

**NOTICE OF THE REGULAR MEETING OF THE
THATCHER TOWN COUNCIL
March 21, 2022**

Pursuant to A.R.S. 38 431.02, notice is hereby given to the members of the Town Council of the Town of Thatcher and the general public that the Town Council will hold **its Regular Meeting that is open to the public on March 21, 2022 beginning at 6:30 PM, in the Council Chambers, Thatcher Town Hall, located at 3700 West Main Street, Thatcher, Arizona.**

AGENDA

1. Welcome and Call Meeting to Order
2. Pledge of Allegiance
3. Roll Call
4. **PUBLIC HEARING:**
 - A. **SUBDIVISION ORDINANCE AMENDMENT** - To consider text amendments to the Subdivision Ordinance.
 - B. **REZONING REQUEST** - To consider the matter of a proposed re-zone of a portion of parcel 104-13-076 from C-2 (Highway Commercial) to MU (Mixed Use) with the purpose of building a multi-family development. The total parcel is approximately 9.2 acres and is located at just west of the intersection of Reay Lane and 4th Street in Thatcher. Approximately 6.5 acres is requested to be re-zoned.
5. **OPEN CALL TO THE PUBLIC:**

Anyone wishing to address the Council on an issue not on the agenda is allowed to speak at this time. Comments are limited to 5 minutes and the Council may only direct staff to study the matter, respond to criticism, or schedule the matter for a future meeting.
6. **PUBLIC APPEARANCES:**
 - A. "National Week of the Young Child" Proclamation
7. **CONSENT AGENDA:** Action Item
 - A. Approve minutes of the February 28, 2022 Regular Council Meeting
 - B. Planning and Zoning Monthly Report
 - C. Police Monthly Report
 - D. Approval of Invoices

E. Financial Reports

8. **OLD BUSINESS:** Discussion, Consideration and Possible Action

9. **NEW BUSINESS:** Discussion, Consideration and Possible Action

A. **RESOLUTION NO. 699-2022** - A RESOLUTION OF THE COUNCIL OF THE TOWN OF THATCHER, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED ORDINANCE NO. 194-2022 - "EXHIBIT A" WHICH AMENDS MULTIPLE SECTIONS OF CHAPTER 152 OF THE TOWN OF THATCHER SUBDIVISION ORDINANCE

B. **ORDINANCE NO. 194-2022** - AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF THATCHER, ARIZONA, AMENDING THE SUBDIVISION ORDINANCE OF THE THATCHER TOWN CODE BY AMENDING MULTIPLE SECTIONS AND ADOPTING BY REFERENCE PURSUANT TO A.R.S. §9-802, THESE AMENDMENTS WHICH ARE FULLY DESCRIBED IN "EXHIBIT A" ATTACHED HERETO.

C. Proposed Re-zone of Parcel 104-13-076, West side of Reay Lane at 4th Street

D. Assignment of Zoning to the "Shadow Lane" Annexation Area

E. **RESOLUTION NO. 700-2022** – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF THATCHER, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE BOX CANYON RESALE AGREEMENT

F. **RESOLUTION NO. 701-2022** – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF THATCHER APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE SPPA PROJECT CONTRACT NO. 2021-2 (POWER PURCHASE AGREEMENT PROJECT)

G. Thatcher Soccer Field Use – RSL Club Soccer

10. **INFORMATIONAL ITEMS:**

The agenda may be inspected at the Thatcher Town Hall, 3700 W. Main Street, Thatcher, Arizona. All individuals addressing the Council shall limit their presentations or comments to 5 minutes or less and no more than twice on any one subject. Handicapped individuals with special accessibility needs may contact Tom Palmer, ADA Coordinator the Town of Thatcher, at (928) 428-2290 or (800) 367-8938 (TDD Relay). If possible, such requests should be made 72 hours in advance.

Posted by: _____

Date: Time: _____

- A. Town Manager's Report
 - Public Works Projects
 - Budget Work Session - April 4th @ 6:00 PM
 - Monthly Financial Summary
 - Police Department
 - Fire Department

- B. Council Reports

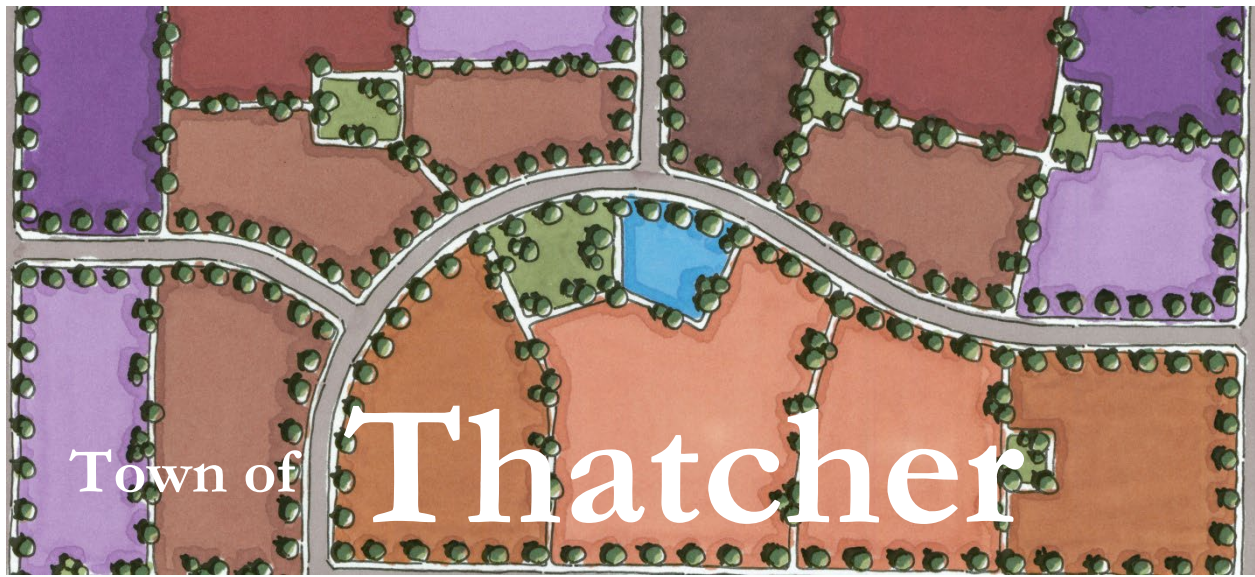
11. ADJOURNMENT

The agenda may be inspected at the Thatcher Town Hall, 3700 W. Main Street, Thatcher, Arizona. All individuals addressing the Council shall limit their presentations or comments to 5 minutes or less and no more than twice on any one subject.

Handicapped individuals with special accessibility needs may contact Tom Palmer, ADA Coordinator the Town of Thatcher, at (928) 428-2290 or (800) 367-8938 (TDD Relay). If possible, such requests should be made 72 hours in advance.

Posted by: _____

Date:Time:_____



Subdivision Ordinance

Approved June 2013 – Last Modified **March 2022**

Acknowledgments

The Town of Thatcher would like to thank the various individuals and working groups for taking the time to provide suggestions and acknowledge their input in the drafting of this Ordinance.

Town Council

Planning & Zoning Commission

Town Project Team

Project Consultants

Ordinance Updates:

1. Ordinance No. _____ (passed _____): Modifying standard street sections and updating various sections of the code.

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CHAPTER 152, ARTICLE 1: Title, Authority and Purpose

Section 1.0 Short Title. These regulations shall be known and may be cited as the “Town of Thatcher Subdivision Ordinance” and will be referred to herein as “this Code”, or “this Ordinance”.

Section 1.1 Authority. This Ordinance is adopted pursuant to the authority contained in the Arizona Revised Statutes (A.R.S.) § 9-463.01, *et seq.* in order to conserve and promote the public health, safety, and general welfare of the present and future citizens of the Town of Thatcher.

Section 1.2 Purpose and Intent.

- A. The purpose of this Ordinance is to provide for the orderly growth and harmonious development of the Town of Thatcher; to ensure adequate vehicular and pedestrian traffic circulation through coordinated street systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, flood protection, storm water detention, sanitary sewerage, and other health and safety requirements; to ensure consideration for adequate sites for schools, open space, recreation areas, and other public facilities; to help ensure that emergency services such as fire, ambulance and police services can be provided to all developed land; to promote the conveyance of land by accurate legal description; and to provide practical procedures for the achievement of this purpose.
- B. In the interpretation and application of this Ordinance, it is intended that a common ground of understanding and a sound and equitable working relationship exist between the public and private interests and to this end, the independent and mutual objectives of the public and private interests can be achieved in the subdivision of land.

Section 1.3 Adoption of Figures and Tables. All figures and tables within this Ordinance are hereby adopted and shall be incorporated herein as a part of this Ordinance.

Section 1.4 Adoption of Glossary, Appendices and Maps. The Glossary of Terms along with any appendices and maps within this Ordinance are hereby adopted and shall be incorporated herein as a part of this Ordinance.

Section 1.5 **Conformance with the General Plan.** This Ordinance is intended to implement the goals, objectives and policies of the “Town of Thatcher General Plan” and is hereby deemed to be in conformance with the adopted General Plan. Any amendments to or actions pursuant to this Ordinance shall be in conformance with the General Plan, as it may be amended from time to time.

(End of Article)

CHAPTER 152, ARTICLE 2: Administration

Section 2.0 Responsibility.

- A.** The Thatcher Planning and Zoning Commission is charged with the duty of reviewing the design and improvements of proposed subdivisions and to provide the Town Council with a recommendation to approve, conditionally approve or disapprove preliminary subdivision plats, final subdivision plats, subdivision regulation exceptions and protected development rights plans. The Commission's recommendation shall also include recommendations on the kinds, nature and extent of the improvements to be installed in the subdivisions.
- B.** The Town Council for the Town of Thatcher is hereby authorized to receive, process and otherwise act upon applications for preliminary subdivision plats, final subdivision plats, subdivision regulation exceptions and protected development rights plans in accordance with this Ordinance. Additionally the Town Council is hereby authorized to receive, process, and act upon an appeal of the Zoning Administrator's decision on a minor land/lot split application.
- C.** The Town Council shall have final jurisdiction over all matters pertaining to the implementation of this Ordinance.
- D.** All applications for action under this Ordinance shall be filed initially with the Zoning Administrator or his/her designee for processing in accordance with this Ordinance.
- E.** All applications shall be reviewed, from a technical aspect, by the Subdivision Technical Advisory Committee (TAC) which shall act in an advisory capacity to the Planning and Zoning Commission. The TAC shall, at a minimum, consist of the following Town Staff and agency members: Zoning Administrator, Town Engineer, Parks and Recreation Director, Public Works Director, Fire Chief, local Postmaster, representatives from the serving utility companies, Irrigation District, and the local School District. Additional members may be consulted when deemed necessary by the Zoning Administrator including the County Engineer and County Zoning Administrator if the proposed subdivision abuts property under Graham County jurisdiction.

Section 2.1 Application.

- A.** Where this Ordinance imposes a greater restriction upon land, land improvement, or development, and land use than is imposed by existing provisions of law, ordinance, contract or deed, this Ordinance shall control.
- B.** This Ordinance shall apply to all land, within the corporate limits of the Town of Thatcher, coming within the definition of subdivisions, land splits, and minor land divisions as defined in the Glossary of this Ordinance.

Section 2.2 Filing Fees. The Mayor and Town Council of the Town of Thatcher may from time to time establish and set by resolution, administrative fees considered necessary to process subdivision applications, and to review improvement plans and construction documents. The developer shall, at the time of filing, pay to the Town those established fees. These fees shall be non-refundable.

Section 2.3 Prohibition of Circumvention.

- A. No person, firm, corporation or legal entity shall sell, offer to sell, or divide any lot, piece, or parcel of land which constitutes a subdivision, as defined herein, or part thereof without first having recorded a final plat thereof in accordance with this Ordinance.
- B. No person, firm, corporation or legal entity shall sell, offer to sell, or divide any lot, piece, or parcel of land that is not within a subdivision but which constitutes a lot split or minor land division, as defined herein, without first obtaining approval by the Zoning Administrator in accordance with this Ordinance.
- C. The County Recorder shall not record a plat unless the plat has been approved and signed by the Town Council. The Town shall not issue any permits for work on any lot, piece or parcel of land in violation of this Ordinance.

Section 2.4 Modifications.

- A. Where, in the opinion of the Council, and after review by the Zoning Administrator and/or the Planning and Zoning Commission, there may exist extraordinary conditions of topography, land ownership or adjacent development, or other circumstances not provided for in this Ordinance, the Council may modify these provisions in such a manner and to such extent as it may deem appropriate to the public interest.
- B. In the case of a plan and program for an approved Traditional Neighborhood Development (TND), the Council may modify this Ordinance in such manner as appears necessary and desirable to provide adequate space and improvements for the circulation, recreation, light, air, and service needs of the development when fully developed and populated and may require conditions to assure conformance with the achievement of the TND's approved "Master Plan Map" and "Architectural Design Standards & Guidelines".
- C. In modifying the standards or requirements of this Ordinance, as outlined above, the Council may make such additional requirements as appear necessary, in its judgment, to secure substantially the objectives of the standards or requirements so modified.

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Section 2.5 Enforcement and Penalties.

- A. The Zoning Administrator shall be responsible for the enforcement of this Ordinance to further the promotion of the public health, safety, and general welfare.
- B. No building permit shall be issued for the erection or use of any structure or part thereof, to be located in a subdivision or lot created or established subsequent to this Ordinance becoming effective, that is not in accordance with the provisions of this Ordinance. Any such permit issued shall be void and of no effect.
- C. Any building or structure erected or maintained on a lot or parcel of land that is subject to this Ordinance, created or established subsequent to this Ordinance becoming effective, that is contrary to the provisions of this Ordinance shall be and the same is hereby declared to be unlawful and a public nuisance and the Town Attorney shall, upon order of the Town Council, immediately commence action or actions, proceeding or proceedings for the abatement, removal, and enjoinder thereof, in the manner provided by law; and shall take such other steps, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building or structure.
- D. Any subdivision, land split, minor land division or other use of property in violation of this Subdivision Ordinance shall be prevented or restrained through appropriate action instituted by the Town in accordance with ARS Section 9-463.01, 9-240.B28 and 9-240.B29.
- E. The Zoning Administrator may also request that the court issue an injunction against a violator to prevent further violations or irreparable harm to persons or property when the circumstances warrant it.
- F. Unless a specific penalty is set forth herein any person, firm, or corporation found guilty of violating any provision of this Ordinance, or any amendments thereto, shall be guilty of a class one misdemeanor punishable as set forth in the "Town Code" for the Town of Thatcher, and each day of continued violation shall be a separate offense, punishable as described.
- G. In addition to, or independent of the penalties provided above, the Town may bring a civil proceeding in a court of competent jurisdiction to enforce compliance with the terms of this Ordinance or to prevent, restrain, or abate any violation of the terms of this Ordinance.

Section 2.6 Conflicting Provisions.

- A. Where, in any specific case, different sections of this Ordinance or any other Town ordinance or code specify the use of different standards, different construction or other requirements, the most restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall apply.

- B. This Ordinance also is not intended to interfere with, abrogate, or annul any private agreements between persons, such as easements, deeds or covenants, except that if this Ordinance imposes higher standards or a greater restriction on land, buildings or structures than an otherwise applicable provision of a law, ordinance, or a private agreement, the provisions of this Ordinance shall prevail.

- C. Where other private agreements, covenants or restrictions are more restrictive, the Town cannot enforce the more restrictive private agreements, covenants or restrictions as a part of this Subdivision Ordinance.

Section 2.7 Severability.

- A. If any court of competent jurisdiction shall adjudge any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in said judgment.

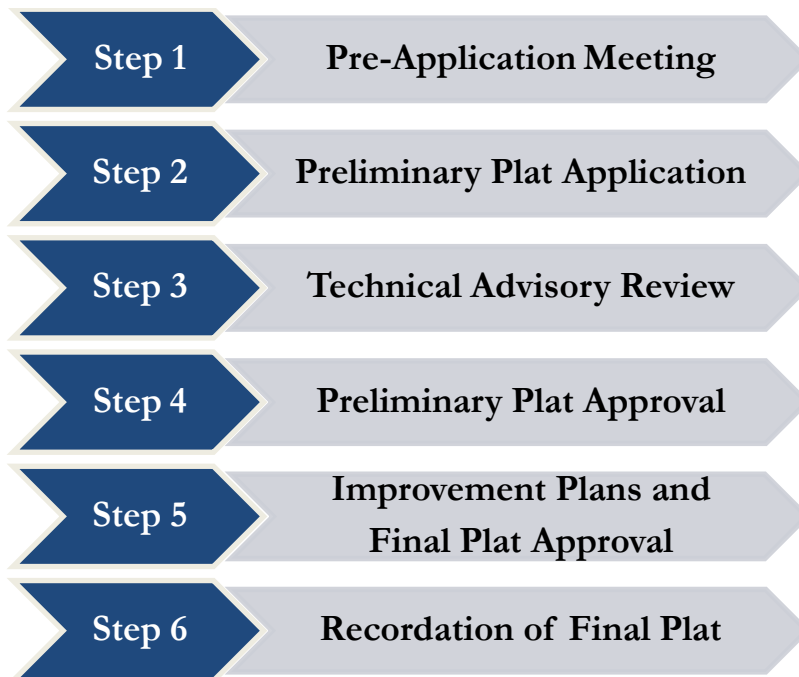
- B. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

(End of Article)

CHAPTER 152, ARTICLE 3: Platting Procedures and Requirements

Section 3.0 Outline of Procedures and Requirements

- A. The preparation, submittal, review, and approval of all subdivision plats located inside the jurisdictional boundaries of the Town of Thatcher shall proceed through the following progressive steps.



- B. If a submittal is determined to be incomplete or inaccurate at or during any of the different stages of the process, the developer shall be required to correct the inaccuracy and/or produce the omitted information before proceeding any further through the process.

Section 3.1 Step 1: Pre-Application Meeting.

- A. The pre-application meeting step is an investigatory meeting, to obtain advice and assistance from the Town that precedes the actual preparation of preliminary plans by the subdivider. During this meeting, the subdivider makes known its intentions and the town staff gives informal guidance at a time when potential points of conflict can most easily be resolved, advises of specific public objectives related to the subject tract, and other details regarding platting procedures and requirements. During this stage, it may be determined that a change in zoning would be required for the subject tract or part thereof, and in such case the subdivider shall initiate the necessary rezoning application.

- B.** In carrying out the purposes of the pre-application step, the subdivider and the Town shall be responsible for the following actions.
1. Actions by the Subdivider: The subdivider shall schedule a pre-application meeting with the Town and submit copies of a “Sketch Plan” for staff to review prior to and in preparation for the meeting. The subdivider shall meet informally with the Zoning Administrator and Public Works Departments’ staff to present and discuss the general outline of its proposal, including but not limited to:
 - a. Sketch plans and ideas regarding land use, street and lot arrangement, tentative lot sizes; and
 - b. Make tentative proposals regarding water supply, sewage disposal, irrigation (if any), surface drainage, flood hazard, and street improvements.
 - c. The subdivision shall be designed to comply with the requirements of the specific zoning district within which it is located.
 2. Actions by the Town: The Town will discuss the proposal with the subdivider and advise him of procedural steps, design and improvement standards, and general plat requirements. Then, depending upon the scope of the proposed development, the Town will proceed with the following investigations:
 - a. Check to determine if the subdivision is in conformance with existing zoning regulations and advise the subdivider if a zoning change or a General Plan Amendment is necessary or desirable.
 - b. Determine the relationship of existing or proposed school sites, parks, and other public spaces in the subdivision with the adopted Thatcher General Plan and any adopted or proposed general or master plan of schools, parks, and recreation areas to determine what space needs shall be reserved or set aside with any special requirements for such site.
 - c. Determine relationship of the subdivision to any adopted or proposed Town plan, development master plan, or neighborhood plan that embraces the subject subdivision.
- C.** If a General Plan Amendment is required that amendment must be obtained prior to additional processing of the application. In the event that a change of zoning is necessary, the zoning application and subdivision may be processed concurrently, but in no event will the preliminary plat be approved until the change of zoning is adopted by the Council.

Section 3.2 Step 2: Preliminary Plat Application.

The preliminary plat stage of land subdivision includes detailed subdivision planning, submittal, review and approval of the preliminary plat by the Council. Application for approval of the preliminary plat is made to the Zoning Administrator. To avoid delay in processing the application, the subdivider should provide the Town with all information requested herein.

A. Submittal Requirements. All preliminary plat applications shall comply with the submittal requirements and submit the required documents as outlined herein and on the application:

1. The information herein required as part of the preliminary plat submitted shall be shown graphically or by note on plans, or by letter, and may comprise several sheets showing various elements or required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, said scale being not less than 100 feet to an inch (1"=100'). Whenever practical, scales shall be adjusted to produce an overall drawing not exceeding 24" x 36" in size. The preliminary plat shall be prepared by a **civil engineer or** land surveyor registered to practice in the State of Arizona.
2. The subdivider (or its representative) shall **submit five (5) full-size (24"x36") copies of the preliminary plat, together with two (2) copies of each required report and a single electronic (PDF) copy of the plat and report on a "flash drive". All of these copies, together with the completed application and fees shall be submitted to the** Zoning Administrator at least twenty-five (25) working days prior to the regular Commission meeting at which the applicant desires to be heard. However, further processing of the plat shall be dependent upon the adequacy of the data presented, the completion of the technical review, and whether responses have been received from all the required departments demonstrating that the preliminary plat is compliance with this Ordinance. The subdivision files will be available for examination by the developer or its representative in the office of the Zoning Administrator by prearranged appointment.
3. All subdivision submittals shall provide "Identification and Descriptive Data", "Existing Conditions Data", "Proposed Conditions Data", and "Proposed Utility Methods" information by graphic representation or note as further outlined in the following sub-sections B-E. The submittal shall be checked by the Town for completeness; if incomplete as to those requirements set forth in this section, the submittal shall be rejected and the developer notified within fifteen (15) days of the date the application was received.
4. A Title Report showing the current owner.

5. A letter from the property owner giving authorization to process the application for the subdivision if the owner is not the developer.
6. If the proposed preliminary plat is within an approved Traditional Neighborhood Development (“TND”), copies of the approved TND master plan and the zoning conditions shall also be submitted as supporting documentation
7. If the developer is planning to plat the proposed development in phases it must be so indicated on their preliminary plat when submitted for Technical Review. If the developer later decides to phase the development, it may be necessary to re-submit for a second review.
8. The Preliminary Drainage Report. See Article 4 for more specific details.
9. The Preliminary Geotechnical/Soils Report. See Article 4 for more specific details.
10. The Traffic Impact Analysis, if required. See Article 4 for more specific details.
11. The Preliminary Landscape and Open Space Plan for all open space, retention area, and required landscaping for both on-site and off-site. See Article 4 for more specific details.
12. The subdivision fencing detail, if applicable, depicting the type of fencing being proposed; including elevations, and general locations.
13. If the subdivision is a conventional subdivision that proposes to use standard plans then copies of the proposed elevations and floor plans should be submitted.
14. A draft copy of the Covenants, Conditions and Restrictions (CC&R’s) for the subdivision.

