representations, or (y) this Agreement (including in respect of claims for breach of a Fundamental Representation) after the aggregate of all Losses paid by Seller equals the Base Purchase Price. No Seller Indemnitee shall be entitled to any further indemnification under (x) Section 7.2(b)(i) after the aggregate of all Losses paid by Buyer to all Seller Indemnitees equals $250,000; provided that the foregoing limitation shall not apply to claims for breach of Fundamental Representations or (y) this Agreement (including in respect of claims for breach of a Fundamental Representation) after the aggregate of all Losses paid by the Buyer equals the Base Purchase Price.

(iv) An Indemnifying Party's indemnity obligations under this Article VII shall be reduced by the amount of any insurance proceeds actually recovered (less the cost to collect the proceeds of such insurance and the amount, if any, of any retroactive or other premium adjustments reasonably attributable thereto).

7.3 Indemnity Procedures. All claims for indemnification by any Indemnified Party under Section 7.2 shall be asserted and resolved as set forth in this Section 7.3.

(a) In the event any claim or demand in respect of which an Indemnified Party might seek indemnity under Section 7.2 is asserted against or sought to be collected from such Indemnified Party by a Person other than Seller, Buyer or any Affiliate of Seller or Buyer (a

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"Third-Party Claim"), the Indemnified Party shall as soon as practical following the time at which the Indemnified Party discovered such claim deliver a Claim Notice to the Indemnifying Party, provided, however, the failure to promptly deliver such Claim Notice shall not be a waiver of the Indemnified Party's rights under this Article VII except to the extent the Indemnifying Party is materially prejudiced by any delay in the delivery of such notice. The Indemnifying Party shall have the right to control the defense of such Third-Party Claim at its expense and through counsel of its choice by providing written notice of its election to assume such defense within twenty (20) days following the Indemnifying Party's receipt of the notice of the Third Party Claim, and, except as otherwise provided herein, in which case the Indemnifying Party shall not be liable to the Indemnified Party for any fees of counsel or any other expenses with respect to the defense of such Third-Party Claim; provided that (i) if such Third Party Claim would reasonably be expected to result in injunctions or other equitable remedies in respect of the Indemnified Party or its business, then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of the Indemnifying Party, (ii) if such Third Party Claim may reasonably result in criminal proceedings in respect of the Indemnified Party or any of its Affiliates, including any director, officer or employee of the Indemnified Party or any of its Affiliates, or in respect of the business of the Indemnified Party or any of Affiliates, then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of the Indemnifying Party, (iii) if such Third Party Claim may reasonably be expected to result in Losses in excess of the monetary limitation of a party set forth in Section 7.2(c)(iii), then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of the Indemnifying Party, (iv) if the Indemnified Party reasonably determines based upon the written advice of counsel that a conflict of interest exists that would make it inappropriate for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of the Indemnifying Party and (v) the Indemnified Party may, at its sole cost and expense, retain separate counsel to participate in, but not control, any defense or settlement of any Third-Party Claim, and the Indemnifying Party shall reasonably cooperate with such participation. If the Indemnifying Party elects to control the defense of any Third-Party Claim, the Indemnifying Party shall have the right to settle such Third-Party Claim if the Indemnified Party (or its Affiliates, if applicable) receive a full and unconditional release in favor of, and without the imposition of equitable relief or any other restriction of any kind on, or the admission of wrongdoing by, the Indemnified Party (or its Affiliates, if applicable); provided that if the proposed settlement provides for relief other than the payment of money damages, the Indemnifying Party may settle such Third-Party Claim only with the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed. The Indemnified Party shall reasonably cooperate with the Indemnifying Party and its counsel in contesting any Third-Party Claim, including in making any counterclaim against the Person asserting the Third-Party Claim, or any cross-complaint against any Person (other than the Indemnifying Party or any of its Affiliates). The party controlling the defense of a Third Party Claim shall in a timely manner keep the other party advised of the status of such Third Party Claim and the defense thereof and will consider in good faith recommendations made by such other party with respect thereto, but shall otherwise have full and exclusive control of the conduct of the defense of such Third Party Claim.

(b) In the event any Indemnified Party should have a claim under Section 7.2 against any Indemnifying Party that does not involve a Third-Party Claim, the Indemnified Party shall as soon as practical following the time at which the Indemnified Party discovered such claim

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promptly deliver an Indemnity Notice to the Indemnifying Party; provided the failure to promptly deliver such Indemnity Notice shall not be a waiver of the Indemnified Party's rights under this Article VII except to the extent the Indemnifying Party is materially prejudiced by any delay in the delivery of such notice.

7.4 Tax Effect. Any amounts paid pursuant to this Article VII shall be considered an adjustment to the Purchase Price for Tax purposes to the extent allowed under applicable Law. Buyer and Seller, and each of their respective Affiliates, shall prepare and file, and cause their Affiliates to prepare and file, Tax Returns consistent with the treatment described in the foregoing sentence.

7.5 Insurance Offset. The amount of any Loss for which indemnification is provided under this Article VII shall be determined net of any amounts recovered by an Indemnified Party or any of such Indemnified Party's Affiliates under or pursuant to any insurance policy, title insurance policy, indemnity, reimbursement arrangement or contract pursuant to which or under which such Indemnified Party or such Indemnified Party's Affiliates is a party or has rights; provided, however, that any amounts actually received pursuant to this Section 7.5 shall be reduced by any amounts incurred by the Indemnified Party or any of such Indemnified Party's Affiliates in pursuing such recovery (except to the extent such amounts actually received include such amounts incurred in pursuing recovery).

7.6 Subrogation. Each Indemnified Party hereby waives any subrogation rights that its insurer may have with respect to any indemnifiable Losses. After any indemnification payment is made to any Indemnified Party pursuant to this Article VII, the Indemnifying Party shall, to the extent of such payment, be subrogated to all rights (if any) of the Indemnified Party against any third party in connection with the Losses to which such payment relates. Without limiting the generality of the preceding sentence, any Indemnified Party receiving an indemnification payment pursuant to the preceding sentence shall execute, upon the written request of the Indemnifying Party, any instrument reasonably necessary to evidence such subrogation rights.