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- B. Identification and Descriptive Data.** All preliminary plats shall contain the following information:
1. The proposed name of the subdivision and its location by section, township and range shall be clearly indicated; small scale vicinity map showing relative location of the plat to arterial or collector streets; reference by dimension and bearing to two (2) section corners and/or quarter section corners, and all subdivision boundaries shall be clearly identified on the plat.
 2. Name, address and phone number of land owner and the subdivider.
 3. Name, address, phone number, and seal of Registered Land Surveyor or Civil Engineer preparing the plat.
 4. Scale, and date of preparation, including dates of any subsequent revisions.
 5. A surveyed boundary, including distances and bearings and the total size of the proposed subdivision. A basis of bearings should also be shown.
- C. Existing Conditions Data.** All preliminary plats shall contain the following information obtained from a field survey:
1. Existing contours at one-foot (1') intervals, shown on the same map as the proposed subdivision layout. The datum used, together with the location and elevation of a site benchmark should also be shown on the plat. Contours shall be shown extending a minimum of fifty (50) feet from the external boundaries of the proposed development.
 2. The FEMA designated flood hazard area is to be designated on the coversheet of the preliminary plat. If the entire project boundary is not in the same zone, clearly delineated zone boundaries shall be shown on the preliminary plat. In the case that any portion of the proposed project is in a designate flood zone (other than zone "x"), specific plans for development within the floodplain shall be addressed both on the plat and in the drainage report. In addition to FEMA designated floodplains, the location by survey of streams, washes, canals, irrigation laterals, private ditches, culverts, lakes or other water features, including direction of flow and water level elevations shall be shown on the plat. The drainage report shall address the and location and extent of areas subject to inundation and whether such inundation is frequent, periodic or occasional.
 3. Location, widths and names of all existing or platted streets or other public ways within or adjacent to the tract, existing permanent building, railroad rights-of-way and other important features such as section lines, political subdivisions, or corporation lines and school district boundaries.

4. Existing sewers, water mains, culverts, or other underground structures within the tract and immediately adjacent thereto with pipe sizes, grades and locations indicated. Where sewers or water mains are not immediately adjacent thereto give direction and distance to nearest such usable utility.
5. Name, book and page numbers of any recorded subdivision adjacent to or having common boundaries with the proposed development.
6. The gross acreage of the subject parcel(s). Do not include previously dedicated rights-of-way in this figure.
7. The existing zoning of the parcel to be subdivided shall be noted on the plat. In the case that multiple zoning districts exist across the subdivision, the delineation of each zoning boundary shall be clearly shown.

D. Proposed Conditions Data. All preliminary plats shall contain the following information:

1. Street layout, including design cross section, preliminary curve data, curve lengths, proposed street(s) names based on existing projected alignments wherever possible, alleys, drainage ways, pedestrian connections and crosswalks and easements including all connections to adjoining platted or un-platted tracts.
2. Lot layout, lot numbers, and approximate dimensions and area of proposed lots. A non-access easement shall be provided on all residential lots adjoining an arterial street. Each lot shall be numbered individually and the total number of lots or dwelling units provided. Where plats will consist of a number of units/phases, utilizing the same subdivision name, the lot numbering shall be consecutive through the total number of lots or units.
3. Designation of all land to be dedicated, provided, or reserved for public or semi-public uses, with use indicated.
4. If plat includes land for which multi-family, commercial or industrial use is proposed, such areas shall be clearly designated together with the existing zoning classification, present district boundary lines and status of any pending zoning change.
5. Storm water disposal system, preliminary calculations, and layout of proposed drainage system. The direction of proposed street drainage to be indicated by arrows on the plat; the 100-year flood plain delineation and a proposal to provide for the retention of storm water generated on the property. Retention and detention of storm water to comply with the Town of Thatcher Standards.

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6. Whenever any stream or important surface drainage course is located in the area being subdivided, provision shall be made for an adequate easement along each side of the stream or drainage course for the purpose of widening, deepening, realigning, improving, or protecting the stream for drainage purposes.
7. Irrigation: If lots are proposed to be irrigated, all easements, the preliminary location of valves, and the tentative line of the underground pipe shall be shown.
8. Fire Hydrants: The type, number and location of fire hydrants shall be shown on the preliminary plat. Subsequently submitted domestic water distribution plans shall show connections of fire hydrants.
9. A statement as to the type and extent of proposed improvements should appear on the face of the plat. The subdivider shall provide Town Engineering with information as to the method whereby streets and their improvements are proposed to be financed.
10. A Lot and Tract Table shall be included, showing each lot and tract, the lot number or tract name, the area in square feet and acres and the proposed use of each tract. In addition to the table, a statement as to the ownership and maintenance of the tracts shall be shown on the coversheet of the plat.

E. Proposed Utility Methods. All preliminary plats shall contain the following information:

1. **Sewage Disposal** - The plat shall show the preliminary sewer layout indicating line sizes, manholes, direction of flow, and cleanout locations. A statement as to the type of facilities proposed shall appear on the preliminary plat.
2. **Water Supply** - A statement as to the assured water supply for the development shall appear on the preliminary plat. The preliminary layout of the water system shall be shown, indicating fire hydrants, valves, meter vaults, water line sizes and locations. A statement as to the type of facilities proposed shall appear on the preliminary plat.
3. **Electric and Gas Supply, and Telecommunications Service** - A statement as to the electric and gas supply, and the telephone, cable and internet service for the development shall appear on the preliminary plat. Any necessary easements shall be shown on the preliminary plat.
4. **Refuse Service** - A statement as to the garbage service for the development shall appear on the preliminary plat.

Section 3.3 Step 3: Technical Advisory Review.

A. The following entities may be part of a Technical Advisory Committee, as invited and deemed appropriate by the Zoning Administrator and the Town Engineer. Whether or not a formal Committee is convened, copies of the preliminary plat may be distributed by the Town to those parties who have an interest in the development.

1. City of Safford - Water Department
2. Town of Thatcher - Sanitary Sewer Department
3. Gila Valley Irrigation District
4. Thatcher School District
5. Graham County Coop - Electric Department
6. Town of Thatcher - Electric Department
7. Graham County Coop - Gas Department
8. Communications (Sparklight, Valley Telecom, Century Link)
9. Thatcher Fire Department
10. Graham County Floodplain Administrator
11. ADOT, if appropriate
12. US Postmaster, if appropriate

B. Before hearing by the Commission and if determined to be necessary because of the size or complexity of the development, the preliminary plat may be scheduled for review by the Technical Advisory Committee. The purpose of this Committee is to resolve, with all affected parties, technical problems with the proposed subdivision before being scheduled for hearing by the Commission. The developer and its representatives will be invited to attend together with representatives of the aforementioned reviewing offices.

C. Extensive revisions caused by the comments received at this meeting or by voluntary action of the developer, may require additional review time or another meeting. Additionally, circumstances may exist where the project may experience delay due to the developer's time line in addressing agency comments.

D. The right is reserved to disapprove any subdivision that is subject to periodic flooding or that contains extremely poor drainage facilities. However, if the subdivider agrees to make improvements that will in the opinion of the Town of Thatcher make the area safe for residential occupancy, the subdivision may be considered for approval.

Section 3.4 Step 4 Preliminary Plat Approval.

The preliminary plat approval step involves the re-submission of the preliminary plat to address all of the review comments from the Town, agencies and utilities. Included in this step is the review of the resubmitted plans, reports, and required studies and acceptance of the preliminary plat. The developer shall provide the

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Town with all information essential to determine the character and general acceptability of the proposed development.

A. Preliminary Plat Re-submission.

1. After addressing all comments by the Town and/or the Technical Advisory committee, the developer shall resubmit five (5) full-sized copies of the preliminary plat and two (2) copies of each required report, together with a flash drive containing PDF copies of all documents to the Town. Preliminary plats that correctly contain all of the information requested or required through the development review process, as determined by the Town, shall be scheduled for Planning and Zoning Commission hearing. Incomplete or incorrect re-submittals could cause delays in a preliminary plat being presented to the Planning and Zoning Commission. Scheduling of the case for Commission hearing shall be determined by the Zoning Administrator and shall be dependent upon adequacy of data presented, completion of processing, and other legalities that may be required if the subdivision involves rezoning and other land use exceptions.
2. Per the Town Zoning ordinance, the developer is required to conduct a neighborhood meeting as a prerequisite to the Commission hearing on the preliminary plat. The purpose of the meeting is to provide information to the adjacent property owners and to provide an opportunity for questions and concerns to be expressed. The meeting is to be held and minutes submitted in accordance with the Zoning ordinance.

B. Preliminary Plat Hearing(s).

1. The Commission shall consider the preliminary plat and the Zoning Administrator's staff report and recommendations.
2. The subdivider shall confer with the Commission regarding the type and character of development that will be permitted in the subdivision and may agree as to certain minimum deed restrictions to be placed upon the property to prevent the construction of sub-standard buildings, control the type of structure or the use of the lots, which, unless so controlled, would clearly depreciate the character and value of the proposed subdivision and adjoining property. These deed restrictions or covenants may include provision for the creation of a Homeowner/Property Owner's Association or Board of Trustees for the proper protection and maintenance of the subdivision in the future, provided, however, that such deed restrictions or covenants should not contain reversionary clauses wherein any lot shall return to the subdivider because of a violation thereon of the terms of the restrictions or covenants.
3. If satisfied that all objectives of this Ordinance have been met, the Commission may recommend to the Town Council approval of the preliminary plat. Recommendation of approval may be unconditional or may contain recommended conditions of approval.

4. If the Commission finds that the plat requires revision, the plat may be held over pending revision, resubmittal, processing, and rescheduling for hearing. Preliminary plats needing only minor revisions may be submitted to Town Council for consideration provided the revisions are noted both graphically and within the narrative of the Commission's written recommendation to the Council.
5. If approved by the Town Council a notation of approval shall be stamped on two (2) copies of the plat, one (1) being returned to the subdivider and one (1) retained in the permanent file of the Town.
6. If a plat is rejected, the new filing of a plat for the same tract, or any part thereof, shall follow the aforementioned procedure and shall pay a new filing fee.

C. Significance of Preliminary Approval. Preliminary plat approval constitutes authorization for the subdivider to proceed with preparation of the final plat and the engineering plans and specifications for public improvements. Preliminary plat approval **does not** authorize the developer to cut roads or other easements, begin site preparation and grading, or any similar such work unless authorized in writing by the Town. Preliminary approval is based upon the following terms:

1. **Subject to the Basic Approval.** The basic conditions under which preliminary approval of the preliminary plat is granted will not be substantially changed prior to the expiration date.
2. **One (1) Year Approval.** Approval of the preliminary plat is valid for a period of twelve (12) months from the date of Council action. Preliminary approval may, upon written application to the Council by the subdivider, be extended for an additional twelve (12) month period if in the opinion of the Council there is no change in conditions within or adjoining the preliminary plat that would warrant a revision in the design of the original preliminary plat.
3. **Multi-Phased or Traditional Neighborhood Development (TND) Approval.** Approval of the preliminary plat for a multi-phased development and/or for a TND, approved by the Town of Thatcher, is valid for a period of twelve (12) months; provided that the first phase/unit of the approved multi-phased development and/or TND is final platted within the initial twelve (12) month period. The remaining phases/units of the approved preliminary plat shall remain valid in accordance with the initially approved preliminary plat.
4. **No Authority to Record.** Preliminary approval, in and of itself, does not assure final acceptance of streets for dedication nor constitute authorization to record the plat.

Section 3.5 Step 5: Improvement Plans and Final Plat Approval.

The final plat step includes submittal, review and approval of the final plat, engineering of public improvements, final reports, plans for all improvements required by the Council, and recording of the plat with the County Recorder. Application for approval of the final plat is made to the Zoning Administrator. Improvement plans prepared by the Subdivision Engineer for roads, drainage, utilities and other related improvements must be submitted for review with the final plat.

A. Document Submittal Requirements.

1. **Utility Documentation.** The Subdivision Engineer shall submit one (1) copy of the plat and one copy of the improvement plans to the utility agency or agencies, concerned with the installation of utilities within the subdivision. Prior to approval of the plat by the Town, the Subdivision Engineer shall obtain will-serve letters from all agencies providing utility service to the subdivision. All new utilities are to be placed underground in the subdivision.
2. **Covenants, Conditions & Restrictions (Deed Restrictions).** The subdivision deed restrictions shall be submitted to the Town for review as part of the final plat and improvement plan submittal package.
3. **Title Report.** The developer shall, at the time of filing the application(s) for the final plat and improvement plans, submit a Title Report, certifying that the developer has title, acceptable to the Town Attorney, for all of the land being subdivided.
4. **Filing Fees.** The developer shall, at the time of filing the application(s) for the final plat and improvement plans, pay the Town the final plat application fee, improvement plan review fee, and the fee for recording the final plat and accompanying deed restrictions. If the recording fee is submitted in the form of a check, it must be made payable to the County Recorder.
5. **Engineers Cost Estimate & Financial Assurance Document.** Assurance in the form acceptable to the Town Attorney and in the amount required by the Town of Thatcher shall be deposited with the Zoning Administrator to guarantee construction of the required subdivision improvements.
6. **Commitment of Water Service.** The developer shall provide the documentation from the City of Safford that states the City of Safford will serve the subdivision, in accordance with Section 45-576 of the Arizona Revised Statutes (ARS).

7. The final plat and improvement plans prepared by the Developer and Subdivision Engineer shall comply with any special conditions of approval, the design standards of this Ordinance, and any zoning conditions imposed by the Zoning Ordinance and/or the Town Council.

B. Final Plat Submittal.

1. The final plat shall conform to the approved preliminary plat and any stipulations attached thereto by the Council. One (1) mylar print and eight (8) paper copies of the final plat shall be filed with the Town. The mylar copy shall bear the original signatures of the owner or owners and be duly acknowledged. A completed application and applicable fees shall accompany the final plat.
2. The final plat shall be filed with the Town at least twenty-five (25) working days prior to the regular meeting at which the applicant desires to be heard by the Council. Upon receipt of the final plat submittal, the Town shall immediately check it for completeness and if the final plat is not complete it will be immediately returned to the subdivider. If the final plat is not in conformance with the preliminary plat or stipulations attached thereto, it will be returned to the subdivider for compliance. If the final plat is complete and conforms to the approved preliminary plat and any stipulations attached thereto, it will be transmitted to all reviewing departments and/or agencies.
3. If additional information or changes are recommended by any of the reviewing departments and/or agencies, a revised final plat must be submitted to the Town. Referral and scheduling of a revised final plat shall be the same as that required for the original final plat. Plats not in satisfactory form to be considered by the Council will not be scheduled for a public hearing.

C. Improvement Plans & Reports.

Infrastructure construction plans and reports will be submitted concurrently with the final plat submittal for review. The Final Plat will not be approved until the infrastructure plans are approved. Improvement plans and reports shall be submitted in accordance with the procedures and design standards established in Article(s) 4 and 5 of this Ordinance. Three (3) complete sets of improvement plans and two (2) copies of all reports shall be submitted to the Town. If the submittal is complete, the Town shall distribute sets of the plans to the appropriate reviewing departments within the Town. The developer shall be responsible for submitting to all other agencies and utility companies who shall make known their recommendations in writing.

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D. Information Required on the Final Plat.

1. The final plat shall be drawn in ink on mylar or other approved material on a sheet not exceeding 24" x 36" in size. Copies of the final plat shall be reproduced in the form of blue line or black line prints on a white background. The plat shall be drawn to an accurate scale of not less than 100 feet to an inch (1"=100'). If more than two (2) sheets are required, a key map shall be shown on the first sheet or on a separate sheet. The Town shall require the plat to be submitted digitized in an appropriate format.
2. A title, which includes the name of the subdivision and its location by Section, Township, Range, and County.
3. Name, address, registration number and seal of the Arizona-Registered Land Surveyor responsible for preparing the plat.
4. Scale (written and graphic), north arrow and date of plat preparation.
5. Basis of bearings, dimensions, bearings and distances of all property lines, right-of-way lines and easements.
6. Any excepted parcel(s) within or surrounded by the plat boundaries shall be noted as "Not a Part of This Subdivision" and shall be accurately described by bearings and distances. Proper street and alley dedications adjacent to any proposed tracts or excepted parcels shall be provided by the subdivider by inclusion within the plat or by separate dedication noted on the plat
7. Boundaries of the parcel(s) to be subdivided fully balanced and closed, showing all bearings and distances, determined by an accurate survey in the field. The surveyor of record shall also provide subdivision boundary and lot closures and area calculations to the Town. Closures shall be properly stamped and signed, showing the Surveyor's registration number. All dimensions shall be expressed in feet and decimals thereof.
8. Corners of the plat should be noted and monuments found or set should be indicated; each of two (2) separate corners of the subdivision traverse shall be tied by course and distance to separate section corners or quarter section corners. Portions of any contiguous property between major road intersections shall not be excluded from within the boundaries of the subdivision when needed or required for dedication or improvement of any traffic, drainage, or flood control facility. Such areas may be indicated as excluded tracts after necessary dedications are shown. The certifying Land Surveyor shall submit subdivision boundary and lot closure and area calculations to the Town.

9. A table showing the name or number of each lot and tract and areas of all right-of-way. Table should include total subdivision gross acreage, total number of lots and parcels, and the size, in square feet, of each lot or parcel.
10. Names, centerlines, right-of-way lines, courses, lengths and widths of all public streets, alleys, crosswalks and utility easements; radii, points of tangency, curve lengths, and central angles of all curvilinear streets and alleys, and radii of all rounded street line intersections.
11. All drainage easements shall be shown on the plat and the limit of the Floodplain if any portion of the land being subdivided is within a FEMA defined Floodplain. Notes shall be clearly placed on the plat such that no structure will be allowed in the easements to obstruct drainage. The rights-of-way of all major drainage ways shall be dedicated drainage easements or right-of-way as determined by the Town Engineer.
12. The location, width and use of all public or private utility easements shall be noted.
13. Location and dimensions of all lots shall be shown. Lot dimensions shall be indicated on at least one side lot line and either the front or rear lot line. All lots shall be numbered consecutively throughout the plat. Exceptions, “tracts”, “parcels” and private parks shall be so designated, lettered or named, and clearly dimensioned; parcels which are not part of the subdivision shall be so designated.
14. Typical Building Lines: A graphic depiction of the “typical” minimum building setback lines shall be shown on the plat. Such building lines shall not be less than required by any zoning ordinance or building setback line regulations applying to the property. The typical setback detail should include at least one corner lot, with applicable setbacks.
15. The accurate outline, with dimensions and bearings for all property that is offered for dedication for public use and of all property that may be reserved by deed covenant for the common use of the property owners in the subdivision.
16. Name, Book and Page number of adjacent recorded subdivisions, with location of existing adjacent lots, easements and right-of-way shown, or notation “unsubdivided” where appropriate. All proposed conditions shall be graphically differentiated from existing conditions on adjacent properties and on excepted parcels within the plat.

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17. Any proposed private deed restrictions to be imposed upon the plat or any part or parts thereof pertaining to the intended use of the land, and to be recognized by the Town, shall be noted on the plat.
18. All existing private easements within, on or over the plat shall be indicated, dimensioned, and noted as to their use. The location and widths of all easements for right-of-way provided for public services, utilities, or drainage, and any limitations of the easements.
19. Dedications: There shall be a statement of dedication of all streets, alleys, drainage detention/retention basins and drainage ways, pedestrian/bicycle ways, equestrian trails and easements, and other easements for public use, including sanitation, utility, fire and other emergency related vehicles, executed by the person or persons holding title by deed to the lands, by persons holding any other title of record, by persons holding title as vendees under land contract, by spouses of said parties, lien holders and all other parties having an interest in the property. If land dedicated is mortgaged, the mortgagee shall also sign the plat. Signatures must be witnessed. If the plat contains private streets, provisions should be made for installation and maintenance of utilities and drainageways. Easements shall be provided for purposes indicated, including refuse collection, fire and other emergency services.
20. Acknowledgment of Dedications: Execution of dedication, acknowledged and certified by a notary public.

E. Required Certifications, Signatures, and Notes.

Multiple notations are required to appear on a final plat. The notations that are standard on every final plat include, but are not limited to, the following:

1. Notary Acknowledgment Statement
2. Covenants, Conditions & Restrictions (Deed Restriction) information
3. Conveyance and Dedication Statements
4. Town Approval Signature Block
5. Surveyors Certification
6. Easement Statements & Notes
7. Township / Section information & Basis of Bearings

F. Final Plat Approval.

1. Upon approval of the improvement plans, documents and final reports; letters from all involved utility companies approving the utility installation plans and confirming the availability of services; all required certifications from State and County agencies; and receipt of a request for Town Council action from the Town Engineer; the Zoning Administrator shall first place the final plat on the Planning and Zoning Commission agenda for review and recommendation.
2. The Town shall assemble the recommendations of the various reviewing offices, prepare a concise summary of these recommendations and submit said summary together with the reviewer's recommendations at the next regular meeting of the Commission.
3. The Commission's recommendation shall be forwarded to the Mayor and Council. If the Town Council approves or conditionally approves the plat, the Mayor shall sign the plat and the Town Clerk shall attest the Mayor's signature.
4. When the certificate of approval by the Town Council has been transcribed on the plat, the Zoning Administrator shall retain the recording copies until the Town Engineer certifies that the subdivision has been staked; the improvement plans and final reports have been approved; a computer closure of the plat has been received; recording fees submitted; that the subdivision improvement construction assurances are in the form and amount to the satisfaction of the Town Engineer and the Town Attorney, along with the Engineer's estimated cost of said improvements has been received; and that any drainage or other restrictive covenants have been signed, notarized and received from the developer.
5. Where the subdivision contains a park, school or other public area that is shown upon the Town General Plan or as recommended by the Commission such area shall be reserved for acquisition by the proper public agency within a period of one (1) year after recording the final subdivision plats
6. Approval of the final plat is valid for a period of one (1) year from the date of Town Council approval. If the developer fails to provide the required material or perform the necessary work, as indicated in Section 3.5 (F)(4), within this one (1) year period, the final plat approval by council shall become null and void; unless a time extension has been approved by the Town Council. Any further action on said plat, after the expiration of the approval, shall require a complete re-submittal of the plat and improvement plans. The re-submittal will be subject to any adopted codes and ordinances in effect at the time the re-submittal takes place.

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Section 3.6 Step 6: Recordation of Final Plat.

- A. Upon receipt of the required material, documents, and fees, and performance of the necessary work as listed in Section 3.5, the Town shall then cause the final plat to be recorded in the Office of the County Recorder of Graham County.
- B. An electronic copy of the recorded plat shall be provided to the Town of Thatcher in CAD format by the Subdivision Engineer or Surveyor. Said electronic copy shall be in a format acceptable to the Town Engineer.

Section 3.7 Replat.

- A. Any division of a lot in a recorded subdivision, or any change in lot lines in a recorded subdivision, shall be processed in accordance with Section 3.5 of these regulations, after a pre-application meeting with Town staff as provided in Step 1.
- B. Any replat involving dedication of land for a public street shall comply with all procedures set forth in these requirements unless, at the discretion of the Zoning Administrator after a Pre-application Meeting, Step 2, the Preliminary Plat Step, is waived.
- C. If abandonment of a street, alley or public utility easement or other recorded easement in a previously recorded subdivision is necessary, either a replat of that area or a Certificate of Correction, as determined by the Zoning Administrator, shall be processed concurrently with the abandonment and recorded immediately subsequent to the recordation of the abandonment.

Section 3.8 Abandonment of Recorded Subdivision

- A. Pursuant to provisions of Title 28, Chapter 14, Article 1, Subsections 28 - 1901 through 28 - 1908, ARS, the abandonment of all or part of a recorded subdivision may be initiated by written petition to the Council, said petition to be signed by all owners of real property in said subdivision requesting abandonment of all streets, alleys and easements within said subdivision and giving the legal description and recording information thereof.
- B. Applications for abandonment of a recorded subdivision are filed with the Zoning Administrator and referred for recommendation to the appropriate Town Staff and utility companies concerned. After approval of the abandonment of the streets, alleys and easements by the Council and upon recordation of the abandonment Resolution and a subsequent Town road map in the Town Clerk's Office, the subdivision is removed from official maps.

Section 3.9 Condominium Developments

- A. The application requirements, processing and approval regulations contained within this Ordinance shall apply to all condominium developments.
- B. All condominium subdivisions shall comply with the provisions of this Ordinance and the *Town of Thatcher Zoning Ordinance*, and the location of building shown on the plat and the manner in which the airspace is to be divided in conveying the condominium shall be clearly defined and shall not violate any provision of this Ordinance.
- C. In order for the condominium subdivision application to be considered complete, the developer shall provide to the Town any plans, specifications, and/or analysis needed to show that the proposed condominium subdivision is in compliance with this Ordinance and the *Town of Thatcher Zoning Ordinance*, including but not limited to grading plans, site plans, floor plans, elevations, and improvement plans.

Section 3.10 Minor Land Divisions and Lot Splits

- A. The provisions in this section shall apply to any “minor land division” and/or “lot split” of improved or unimproved property, including a lot, parcel, tract, or combination thereof, for the purpose of financing, sale or lease, whether immediate or future, if one of the following conditions exists:
 - 1. The division of land whose area is two and one-half (2½) acres or less and is being divided into two (2) or three (3) tracts or parcels of land for the purpose of sale, lease or conveyance.
 - 2. The area of the property to be divided is greater than two and one-half (2½) acres and requires the creation of a public or private street or easement to provide legal access to one (1) or more additional lots.
 - 3. Any lot or parcel of land, not a part of a recorded subdivision plat, that has a tax parcel established by the county and is being divided into two (2) or three (3) lots.
 - 4. The division of land into more than two (2) parts, and when the boundaries of such property have been fixed by a recorded plat.
- B. A minor land division and/or lot split does not include the adjustment of a property line, where land taken from one (1) lot is added to an adjacent lot, provided the proposed adjustment does not create a substandard lot. Administrative review by the Town is required. A certificate of correction, from an AZ Registered Land Surveyor, shall be required if the property line adjustment is for lots within a recorded subdivision plat.

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- C. The Town may approve minor land divisions and lot splits administratively. Prior to recording any deeds related to a minor land division and/or lot split with the Graham County Recorder's office, a property owner shall submit to the Zoning Administrator an application containing the following information.
1. A completed application form.
 2. A survey map, prepared by a licensed land surveyor, showing the proposed land split. The survey map should be fully dimensioned and prepared at a scale that maintains legibility. The drawing or sketch shall show the following information at a minimum:
 - a. The boundaries of the original parcel(s) or lot(s) prior to the land split. This should include ties to section monuments and all corner monumentation.
 - b. The proposed lot(s), including proposed corner monuments.
 - c. The rights-of-way adjacent to or within the property, including streets and easements.
 - d. The locations and dimensions of any existing structures.
 - e. The setbacks of existing buildings from existing and proposed property lines.
 - f. The land area of each proposed lot in square feet or acreage.
 - g. Access to all proposed lots.
 - h. Whether there is any shared use of facilities between properties.
 3. Documentation of the land division history of the parcel. Documentation may consist of Assessor's maps and records, deeds, title history search, or any other information that would credibly show the number of land divisions that have occurred from the original parcel over the last twenty (20) years or from the date of annexation if the annexation occurred within the last twenty (20) years.
 4. If applicable, a copy of any easement agreement or other legal document that permits shared facilities.

- D.** The Zoning Administrator shall review the application and make a determination on the following.
1. Whether the proposed minor land division and/or lot split constitutes a subdivision as defined in the Glossary of this Ordinance, requiring compliance with platting requirements of this Ordinance.
 2. If the proposed minor land division and/or lot split does not constitute a subdivision, whether:
 - a. The lots resulting from the proposed minor land division and/or lot split conform to the minimum lot size requirements for the zoning classification of the property.
 - b. Access to the proposed lots is in compliance with this Ordinance.
 - c. The location of any existing building on any lot resulting from the proposed minor land division and/or lot split complies with building setbacks for the applicable zone.
- E.** If dedicated and/or public improvements are required for minor land divisions and/or lot splits, the developer shall be responsible for the preparation of a complete set of improvement plans, prepared by an Arizona registered civil engineer, satisfactory to the Town Engineer for the construction of the required improvements. The plans shall be prepared in conjunction with the minor land division and/or lot split map and the requirements outlined in Article 5 of this Ordinance
- F.** The Zoning Administrator shall notify the applicant, in writing, of the review decision and findings within ten (10) working days after the minor land division and/or lot split application is filed.
1. If the Zoning Administrator determines that the proposed minor land division and/or lot split constitutes a subdivision, **compliance with all Subdivision requirements of this Article shall be required for the subdividing of lands.**
 2. If the Zoning Administrator determines that the proposed minor land division and/or lot split complies with minimum requirements of this Article, a letter of approval shall be issued to the applicant together with an approved copy of the land split drawing.
 3. If the Zoning Administrator determines that the proposed minor land division and/or lot split does not comply with minimum requirements for this Article, a letter of denial shall be issued.

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4. Compliance with Town ordinances and regulations not reviewed as part of the minor land division and/or lot split review process will be determined at the time of application for building permits when more detailed information is provided on the proposed development.
- G. No building permit or zoning compliance certificate shall be issued for development on any parcel that does not comply with the minor land division and/or lot split regulations of this Article.
- H. When improvements are required as a part of the minor land division, the minor land division and/or lot split map shall not be recorded, nor shall any improvement work commence until the Town Engineer has approved the improvement plans.
- I. No minor land division and/or lot split, which creates a substandard or nonconforming lot or structure, shall be approved unless and until the appropriate variance and/or use permit is obtained.
- J. If any improvements are required for the minor land division and/or lot split pursuant to regulations contained herein, no building permit for any lot created will be issued until such improvements are completed and the work accepted by the Town Engineer unless the developer provides construction assurance in a form acceptable to the Town Attorney.

(End of Article)

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CHAPTER 152, ARTICLE 4: Design Standards

Section 4.0 Purpose and Intent.

- A. The purpose of this Article of the Subdivision Ordinance is to provide the development community and the citizens of Thatcher with a minimum set of standards to guide the physical development and the visual quality of the subdivisions being developed throughout the community.
- B. The intent is to create functional developments, minimize adverse impacts on the community, and to insure that future subdivisions will conform to the community's expectations and implement the General Plan. All subdivision plats shall comply with the design standards in this Article which are designed to result in a well-planned community without adding unnecessarily to development costs yet encourage new development that is dynamic, creative and imaginative.

Section 4.1 General Requirements.

- A. Consideration should be given in the design and development of all Subdivisions to conserve natural features such as trees, watercourses, historical and archaeological sites and similar community assets which add value and beauty to the community.
- B. Every subdivision shall conform to the goals, objectives and policies of the General Plan. All improvements proposed shall conform to this Subdivision Ordinance, the Zoning Ordinance, and the Arizona Revised Statutes and shall be acceptable to the Town Engineer.
- C. All public improvements shown on the final plat and the improvement plans, and any additional improvements that may be required by the Town Council as a condition for approval of the final plat, shall be the responsibility of the developer; unless otherwise approved by the Town Council.
- D. Where the area proposed for development contains all or part of a park, a school, flood control facility, or other public site, as shown on the General Plan or as recommended by the Commission or Town Council, such site shall either be dedicated to the public or reserved for acquisition by the public or appropriate agency or land trust within a specified period of time as prescribed in A.R.S. 9-463.01 (D) and (E).
- E. Land which is subject to periodic flooding, land which cannot be properly drained, land which has unstable soils or slopes, or land which is otherwise unsuitable for residential, commercial, or industrial uses shall not be subdivided. The Town Council may approve the subdivision of such land upon receipt of evidence, including subdivision construction assurances satisfactory to the Town Engineer and Town Attorney, that the construction of specific improvements will render the land suitable. The construction of subdivision improvements shall not commence until

after final plat and improvement plan approval, and financial assurances have been secured to the satisfaction of the Town Engineer, Zoning Administrator, and Town Attorney.

- F. Any contiguous property owned by the subdivider shall not be excluded from the boundaries of a Subdivision when needed or required for traffic, drainage or flood control facility for the Subdivision.
- G. If the Subdivision is traversed by or is adjacent to streams or other bodies of water, the Subdivider shall provide a right-of-way for storm drainage conforming substantially with the line of the natural watercourse or provide an acceptable realignment of the watercourse.
- H. When the land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged to allow for future streets and Subdivisions that may develop.

Section 4.2 Site Design Standards.

- A. Residential. Regardless of the density of the individual developments, single family residential subdivisions and condominium or multi-family subdivisions shall be properly designed and shall be required to provide open space as well as landscaping. Depending upon site and location factors the subdivision may also be required to provide physical connections to adjacent neighborhoods and to the greater community.
- B. Commercial and Industrial. Commercial and industrial subdivisions shall be required to provide open space as well as landscaping. Further, the subdivisions shall be designed in a manner so that the surrounding land uses are considered; sufficient access is provided; and adverse impacts buffered. In addition, the following standards shall apply to commercial and industrial subdivisions:
 - 1. Commercial and industrial lots/developments that back up to an existing or designated residential land use shall be designed with extra depth to accommodate a landscaped buffer strip adjacent to the common property line to mitigate any adverse effects to the residential neighborhood from a permitted commercial or industrial use.
 - 2. Street right-of-way and pavement design shall be adequate to accommodate the type and volume of traffic anticipated to be generated by the development.
- C. Traditional Neighborhood Development (TND): A TND, as described in Article 12 of the Thatcher Zoning Ordinance, shall establish the minimum lot area and lot width, the associated development standards, mix of land uses, density, open space, amenities, and landscaping in effect for the various subdivision(s), provided that the

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TND is approved by the Town Council prior to or in conjunction with, the preliminary plat approval for the subdivision.

Section 4.3 Open Space and Landscape Standards.

A. General Requirements.

1. Required open space for all types of subdivisions shall be as prescribed in the Thatcher Zoning Ordinance.
2. Open space intended to fulfill the open space requirements shall be calculated upon the net acres of the subdivision whether residential, commercial, or industrial.
 - a. Net acres for a residential project are defined as: total acres exclusive of the area required for arterial or collector street right-of-way dedications, reserved school sites, and all commercial and/or industrial acreage.
 - b. Net acres for nonresidential projects are defined as: total acres exclusive of the area required for arterial or collector street right-of-way dedications.
3. Open space area shall mean any area of land that can be enjoyed by people. Any of the following may be calculated as part of the required open space:
 - a. Landscaped or hardscaped plazas,
 - b. Any parking area landscaping that exceeds that which is required by the Zoning Ordinance,
 - c. Fountains, and sitting areas all meant to provide an open park like atmosphere,
 - d. Playgrounds,
 - e. Golf courses,
 - f. Bicycle trails (but not bike lanes within the public right-of-way),
 - g. Pedestrian trails (but not residential sidewalks integrated with the curb),
 - h. Landscape buffers,
 - i. Landscaped medians, and

- j. Landscape strips associated with curb separated sidewalks.
- 4. Open space does not include retention and/or detention basins that are concrete lined or non-landscaped, vacant lots, or undeveloped lots.
- 5. Improvement of the open space, landscaping, and amenities shall be the responsibility of the developer and shall be part of the subdivision improvements. An improvement district shall be established by the developer to provide for the long-term maintenance responsibilities of these areas; unless otherwise accepted by the Town into the Town park system for such maintenance responsibilities.

B. Specific Open Space Design Standards.

- 1. The open space areas should be designed in such a manner as to be easily accessible to all lots.
- 2. Residential subdivision retention or detention basins, that are required in accordance with the subdivision drainage report, shall qualify as open space only if they are landscaped and designed to be used as an active multi-use area. Retention basins with a bottom area in excess of one-half (1/2) acre, shall be designed and turfed and encouraged to be equipped to accommodate a play/sport field. All play structures and restrooms within the basin shall be located at least one-half (1/2) foot above the 100-year storm level. All basins to be accepted by the Town for maintenance shall be constructed with a minimum of four to one (4:1) side slopes.
- 3. Commercial and industrial subdivision retention or detention basins, that are required in accordance with the subdivision drainage report, shall qualify as open space only if they are landscaped. Terracing, berming and contouring may be required to naturalize and enhance the aesthetics of the basin. Basin slopes shall not exceed a three to one (3:1) slope.
- 4. Existing watercourses and drainage ways shall qualify as open space if they are incorporated into the design of the subdivision, constructed with/of natural materials, and incorporated into the larger open space design.

REMOVED FIGURE 1 & FIGURE 2

5. Existing canal right-of-way, if within or adjacent to the proposed subdivision, may be calculated as open space if improved with a multi-use pathway, for bicycles, pedestrians, equestrians, and landscaping as part of the subdivision improvements. At least one-side of the canal should be designed to provide an access road for cleaning and dredging of the canal and depositing of the dredged material.
6. If the developer chooses to provide a median and/or a curb separated sidewalk with a tree-lined street cross section as the collector and/or local street cross section, the landscaped median and “boulevard strip” area, within the public right-of-way may be calculated as part of the required open space.
7. The location of neighborhood parks, mini parks, tot lots and similar recreation areas should wherever possible be internalized to the neighborhood and not adjacent to an arterial street.

C. Specific Landscape Standards.

1. Landscaping, as a major element of the streetscape and open space, shall be required as part of any subdivision development. All developments shall provide landscaping within, but not limited to, the required open space areas, retention or detention basins, the community trail system if applicable, and the public rights-of-way as required in Article 17 of the Thatcher Zoning Ordinance. Installation of the required landscaping shall be in accordance with the approved landscape plan for the development.
2. To ensure plant materials are installed and properly maintained, a Preliminary Landscape and Open Space Plan will be required of all developments as part of the Preliminary Plat submittal package and a Final Landscape and Open Space Plan (including irrigation) as part of the Improvement Plan submittal package (see Article 5 for details). The final plan shall show all required plant material locations and include a plant list/palette, indicating species, size, quantity, and spacing specifications.
3. Streetscape shall be required along the arterial and collector streets that are within or adjacent to a subdivision as part of the required improvements for that subdivision. Landscaping should be a major element of the streetscape.
4. Landscaping on parcels must gradually taper to meet the top of the sidewalk fronting the street at all points. Developers shall install curbing or retaining walls on the outside of the sidewalk for parcels graded such that landscaping lies above the sidewalk or where landscaping slopes more than 10% within 8 ft. of the sidewalk.

D. Walls and Fences.

1. Where a commercial or industrial development share a common property line with a residentially zoned property (including agricultural lands) or the community open space areas, a solid perimeter wall shall not enclose the developments required open space area.
2. Any solid view-obscuring perimeter wall along the boundary of the subdivision shall be specifically indicated on the final improvement plans.

Section 4.4 Access Requirements.

- A.** Where practical, as determined by the Town Engineer, every subdivision (residential, commercial and industrial) shall have at least two (2) separate and distinct access points both of which shall provide fully-improved and accepted access from public, or approved private streets, developed to Town of Thatcher street standards. Where two fully-improved access points are not possible or practical, every effort should be made to provide at least one fully improved access point and one all-weather emergency access point. Single access points will only be allowed for small subdivisions, as defined in the Glossary, and for subdivisions where no other feasible option for secondary access exists.
- B.** Every lot within a subdivision shall have frontage onto a fully-improved, publicly-dedicated and accepted right-of-way (street or alleyway) that meets all Town of Thatcher street standards. Private streets that meet all Town of Thatcher street standards may provide frontage to lots if the development is approved by the Town Council for private streets.
- C.** Access requirements for lot splits and small lot subdivisions shall be in accordance with Section 4.16.
- D.** Access directly onto any Arterial street from lots in a residential subdivision shall be prohibited by the dedication of a 1 foot Vehicular Non-Access Easement (VNAE) along the right-of-way line and the construction of a solid masonry wall along said lots. There shall be no vehicular access gates in such wall. Access directly onto collector streets from lots in a residential subdivision shall be discouraged. For non-subdivided properties, every effort should be made to minimize the number of access points onto arterial and collector roads.

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Section 4.5 Street Location and Arrangement.

- A. The road system shall be designed to permit the safe, efficient, and orderly movement of traffic and pedestrians; meet the needs of present and future population served; have a simple and logical pattern; respect natural features and topography, and; present an attractive streetscape.
- B. In residential subdivisions, the road system shall be designed to serve the needs of the greater community. Where practical and necessary, traffic calming methods, as defined by the Institute of Traffic Engineers (I.T.E.), may be implemented to reduce speeds and discourage “pass-through” traffic. Any such traffic calming measures shall be justified and approved by the Town Engineer.
- C. Whenever a proposed subdivision embraces any part of an arterial or collector street designated in the approved Circulation Plan, such street shall be platted in conformity thereto. Street layout shall provide for the continuation of such arterial and collector streets as the Circulation Plan or Town Engineer may designate.
- D. Certain proposed streets, as designated by the Town, shall be extended to the subdivision boundary to provide future connection with adjoining unsubdivided lands.
- E. Half width streets may be approved in a Subdivision where there is adjacent property that may be developed in the future which can provide the other half width to the street. The width of a half width street shall not be less than thirty (30) feet. A full width street shall be provided where it would be impractical for half width streets. A Subdivision that adjoins existing streets shall dedicate additional rights-of-way to meet the dimensional requirements established by the Town and this Ordinance.
- F. Streets shall be so arranged in relation to existing topography as to produce desirable lots of maximum utility, streets of reasonable gradient, and the facilitation of adequate drainage.
- G. Where private streets are approved, such streets shall be constructed to Town specifications and shall be placed into specific “street tracts” of land. Statements shall be contained on the plat and in the Deed Restrictions that those streets are declared private subject to an easement authorizing use by emergency and public service vehicles and utilities, and remain the permanent responsibility of that development’s improvement district. If at any time the streets are dedicated to, and accepted by the Town, the streets must first be improved by the developer to the current standards specified by the Town at the time of dedication.

Section 4.6 Street Design Standards.

REMOVED FIGURES 3 - 8

- A. Design of Streets.** Unless specifically approved otherwise, all streets shall be fully developed to the applicable street cross-section included in this ordinance. The current Circulation Plan, as approved by the Town will be used to determine appropriate cross-sections.
- B. Private Streets.** Private streets shall conform to above stated design standards unless otherwise approved by the Town Council. Private streets shall be placed within their own parcel or tract of land. Where site conditions necessitate unique design solutions, modifications may be approved by the Town Council.
- C. Cul-de-Sac Streets.** Cul-de-sac streets shall be constructed at the end of all non-thru streets. The Town Engineer may approve an equally convenient form of turning and backing areas where extreme conditions justify. The maximum length of Cul-de-sac streets shall be seven hundred fifty (750) feet or 20 homes, whichever is more restrictive, as measured from the curb line of the intersection street to the curb line at the end of the of the cul-de-sac, along the street centerline.
- D. Dead-end Streets.** Dead-end streets will not be approved except in locations recommended by the Zoning Administrator as necessary to future development of adjacent lands; with an acceptable all-weather access emergency turn around.
- E. Private Access and Driveways.** Access from private property to any dedicated street shall be constructed in accordance with permits issued by the Town. Width of driveway at the property line shall be a minimum of twenty (20) feet.
- F. Alleys.** Alleys are highly discouraged and shall be permitted only with approval from the Town Council. Where needed, and approved by Town Council, they shall be a minimum of twenty (20) and a maximum of thirty (30) feet in width for commercial and industrial and a minimum of twenty (20) foot in width for residential. Sufficient turning radii shall be provided to allow service vehicles to safely traverse the alley. Dead-end and “half” alleys shall be prohibited.
- G. Street Intersections.**

 - 1. Street intersections shall be as nearly at right angles as possible and no intersection shall be less than sixty degrees (60°). Exceptions to these requirements will be considered by the Town Engineer based on terrain and other conditions.
 - 2. Street jogs with centerline offsets less than 135 feet shall be prohibited except when approved by the Town Engineer. Under special circumstances where local streets intersect collector or arterial streets, the Town Engineer may require minimum centerline offsets of 400 feet.

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3. Local streets intersecting a collector street or arterial street shall have a tangent section of centerline at least 150 feet in length measured from the right of way line of the major street, except that no such tangent is required when local street curve has a centerline radius greater than 400 feet with the center located on the major street right-of-way line. Where topographic conditions make necessary other treatment to secure the best overall design, these standards may be varied by the Town Council upon the recommendation of the Town Engineer.
4. Street intersections with more than four legs and y-type intersections where legs meet at acute angles shall be prohibited unless specifically approved by the Town Engineer.
5. Property line radii at street intersections shall not be less than twenty (20) feet for all local streets and thirty (30) feet for collector and arterial streets.
6. Minimum intersection setbacks and spacing between driveways varies with street classification as follows:

Table No. 1 – Driveway Setbacks from Intersections

Street Classification	Spacing Requirement (feet)
Principal Arterial	250
Minor Arterial	200
Collector	100
Local	30

- H. **Street Grades.** The minimum street grade shall not be less than three-tenths of one percent (0.3%). The maximum street grade shall not exceed a ten (10%) percent grade. Street grades between six (6%) percent and ten (10%) percent may be approved only for such distances as topographical conditions make lesser grades impractical.
- I. **Surface Treatment.** The traveled way of all streets shall be surfaced with asphalt concrete. The placing of asphalt concrete shall be accomplished under generally accepted construction techniques provided in the MAG Standard Specifications.