7.7 Exclusivity. After the Closing, to the extent permitted by Law and except with respect to claims based on fraud, criminal activity, or willful misconduct and claims for equitable remedies (including specific performance), the indemnities set forth in this Article VII shall be the exclusive remedies of the Indemnified Parties for any inaccuracy in any representation or warranty, misrepresentation, breach of warranty or nonfulfillment or failure to be performed of any covenant or agreement contained in this Agreement.

7.8 Mitigation. Any Indemnified Party that becomes aware of a Loss for which it may seek indemnification under this Article VII shall use commercially reasonable efforts to mitigate the Loss to the extent reasonably practicable and shall consider any mitigating actions reasonably requested by the Indemnifying Party. Neither Party's failure to mitigate shall limit an Indemnified Party's right under this Article VII to file any claim for Losses or take any other action.

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ARTICLE VIII
TERMINATION AND REPURCHASE OBLIGATION

8.1 Termination.

8.1.1 Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time:

(a) by the mutual written consent of the Parties;

(b) by Seller on the one hand, or Buyer on the other, if there has been a breach of any representation, warranty, covenant or other agreement made by the other Party, which breach (i) cannot be cured or (ii) remains uncured for forty-five (45) days after notice of such breach is received by the breaching Party or such longer period as may be reasonably required to cure such breach, provided that the breaching Party is diligently working to cure such breach (such period not to exceed ninety (90) days);

(c) by either Party, if a Governmental Authority shall have issued a final and non-appealable order, injunction, judgment, decree or ruling permanently restraining, enjoining or otherwise prohibiting the consummation of the Transactions, or if there shall be any applicable Law that makes consummation of the Transactions illegal or otherwise prohibited

(d) by Seller upon written notice to Buyer, upon the Bankruptcy of Buyer; or

(e) by Buyer upon written notice to Seller, upon the Bankruptcy of Seller.

8.2 Notice of Termination. Any Party desiring to terminate this Agreement shall give written notice of such termination to the other Party.

8.3 Effect of Termination.

8.3.1 If this Agreement shall be terminated pursuant to Section 8.1 (prior to Closing), in addition to any other rights it may have under this Agreement or otherwise, all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the expiration or termination of this Agreement, including Article VII, Article VIII, Article IX and this Section 8.3) shall be terminated without further Liability of any Party to the other Party and the exercise of such right of termination will not be an election of remedies; *provided, however*, that nothing herein shall relieve any Party from Liability for fraud, willful misconduct or intentional breach of the terms or provisions of this Agreement.

8.3.2 Upon termination of this Agreement by a Party for any reason, Buyer shall, at Seller's request, return or destroy all documents and other materials of Seller solely relating to the Project, Project Assets and the Transactions contemplated hereby. Each Party shall also, at the request of the other Party, return to the other Party or destroy any information relating to the Parties to this Agreement furnished by one Party to the other, whether obtained before or after the execution of this Agreement. Notwithstanding the foregoing, the provisions of this Section 8.3 shall not apply to (a) the extent that a Party preserves copies of such documents, materials or information in connection with such Party's enforcement of its rights or remedies under this

Agreement (b) any copies of documents or materials relating by a Party or its counsel if required law or for regulatory or compliance purposes (including any such information contained in board or committee papers) or (c) any documents or materials that are contained in an archived computer system backup in accordance with a Party's or its counsel's security and/or disaster recovery procedures.

ARTICLE IX
MISCELLANEOUS

9.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No assignment shall be made by any party without the prior written consent of the other Parties; provided, (i) any party may assign this Agreement to any Affiliate of such party without such consent and (ii) Buyer may assign this Agreement to any financial institution providing purchase money or other financing to Buyer from time to time as collateral security for such financing, provided, that in each case, no such assignment shall relieve the assigning party of any of its obligations hereunder. Any purported assignment in contravention of this Section 9.1 shall be null and void.

9.2 Limitation of Liability. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF A PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH LOSSES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY; *PROVIDED*, *HOWEVER*, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO FRAUD OR THE INTENTIONAL MISREPRESENTATION OR WILLFUL MISCONDUCT OF A PARTY.

9.3 Confidentiality.

9.3.1 Buyer shall keep the Confidential Information strictly confidential and shall not use the Confidential Information for any purpose other than to evaluate, negotiate, and consummate the Transactions. Buyer shall not disclose or permit its Representatives to disclose any Confidential Information except: (a) if required by law, regulation, or legal or regulatory process; (b) to its Representatives, to the extent necessary to permit such Representatives to assist the Buyer in evaluating, negotiating, and consummating the Transactions; or (c) to any actual or potential sources of financing (debt, equity, or otherwise) who are or may be engaged to provide financing to the Buyer or its Affiliates. Buyer shall be responsible for any breach of this Agreement by any of its Representatives except for breaches committed by any such Representative that has executed its own confidentiality agreement with the Seller with respect to the Transactions.

9.3.2 Except for such disclosure as is necessary, in the written opinion of Buyer's counsel, to not to be in violation of any applicable law, regulation, order, or other similar requirement of any governmental, regulatory, or supervisory authority, the parties shall not, and shall not permit any of their Representatives to, without the prior written consent of the other party, disclose to any Person: (a) the fact that the Confidential Information has been Made Available to

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the Buyer or its Representatives or that the Buyer or its Representatives has received or inspected any portion of the Confidential Information; (b) the existence or contents of this Agreement; (c) the fact that investigations, discussions, or negotiations are taking or have taken place concerning the Transactions, including the status thereof; or (d) any terms, conditions, or other matters relating to the Transactions.

9.3.3 If Buyer or any of its Representatives is required, in the written opinion of Buyer's counsel, to disclose any Confidential Information, by law, regulation, or legal or regulatory process, the Buyer shall: (a) take all reasonable steps to preserve the privileged nature and confidentiality of the Confidential Information, including requesting that the Confidential Information not be disclosed to non-parties or the public; (b) give the Seller prompt prior written notice of such request or requirement so that the Seller may seek, at its sole cost and expense, an appropriate protective order or other remedy; and (c) reasonably cooperate with the Seller to obtain such protective order. In the event that such protective order or other remedy is not obtained, the Buyer (or such other Persons to whom such request is directed) will furnish only that portion of the Confidential Information which, on the advice of the Buyer's counsel, is legally required to be disclosed and, upon the Seller's request, use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

9.4 Public Announcements. No party hereto shall issue or make any public announcement, press release or other public disclosure regarding this Agreement or its subject matter without Seller's prior written consent, in the case of any proposed disclosure by Buyer, or without Buyer's prior written consent, in the case of any proposed disclosure by Seller, except for any such disclosure that is, in the opinion of the disclosing party's counsel, required by applicable Law or the rules of any applicable stock exchange. In the event a party is, in the opinion of its counsel, required to make a public disclosure by applicable Law or the rules of any applicable stock exchange, such party shall, to the extent practicable, submit the proposed disclosure in writing to Seller, in the case of any proposed disclosure by Buyer, or the Buyer, in the case of any proposed disclosure by Seller, prior to the date of disclosure and provide Seller or Buyer, as applicable, a reasonable opportunity to comment thereon.