J. Structural Section.

1. The thickness of base and surface treatment for all streets shall be based on geotechnical/soils report and pavement thickness design provided by the developer. In the absence of a recommendation by a geotechnical report, the minimum street sections will be as follows: Local streets – 3”AC on 6” AB; Collector Streets – 3” AC on 8” AB; Arterial Streets – 5” AC on 8” AB.
2. Unless otherwise approved, all streets shall be constructed with a minimum crown of two (2) percent from the centerline to the gutter. Warping of the cross-slope is allowed at intersections, driveways and other similar areas. However, transitions shall be smooth and shall allow for adequate drainage.

K. Roadway Sections & Design

The minimum right-of-way requirements and typical street design standards are summarized in the following Tables and Figures. Alternative street designs will be allowed only with specific approval by Town.

Table No. 2 – Street Classifications & Sections

Street Classification	Right-of-Way Width	Pavement Width*
Arterial	100'	60' - 66'
Collector	66'	39' - 49'
Local	50'	33'
Cul-de-Sac	50' radius	42.5' radius
Rural - Large Lot	50'	30'

Note: See Figure 1 thru Figure 9 for additional information.
 * Pavement width shown is from back of curb to back of curb

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Table No. 3 - Minimum Road Design Standards

Design Speed (mph)	50	45	40	35	30	25
Min. Radius of Horizontal Curves w/o Superelevations (ft)	1,800 ⁽²⁾	1,200 ⁽²⁾	800	500	300	200
Min. Length of Tangent between Reverse Curves (ft)	300 ⁽¹⁾	250 ⁽¹⁾	225 ⁽¹⁾	200 ⁽¹⁾	150 ⁽¹⁾	100 ⁽¹⁾
Min. Length of Tangent between Curves - Same Direction (ft)	1,000	800	600	500	400	300
Min. Vertical Curve (ft)	150 ⁽³⁾	140 ⁽³⁾	120 ⁽³⁾	110 ⁽³⁾	90 ⁽³⁾	75 ⁽³⁾
Passing Sight Distance (ft) (per AASHTO)	1,800	1,500	1,200	1,000	800	600
Right Angle Intersection Sight Distance (ft) (per AASHTO)	800	600	300	150	150	100
Min. Tangent Length Approaching Intersections (ft)	300	250	200	175	150	100
Key:						
(1) Equals the superelevation runoff length + tangent runout length.						
(2) Superelevation required at design speed 45mph and above.						
(3) Equals minimum length. May be greater based on AASHTO calculation.						

Figure No. 1 – Standard Local Street Section

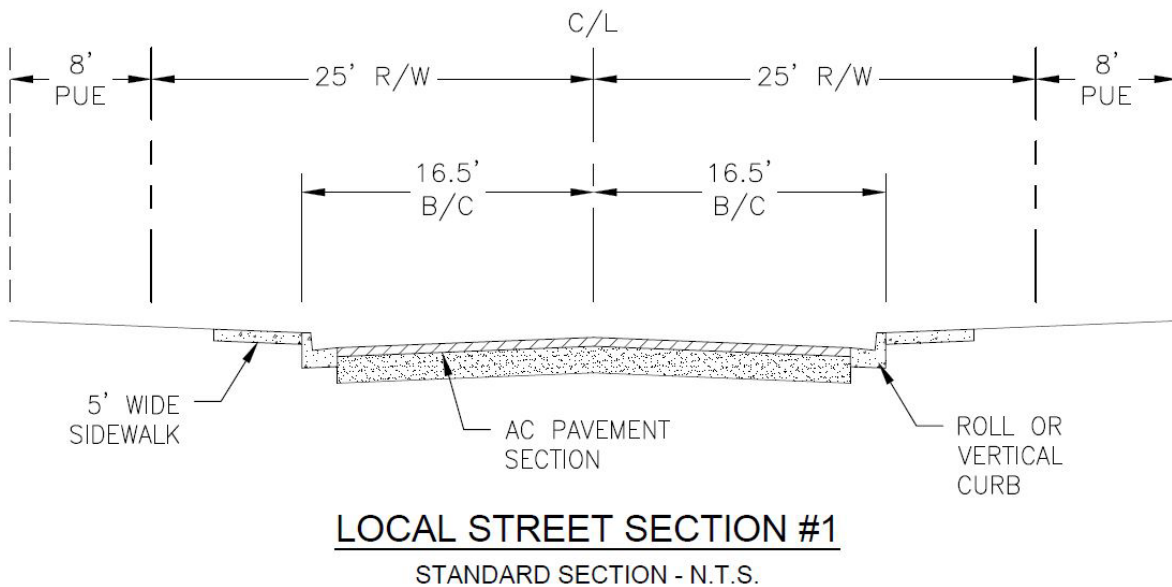
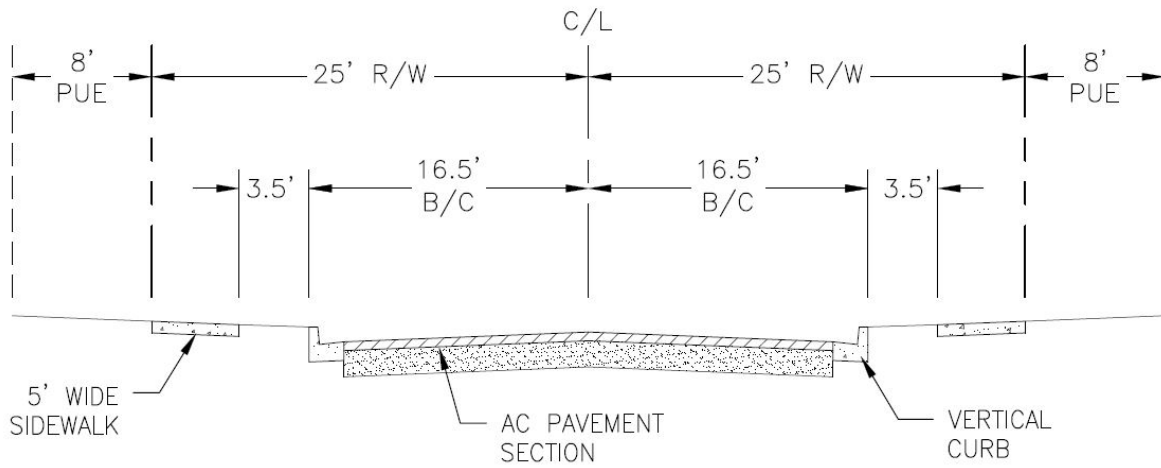


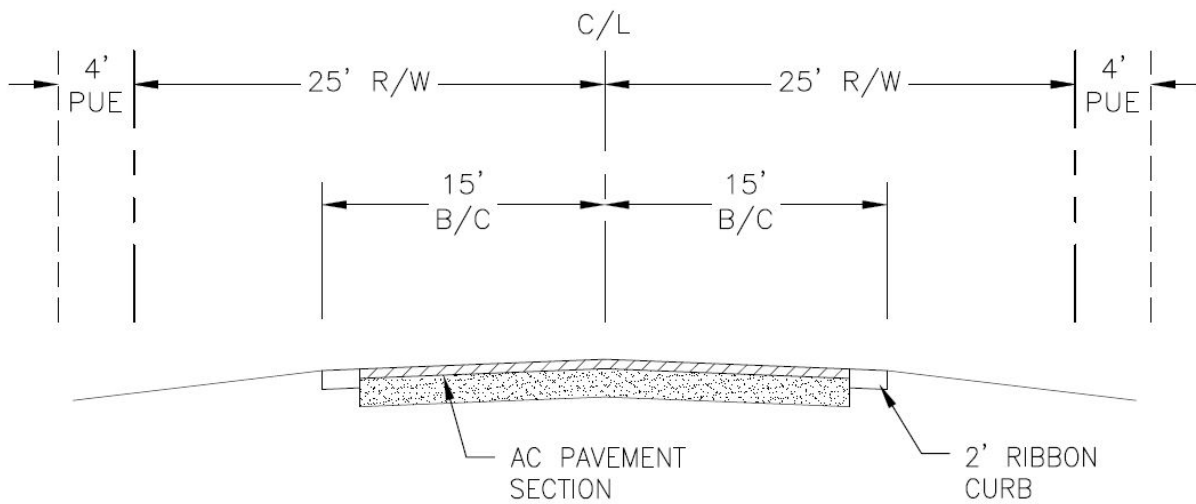
Figure No. 2 – Alternate Local Street Section



LOCAL STREET SECTION #2

ALTERNATE SECTION - N.T.S.

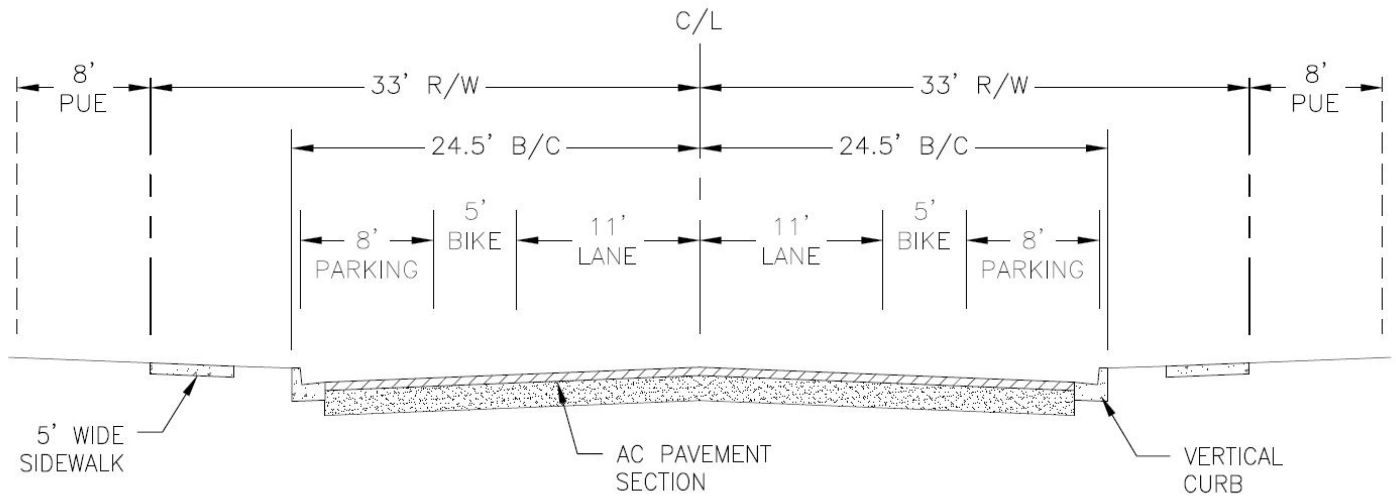
Figure No. 3 – Rural / Large Lot Section



LOCAL STREET SECTION #3

RURAL / LARGE LOT - N.T.S.

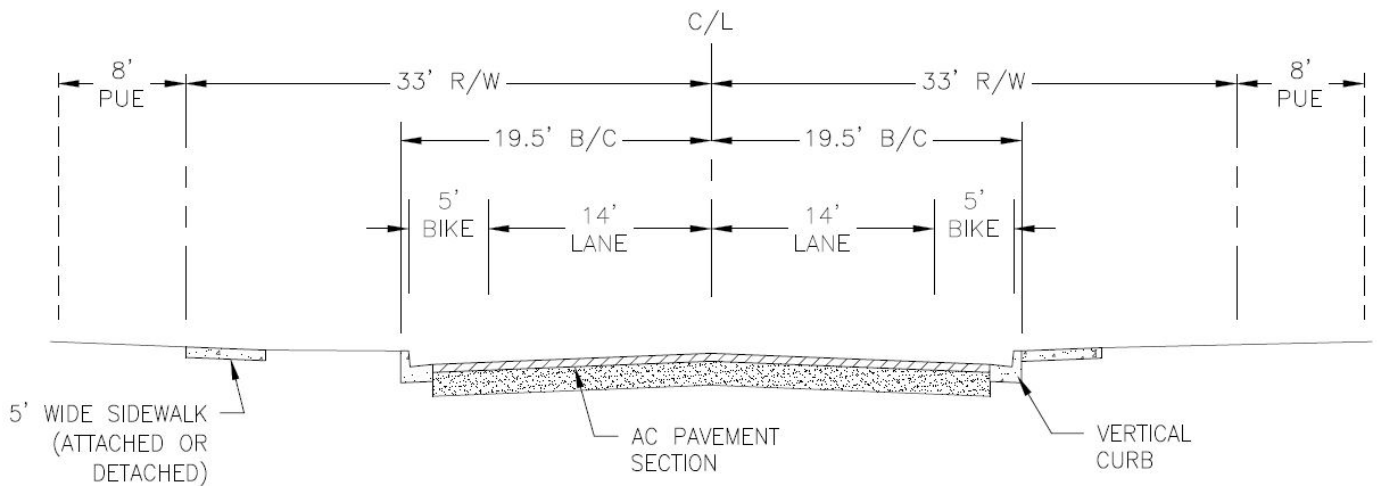
Figure No. 4 – Minor Collector Street Section – “Pioneer Streets”



COLLECTOR STREET SECTION #1

MINOR COLLECTOR - "PIONEER STREETS" - N.T.S.

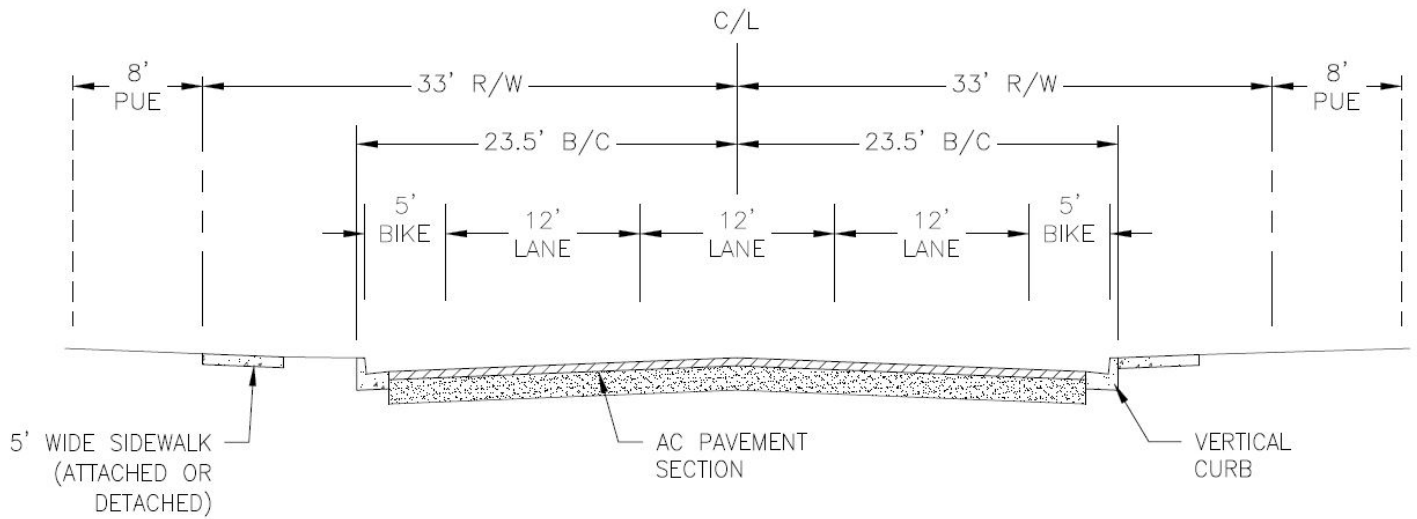
Figure No. 5 – Minor Collector Street Section



COLLECTOR STREET SECTION #2

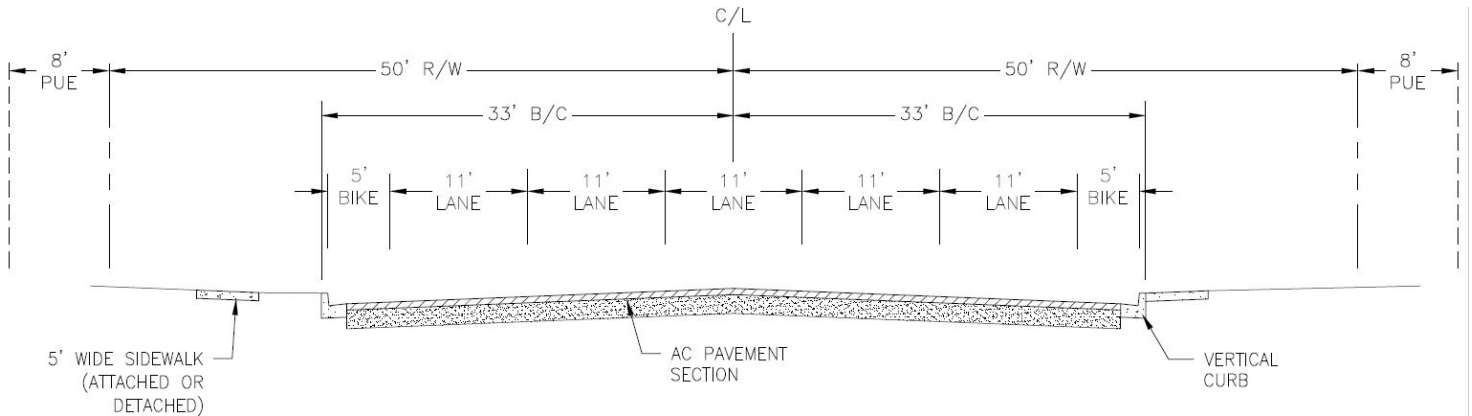
MINOR COLLECTOR - NO PARKING ON STREET - N.T.S.

Figure No. 6 – Major Collector Street Section



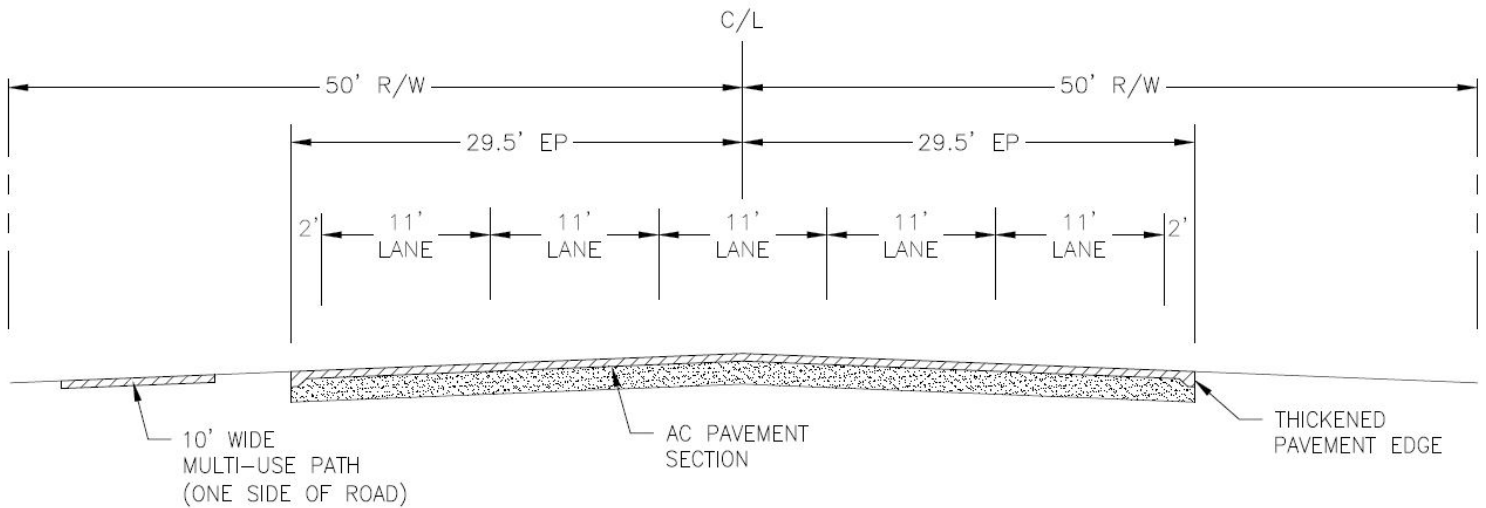
COLLECTOR STREET SECTION #3
MAJOR COLLECTOR - NO PARKING ON STREET - N.T.S.

Figure No. 7 – Urban Arterial Street Section



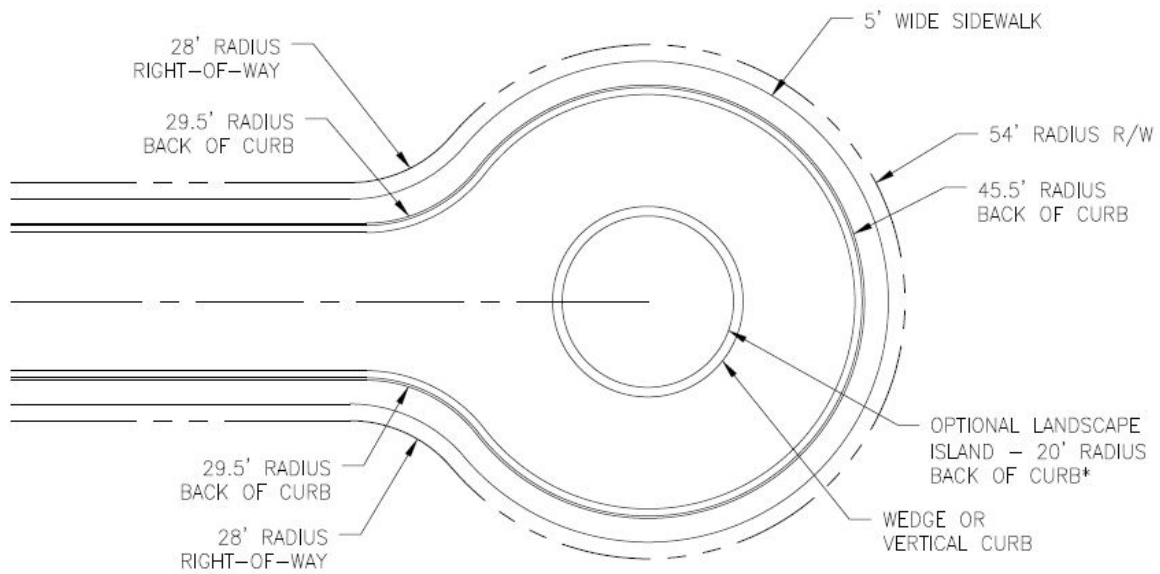
ARTERIAL STREET SECTION #1
URBAN SECTION - N.T.S.

Figure No. 8 – Rural Arterial Street



ARTERIAL STREET SECTION #2
RURAL SECTION - N.T.S.

Figure No. 9 – Typical Cul-de-Sac



TYPICAL CUL-DE-SAC
N.T.S.

* NOTES:

- 1) LANDSCAPE ISLAND SHALL REQUIRE NO PARKING ON THE STREETS. TYPICALLY SUITABLE FOR LARGER LOT DEVELOPMENTS.
- 2) TYPICAL LOCAL STREET SECTION SHOWN. FOR OTHER STREET CLASSIFICATIONS, BACK OF CURB RADII WILL BE PER THIS DETAIL WITH OTHER IMPROVEMENTS PER APPLICABLE SECTION.

Section 4.7 Block Planning.

- A. A block shall not be more than one thousand three hundred twenty (1,320) feet in length unless the Council considers it necessary to increase it to secure efficient use of land.
 - 1. Blocks which are over six hundred sixty (660) feet in length may be required to have crosswalks.
 - 2. Longer blocks may be provided when fronting on major streets in order to reduce the number of intersections.
- B. Typically, a block shall be wide enough to allow two (2) tiers of lots of minimum depth. The Council may approve a single tier of lots of minimum depth if conditions justify it.

Section 4.8 Lot Planning.

- A. Single-family residential lots shall not have a depth to width ratio greater than three to one (3:1) for the usable area. Special lot designs that do not meet this requirement may be permitted on a case-by-case basis.
- B. Each lot shall be accessible to the street which it fronts; including grading, when necessary, to ensure access. All proposed lots must be buildable without the need of a variance, waiver or further discretionary approvals from the Town. Prior to final plat approval the Town may require additional documentation, including but not limited to engineered concept plans, for lots with questionable development ability. The area of a lot shall be exclusive of any area designated for streets or easements.
- C. Corner lots shall generally be designed larger to accommodate the increased setback requirements of the Zoning Ordinance.
- D. Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines insofar as practical, except where other treatment may be justified in the opinion of the Town Engineer.
- E. Each irregular shaped lot shall have a minimum width at the front and rear setback lines of forty (40) feet. No lot shall be less than one hundred (100) feet in depth; except that smaller lots may be permitted on a case-by-case basis.
- F. Residential lots extending through the block and having frontage on two parallel streets which are both local streets or one of which is a local street and the other is a collector street shall not be permitted; except where justified in the opinion of the Town Engineer.
- G. Lots shall be laid out in a manner to provide positive drainage away from all buildings.

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Section 4.9 Easement Planning.

- A. If the utilities are to be located in the street right-of-way, then public utility easements shall be eight (8) feet along each side of the street and around a cul-de-sac, provided that said street right-of-way meets Town standards. The Town may stipulate grading and surface preparation of the easements.
- B. Easements will be required for all private utilities outside of the street right-of-way and shall be placed along lot lines as required by the utility companies.
- C. Where a stream, wash or important surface drainage course abuts or crosses a development, dedication of a drainage easement of a width sufficient to permit widening, deepening, relocating, or protecting and maintaining said water course shall be required. All drainage easement widths shall be approved by the Town Engineer and the Graham County Flood Control District based upon the hydrological analysis of a 100-year frequency storm.
- D. All retention and detention areas shall be in tracts with drainage easements.
- E. Land within a drainageway or within an easement for major power transmission (tower) lines or pipelines shall not be considered a part of the useable lot area.

Section 4.10 Street Naming.

- A. The Zoning Administrator shall keep a record of the names of all streets within the corporate limits of the Town of Thatcher. Street names shall comply with the overall Town of Thatcher street naming system.
- B. Street names should be consistent with the natural alignment and extension of existing named streets.
- C. The developer shall propose the street names at the preliminary plat submittal stage and the names shall be recommended by the Commission and approved by Council.
- D. Street name signs shall be placed at all street intersections and be in place by the time the street pavement is ready for use. Specifications for design, construction, location, and installation shall conform to "Manual on Uniform Traffic Control Devices" (M.U.T.C.D.) standards.

Section 4.11 Drainage.

- A.** Proper and adequate provisions shall be made for disposal of storm water; this shall apply equally to grading of private properties and to public streets. Existing major water courses shall be maintained as drainage ways. Drainage shall meet the requirements of the “Drainage Policy” of the Town of Thatcher. Streets may be used for drainage conveyance only.
- B.** Post development flows cannot exceed pre-development flows in peak runoff, volume, or velocity and may not concentrate sheet flows without downstream off-site control.
- C.** Drywells are discouraged. If drywells are necessary they shall be spaced as far a part as possible and only fifty (50%) percent of the percolation capacity can be used in calculating the required number of drywells to be utilized. In addition a maintenance plan shall be prepared that provides for routine inspection and maintenance to the approval of the Town Engineer. The Town will not accept sumps for maintenance.
- D.** All retention basins shall be designed to drain within thirty-six (36) hours.
- E.** Minimum side slope of a drainage retention or detention basin shall be 4:1 if basin is calculated as open space (see Sec 4.3 B). An acceptable method of transporting water from the street into the basin shall be provided so as to preserve the integrity of the basin walls and floor.
- F.** Unless diversion of water is required to conform to a comprehensive drainage plan for a drainage district, off-site runoff shall be received and discharged at the locations which existed prior to development and as nearly as possible in the same manner which existed prior to development. Should diversion be required, sufficient work shall be done upstream and/or downstream to provide all affected properties at least the same level of flood protection that existed prior to the diversion. The developer’s Engineer shall determine any changes in backwater that will be caused by the proposed developments and any effects the backwater might cause.

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Section 4.12 Sanitary Sewage Disposal.

- A.** All subdivisions within the Town of Thatcher's sewer service area shall install sewer collection lines and service lines to each lot within the subdivision, located in the street or within a separate sewer easement, prior to paving the street. All dwelling units shall be required to connect to the Town's sewer collection system. If there is no sewer main available, to the subdivision boundary, to serve the subdivision at the time of building permit issuance, an alternative sewage disposal system may be installed in addition to the sewer collection and service line.
- B.** All subdivisions not in the Town's sewer service area shall submit a sewer service plan acceptable to the Town's Engineer, Graham County Health Department, and the Arizona Department of Environmental Quality (ADEQ).
- C.** Septic tanks shall be approved by Graham County Health Department and A.D.E.Q.
- D.** Public sanitary sewers shall be installed in accordance with plans, profiles and specifications approved by the Town Engineer, A.D.E.Q., and Graham County Health Department. The installation shall be accomplished under generally accepted construction techniques in accordance with the applicable Town of Thatcher and A.D.E.Q. Standards.
- E.** Service stubs to platted lots within the subdivision for underground utilities shall be placed to the right-of-way line or the public utility easement whichever is greater.
- F.** Sanitary sewer lines shall be extended to the boundaries of the plat to provide service connections to abutting unsubdivided land.

Section 4.13 Water System.

- A.** Each lot or building unit shall be supplied with potable water in sufficient volume and pressure for domestic use and fire protection purposes. Design and construction of any and all facilities relating to the supply, storage, transmission, treatment and distribution of potable water within or outside of any subdivision shall be accomplished under generally accepted construction techniques in accordance with the applicable Town of Thatcher Standard and meet with the written approval of the Town Engineer, Thatcher Fire Department, the water provider and A.D.E.Q.
- B.** All design and construction must meet all applicable Town and A.D.E.Q. specifications and requirements in force at the time of plan review and approval. If it is necessary for the Town to apply specifications or requirements not in force at the time of plan review, but necessary to achieve the orderly and proper development of any portion of the public water system, the Town reserves the right to enforce such specifications and requirements to insure and protect the public welfare.
- C.** Where it is necessary to extend a water main from an existing adequate main to the subdivision, the subdivider will be required to pay the full cost of the line extension.
- D.** Water specifications and requirements relating to fire protection are established by the Town Engineer and Thatcher Fire Department. At a minimum fire protection must be provided in accordance with the International Fire Code as adopted by the Town of Thatcher.
- E.** Fire Hydrants: Maximum spacing between fire hydrants shall be six hundred (600) feet. A building permit will not be issued for any structure more than 300 feet from a fire-hydrant. Installation shall be accomplished under generally accepted construction techniques in accordance with the applicable Town of Thatcher Standard and the International Fire Code as designated by the Town Engineer and the Thatcher Fire Department.
- F.** Water distribution lines shall be extended to the boundaries of the plat to provide service connections to abutting unsubdivided land.
- G.** No vertical construction or structure shall be permitted within the subdivision until fire protection for the subdivision is operable.

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Section 4.14 Public Utilities.

- A. All electric lines, except those of greater than twelve thousand five hundred (12,500) KVA capacity, and all telephone lines, cable television lines, and other communication and utility lines necessary to serve the subdivision shall be installed underground; within public right-of-way or a public utility easement (PUE). The developer of the property shall be responsible for the costs of the underground construction in accordance with the underground policy of the serving utility.
- B. When as a result of the subdivision development, it is necessary to relocate, renew or expand existing facilities within or adjacent to the platted area, the developer shall make the necessary arrangements with the serving utility for these installations to be placed underground at the time of development of the property as part of the required off-site and on-site improvements.
- C. The developer shall arrange with the serving utility for, and be responsible for, the cost of underground service lines to approved street light locations.
- D. Service stubs to platted lots within the subdivision for underground utilities shall be placed to the right-of-way line or the public utility easement whichever is greater.
- E. Underground utilities shall be extended to the boundaries of the plat to provide service connections to abutting unsubdivided land.
- F. The above regulations shall be the minimum standards regardless of the utility company's standards. The developer will need to refer to the specific "Design Criteria & Specifications" established by the utility companies; the more restrictive regulation shall apply.
- G. The subdivider shall be responsible for compliance with the requirements of this section and shall make the necessary arrangements with each of the public utility companies involved for the installation of underground facilities. Letters from each of the public utility companies indicating that they "will serve" the subdivision and arrangements have been made shall be submitted to the Town at the time the final subdivision plat is filed.

Section 4.15 Outdoor Lighting

- A. Where required and/or permitted all outdoor light fixtures shall be fully shielded (full cut-off) and shall meet the requirements of Article 16 of the Town's Zoning Ordinance and the State of Arizona Light Pollution Ordinance contained in the Arizona Revised Statutes (A.R.S.) §49-1101 *et seq.* The term "fully shielded" means the fixture shall be shielded so that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted. Further, the light sources must be shielded in a manner that the bulb or light source from the fixture is not visible from an adjoining property or from the street view.
- B. Outdoor light fixtures, lamps and other devices, permanent or portable, used for illumination or advertisement for: recreational areas, walkways within open space areas, parking lot lighting, and street lighting shall comply with these provisions and the Town of Thatcher Zoning Ordinance and shall be installed in conjunction with, and as part of, the subdivision improvements.
- C. Street lights shall be installed at all intersections along arterial streets, collector streets, and along all streets within the subdivision. Within the subdivision street lights should be installed and spaced in a manner that will light the street and sidewalks along the street but should not be spaced more than five hundred (500) feet apart.
- D. Where street lights are required along State Highways the installation shall be limited to American Association of State Highway and Transportation Officials (A.A.S.H.T.O.) standards.
- E. Other areas where outdoor lighting should be installed include parks, open space areas, parking lots, walkway lighting and other public areas of the subdivision as approved by the Town. The Town encourages the use of solar to power the outdoor lighting fixtures for these areas within subdivisions. Motion sensor/detector light fixtures are encouraged to be mounted under and recessed into the parking shade canopy/structures.
- F. All utilities are to be underground, and underground conduit shall be provided by the subdivider.

Section 4.16 **Small Subdivision Street Standards**

- A.** A small subdivision, as defined in the Glossary of this Ordinance, shall be processed in the same manner as any other subdivision (see Article 3 for processing details). The Town Engineer, on a case-by-case basis, may determine that some of the submittal requirements may not be necessary and could therefore be waived.
- B. 3 or Less Lots.** For a minor land division and/or lot split, as defined in the Glossary of this Ordinance, the Town may administratively approve in accordance with Section 3.10 of this Ordinance the minor land division and/or lot split with the following reduced access improvement standards:
1. For one (1) to three (3) lots, the access should be a minimum twenty-five (25) foot wide easement with a minimum twenty-five (25) foot all-weather road. For purposes of this article, “all weather” will be a minimum of 6” of compacted AB or other similar road material, as approved by the Town Engineer.
 2. An improved turn-around, not less than 80 foot in diameter, unobstructed, shall be provided if lots share a common access road that is longer than 150 feet in length.
 3. On-site drainage improvements.
- C. 4 - 6 Lots.** For small subdivisions, including those created through the minor land division or lot-split process, where four (4) to six (6) lots share a common access, the Town Council may approve the subdivision with the following alternative and/or reduced street improvement standards:
1. The dedication of a fifty (50) foot ingress/egress access and public utility easement.
 2. The construction of a twenty-eight (28) foot wide paved access road with thickened edge.
 3. A paved turn-around (cul-de-sac), not less than 80 foot in diameter at the end of any “dead-end” paved road.
 4. On-site drainage improvements.

D. 7 - 15 Lots. For small subdivisions with seven (7) or more lots, each of which is 20,000 square feet or greater, the Town Council may approve the subdivision with the following alternative and/or reduced street improvement standards:

1. The dedication of a fifty (50) foot roadway and public utility easement.
2. The use of the “rural / large lot” street section with 4’ wide sidewalks on both sides of the street.
3. On-site drainage improvements.

(End of Article)

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CHAPTER 152, ARTICLE 5: Improvement Requirements

Section 5.0 General Requirements.

A. Developer Responsibilities. The developer shall be responsible for all costs, including review fees, for the installation of the improvements as a condition of zoning and/or preliminary plat which shall include, at least but not limited to, the following improvements:

1. Sanitary Sewer Systems
2. Water Supply Systems
3. Grading/Drainage/Storm Drains
4. Streets (public and private) and Access Ways
5. Alleys (where applicable and approved)
6. Utilities (electric, telephone, cable television, gas)
7. Traffic Signals, Street Lights (where applicable and approved)
8. Monuments and Signage
9. Landscaping and Streetscape
10. Sidewalks, Bicycle and Multi-use Pathways

B. Streets and Public Easements.

1. All streets and public easements within the boundary lines of the subdivision shall be improved to cross-sections, grades, and standards outlined in this Ordinance. If there are extenuating circumstances the Town may approve modifications.
2. Where there are existing Town streets adjacent to the subdivision, the subdivision streets shall be improved to the intercepting paving line of such existing streets; or to a matching line determined by the Town Engineer. Transition paving, including turn lanes, shall be installed as required by the Town Engineer.
3. In the case where there is an unimproved street or roadway easement between the subdivision and the improved Town street system, the developer shall at the time of, and as part of, the subdivision improvements be required to make “interim” street improvements as required by the Town to sufficiently and appropriately connect the proposed subdivision to the Town street system.
4. Any interim roadway shall have sufficient culverts and drainage facilities to allow a 25-year frequency storm to pass under the road section and a 100-year frequency storm to pass over the road section at a depth not to exceed six (6) inches of water. Dead-end streets extending two hundred (200) feet or more and dead-end interim roads shall be graded and have an asphalt surface with a temporary unobstructed minimum fifty (50) foot radius turning circle.

- C. Utilities.** The developer shall be responsible to make the necessary arrangements with each of the serving utility companies involved for the installation of the underground facilities, including payment of all deposits, fees and miscellaneous expenses. Letters from each of the serving utility companies indicating that said arrangements have been made shall be submitted to the Zoning Administrator at the time the Improvement Plans and Final Plat are submitted. Utility improvement plans shall be submitted to the Town of Thatcher as part of the improvement plan submittal. The Town will log in the submitted plans and forward them to the appropriate departments and utility companies for review.
- D. Monuments.** Monuments shall be a steel pin or pipe at least eighteen (18) inches in length and set in a reasonably permanent manner for all points of reference on the outside boundary at each lot corner or at all points of curvature or tangency of the Subdivision.

 - 1. Survey monuments shall be required at all street intersections and at the point of curvature and point of tangency of all curves as approved by the Town Engineer when streets are paved. Brass caps punched by a Registered Land Surveyor set inside cast-iron hand holes embedded in concrete with a lid indicating “SURVEY” will be set at intersections, section corners, and quarter section corners.
- E. Phased Development.** All public or private infrastructure, utilities and streets for each phase, of an approved multi-phased development, shall be designed, constructed and function independently (stand-alone) to avoid negative consequences in the event future phases are not built.

Section 5.1 Submittal Requirements.

A. General.

- 1. It shall be the responsibility of the developer to have an Arizona Registered Professional Engineer, in the correct discipline, prepare a complete set of engineering plans and reports for construction of all required improvements and an Arizona Registered Landscape Architect an Arizona Certified Nurseryman or other approved professional prepare a complete set of landscape and open space plans. Survey information must be prepared by and stamped by an Arizona Registered Land Surveyor. All plans and reports submitted to the Town shall be dated, signed and stamped/sealed by the professional who prepared them. Such plans shall be based on the approved preliminary plat and be prepared in conjunction with the final plat and in accordance, with all applicable Town, County, or State standards.
- 2. All improvement plans submitted to the Town of Thatcher for approval must be submitted in duplicate on a standard 24”x 36” paper. The scales

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chosen for plans shall be such that existing features, proposed construction and any other information to be provided will be depicted in a clear, uncluttered, and concise manner.

3. Water and sewer improvement plans may be submitted shown on the same set of plans. The water and sewer improvement plans must also be shown on the paving plans. The water improvement plans shall have a signature block for the Water Provider. It shall be the developer's responsibility to obtain approval signatures from A.D.E.Q and the Water Provider.
4. Separate grading and drainage plans shall be submitted.

B. Improvement Plan Submittal Requirements.

1. **Initial Submittal with Final Plat:** Two (2) hard copies plus one (1) electronic file of the following plans and reports, along with the required fees, shall be submitted to the Zoning Administrator:
 - a. Improvement plan review fees (paid to Town)
 - b. Final Plat review fee (paid to Town)
 - c. Final Plat
 - d. Water and Sewer Improvement Plans
 - e. Paving, Grading, and Drainage Improvement Plans
 - f. Landscape and Open Space Improvement Plans
 - g. Dry Utility Improvement Plans – for Utility Design (submitted directly to utility companies serving the development)
 - h. Final Drainage Report
 - i. Final Geotechnical/Soils Report
 - j. Final Traffic Report (if required)
 - k. Boundary Closure
 - l. Subdivision Deed Restrictions or Covenants, Conditions and Restrictions (CC&R's), if any
2. The final plat shall be in recordable form showing all information including dedication statement, signature blocks, and other notations as necessary. The Graham County Recorder signature block shall be included on the first page of the Final Plat.
3. Subsequent submittals of improvement plans and reports will require that the redline comments be submitted in addition to the same number of sets as in the initial submittal requirements.
4. An approval signature block shall be included on the front page of all improvement plans.
5. **Final Submittal:** The following information, documents and material shall be submitted to the Zoning Administrator (*see Town of Thatcher Submittal Requirement Checklist for specific number of sets or copies*):

- a. Engineers Cost Estimate
- b. Improvement Plans
- c. Final Plat
- d. Most current Title Report showing current owner
- e. Assurance of construction (refer to Sec.5.3 for specifics)
- f. Electronic copy of the final plat and plat closure

6. **Town Recordation Submittal:** The following fees, documents and plans shall be submitted to the Zoning Administrator after the Town Engineer has approved the improvements plans and the Town Council has approved the Final Plat (*see Town of Thatcher Fee Schedule and Submittal Requirement Checklist for specific fees and number of sets or copies*):

- a. Recording fees (for Final Plat and CC&R's)
- b. Original, signed, Covenants, Conditions & Restrictions
- c. Mylar copy of the final plat for County Records
- d. Mylar copy of the final plat for Town Records
- e. Approved Improvement Plans (paper prints)

C. Water Service Requirements.

1. Prior to the recordation of any final subdivision plat affecting all or any portion of the property, the developer shall obtain written commitment from the Water Provider stating that they will serve the subdivision.
2. In accordance with water service agreements to be entered into between the Water Provider and the developer prior to the delivery of water to the property, the developer, will construct, to all applicable standards, the necessary water infrastructure to serve the property, which shall include such water treatment, storage, recharge, pumping and delivery systems as may be necessary for the Water Provider to remain designated as having an Assured Water Supply for the property. Upon completion of the construction warranty period the developer will convey the completed and accepted water service infrastructure to the Water Provider for operation and maintenance. Upon conveyance by the developer, and acceptance by the Water Provider of the water service infrastructure, the Water Provider shall, at its own cost and expense, operate and maintain such infrastructure.

D. Landscape and Open Space Plan Submittal Requirements

1. **Preliminary Landscape Plan:** A preliminary landscape and open space plan, prepared by an Arizona Registered Landscape Architect, a Certified Nurseryman or other qualified professional, shall be submitted as part of the

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“**Step 2: Preliminary Plat Application**” as referenced in Article 3 of this Ordinance, and shall at a minimum contain the following:

- a. Identify the location of proposed park(s) and open space areas, the proposed amenities and different types of uses (i.e. passive, active, landscaping, retention/detention etc).
 - b. Identify the location of all existing and proposed species and inorganic ground covers, sidewalks, paths, fencing, walls, benches, ramadas, fountains, and waterways. For fencing and walls, provide a preliminary graphic representation as to what is intended relative to the fencing and wall themes.
 - c. Right-of-way landscaping is required and shall be shown on the Landscape Plan. The entire area of the right-of-way, between street property line and back of curb (B.O.C.) and/or pavement except for approved driveways, sidewalks and pathways, shall be landscaped.
 - d. Include a plant palette, in list form, on the landscape plans that call out all proposed plant species and inorganic ground covers.
 - e. Identify existing and proposed lots, streets, fences, walls, wells, or other features as may be applicable.
 - f. Identify the line of sight requirements of the Town, County and State.
 - g. Identify the name of the developer, project engineer, and landscape architect/professional on the plan.
2. **Final Landscape Plan:** A final landscape plan shall be submitted as part of the “**Step 5: Improvement Plans and Final Plat Approval**” as referenced in Article 3 of this Ordinance, and shall at a minimum contain the following:
- a. Final Irrigation Plan.
 - b. Identify the specific park and open space areas and include a list of all amenities (type and quantity). Provide cut-sheets or the manufactures information for all play equipment, furniture, lighting and signage and for each type of use (i.e. passive, active, landscaping etc).
 - c. Plant Location: Identify the location of all retained and proposed species and inorganic ground covers, sidewalks, paths, fencing, walls, benches, ramadas, fountains, and waterways. For fencing and walls, provide a final graphic representation as to what is intended relative to the fencing and wall themes.