9.5 Expenses. Except as otherwise specified herein, each party shall bear its own expenses with respect to the Transactions.

9.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future Laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.7 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied (including Article VII), shall

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give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

9.8 Waiver. The failure of any party to enforce any part of this Agreement at any time shall not be construed as a waiver of that part, nor shall it forfeit any rights to future enforcement thereof. Any waiver hereunder shall be effective only if delivered to the other Parties in writing by the party making such waiver.

9.9 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the Laws of the State of New York without regard to the conflicts of Laws provisions thereof.

9.10 Jurisdiction. The Parties agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions shall be brought in the United States District Court for the Southern District of New York so long as such court shall have subject matter jurisdiction over such Action, or alternatively in any New York state court located in the County of New York if the aforesaid United States District Court does not have subject matter jurisdiction, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the Parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Action in any such court or that any such Action which is brought in such court has been brought in an inconvenient forum.

9.11 Waiver of Jury Trial. EACH OF THE PARTIES HERETO WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS. EACH OF THE PARTIES HERETO HEREBY: (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

9.12 Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

9.13 Counterparts. The Parties may execute this Agreement in one or more counterparts, and each fully executed counterpart shall be deemed an original.

9.14 Notices. All communications, notices and Consents provided for herein shall be in writing and be given in person or by means of email, telex, facsimile or other means of wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), by overnight courier or by mail, and shall become effective: (a) on

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delivery if given in person; (b) on the date of transmission if sent by email, telex, facsimile or other means of wire transmission; (c) one (1) Business Day after delivery to the overnight service; or (d) four (4) Business Days after being mailed, with proper postage and documentation, for first-class registered or certified mail, prepaid. Notices shall be addressed as follows:

If to Buyer, to:

[____________]
[____________]
[____________]

If to Seller, to:

[____________]
[____________]
[____________]

provided, however, that if any party shall have designated a different address by notice to the others, then to the last address so designated.

9.15 Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other gender as the context requires. The terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Disclosure Schedules hereto) and not to any particular provision of this Agreement. Article, Section and Disclosure Schedule references are to the Articles, Sections, and Disclosure Schedules to this Agreement unless otherwise specified. Unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement. The word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified. The word "or" shall not be exclusive. Unless otherwise specified in a particular case, the word "days" refers to calendar days. References herein to this Agreement shall be deemed to refer to this Agreement as of the date of such agreement and as it may be amended thereafter, unless otherwise specified. All references to "dollars" or "$" shall be deemed references to the lawful money of the United States of America.

9.16 Disclosure Schedule. Each exception set forth in the Disclosure Schedules is identified by reference to, or has been grouped under a heading referring to, a specific individual section or subsection of this Agreement; provided, however, that the inclusion of any item referenced in one section or subsection of the Disclosure Schedules shall be deemed to refer to any other section or subsection of the Disclosure Schedules (and accordingly to the applicable sections or subsections of this Agreement which contain references to the Disclosure Schedules), whether or not an explicit cross-reference appears, if the applicability of such item to the other section or subsection is reasonably apparent. The inclusion of any information in the Disclosure Schedules

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shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

9.17 Entire Agreement. This Agreement (including the Disclosure Schedules referred to herein) and the Confidentiality Agreement constitute the entire agreement among the Parties and supersedes any prior understanding, agreements, or representations by or among the Parties, written or oral to the extent they relate in any way to the subject matter hereof.

10.19 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the Parties.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized representatives as of the date first written above.

SELLER:

[SELLER]

By ____
Name: ___________________________________
Title: ____________________________________

BUYER:

[BUYER]

By ____
Name: ___________________________________
Title: ____________________________________

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EXHIBIT A

FORM OF BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

This BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement"), dated as of [___] (the "Effective Date"), is made and entered into by and between [___], a [___] ("Assignor"), with a mailing address of [___], and [___], a [___] ("Assignee") with a mailing address of [___]. Assignor and Assignee are referred to herein, individually, as a "Party," and collectively, as the "Parties."

RECITALS

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement of even date herewith (the "Purchase Agreement") and hereby desires to sell, contribute, assign, transfer, convey and deliver the Project Assets to Assignee;

WHEREAS, Assignee desires to assume and accept from Assignor the Project Assets in each case upon the terms and subject to the conditions of this Assignment Agreement;

WHEREAS, Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Purchase Agreement; and

WHEREAS, the Parties desire to carry out the intent and purpose recited herein by each Party's execution and delivery to the other Party of this Assignment Agreement evidencing the vesting in Assignee of the Project Assets.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Assignment Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Transfer of Project Assets. Effective as of the Effective Date, Assignor does hereby irrevocably sell, assign, transfer, convey, deliver and contribute to Assignee, and Assignee does hereby purchase, acquire, take and accept from Assignor, all of Assignor's right, title and interest in and to the Project Assets, free and clear of all liens, encumbrances, liabilities, and obligations of every nature and description. All Project Assets hereby contributed and assigned to the Assignee shall be deemed to have been contributed and assigned effective as of the date first written above, except to the extent that any consents are required for such assignment, in which case such Project Assets shall be deemed to be assigned automatically upon obtaining such consent.

Section 2. Assumption of Liabilities. As part of the consideration for the transfer of the Project Assets, effective as of the Effective Date, Assignee does hereby assume from the Assignor, all burdens, obligations and liabilities in connection with the Assumed Liabilities and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and

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to pay and discharge all of the liabilities of the Assignor to be observed, performed, paid or discharged, in connection with the Assignment.