- d. Right-of-way landscaping is required and shall be shown on the Landscape Plan. The entire area of the right-of-way, between street property line and back of curb (B.O.C.) and/or pavement except for approved driveways, sidewalk and pathways, shall be landscaped.
- e. Plant Species: Include the approved preliminary landscape plan plant palette, in list form, on the landscape plans that call out all proposed plant species and inorganic ground covers.
- f. Plant Sizes: Identify the specific sizes of all proposed plant and inorganic ground covers. This information shall be included within the plant palette list on the landscape plan.
- g. Plant Quantities: Identify the exact quantities for each species of tree, shrub and ground cover per each size and species. This information shall be included within the plant palette list on the landscape plan.
- h. Paths, Trails, Sidewalks: Identify the material type, width and depth of the surfacing of all proposed paths, trails and walks.
- i. Walls, Fencing, Signage: Identify the type and location of any proposed perimeter subdivision walls/fencing and the entry signage. Indicate exact material types for all fencing and walls and entry signage proposed.
- j. Identify existing lots, streets, fences, walls, wells, or other features as may be applicable.
- k. Identify the line of sight requirements of the Town, County and State.
- l. Identify the name of the developer, project engineer, and landscape architect/professional on the plan.

E. Report Submittal Requirements

- 1. **Preliminary Drainage Report**: A preliminary drainage report shall be submitted as part of the “**Step 2: Preliminary Plat Application**”, as referenced in Article 3 of this Ordinance, and shall at a minimum contain the following information:
 - a. Delineation of the boundaries of on-site and off-site drainage areas. Information about adjacent property, such as significant differences in elevation, walls, drainage structures, buildings with their floor elevations etc. shall be provided.

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- b. Identify the drainage pattern for all existing and proposed streets and building sites. Label the different critical points and where inlets/outlets are to be located.
 - c. Justify the runoff factor (C-factor) used in the computations.
 - d. Describe offsite flows from adjacent properties onto the property to be developed. Drainage area, calculated peak flows, velocity and other pertinent runoff data must be presented. If the flow is in a defined channel, the channel must be improved. Special consideration for joint use of open channels as a recreational amenity is to be given on each individual project. The runoff from areas outside the development may be realigned through the new development.
 - e. Indicate the retention/detention volume required, and provided. Indicate the method for draining basins in thirty-six (36) hours, and who is responsible for maintenance.
 - f. Show location of all drainage easements.
2. **Final Drainage Report:** A final drainage report shall be submitted as a part of the “**Step 5: Improvement Plan and Final Plat Approval**” for all developments (see Town of Thatcher Submittal Requirement Checklist for number of copies). The report shall be a complete report and not an addendum to the preliminary drainage report. The format shall be as previously described and include the following additional information:
- a. Place inlets and/or scuppers wherever the flow exceeds the street capacity. The inlets and/or scuppers are to be analyzed separately and catch basin computations shall be submitted.
 - b. Size the storm drains and culverts and submit design computations.
 - c. Final retention/detention basins calculations including 36-hour percolation, or evaporation rates.
 - d. Final channel flow calculations considering the impacts of landscaping and other joint use impacts on the cross-section and Mannings coefficients.
 - e. Adjusted calculations for “pre” and “post” development conditions.
3. **Geotechnical Report:** A geotechnical/soils report shall be submitted as part of the “**Step 2: Preliminary Plat Application**”, as referenced in Article 3 of this Ordinance, and shall at a minimum contain the following information:

- a. Identifies any special geotechnical hazards, and develops recommendations regarding the hazards, grading, foundations and pavement.
 - b. The geotechnical hazards portion shall consider, at a minimum: expansive soils, soil creep, landsliding, and groundwater.
 - c. The grading and foundations portion of the report shall include data regarding the distribution and engineering characteristics of the various soil materials; shrink/swell percentages; data about groundwater levels; percolation test; an opinion regarding the geotechnical feasibility of the development as planned; recommendations about any needed mitigation measures for geotechnical hazards, grading criteria and foundation design criteria and any other pertinent information.
 - d. The pavement design portion shall include data regarding the distribution of various subgrade materials and for each, design test such as R-value. The design procedure and all assumptions used to determine the pavement section shall be presented. The selected design procedure per the traffic and geotechnical report shall not result in a lesser pavement section than the minimum allowed in Article 4 of this Ordinance.
4. **Preliminary Traffic Report:** Developer shall be responsible to inquire of the Town Engineer whether a traffic analysis / report will be required for all commercial developments and any residential subdivision in excess of 50 lots. When required, all traffic analysis information shall be prepared by an Arizona Registered Professional Engineer with adequate experience in transportation engineering. A preliminary traffic report shall be submitted as part of the “**Step 2: Preliminary Plat Application**”, as referenced in Article 3 of this Ordinance, and shall at a minimum contain the following information:
- a. A project trip generation report that provides an analysis of the number of trips generated by the development during a weekday in a one-hour A.M. and P.M. peak hour and daily traffic. Trip generation shall be developed utilizing the Institute of Transportation Engineers Trip Generation Manual.
 - b. An analysis of the non-vehicular modes of transportation (e.g. sidewalks, multi-use pathways and trails) proposed for the development and their impact on the trips generated by the development.
5. **Final Traffic Report:** If the number of peak hour trips generated by the development is greater than 100 trips, a final traffic study shall be provided. The Town Engineer may require a final traffic study to be provided for

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projects with a peak hour trip generation of less than 100 trips because of safe access concerns. The final traffic study shall include the following information:

- a. Introduction which outlines the land use, site and study boundaries, and existing and proposed site uses.
 - b. Project trip generation estimates (A.M., P.M., and A.D.T.).
 - c. Project access and internal circulation evaluation.
 - d. Trip distribution.
 - e. Trip assignment.
 - f. Existing and projected traffic volumes.
 - g. Capacity analysis of all impacted public/private street intersections and access points.
 - h. Level of service with a minimum service of Level 'C'.
 - i. Evaluation of existing and existing-plus project conditions, as well as cumulative and cumulative-plus project conditions.
 - j. Project impacts and mitigation measures (recommendations to include the proposed recommended improvements, volume/capacity analysis at critical points, traffic volume proportions for funding of improvements),
 - k. Other special requirements, as determined by the Town Engineer.
6. All of these reports shall be reviewed and approved by the Town Engineer or consultant experts designated by the Town Engineer.

Section 5.2 Improvement Plan Review Process.

- A.** The project Engineer shall submit “dry utilities” improvement plans (i.e. gas, electric and telecommunications) to the Town Engineer as well as to the utility providers serving the development. Design and/or review fees, for all utilities, shall be paid to the respective utility companies (per utility company fees and policies). All fees for review of the improvement plan(s), reports, and other submittals shall be paid by the developer (see Town of Thatcher Fee Schedule for specific fees).
- B.** The Town staff will review the submittal for accuracy, completeness, compliance with conditions made by the Town Council and conformance with all Town Codes.

- C. Redline comments, including “dry utilities” preliminary design plan, will be returned to the Developer’s Engineer and Landscape Architect of record for corrections, additions, revisions and in the case of the “dry utilities” plan for conflict checks.
- D. Subsequent submittals of the improvement plans and reports shall also include the latest redline set of plans/comments. It shall be the developer’s responsibility to resubmit the “dry utilities” preliminary design plan after it has been checked by the developer’s Engineer for potential conflicts.
- E. Within sixty (60) days from the date of Town Council approval, and prior to the recording of the Final Plat and Covenants, Conditions and Restrictions (CC&R’s), the following items must be submitted:
 - 1. A project approval letter, signed by the Town Engineer, stating that all of the subdivision improvement plans and reports have been approved by the Town.
 - 2. A project approval letter, signed by the Zoning Administrator, stating that any and all required agreements between the Town and developer have been executed.
 - 3. A letter of agreement from the serving utilities stating the availability of utilities and the approval of improvement plans for the subdivision.
 - 4. The required “Financial Assurance for Construction”.
- F. If the engineering plans have not been approved within sixty (60) days, solely due to reasons on the part of the developer, the Council may require that the final plat be resubmitted.

Section 5.3 Assurances of Construction.

A. Agreement by Developer

- 1. The subdivision improvements in an approved development may be constructed in practical increments in accordance with a Council approved Phasing Plan subject to provisions for satisfactory drainage, traffic, circulation, utilities, landscaping and other elements of the total development plan.
- 2. The improvements shall be constructed in accordance with plans approved by the Town Engineer, State agencies, and utility providers and shall be completed within an agreed specific time period.

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3. The developer shall give adequate Financial Assurance for Construction for each phase in accordance with this Ordinance and to the satisfaction of the Town Engineer and Town Attorney.
4. Once a construction permit has been issued for improvements work shall proceed without interruption until the Town Engineer accepts the improvements.
5. Any work shown on approved plans that has been abandoned for a period of one hundred eighty (180) days, or not completed by the developer in accordance with an agreed upon time period, may be completed by the Town which may recover the construction costs from the developer.
6. When in the opinion of the Town and the developer it is in the best interest of both parties to delay installation of development required improvements to coincide with adjacent work the Town Council may elect to accept payment of the estimated cost of said improvements in-lieu of construction by the developer. The timing of this payment will be specified in a Council approved Phasing Plan.

B. Financial Assurances of Construction

1. The Town Council shall require that the developer provide cash, a performance bond, an irrevocable letter of credit, or funds in escrow at the time of application for final subdivision approval in the amount sufficient to secure to the Town the satisfactory construction, installation, and dedication of the required improvements. All assurances other than currency of the United States will be accepted only if made by or through a lending institution, insurance or surety company or title company regulated by the State of Arizona and made payable to the Town of Thatcher, Arizona. The amount of the financial guarantee shall be no less than one hundred (100%) percent of the cost of the installation and materials necessary to complete the subdivision, depending on conditions.
2. Such financial guarantee shall comply with all statutory requirements and shall be satisfactory to the Town Attorney as to form, sufficiency, and manner of execution, as set forth in this Ordinance. The periods within which required improvements must be completed shall be incorporated in the financial guarantee and shall not, in any event, exceed two (2) years from the date of final approval. The Town shall require that ten (10) percent of the gross total cost of public improvements be retained by the Town for the duration of the warranty period which begins from the "Date of Acceptance" of said improvements by the Town Engineer.
3. Whenever it is deemed appropriate or necessary by the Town Engineer and the Town Council to defer, for an additional two (2) year period, the construction of any required public improvements, because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for

other suitable reasons, the developer shall provide renewed assurances based on updated costs as determined by the Town Engineer to secure completion of the required public improvements.

Section 5.4 Construction and Inspection.

- A.** All stormwater and street improvements whether public or private shall be constructed to the latest standards and specifications adopted by the Town, or standard specifications of the utility provider; whichever is greater. All other improvements whether public or private shall be constructed to the latest Town of Thatcher standards.
- B.** All improvements shall be constructed with the inspection and approval of the Town Engineer. All construction shall require a Town construction permit and a County dust control permit. Construction shall not begin until a permit has been issued by the Town for the construction and a dust control permit has been issued for the site by the Graham County Health Department.
- C.** A preconstruction meeting must be scheduled, by the developer, to include all dry utilities before any trenching or conduit installation is permitted.
- D.** Public utilities must be installed either in public dedicated rights-of-way or public utility easements (PUE's) or easements dedicated specifically by the landowner for such usage and maintenance.
- E.** All utility companies, public and private, must inspect all trenches, pipes, lines and conduit installation prior to backfill.
- F.** Shading material shall be per the individual utility company standards and all backfill shall be compacted to ninety-five (95) percent or better if required by the geotechnical/soils report.
- G.** All underground utilities to be installed in streets and private access ways, shall be constructed prior to the surfacing of such street or private access way.
- H.** The developer shall provide for an Arizona Registered Engineer to be present on the site to assess compliance with the plans and specifications for each element of construction.
- I.** The Town Engineer shall be notified forty-eight (48) hours prior to any construction on the project site.
- J.** The Town Engineer shall be notified upon completion of all underground utilities within the street rights-of-way and prior to any street preparation work. Interim as-built plans of the utilities and all passing tests results shall be submitted for review. Upon review and approval of the supplied information, the developer may proceed

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with the installation of street improvements.

- K.** The developer's engineer shall request the Town Engineer to perform inspections of the subgrade base prior to placement of the overlaying materials. In addition the Town Engineer will perform periodic inspections throughout the course of the construction. These inspections or approvals do not signify that the Town has accepted any of the improvements for maintenance.
- L.** The developer's engineer shall submit monthly progress reports to the Town Engineer throughout the construction. The monthly progress reports shall include the results of all tests taken during the month.
- M.** Testing during the construction phase of the project shall be performed as required by the Town Engineer and the involved utility companies' policies.

Section 5.5 Subdivision Improvement Acceptance.

- A. General:** Upon completion of all subdivision improvements and installation of monumentation the Town Engineer will perform a final inspection, a review of the final reports, and a review of the "as-built" drawings.
- B. Final Inspection:** At completion of the project a final inspection shall be requested with the Town Engineer. At the time of request for the final inspection a hard-copy set of the "as-built" drawings shall be submitted along with a final engineers' report and warranty statement to the Town Engineer. The "as-built" drawings shall be certified and contain the following statement:

"I certify that the construction of the public improvements and the "as-built" plan preparation were performed by me or under my direct control and supervision. The construction details as shown on the "as-builts" are accurate and complete to the best of my knowledge and belief."

Arizona Registered Engineer

Date & Registration Number

- C. Final Report:** A final report shall be submitted upon completion of the project. The final report shall be compiled by the developers' engineer and shall include the following:
 1. A brief statement of the testing on the project and a statement as to whether the observations and tests indicate that the various materials in place comply with the plans and specifications.
 2. A summary of all field density test and compaction tests on trench backfill, on street subgrade and base material and on any fill material.

3. Asphalt and pavement mix design and all results of Marshall, gradation, asphalt content and compaction tests.
4. All concrete mix designs and all test results on air content, slump, unit weight, compressive strength at seven (7) and twenty-eight (28) days.
5. All line pressure, bacteria and manhole test information.
6. Any other tests or information that may be required as a part of the specifications or that may add to the integrity of the report.

D. Procedure: The following procedure will be followed for final acceptance of the improvements:

1. The Town Engineer shall make a final inspection of all public improvements in the project. The developer will be notified of any items that are not in conformance with the Town specifications, and shall bring the items into conformance.
2. The “as-built” plans and final report will be reviewed by the Town Engineer. Any additional information needed will be noted and the plans will be returned to the developer for revision and resubmittal as mylars.
3. When the public improvements have passed the final inspection, the “as-built” plans and final report have been stamped and approved and the warranty statement provided, the Town Engineer shall make a written recommendation to the Town Council to accept the public improvements for maintenance.

E. Warranty Period on Public Improvements: The warranty period begins on the day that the Town Council approves and accepts the public improvements. At a minimum a warranty period of two (2) year for all utilities, roadway pavement and structure, landscaping and other public improvements shall apply to all subdivision improvements; however the warranty period may extend beyond that time period as determined by the Town Engineer. During the warranty period the developer is responsible for repair work to any of the public improvements. The Town Engineer will periodically inspect the public improvements and will notify the developer of the necessary repair work. The developer is responsible for having the repair work completed prior to the end of the warranty period. Upon completion of the warranty period and acceptable repair of any necessary warranty items the remainder of the financial assurances retained by the Town will be released.

(End of Article)

Glossary

A. General Terms. For the purpose of carrying out the intent of this Subdivision Ordinance, certain terms or words used herein shall be interpreted or defined as follows:

1. Words used or defined in one tense or form shall include other tenses and derivative forms; words used in the singular include the plural; and words in the plural include the singular.
2. The word “shall” is mandatory.
3. The word “may” is permissive.
4. The word “person” includes an individual, tenant, lessee, firm, co-partnership, joint venture, corporations, associations, estate, trust, receiver, or and any other group or combination acting as a singular entity, including the federal government, another Town, county, or school district, except as exempt by law.
5. The following words or terms when applied in this Ordinance may be used interchangeably unless contrary to the circumstances: lot or parcel; and “building” applies to the word “structure”.

B. Specific Terms. The following additional words and phrases shall, for the purpose of this Ordinance, have the following meanings:

A

Abut. To physically touch or border upon or to share a common boundary, property line, or right-of-way. Parcels having only one common corner are not considered as abutting parcels.

Access or Access Way. The place, means, or ways by which pedestrians, vehicles, or both shall have safe, adequate, and usable ingress/egress to a property or use. A private access is an access not in public ownership and controlled by means of deed, dedication, or easement.

Accessory Use. A use of land or of a building or portion thereof ~~customarily~~ clearly incidental and subordinate to the principal use of the land or building and is conducted on the same lot with ~~such~~ the principal use or building.

Adjoining Lot or Land. A lot or parcel of land that shares all or part of a common lot line with another lot or parcel of land.

Administrative Decision. Any decision on a development application made by the Zoning Administrator or his/her authorized representative pursuant to this Ordinance.

Administrator. The Zoning Administrator for the Town of Thatcher, Arizona.

Alley. A passage or way open to public travel, affording generally a secondary means of vehicular access to abutting lots or upon which secondary and service entrances of buildings abut, and not intended for general traffic circulation.

A.L.T.A. American Land Title Association.

Applicant. A person submitting an application for development or other action.

Approval, Conditional. An affirmative action by the Council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations.

Approval, Preliminary. Unconditional approval of the Preliminary Plat by the Council as evidenced in its meeting minutes and noted upon prints of the Plat; constitutes authorization to proceed with final Engineering Plans and Final Plat preparation.

Approval, Final. Unconditional approval of the Final Plat by the Council as evidenced by certification on the Plat by the Mayor and the Clerk of the Council; constitutes authorization to record a plat.

A.R.S. The abbreviation for the Arizona Revised Statutes.

B

Berm. An earthen mound, either natural or man-made.

Bicycle Lane. A paved area located within a street right-of-way and between the curbs that is designated for bicycle or other non-motorized traffic.

Bicycle Trail. A paved or improved surfaced trail, located outside of a street right-of-way, utilized for bicycle, pedestrian or other non-motorized traffic. Public utility maintenance vehicles may be permitted use if joint access is allowed.

Bicycle Path. A paved area located within a street right-of-way but not between curbs that is designated for bicycle or other non-motorized traffic.

Block. A piece or parcel of land or group of lots entirely surrounded by public or private streets or rights-of-way, railroad rights-of-way, streams, canals, washes, parks, or a combination thereof of creating a physical barrier of sufficient magnitude as to interrupt the continuity of development.

Buildable. A lot or parcel that has the area, shape, slope, street frontage, or other attribute in order for a permitted use, based on the lot or parcel's Zoning District, to be developed, without the need for any variance from the Town Zoning Ordinance.

Buildable Area. The portion of a lot that is within the envelope formed by the required setbacks.

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Building Setback Line. The required minimum distance, as prescribed by the Zoning Ordinance, between the property line and the closest point of any building or structure other than those projections allowed by the Zoning Ordinance.

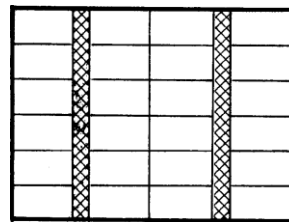
Bus Stops (School). Areas designated by the School District(s), serving the Town of Thatcher, as needed for the convenience and safety of the students and public per Arizona Administrative Code (A.A.C.) R17-9-104.

C

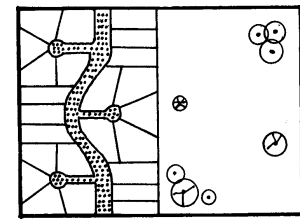
Chord. A straight line joining two points on a curve.

Cluster Development / Cluster Residential.

A development design technique that concentrates development/buildings in specific areas on a site, rather than distributing them evenly, thereby allowing the remaining land to be retained as natural open space for the preservation of sensitive lands, parks, and public open space areas.



24 Conventional Lots
No Open Space



24 Clustered Lots
50% Open Space

Commission. The Town of Thatcher Planning and Zoning Commission.

Common Ownership. Ownership by one or more individuals in any form of ownership.

Common Access. A commonly shared or used pedestrian or vehicular way that connects or serves two (2) or more properties.

Condominium. Real estate, portions of which are designated for separate ownership with the remainder designated for common ownership by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Conservation Easement. A conservation easement is a permanent open space easement granted to the Town or to a public land trust to prohibit development of the property, including roads and utilities, and to protect archaeological sites, ecologically significant lands, scenic highways, hiking trails, biking trails, equestrian trails, and to preserve the land for the scenic enjoyment of the general public.

Conventional Development. Development other than a Traditional Neighborhood Development (TND) or a Cluster Development.

County. Graham County, Arizona.

Cut. The removal of soil, rock, or other materials from a location which shapes and lowers the grade at the location.

D

Dedication. The conveyance of land by its owner to the Town for any general or public use.

Density Transfer. Permitted unused allowable densities in one area to be used in another area of the same development. (Examples: within a subdivision clustering of homes on smaller lots to retain larger open space areas; within the floodplain area to cluster homes at a higher elevation to retain undisturbed floodplains.).

Developer (*See also Subdivider*). A person, firm, partnership, joint venture, association, corporation, or entity that desires to improve or otherwise engage in any development of property within the Town of Thatcher, including the owner of the property and any representatives acting on behalf of the owner.

Development. The utilization of land for public or private purposes.

Drainage (*terms specifically related to drainage*).

1. **10-year, Peak Discharge.** A storm based on the 10-year event, at a certain duration (6 or 24-hour rainfall values shown on the most current precipitation maps for the area, prepared by the ADOT method).
2. **Backwater.** The elevation profile of standing or flowing water upstream of a constriction, whether natural or man-made.
3. **Basin.** A man-made or improved natural low point on a site constructed to capture storm water for the purpose of retaining or detaining it.
4. **Basin, Detention.** A stormwater storage facility that temporarily stores surface runoff and releases it at a controlled rate through a positive outlet. A detention basin and park may be joined to serve both recreational needs and as a stormwater storage facility.
5. **Basin, Retention.** A stormwater storage facility that stores surface runoff. Stored water is infiltrated into the subsurface or released to the downstream drainage system or watercourse (via gravity outlet or pump), or evaporated after the storm event. A retention basin and park may be joined to serve both recreational needs and as a stormwater storage facility.
6. **Detention.** For the purposes of this Ordinance, detention is the act of capturing and slowing stormwater runoff in a basin then discharging the water at release rate that is less than or equal to pre-development flows. Only offsite drainage and pre-development onsite drainage are allowed to be detained for later release into a downstream channel or storm sewer.
7. **Direct Onsite Runoff.** That portion of the rainfall which falls within the entire

Subdivision Ordinance - June 2013

limits of the proposed subdivision and which flows across the land or enters streams promptly after the rainfall.

8. **Drainage, 100-Year Storm, Peak Discharge.** Local drainage resulting from a storm which has a 1% chance of occurring annually, based upon the methods given in Hydrologic Design for Highway Drainage in Arizona, published by the Arizona Department of Transportation, Highway Division.
9. **Drainage, Local.** Water which accumulated as a result of local storms and flows over land not included in a floodplain. This shall include sheetflow and such flow as may be concentrated in local drainage systems with or without defined channels, excluding delineated floodplains.
10. **Drainage Way.** Any natural or artificial watercourse, trench, ditch, swale, or similar depression into which surface water flows.
11. **Dry Well.** An underground structure installed in the bottom of a basin to expedite the percolation of captured storm water into the soil.
12. **Freeboard.** The vertical clearance between the water surface and the soffit (underside of a bridge deck or the top point of the inside diameter of a pipe) for culverts carrying storm water.
13. **Offsite Drainage.** The storm surface waters emanating from higher lands outside the limits of the proposed subdivision and draining through the site of the proposed subdivision.
14. **Post-development Conditions.** The physical state of a site in terms of its ability to hold, shed, or channelize storm water after development – for quantity, quality, and flow rate.
15. **Pre-development Conditions.** The physical state of a site in terms of its ability to hold, shed, or channelize storm water prior to development--for quantity, quality, and flow rate.
16. **Retention.** The act of capturing and holding in a basin the additional direct onsite runoff caused by post-development conditions. This captured water may not be discharged into a downstream channel or storm sewer; instead, it must diminish by evaporation or soil percolation.
17. **Spillway.** An erosion-resistant structure installed at a low point on a basin's walls to provide controlled overflow during a storm event larger than the 100 year, 24 hour storm event.
18. **Sump.** A basin that only retains the storm water it captures. It does not have an outlet and loses water only through evaporation or soil percolation.

E

Easement. A grant by a property owner of the use of land, by the general public, a corporation, or a certain person or persons for the specific uses and purposes designated.

Exception. Any parcel of land that is not owned by the developer or not included in the recorded plat. All such exceptions must be noted on the final plat as “not a part of this subdivision”.

F

Figure. Any graphic representation noted as “Figure” within this Ordinance that is used to illustrate and exemplify certain standards and regulations contained within the language of this Ordinance. If a figure and text of the Ordinance conflict, the written text of the Ordinance shall control.

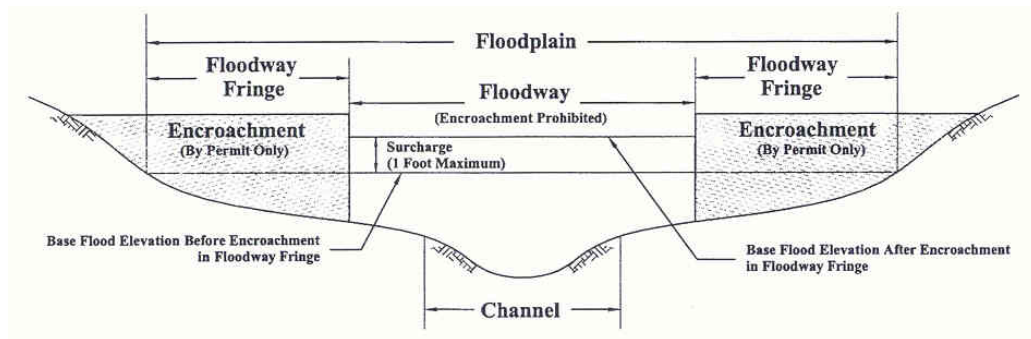
Fill. Soil, rock or other material, deposited at a location by man that raises the grade at that location.

Flood (*terms specifically related to floods/flooding*).

1. **50-year Flood.** A flood that has a 2% chance of occurring based upon the criteria established by the Arizona Department of Water Resources.
2. **100-year Flood.** A flood that has a 1% chance of occurring based upon the criteria established by the Arizona Department of Water Resources.
3. **Base Flood.** The flood having a one-percent (1%) chance of being equaled or exceeded in any given year.
4. **Delineated Floodplain.** Shall be that area delineated and mapped as a floodplain, as approved by the Council and as shown on the Town Official Zoning District Maps. At no time shall it be less than that delineated by the Federal Emergency Management Agency (FEMA).
5. **Flood or Flooding.** A temporary inundation of land not normally covered by water due to unusual and rapid accumulation or runoff of surface waters from any source, or a rise in flow or stage of any stream or watercourse that result in water overtopping its banks and adjacent areas that are not normally covered by water.
6. **Flood Hazard Zone.** Any land area partially or wholly within a delineated floodplain susceptible to flood related damage as designated on the Flood Management Maps. Such flood hazard zones may include, but not be limited to, areas highly susceptible to erosion, stream meander sensitivity, moveable bed, scour, wave action, and subsidence.

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7. **Floodplain.** The relatively flat areas or low lands adjoining the channel of a watercourse, or areas where drainage is or may be restricted by man-made structures which have been or may be covered partially or wholly by flood water, but shall compose an area not less than that area confined by the Fifty (50) Year Flood and shall not exceed that area confined by the One hundred (100) Year Flood.
8. **Floodplain Administrator.** The Graham County Floodplain Administrator.
9. **Floodway.** The channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the one-hundred (100) year flood without cumulatively increasing the water surface elevation more than one (1) foot.
10. **Floodway Fringe.** The area of the floodplain on either side of the floodway where encroachment may be permitted.



G

General Plan. A comprehensive plan pursuant to A.R.S. §9-461.05, providing for the future growth and improvement of the Town of Thatcher and for the general location of streets, schools and recreation areas, public building sites, and other physical development, and including any part of such plan separately adopted and any amendment to such plan, or parts thereof.

Grade, Finished. The final elevation of the ground surface after development in conformance with the approved grading plans.

Grade, Natural. The elevation of the ground surface in its natural state, before man-made alterations.

H

Health Department. Graham County Health Department.

I

Improvements. Required installations, pursuant to this Subdivision Ordinance and any zoning conditions, including but not limited to: grading, sewer, water, utilities, streets, curbs, gutters, sidewalks, trails, alleys, street lights, traffic control devices and landscaping; as a condition to the approval and signing of the final plat, before recordation.

Improvement Plans. A set of plans setting forth the profiles, cross-sections, details, specifications, and instructions and procedures to be followed in the construction of public or private improvements in the Town of Thatcher that are prepared and bear the seal of an Arizona - Registered Land Surveyor, Engineer, Architect or Landscape Architect in accordance with the approved preliminary plat, and zoning conditions, and in compliance with standards of design and construction that are to be approved by the Town Engineer, other Town Departments, the applicable County Departments, and all applicable utilities.

Improvement Standards. A set of regulations and figures setting forth the details, specifications and instructions to be followed in the planning, design and construction of public improvements in the Town of Thatcher, as required by the Town.

Irrigation Facilities. Includes laterals, ditches, conduits, pipes, gates, pumps and all equipment necessary for the supply, delivery and drainage of irrigation water and the construction, operation and maintenance of such.

J

K

L

Landscaping. Shall consist of any of the following or combinations thereof: material such as, but not limited to, organic and inorganic ground covers, vegetation and irrigation, hardscape, walls or fences that may be calculated as open space but excluding paving (*refer to the definition of **Open Space***).

Lot. A single piece of property located in a recorded subdivision. A lot also includes a parcel of land, shown in the records of the Graham County Assessor's Office, divided to be used separately from other parcels of property by description, as on a recorded survey map, or by metes and bounds, for purposes of sale, lease, or separate use in a legal manner pursuant to all state, county, and Town requirements for the development and proposed use of that property.

Lot Area. The total area within the boundary lines of a lot.

Lot Depth. The horizontal length of a straight line connecting the midpoints of the front and rear lot lines; and for triangular shaped lots, the shortest horizontal distance between the front lot line

Subdivision Ordinance - June 2013

and a line within the lot, parallel to and at a maximum distance from the front lot line, having a length of not less than ten (10) feet.

Lots, Hillside. Any lots, or portions hereof which will have structures built upon, where the terrain has an average cross-slope of fifteen (15) percent or greater.

Lot Line. A line of record bounding a lot that divides one (1) lot from another lot or from a public or private street or any other public space.

Lot Line, Front. In the case of an interior lot: a line separating the lot from the street right-of-way. In the case of a corner lot: the narrowest of the two (2) lot lines adjoining a street right-of-way.

Lot Line, Rear. A lot line that is opposite to and most distant from the front lot line; except in the case of an irregular or triangular shaped lot, a lot line ten (10) feet in length within the lot parallel to and at the maximum distance from the front lot line.

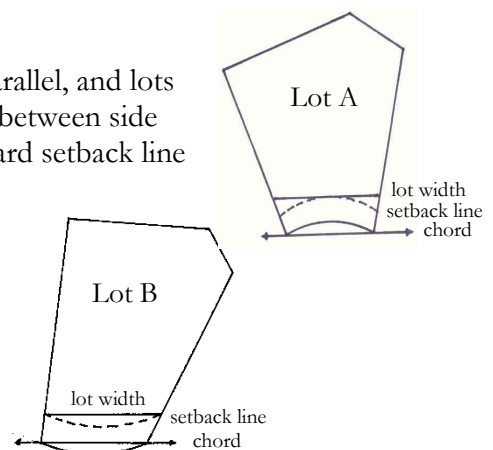
Lot Line, Side. Any lot line that is not a front or rear lot line.

Lot Split. The division or re-division of improved or unimproved land or established lots, the area of which is two and one-half (2½) acres or less in size, into two (2) or three (3) tracts, parcels of land or lots for the purpose, whether immediate or future, of sale, lease, or conveyance (*refer to the definition of **Minor Land Division** if greater than 2½ acres in size*).

Lot, Through. A lot that fronts upon two (2) parallel streets, or that fronts upon two (2) streets that do not intersect at the boundaries of the lot (*also known as a "double frontage lot"*). On such lot, both lot lines are front, except that where a non-access easement has been established on such a lot, the front lot line shall be considered as that lot line most distant from the lot line containing the non-access easement.

Lot Width.

1. For rectangular lots, lots having side lot lines not parallel, and lots on the outside of the curve of a street, the distance between side lot lines measured at the required minimum front yard setback line on a line parallel to the street or street chord.
2. For lots on the inside of the curve of a street, the distance between side lot lines measured at the required minimum front yard setback line on a line parallel to the street or street chord.



M

Master Plan Development. A master plan for the development of a community or other large land area, the platting of which is expected to be undertaken in progressive stages, that provides information and graphics meeting the requirements of this Ordinance for the purpose of implementing an integrated development scheme for all phases of the proposed development.

Minor Land Division. The division of improved or unimproved land, the area of which is greater than two and one-half (2½) acres and either requires creating a road and/or the land does not constitute a subdivision, as defined herein or by Arizona Revised Statutes, due to the size of the original parcel or number of lots being created for the purpose, whether immediate or future, of sale, lease, or conveyance (*refer to the definition of **Lot Split** if less than 2½ acres in size*).

N

Net Acres. The total acreage of a tract or parcel of land exclusive of the area existing or required for arterial or collector street right-of-way dedications and school/public site reservations. When calculating residential net acres within a Traditional Neighborhood Development (TND) any commercial and industrial zoned land must be excluded in addition to those uses listed above.

O

Open Space. Any parcel or area of land or water unimproved or improved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

Open Space, Common. Land within or related to a development, and such area is owned in common by all property owners in that development, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complimentary structures and improvements as are necessary and appropriate.

Open Space, Private. Common open space held in private ownership, the use of which is normally limited to the occupants of a single dwelling or building.

Open Space, Public. An open space area conveyed or otherwise dedicated to a municipality, municipal agency, school district, state or county agency, or other public body for recreational or conservational uses.

Open Space, Usable. Land that can be actively used by people. This could include landscaped or hardscaped plazas, paseos and promenades, fountains and sitting areas meant to provide an open park like atmosphere. Also playgrounds, golf courses, bicycle trails (but not bike lanes), pedestrian trails (not residential sidewalks), and trail heads. Usable open space does not include parking areas and vacant or undeveloped lots.

Subdivision Ordinance - June 2013

Owner. The person or persons holding title by deed to land, or holding title as vendees under land contract, or holding any other title of record.

P

Pedestrian Way. A public walk provided entirely through a block from street to street and/or providing access to a school, park, recreation area, or a shopping center.

Plat. A map that provides for changes in land use or ownership.

Plat, Final. A final map of all of a subdivision, including supporting data, in substantial conformance to an approved preliminary plat and all conditions placed upon it by the Commission or Council, prepared by a registered land surveyor, in accordance with this Ordinance and the Arizona Revised Statutes.

Plat, Preliminary. A preliminary map, including supporting data, indicating a proposed subdivision design, prepared by a registered civil engineer and a registered land surveyor, in accordance with this Ordinance and the Arizona Revised Statutes. A preliminary site plan for a condominium development shall be considered a preliminary plat.

Plat, Recorded. A Final Plat bearing all of the certificates of approval required by this Ordinance and the Arizona Revised Statutes and duly recorded in the Graham County Recorder's Office.

Preliminary Approval. Affirmative action on a preliminary plat, noted upon prints of the plat, indicating that approval of a final plat will be forthcoming upon satisfaction of specified conditions; and which constitutes authorization to submit final engineering plans and the final plat.

Private Access Way. A private way of access dedicated as a tract to one (1) or more lots or air spaces, which is owned and maintained by an individual or group of individuals and has been improved in accordance with Town standards and plans approved by the Town Engineer. A private access way is intended to apply where its use is logically consistent with a desire for neighborhood identification and control of access, and where special design concepts may be involved, such as within Traditional Neighborhood Developments and condominiums.

Protected Development Rights Plan. A final subdivision plat that meets all the requirements of this Ordinance and A.R.S. §9-463.01, and which has been recorded with the County Recorder shall constitute a Protected Development Rights Plan.

Q

R

Recorder. The Recorder of Graham County.

Replat.

1. A plat for the purpose of reverting previously subdivided acreage to unsubdivided acreage, or;
2. A plat for the purpose of vacating rights of way previously dedicated to the public and abandoned under procedures prescribed by the City Code, or:
3. A plat for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

Roadway. That portion of a road or alley right-of-way that is improved for vehicular traffic and is narrower in width than the right-of-way.

Roadway Easement. A recorded conveyance to the public over a described area for roadway related uses.

S

Sketch Plan. A preliminary presentation of a proposed subdivision or site plan showing, at a minimum, the proposed streets and alleys of sufficient accuracy to be used for discussion purposes and identification of any items of controversy or issues of concern. Sketch plans may be drawn on an aerial photo or satellite map and shall be drawn in relation to existing and planned development and the streets immediately adjacent to the proposed subdivision or site.

Small Subdivision. A subdivision of more than three (3) lots but less than or equal to fifteen (15) lots with none of the lots being less than ten thousand (10,000) square feet in size and where alternative street standards and/or public improvements may be approved by the Town.

Streets. Any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct, or easement for public vehicular access, or a street shown in a plat heretofore approved pursuant to law, or a street in a plat duly filed and recorded in the Graham County Recorder's Office. Street includes all land within the street right-of-way, whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking spaces, bridges and viaducts, bike lanes, pedestrian facilities, utility areas, and other such design features. A public street must be accepted for maintenance, after construction in accordance with approved plans, by the Town Council prior to acknowledgment that said street is a public street.

Street, Arterial. A street so designated on the Traffic Circulation Plan as a principal arterial street or minor arterial street as classified in the Thatcher General Plan whose primary function is to carry traffic between and through major traffic generators, have signalized intersections and restricted parking.

Subdivision Ordinance - June 2013

Street, Collector. A street so designated on the Traffic Circulation Plan in the Thatcher General Plan whose primary function is to carry traffic from local streets to arterial streets and whose secondary function is to provide access to abutting properties.

Street, Cul-de-sac Street. A local street having one end permanently terminated in a vehicular turnaround, or an equally convenient form of turning, and backing areas as may be recommended by the Town Engineer.

Street, Frontage. A local street parallel and adjacent to an arterial street that provides access to abutting property, intercepts other local streets and controls access to the arterial street.

Street, Local. A local street permits direct access to abutting lands, traffic movements within neighborhoods, and connections to the collector and arterial street system.

Street, Major. A principal traffic route for contiguous streets that is also a means of access to arterial streets.

Street, Private. Any road or street that is not publicly owned and maintained providing access to lots or units over a common parcel, primarily by the owners or occupants of the common parcel, and necessary service and emergency vehicles, but from which the public may be excluded.

Streetscape. A design term referring to all the elements between the buildings on either side of the street that, as a group, define its character, including building frontage/façade, street paving, landscaping (including trees and other plantings), sidewalks, street furniture (benches, kiosks, trash receptacles, fountains etc.) signs, awnings and colonnades, and street lighting.

Subdivider (*see also Developer*). The individual, firm, corporation, or partnership, association, limited liability company, syndicate, trust or other legal entity that files the application and initiates proceedings for the subdivision of land in accordance with the provisions of this Ordinance and statutes of the State of Arizona; except that an individual serving as representative for such legal entity is not a developer; and said developer need not be the owner of the property as defined by this Ordinance. The Town Council may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

Subdivision.

1. Improved or unimproved land or lands divided for the purpose of financing, sale, lease, or conveyance whether immediate or future, into four (4) or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into two (2) or more parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon.

2. “Subdivision” does not include the following:
 - a. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots.
 - b. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership.
 - c. The leasing of apartment, offices, stores or similar space within a building or trailer park, nor mineral, oil, or gas leases.

T

Town. The Town of Thatcher.

Town Council. The Town of Thatcher Town Council.

Traditional Neighborhood Development (TND). A development in which flexibility can be permitted in the zoning standards, in order to encourage more creativity and sustainable design, thereby providing usable open spaces within and about the development and enhancing the residential character of the Town.

Trail, Multi-Use. A hard surfaced trail designed for all types of non-motorized use. These trails should be constructed of either concrete or an all-weather surface such as rubberized asphalt, or similar material.

Trail, Unpaved. A designated trail designed to accommodate primarily equestrians, off-road bicycles, and pedestrian users.

U

Utility Services. Service to the public of water, sewer, electric, gas, communications, cable television, drainage, flood control, or other facilities, owned and operated by any person, firm, corporation, municipal department or board, duly authorized by State or Municipal regulations. The foregoing shall be deemed to include facilities and appurtenances to the above uses but shall not include public utility treatment and generating plants or offices.

Utility, Public. Any agency under public franchise or ownership, or under certificate of convenience and necessity that provides the public with electric, gas, heat, communication, rail transportation, water, sewage collection, or other similar service.

V _____

W _____

Water Supply, Assurance (100 Years). A written statement from Arizona Department of Water Resources, that states the water supply and flows are adequate and in accordance with Town and State requirements and provide evidence that it meets the Arizona Department of Water Resources requirements for a one hundred (100) year assured supply.

X _____

Y _____

Z _____

Zoning. The dividing of the Town into districts or zones and the establishment of regulations of governing the use, placement, spacing, and size of land and buildings within each zone or district.

Zoning Administrator. The staff/official responsible for the processing of applications required by this Ordinance and for the administration and enforcement of this Ordinance.

Zoning Clearance. The approval by the Zoning Administrator of an application and/or plat that is in conformance with this Ordinance.

(End of Glossary)

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Appendix A:

(For Future Use)

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March 2, 2022

To: Planning & Zoning Commission
Chair: Ray Tuttle
Vice-Chair: Wayne Layton
Members: Brandon Homer, Jerry Hoopes, David Griffin, Billy Orr, Machael Layton

Re: MARCH P&Z MEETING: Tuesday, March 8th, 6:00 PM

All,

Your attendance is requested at a Planning & Zoning meeting at the date & time listed above.

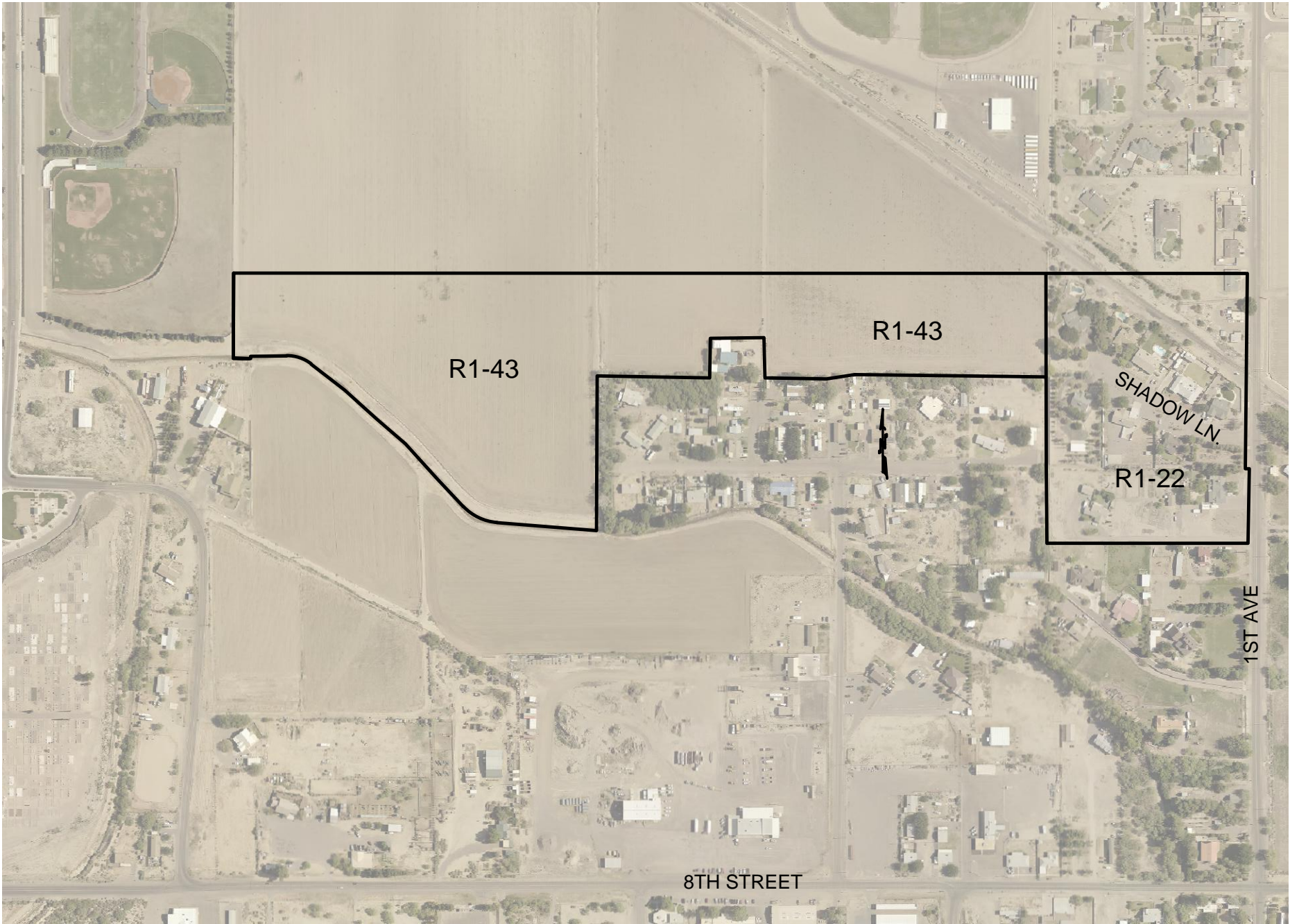
We have three items on the agenda:

1. We annexed the Shadow Lane area into the Town. Now that the appeal period is over, we need to assign it an appropriate zoning. The law states that the new zoning cannot allow for a higher use than what is allowed prior to annexation. I am including, attached, a map showing what I think is appropriate (R1-22 for the houses and R1-43 for vacant land). This is not a public hearing... you just need to make your recommendations to council and they need to approve.
2. I e-mailed you some zoning text amendments. We need to discuss and send a recommendation to Council. Primarily, the amendments deal with road improvements and typical road sections.
3. Lance and Shari Layton are requesting to re-zone of a portion of parcel 104-13-076 from C-2 (Highway Commercial) to MU (Mixed Use) with the purpose of building a multi-family development. The total parcel is approximately 9.2 acres and is located at just west of the intersection of Reay Lane and 4th Street in Thatcher. Approximately 6.5 acres is requested to be re-zoned. They held a neighborhood meeting yesterday and nobody showed up.