Section 3. Facsimile Signature; Counterparts. This Assignment Agreement may be executed in any number of counterparts (including by means of facsimile or portable document format (PDF)), each of which, when executed, shall be deemed to be an original and all of which together will be deemed to be one and the same instrument binding upon all Parties notwithstanding the fact that not all Parties are signatory to the original or the same counterpart. Delivery of an executed counterpart of a signature page to this Assignment Agreement by facsimile or portable document format (PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 4. Governing Law. This Assignment Agreement shall be governed by and construed in accordance with, and all disputes (whether for breach of contract or a tort) arising out of this Assignment Agreement or the transactions contemplated hereby shall be governed by, the laws of the State of New York without reference to any choice of law principles or rules thereof (including any borrowing statute) that would cause the application of the laws of another jurisdiction.

Section 5. Successors and Assigns. This Assignment Agreement and the rights hereunder are not assignable unless such assignment is consented to in writing by all Parties. Subject to the preceding sentence, this Assignment Agreement and all the provisions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 6. Amendments; Waivers, Etc. Neither this Agreement nor any term hereof may be amended, changed, waived, discharged or terminated other than by an instrument in writing, signed by the party against which enforcement of such amendment, change, waiver, discharge or termination is sought.

Section 7. Interpretations. The headings of the sections contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement.

Section 8. Modification. This Agreement constitutes the entire understanding of the parties, and supersedes any and all agreements or understandings of any of the parties with respect to the subject matter set forth herein, and may not be modified or otherwise changed orally, but only by a writing signed by the party against whom enforcement of any such waiver, change, modification, extension, or discharge is sought.

[Remainder of Page Intentionally Left Blank]

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IN WITNESS WHEREOF, this Assignment is executed as of the Effective Date.

ASSIGNOR:

[SELLER]

By ____________________________________
Name: ______________________________
Title: _______________________________

ASSIGNEE:

[BUYER]

By ____________________________________
Name: ______________________________
Title: _______________________________

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EXHIBIT B

PROJECT MANAGEMENT SERVICES

Not applicable.

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EXHIBIT C

FORM OF ENGINEERING, PROCUREMENT AND CONSTRUCTION

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EXHIBIT D

FORM OF ESTOPPEL

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EXHIBIT E

FORM OF POWER PURCHASE AGREEMENT

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EXHIBIT F

PROJECT INFORMATION SUMMARY

PROJECT INFORMATION
Base Purchase Price ($):
NTP Fee Payment:
Solar – Mounting [Roof or Ground or Canopy]:
Solar – System Capacity (kW DC STC):
Solar – Estimated Annual Generation (kWh):
Battery – Description of System to be Installed:
EV – Quantity of EVSEs to be Installed:
Mechanical Completion Deadline:
Substantial Completion Deadline:
Estimated Placed-in-Service Date (Permission to Operate Date):
MATERIAL CONTRACTS
[Power Purchase Agreement dated as of ______ by and among ____ and ____]
[Engineering, Procurement and Constructions Terms and Conditions, by and between the ______ and ____]
[Interconnection Agreement dated as of ______ by and among ____ and ____]
[Net Energy Metering Agreement dated as of ______ by and among ____ and ____]
[Rooftop Solar Lease dated as of ______ by and among ____ and ____]
REAL PROPERTY AGREEMENTS
[Land Lease Option and Lease Agreement dated as of ______ by and among ____ and ____]

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[Land Lease Option Assignment Agreement dated as of ______ by and among ____ and ____] [Land Lease Amendment dated as of ______ by and among ____ and ____]
PERMITS
[Land Use Approval] [Zoning/Planning Board Approval] [Fire Department Approval]
REPORTS
[**Phase I Environmental Site Assessment (ESA), dated** as of ___**]** [**Phase I ESA Reliance Letter, dated** as of ___**]** [**Wetland Delineation Report, dated** as of ___] [**Geotechnical Report, dated** as of ___**]**
INSURANCE POLICIES
[Insert]
BANK ACCOUNTS
[Insert]

Schedule 1.1(a)
Knowledge of Buyer

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Schedule 1.1(b)
Knowledge of Seller

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Schedule 1.1(c)
Project Assets

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Schedule 3.3(e)
Required Permits

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Schedule 4.4
Required Approvals

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Schedule 4.5
Litigation

DRAFT

Schedule 4.7
Taxes

DRAFT

Schedule 4.8.4
Breach or Default of any Real Property Agreements

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Schedule 4.8.5
Real Property Agreements Not Yet Recorded

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Schedule 4.8.7
Other Project Assets

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Schedule 4.9
Material Breach or Default of Material Contracts

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Schedule 4.10
Reserved

DRAFT

Schedule 4.11
Brokers

DRAFT

Schedule 4.18
Actions with respect to Insurance Policies

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Schedule 4.19
Bank Accounts

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Schedule 4.21
Credit Support Obligations

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Schedule 8.1
Encumbrances

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Attachment Staff Report Item 16F

Critical Municipal Facilities: Request for Approval

November 20, 2024

Agenda

1. Overview
2. CMF Program Structure
3. Key Counterparties
4. Next Steps

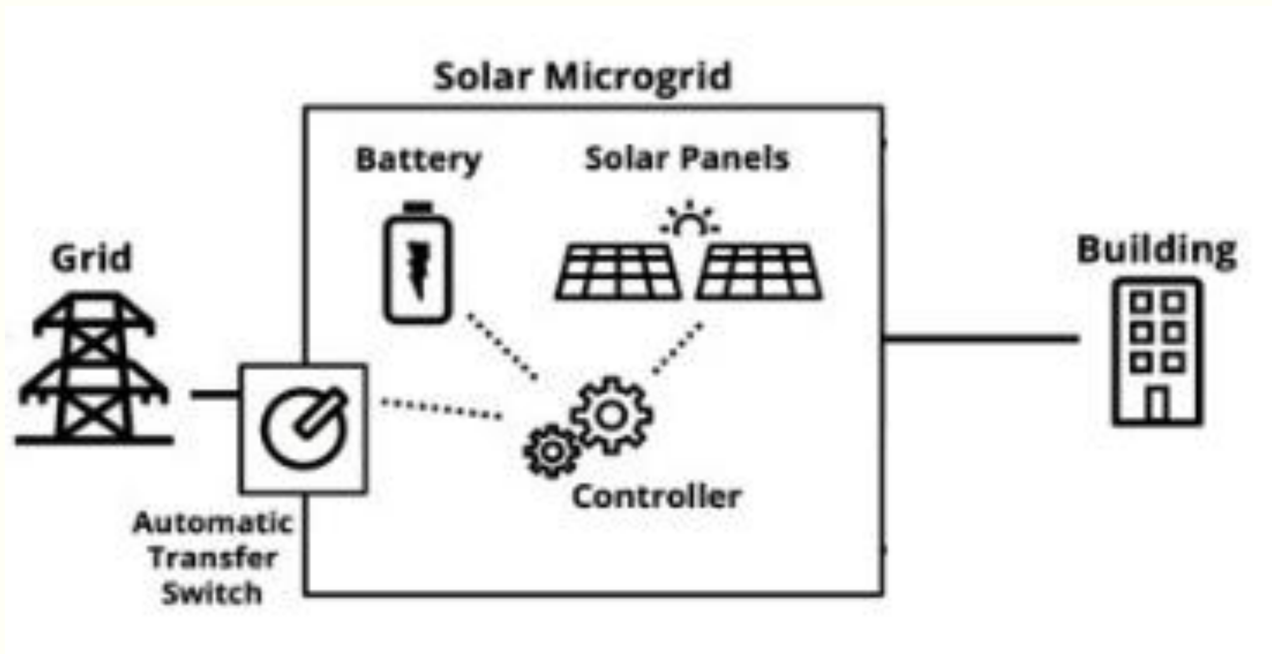
1. Transaction Overview

Executive Summary / Request for Consent

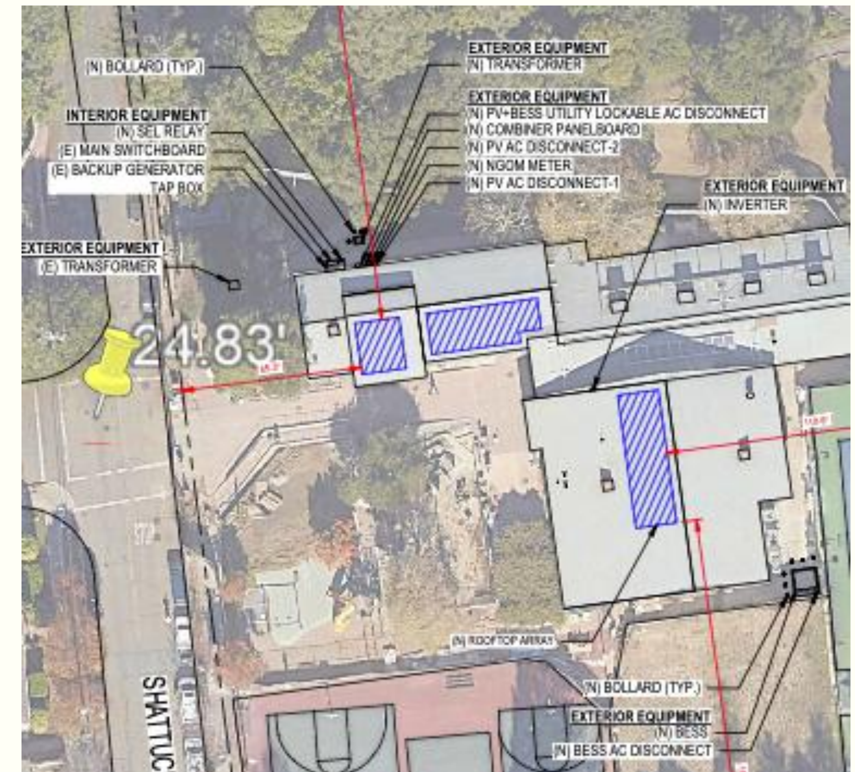
- Ava is working with a renewable energy developer, GreenBridge, to design, construct, and operate solar and storage systems across 34 municipal sites by entering power purchase agreements ("PPAs") with 6 participating cities.
- City project portfolios are designed to deliver energy savings over the contract terms, as well as resiliency benefits to protect against grid outages and extreme weather events.
- Projects to be constructed in phases to achieve commercial operation on varying timelines in 2025-2027.
- Ava working towards execution of a master PPA with Green Bridge by early December to enable early-phase projects to kickoff development to support NEM2.0 qualification deadlines.
- **Nov Board Approval Requests:**
  1. **Negotiate and execute Developer PPA and Asset Transfer Agreements with GreenBridge LLC**
  2. **Negotiate and execute PPAs with Cities and provide Solar and Storage incentives to Cities**

Microgrid Description

Microgrid Layout



Berkeley Live Oak Rec Center



2. CMF Program Structure

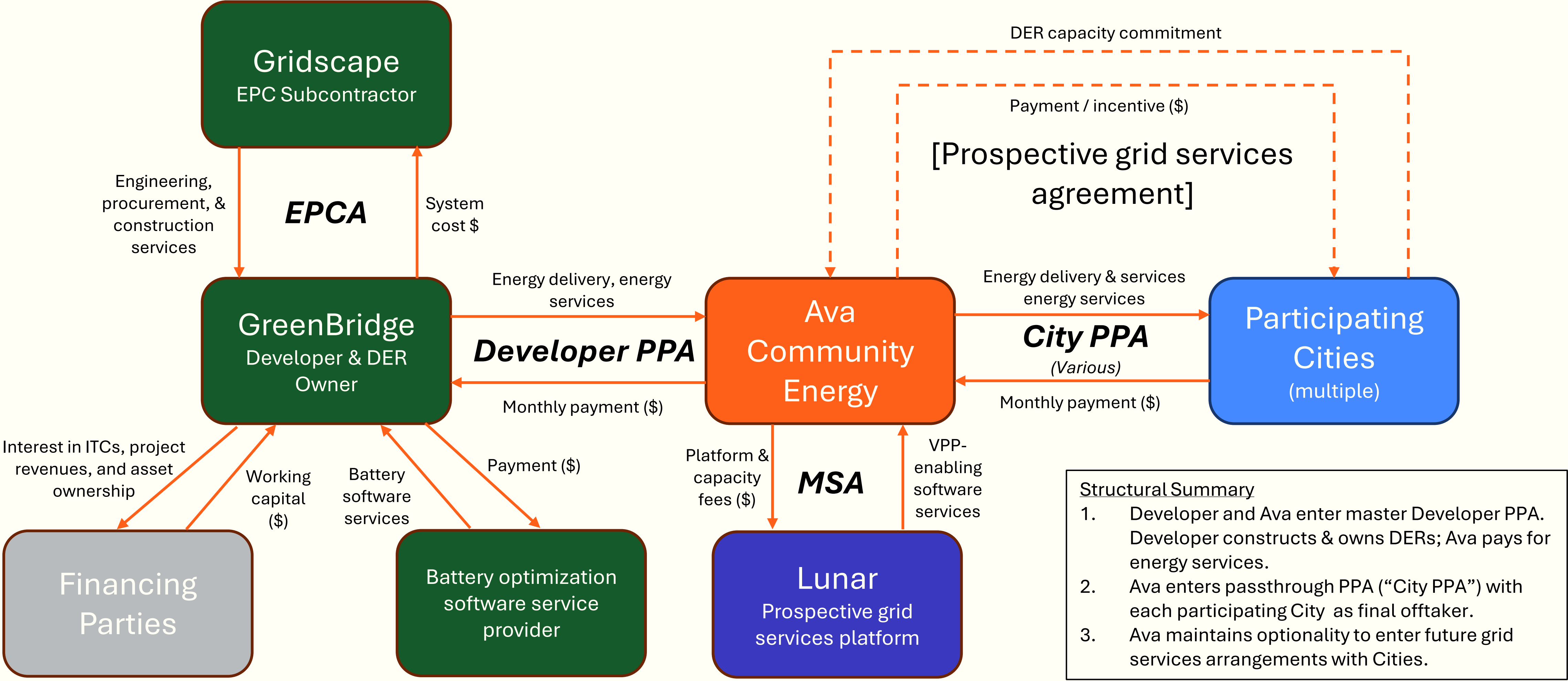
Developer & City PPA Overview

Ava to enter long-term energy service agreements with each participating city, which go “back-to-back” with master agreement Ava enters with experienced project developer.

- **Developer PPA:** Ava to enter master purchase agreement (“PPA”) with Green Bridge (experienced C&I-scale developer) which will construct, operate, and own the systems and sell the site energy generation and optimization services to Ava.
- **City PPAs:** Ava to separately enter individual PPAs with each city that passes through rights / obligations of the master PPA:
  - Ava to sell energy generation and energy services (e.g. use of battery energy storage system and optimization software) to Cities
  - Ava to deliver construction, operation, and system maintenance (directly or indirectly via Developer’s obligations in the master PPA)
- Benefits to Cities:
  - Multi-city initiative enables scale-based benefits in commercial terms for Cities relative to single-project financing, e.g. Lower costs/ increased savings, higher quality contractual terms, etc.
  - Ava (trusted entity) transacts with Cities directly to close and administer the services
  - Ava holds ability to deliver ancillary services and incentives to Cities

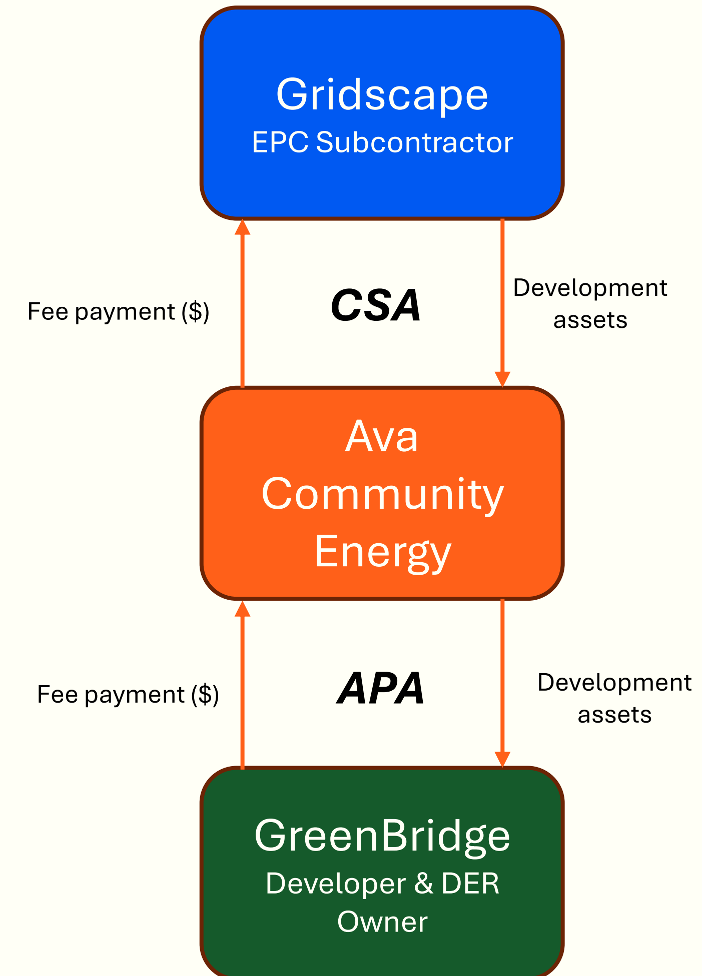
Transaction Diagram

Ava managing high degree of complexity while streamlining the development process on behalf of Cities.



Asset Purchase Agreement

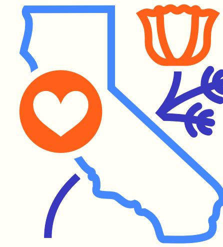
- In advance of Developer PPA execution, Ava entered Consulting Services Agreement ("CSA") with Gridscape to conduct and pay up to $1.8M for preliminary design, development, and interconnection application work for NEM2.0 projects
- CSA was critical to support development ahead of NEM2.0 cliff dates and requisite PG&E approval milestones
- Ava to simultaneously execute Asset Purchase Agreement ("APA") with Green Bridge to assign Ava's development assets to Green Bridge for ongoing project development
  - Under APA, Green Bridge to pay Ava for any development assets undertaken by Ava for projects
  - Ava will retain the costs of development for work related to projects deemed non-viable or terminated prior to NTP

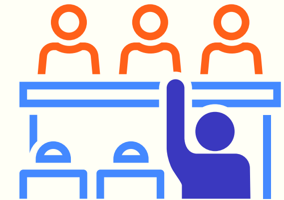


Labor Commitments

Ava working with Developer to ensure construction labor is paid at prevailing wages and contracts with local, union labor.

- **Commitment to Local:** Developer committing to hire construction contractors and subcontractors residing in Alameda or San Joaquin county ("Local Hires").
- **Prevailing wages:** Commitment to pay prevailing wages at local level across each City.
- **Use of union labor:** Developer committing to use union labor where it is possible to (i) use Local Hires, (ii) meet project development timelines, and (iii) meet cost neutrality requirements of the Cities.
  - In the event that the Developer cannot find union labor that can meet all items above, it will provide advance notice to Ava and provide an alternative proposal that meets (i)-(iii).





City Portfolios

Portfolio Profile by City

City	# NEM 2.0 Projects	# NEM3.0 Projects	Total Project Count	PV Capacity (kW)	Battery Capacity (kWh)
Berkeley	2		2	202	387
Fremont	2	4	6	303	697
Hayward	3	1	4	218	387
Livermore	2	4	6	2,814	5,954
Oakland	5	4	9	1,466	2,786
San Leandro	5	2	7	880	1,780
Grand Total	**19**	**15**	**34**	**5,883**	**11,992**

Site list and capacity figures pending finalization

Site Types

Project Type	Project Count
Airport	1
City Hall	3
Community Center	7
Corp Yard	5
Fire station	11
Library	4
Parking Lot*	1
Police Station	1
Water Service	1
Total	34

**Parking lot does not have storage*

PPA Pricing to Ensure City Savings

Developer commits to a pricing construct that (i) ensures each City achieves portfolio savings, (ii) locks pricing for early-stage projects, and (iii) sets guardrails on pricing changes for late-stage projects.

- City portfolios must meet cost neutrality over PPA term
- Developer commits to design and price each City portfolio to meet cost neutrality
- Developer agrees to limitations on price changes for NEM3.0 projects
- Each City has 2 separate PPA rates applicable to its (i) NEM2.0 and (ii) NEM3.0 project cohorts
  - NEM2.0 projects: Pricing is locked at PPA execution
  - NEM3.0 projects: Pricing may change due to design changes, but only to extent that City portfolio remains cost-neutral
    - If pricing changes impair cost neutrality, then Ava/City has right to remove minimum projects to achieve cost neutrality
  - City-specific pricing and savings figures to be shared with Cities shortly after 11/6
- Ava collecting 2.5% surcharge to collect for: Administration, legal expenses, extra-ordinary charges and potential removal fee

City Savings Calculation

Estimated site utility costs during term without projects
<u>(-) Estimated site utility costs during term with projects</u>
= Estimated City utility bill savings
<u>(-) cumulative PPA payments for the projects</u>
= Cumulative net energy bill savings to City

Ava Providing Solar and Storage Incentives

- Ava requesting permission apply approved CMF budget of $7M towards Solar & Storage incentives structured like the upcoming publicly available Community Resilience Hub incentives
- All projects will receive an incentive of $2/month/kWh of aggregate BESS nameplate capacity for 5 years. NEM3.0 projects will also receive an upfront incentive of $400/kWh to account for lower bill savings.
- Current projects forecast to use $2.5M of incentives, leaving remaining funds for future projects
- Incentive to be passed to Cities as a monthly bill credit on City PPA invoices from Ava for a 5-year credit term
- Ava retains option to use the upfront incentive via an optional prepayment of the Developer PPA if the pre-payment delivers additional savings to the Cities

3. Key Counterparties

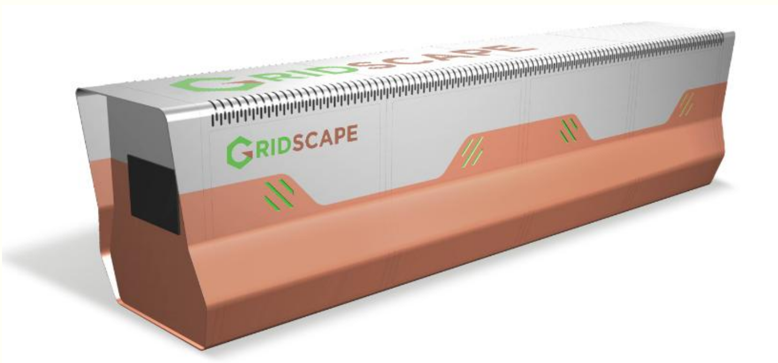
RFO Process

- Initial RFO in July 2022, for projects with 4 Cities and selected SunWealth LLC as Asset Owner and received approval from BoD to negotiate and execute agreement in January 2023.
- Ava and SunWealth were unable to successfully agree on PPA
- Ava re-issued RFO with 8 participating Cities in November of 2023 and received four bids. After initial review 2 bidders were shortlisted
- Greenbridge was selected as final counterparty progress with PPA negotiations

Financing Partner: Green Bridge

- North Carolina-based commercial and utility-scale renewable energy financing and development platform
- Founded in 2020 by legacy GE Capital leadership, with over 38 years of renewables and energy financing and development experience
- Has funded over $1B of projects to date, with pipeline of over $250M in development
- Uses institutional tax equity and debt financing capital to deliver competitive PPA pricing
- Lever relationships with best-in-class operational service providers to support its operational services

Engineering, Procurement, & Construction (EPC): Gridscape



Gridscape

- Headquartered in Fremont
- Portfolio includes 19 municipal solar and/or storage microgrid projects in California
- Deep capabilities in microgrid solar and storage design, engineering, procurement, installation, interconnection, and operation & maintenance
- Levers network of subcontractors as boots-on-the-ground for project construction

4. Next Steps

Next Steps & Timing

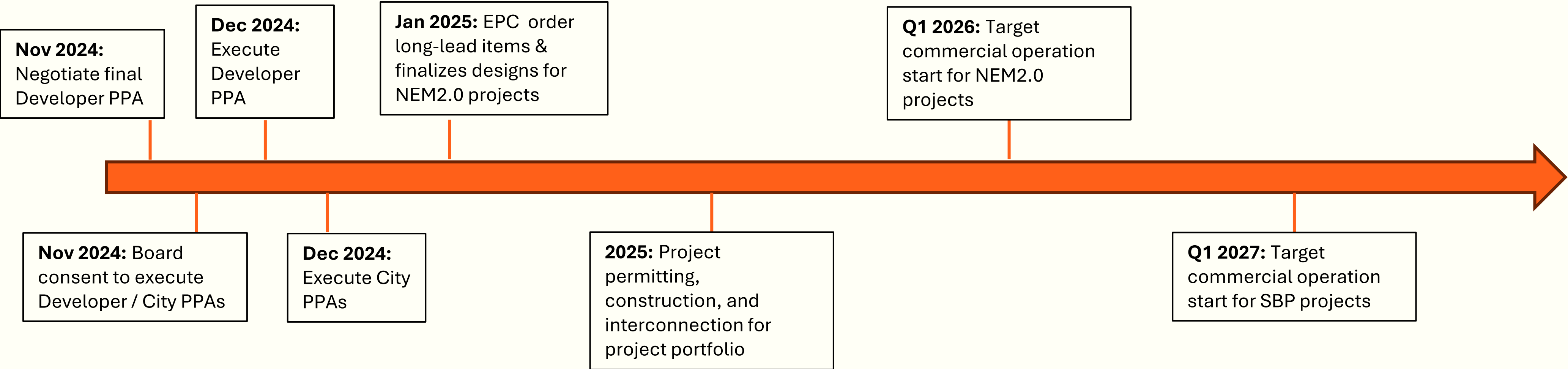
Next two months

- **Mid-November:** Finalize Developer PPA form; deliver pricing to Cities
- **Ava 11/20 Board Meeting:** Authorize CEO to negotiate and execute
- **Early Dec:** Execute Developer PPA
- **EOM Dec:** Execute City PPA with all Cities
- **Jan 2025:** NEM2.0 design finalization & long-lead equipment orders placed
- **2025-2027:** Projects constructed, interconnected, & operationalized in phases

City Calendar for Approval to Execute

City	City Council Approval Date
Berkeley	11/12
Fremont	12/3
Hayward	10/15
Livermore	11/25 & 12/9
Oakland	11/12
San Leandro	12/2

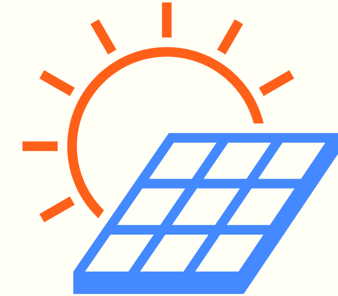
CMF Timeline

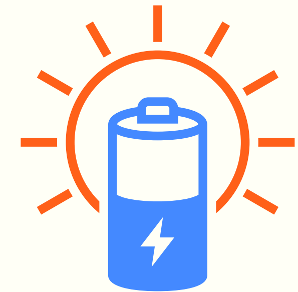


Appendix

Equipment, Operations, & Warranties

- **Major Equipment**
  - All equipment vetted by GreenBridge's independent engineer and supported by manufacturer's warranty on performance and functionality:
    - Solar modules: Minimum 25 year warranty
    - Battery energy storage systems: Minimum 10 year warranty
    - Inverters: Minimum 5 year warranty
- Installer warranties:
  - Workmanship warranty: 3 years
  - Roof warranty: 10 years
- **Operations & Maintenance:** Gridscape
  - As original EPC, maintenance benefitted by Gridscape warranties and project familiarity





Third-Party Advisors

Program structure and project consultation has been supported by best-in-class advisory.

- **Outside counsel:** Ava representation and transaction document drafting by Wilson Sonsini, a leading renewable energy and clean technology law firm.
- **Energy modeling:** Project site assessment verification services provided by EcoMotion, an experienced consultancy with specialty in microgrid resiliency projects.

Ava's Responsibilities & Risk Mitigants

Program has been designed to offer cost-neutral renewable-based energy resiliency for Cities. Ava directly provides services to Cities, while mitigating risk to Ava though Developer's ownership.

Issue	Risk(s)	Mitigation
Billing	• Risk of Ava coming out of pocket to make monthly PPA payments to Developer	• Ava collects City payments through City PPA and passes them through to Developer under Developer PPA • Monthly Payment sized on same reported energy metrics to ensure City payment covers Ava's payment • Billing cycle: City pays Ava before Ava pays Developer
Equipment Performance	• Poor solar or battery performance result in reduced energy savings delivered to the site	• solar performance guarantee, with damages payable to Cities if not met to incentive • Developer backstops BESS performance triggers for BESS availability, efficiency, and capacity with EOD ramifications
Project Operation & Maintenance	• Solar or BESS equipment fails or underperforms during contract term • System owner fails to maintain system to prudent operating standards	• Developer bears cost & responsibility of project O&M services to Ava, which Ava passes along to Cities • Original installer (Gridscape) serving as O&M provider, with support of their workmanship & roof warranties • Developer posts replenishable performance security as reserve for project maintenance and system removal throughout term
Development Timing	• Project construction and commissioning runs late, causing certain projects to miss NEM2.0 deadline and/or inconvenience at project sites	• Developer owes damages passed through to Cities in event project does not meet target operation start date • City has project termination rights if COD is delayed greater than 45 days (for NEM2.0 projects) or 120 days (for SBP projects).
Equipment Selection & Procurement	• Equipment does not meet industry standards around performance and/or warranty • Sourcing practices conflict with federal/state/local regulations	• Developer approved vendor requires technical opinion by reputable third-party independent engineer • Major components supported by fulsome manufacturer's warranty. • Developer required to comply with trade regulations, including UFLPA & modern slavery

Ava’s Responsibilities & Risk Mitigants (cont.)

Issue	Risk	Mitigation
Project Insurance	• Unforeseen installer liability during construction • Disaster, wildfire, extreme weather, or other insurable event results in system loss during operation	• Developer required to maintain fulsome construction all-risk and operating all-risk insurance • Force majeure language limits performance obligation
Project Removal	• Cities left bearing the responsibility and expense of removing systems from their sites at end of term	• Developer required to perform and pay for end-of-term project removals • Developer posts replenishable performance security to support end-of-term project removal • Ava bears obligation to pay for end-of-term project removals if not covered by Developer • In event Ava loses investment grade status, Ava to post cash or LC security at City’s benefit for use in system removals
Project / Portfolio Termination Rights	• Project terminations or default by City leave Ava at risk of performing PPA buyer obligations to Developer • Project termination or default by Developer leave Ava at risk of performing seller obligations to City	• Agreements designed to cross-terminate at project & portfolio level • In event of post-construction City early termination, City makes termination payment that passes through to Developer
Developer Risk	• Developer is unable to perform its obligations through the end of the term due to financial distress or changes to its business model	• Developer’s use of traditional renewable project financing creates likelihood of ownership assignment to reputable asset managers in event of Developer insolvency • In a severe downside scenario, Ava has buyout rights and manager transition rights to step into Developer obligations to the projects