I have attached the minutes from the December meeting as well as the agenda for the upcoming meeting. If you have any questions at all, please don't hesitate to contact me.

Thank you,

Tom Palmer
Zoning Administrator
(928) 322-7065 (cell)
tpalmer@thatcher.az.gov



R1-43

R1-43

SHADOW LN.

R1-22

8TH STREET

1ST AVE



W US HIGHWAY 70

W MAIN ST

W MAIN ST

104-13-077

104-13-018

104-13-019

104-13-021

104-13-022

104-13-024

104-13-025

104-13-078

104-10-0

104-13-057

C-2

C-2

in the County
(2.0± ac.)

to remain C-2
(2.7± ac.)

104-13-007

104-10-0

R1-8

N REAY LN

W 4TH ST

104-13-076

to be re-zoned
from C-2 to MU
(6.5± ac.)

104-13-075

104-10

C-2

104-23-085

R1-43

104-13-023

R1-8

104-10-021

104-10

W CHURCH ST

104-25

N REAY LN



**National Association for the Education of Young Children (NAEYC)
Week of the Young Child
Proclamation - Thatcher, AZ**

-
- WHEREAS, All young children deserve quality early learning environments that support them as capable and competent lifelong learners; and
 - WHEREAS, Nurturing parenting, quality and accessible child care, and early education programs build strong brains during the critical years from birth to age 5; and
 - WHEREAS, Investments in babies and young children has profound impacts on creating a strong and vibrant community; and
 - WHEREAS, First Things First, Arizona Association for the Education of Young Children, and other community organizations, in conjunction with the National Association for the Education of Young Children, are celebrating the 51st anniversary of the Week of the Young Child; and
 - WHEREAS, These organizations are working to improve equitable early learning opportunities that can provide a foundation of learning for children in Thatcher, and
 - WHEREAS, Early childhood educators and others who make a difference in the lives of young children deserve thanks, recognition, and support; and
 - WHEREAS, Public policies that support early learning for all young children are crucial to Arizona's families, communities, and economy.

NOW, THEREFORE, I, Mayor Randy Bryce, do hereby proclaim April 2-8, 2022 as the Week of the Young Child in Thatcher, Arizona and encourage all citizens to support and invest in early childhood education in our community.

Randy Bryce, Mayor

Date

**MEETING MINUTES FOR THE REGULAR
MEETING OF THE THATCHER TOWN COUNCIL
February 28, 2022**

Councilmembers present: Mayor Bryce, Vice Mayor Smith, Councilman Rapier, Councilman Welker, Councilwoman Howard, Councilman Vining, Councilman Carlton

Staff present: Town Manager Heath Brown, Town Engineer Tom Palmer, Town Attorney Matt Clifford, Police Chief Shaffen Woods, Fire Chief Josh Curtis, Building Inspector Mike Payne, Town Clerk Annie Reidhead

Visitors: County Supervisor John Howard, John Habib, Chuck Hayden, David Adams, Steve Curtis, Larry Kerrigan, Bradley & Jessica Smith, Jacquelyn & Tessi Allred, Shawn & Debbie Turley, Jenny Stevens, Ross Hunt, Charley Allred

AGENDA

Welcome and Call Meeting to Order at 6:30 p.m. by Mayor Bryce and he stated that this is a public meeting for the Thatcher Town Council. He stated that we do have a quorum.

Pledge of Allegiance led by Mike Payne

PUBLIC HEARING:

Open to the public, no comments were made.

OPEN CALL TO THE PUBLIC:

Mr. Chuck Hayden, a resident of Quail Ridge, questioned how long residents of Quail Ridge must endure the road closure due to the Aaron Development construction. Also stated his concern of Southwest Gas taking over the gas utility services.

PUBLIC APPEARANCES:

"National Week of the Young Child" Proclamation

Mayor Bryce stated the week of April 2nd through April 8th, 2022, as "National Week of the Young Child" Proclamation.

CONSENT AGENDA: Action Item

- A. Approve Minutes of the January 24, 2022, Regular Council Meeting and the February 7, 2022, Special Meeting
- B. Planning and Zoning Monthly Report
- C. Police Monthly Report
- D. Approval of Invoices
- E. Financial Reports

Councilmember Rapier made a motion to approve the consent agenda and seconded by Vice Mayor Smith. Motion carried unanimously.

OLD BUSINESS:

None

NEW BUSINESS: Discussion, Consideration and Possible Action

A. Bullet Resistant Glazing Bid Award – Town Hall Lobby

Mr. Brown stated that this is the bid for material and labor to install bullet proof glass in the lobby for the staff that is working behind the glass. Boulevard glass was the low bid and Mr. Brown recommended awarding the bid to them. This item was budgeted in this year's budget for \$50,000 and the bid came in at \$32,955.

Councilmember Howard made a motion to award the Town of Thatcher Bullet Resistant Glass to Boulevard Glass

in the amount of \$32,955 and seconded by Councilmember Carlton. Motion carried unanimously.

B. Liquor License Transfer from Basha's to Raley's Arizona LLC

Mr. Brown stated this is the transfer of the liquor license from Basha's Grocery to Raley's. Mr. Brown introduced John Habib representing Raley's. Mr. Habib stated he was there to answer any questions council may have.

Councilmember Rapier made a motion to approve the liquor license transfer from Basha's to Raley's seconded by Vice Mayor Smith. Motion carried unanimously.

C. Fire Chief Mike Payne – Retirement Acknowledgement

Mayor Bryce presented Chief Payne with his retirement plaque. Mayor Bryce thanked Chief Payne for his service. Mayor Bryce announced Josh Curtis as the new Fire Chief.

D. Future Budget Workshop Date

Mr. Brown stated that it's that time of year to schedule the meetings for the 2022/2023 budget. Monday, April 4th at 6:00 p.m. was the date decided for the preliminary budget meeting. Mr. Brown stated that the cut off date to get him suggestions and/or concerns to him for the meeting would be Monday, March 14th.

E. RESOLUTION NO. 698-2022 - A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF THATCHER, ARIZONA, DECLARING THAT THE TOWN COUNCIL DEEMS THE GRANTING OF A FRANCHISE WITH SOUTHWEST GAS CORPORATION BENEFICIAL FOR THE TOWN OF THATCHER; ORDERING AN ELECTION TO BE HELD ON MAY 17, 2022, AT WHICH ELECTION THERE SHALL BE SUBMITTED TO THE VOTERS OF THE TOWN OF THATCHER THE QUESTION AS TO WHETHER OR NOT SAID FRANCHISE SHALL BE GRANTED TO SOUTHWEST GAS CORPORATION.

Mr. Brown stated that Graham County Cooperation held an election to sell the gas utility services to Southwest Gas Company. This will be the franchise agreement between Southwest Gas Company and the Town of Thatcher for Southwest Gas to operate in our right of ways, to maintain the lines, and do what it takes to provide gas to customers. This resolution also requires Southwest Gas to give 2% of their gross revenue back to the Town of Thatcher. This will allow the Town to maintain the impact on our roads to provide the gas services to the town. The franchise agreement will go to election for a citizen vote on May 17th, 2022. If the franchise agreement does not pass the Town of Thatcher citizens will be paying for the impact of the roads instead of Southwest Gas.

Councilmember Rapier made a motion to approve Resolution 698-2022 authorizing the franchise election to take place on May 17th, 2022, seconded by Councilmember Howard. Motion carried unanimously.

F. ORDINANCE NO. 193-2022 - AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF THATCHER, ARIZONA, GRANTING TO SOUTHWEST GAS CORPORATION, ITS SUCCESSORS AND PERMITTED ASSIGNS, A PUBLIC UTILITY FRANCHISE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY

Mr. Brown stated this is an ordinance for the council to approve the franchise agreement.

Councilmember Rapier made a motion to approve Ordinance 192-2022 granting Southwest Gas the information outlined in the ordinance seconded by Councilmember Howard. Motion carried unanimously.

G. Approval of the Form of Argument in the question of the Southwest Gas franchise agreement, which "for argument" is to be published in the ballot pamphlet.

Councilmember Rapier made a motion for the approval of the franchise agreement ballot measure and seconded by Councilmember Howard. Motion carried unanimously.

Mayor Bryce stated that this is in effect for 25 years to the benefit to The Town of Thatcher to maintain our roadways which may be damaged by the utility service.

H. David Adams – Thatcher Soccer Field Use

Mr. Adams thanked Mr. Brown and the council to allow him to speak at this meeting. Mr. Adams would like to create a recreation soccer league that will start in the middle of August into December. This would provide children here in the valley to develop their soccer skills and would also allow for play locally. Mr. Adams stated that the RSO league would purchase additional netting. He also stated that he approached the RSO league about purchasing lighting for the soccer fields and was denied. Mr. Adams asked the Council to have use of the soccer fields from the middle of August to the middle of December each Saturday from 8:00 a.m. to 2:00 p.m. He also stated that he would like to have use of the soccer fields the first two weeks of August from 4:00 p.m. to 6:00 p.m. Monday through Friday for tryouts.

Mayor Bryce stated that he wanted councilmembers and the town manger to have the opportunity to provide suggestions and/or concerns on the matter of designating these times at the soccer fields for Mr. Adams. Mr. Brown stated his concern regarding the reseeding of the fields during the time of the requested time. Mr. Brown also stated to maybe consider a rental fee for the usage of the soccer fields. Councilmember Rapier asked if there is a benefit for the Town to run a soccer recreation league. Councilmember Vining liked the idea of allowing the league usage of the soccer fields to provide Thatcher children more opportunities to participate in the league. Councilmembers proposed that Mr. Brown work directly with Mr. Adams at a pilot program for the soccer field usage.

INFORMATIONAL ITEMS:

A. Town Manager's Report

Public Works Projects

- Recreation Complex

The roof structure for the restroom facilities is installed and the utilities inside the facilities are being worked on.

- 1st Avenue Drainage

2,000 feet of underground irrigation pipe including 11 concrete irrigation boxes have been completed

- High School Avenue Project

900 feet of sidewalk has been poured and 2,100 feet total left on both sides

- Garbage Truck Status & Drivers

Normal garbage truck driver is on an extended medical leave and will be for another month or so. Two of the park department employees are filling the position to accomplish trash pickup. The purchasing of a garbage truck is coming along slowly due to the supply of the trucks.

- Enterprise Fleet Update

The Fire Chief's truck will be in soon. It will be a white Ford F150, and it will be wrapped in red.

- Monthly Financial Summary

Biggest sales tax collection month of the year

- Police Department

Chief Woods stated that he met the K9 dog and announced that he is the number one dog at the academy. He also stated that the K9 will be seeing a veterinarian for an exam.

Chief Woods stated that he submitted paperwork for two grants. These grants will provide money for the Town to purchase a traffic speed limit/light trailer and a laser radar for school zones.

- Fire Department

Mayor Bryce welcomed Chief Curtis to the Town.

Additionally, Mr. Brown stated that the council packets for council elections will be available starting tomorrow.

B. Council Reports

Councilmember Carlton stated that he attended the SEAGO meeting and reported on it. Councilmember Howard stated that SEACAP will have monies available for qualifying residents for housing repairs. She will get the Town more information on the matter to get to our residents.

EXECUTIVE SESSION:

At 7:47 p.m. Councilmember Carlton made a motion to go into Executive Session and was seconded by Councilmember Howard. Motion carried unanimously.

At 8:54 p.m. Councilmember Rapier made a motion to go back into Regular Session and was seconded by Councilmember Carlton. Motion carried unanimously.

ADJOURNMENT

Motion was made to adjourn the meeting at 8:55 p.m. by Councilmember Rapier and seconded by Councilmember Carlton. Motion carried unanimously.

APPROVED:

Heath Brown, Town Manager

Randy Bryce, Mayor

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Thatcher held on this 28th day of February.

I further certify that the meeting was duly called and held and that a quorum was present.

Annie Reidhead, Deputy Clerk

MINUTES OF THE REGULAR MEETING OF THE THATCHER PLANNING & ZONING COMMISSION

Tuesday, March 8, 2022 – 6:00 pm

MEMBERS PRESENT: Chair Ray Tuttle, Vice-Chair Wayne Layton, David Griffin,
Billy Orr, Machael Layton, Brandon Homer
Tom Palmer, Town Engineer

MEMBERS ABSENT: Jerry Hoopes

VISITORS: Gary Allred, Brock Layton, Sherri Layton, Jake Hansen

1. Welcome and Roll Call

Chair Tuttle called the meeting to order and established that a quorum was present. At the time of roll-call, Ms. Layton was not present.

2. Approval of Minutes

The Commission unanimously approved the minutes from the December 2021 meeting.

3. Assignment of zoning – Shadow Lane

Mr. Tuttle asked Mr. Palmer to explain this item. Mr. Wayne Layton stated for the record that he has one of the parcels in this area under contract for purchase.

Mr. Palmer explained that the recent annexation area, which includes Shadow Lane, has now been through the appeal period and is ready for Town Zoning to be assigned. State law requires that the assigned zoning cannot allow for a higher use than what the County zoning allowed. Mr. Palmer explained that the annexation area was zoned AR in the County (agricultural residential) and that an equivalent zone would be R1-43 in the Town. However, several of the lots on Shadow Lane are less than one-acre in size and would not be in compliance with the R1-43 zoning. Mr. Palmer recommended that the Town assign a zoning of R1-22 to the houses on Shadow Lane and that all the vacant land in the annexation area be assigned a zoning of R1-43.

Mr. Griffin recommended that Mr. Palmer's Zoning recommendations be supported and sent to council for approval. A vote was taken and the vote was unanimous in favor of the motion.

Ms. Machael Layton arrived at this point in the meeting.

4. Public Hearing

Public Hearing to consider the matter of a proposed re-zone of a portion of parcel 104-13-076 from C-2 (Highway Commercial) to MU (Mixed Use) with the purpose of building a multi-family development. The total parcel is approximately 9.2 acres and is located at just west of the intersection of Reay Lane and 4th Street in Thatcher. Approximately 6.5 acres is requested to be re-zoned.

Mr. Tuttle opened the hearing and asked if there was anyone that would like to speak on the matter.

Ms. Sherri Layton said that she and her husband, Lance, own the property and are hoping to re-zone the property to Multi-Use (MU) so they can build a 4-plex and consider further development. She said the re-zone to MU would give them more options for development than the current C-2 zone.

Mr. Griffin asked if they were planning on building just one 4-plex. She said they'd start with one and see how it goes, but likely build more in the future.

Mr. Palmer stated that he got a call from Fertizona regarding the re-zone. They are not opposed to the request, but want to make sure any residential developments that go in are aware of Fertizona's operations and that "they were there first".

Mr. Griffin asked Ms. Layton why only a portion of the property was to be re-zoned. She stated that they would like a buffer between the existing C-2 zoning (storage units behind Tom's Service Center). They have thought about potentially doing storage units themselves and those would not be allowed in MU, but would be allowed in C-2.

Mr. Tuttle closed the public hearing and the commission discussed the matter.

Mr. Griffin said that he thinks this is a perfect place for mixed-use development. There are apartments across the street and commercial nearby. It's already a pretty mixed-use area and he does not see any objection.

Machael Layton asked if letters were sent to the neighbors and if a sign was posted on the property. Mr. Palmer stated that they were. Furthermore, the Laytons held a neighborhood meeting and nobody showed.

Mr. Homer asked how many residential units would be built. Ms. Sherri Layton reiterated that a single 4-plex was likely to be built first & then they would consider more.

Mr. Griffin asked Mr. Palmer if they would have to pave their roads and do other improvements. Mr. Palmer stated that the code does require drive lanes and parking areas to be paved for multi-family developments.

Mr. Wayne Layton said that he agreed with Mr. Griffin that this parcel seems a perfect place for this type of zoning.

Mr. Billy Orr made a motion “to recommend approval of the request to re-zone to MU”

Mr. Griffin Seconded the motion

Vote: Unanimous in favor of the motion

5. Public Hearing

Public Hearing to consider text amendments to the Town’s Subdivision Ordinance

Mr. Tuttle opened the hearing and asked Mr. Palmer to introduce the proposed changes.

Mr. Palmer went through a spreadsheet showing the Town’s current street standards compared to other municipalities. He explained that the Town is small compared to many Arizona Cities & Towns on some of our street sections and very wide compared to others on our local streets. He also mentioned the proposed addition of a “large lot” street section.

There was a lot of discussion between the commission and Mr. Palmer regarding the street sections. A narrow street is difficult to maneuver, but slows people down. A wider street is easier to maneuver but hard to control traffic speeds and more expensive to maintain. There was discussion of what the ranges of widths meant on the spreadsheet and the fact that they correspond to specific street sections. There was question about whether the bike lanes included the gutters (and whether they should include the gutter). There was discussion about whether the proposed changes would affect on-going developments.

Generally, the commission agreed that a large-lot standard was needed. There was not a general consensus about local street widths. Three of the commissioners would like to see local streets be wide and three are in favor of narrower local streets.

There was discussion about what defines an arterial, collector & local street. There was a discussion about cul-de-sacs on public roads and whether trash trucks can maneuver when people park in the road.

Mr. Palmer went through the proposed changes in the ordinance, including whether we should require turn-around easements on private driveways when people share them (4.16.B.2). There was a general consensus that we should, at some point, require turn-arounds. There was not a general consensus about the length of the drive or how many homes should be on it. At the end of the discussion, most agreed that requiring a turn-around easement for shared lots with drives in excess of 150’ is probably a good thing.

The remainder of the “Small Subdivision” changes were discussed (Section 4.16), with some recommended changes by the commission. The commission recommended only allowing a reduced street section for 7-15 lot subdivisions if the lot sizes are greater than 20,000 sf.

Mr. Billy Orr made a motion “to recommend approval of the proposed text amendments to the Subdivision Ordinance with the changes discussed”

Mr. Griffin Seconded the motion

Vote: Unanimous in favor of the motion

6. Staff Report

Mr. Palmer gave a report on the on-going projects in town.

7. Adjournment

The meeting was adjourned.

TOWN OF THATCHER BUILDING PERMITS

				Feb-22				
						Number of Permits	Valuation	Number of housing Units
New Residential Buildings								
One-family houses, detached						3	877,745	3
one-family houses, attached								
Two-family buildings								
Apartment Three and four family								
Buildings Five or more family								
Manufactured/Mobile Homes/Park Models								
Publicly owned housing units								
Hotels, motels, tourist courts and cabins								
Other shelter								
New Nonresidential Buildings								
Amusement and recreational buildings								
Churches and other religious buildings								
Industrial buildings								
Parking garages open to general public								
Service Stations and Repair Garages								
Hospitals and other institutional buildings								
Office, bank and professional buildings								
Stores and other mercantile buildings								
Public works and utilities buildings, publicly owned								
Public works and utilities buildings, privately owned								
Schools/other educational buildings, publicly owned								
Schools/other educational buildings, privately owned								
Other nonresidential buildings								
Structures other than buildings								
Swimming pools, fences, billboards, signs, awnings, etc.						2	15,600	
Additions and Alterations								
Residential buildings								
Residential garages and carports						5	45,408	
Commercial buildings						1	2,492	
All other buildings and structures						3	57,859	
Total								
Housing unit demolitions								
TOTAL						14	999,104	

Thatcher Police Department Chief's Report
2021

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	TOTAL
Complaints Answered	192	145	147	180	823	181	207	213	202	190	155	150	2121
Arrests	7	6	9	10	6	8	16	1	14	6	13	4	100
Juvenile Referrals	0	1	1	3	2	2	1	3	2	5	2	1	23
Traffic Citations	12	16	13	16	10	13	16	24	26	20	12	18	196
Warnings	107	81	115	94	99	90	156	229	173	191	130	195	1660
MONTHLY TOTAL	318	249	285	303	276	294	396	470	417	411	312	368	4099
YEARLY TOTAL	318	567	852	1155	1431	1725	2121	2591	3008	3419	3731	4099	4099

CURRENT MONTH BREAKDOWN

COMPLAINT BREAKDOWN

						<u>Property</u>		<u>MILES</u>
Accidents	10	Sex Offenses	0	Thefts	4	Stolen	\$ 21	8818
Traffic Comp	2	Crim Damage	1	Disturbance	2	Recovered	0	
Veh Assist	11	Alarm	10	Fire	2	Difference	21	
Domestic	7	Assault	0	Deaths	0			
DUI	3	Animal	15	Juv Comp	9			
Missing Person	0	Drugs	0	Gen Comp	88			
Alcohol Viol	0	Homicide	0					

YEAR TO DATE BREAKDOWN

COMPLAINT BREAKDOWN

						<u>Property</u>		<u>MILES</u>
Accidents	119	Sex Offenses	7	Thefts	58	Stolen	\$ 6931	97434
Traffic Comp	89	Crim Damage	22	Disturbance	18	Recovered	2151	
Veh Assist	160	Alarm	80	Fire	19	Difference	4780	
Domestic	62	Assault	24	Deaths	6			
DUI	27	Animal	82	Juv Comp	82			
Missing Person	6	Drugs	10	Gen Comp	1352			
Alcohol Viol	4	Homicide	0					

Thatcher Police Department Chief's Report
2022

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	TOTAL
Complaints Answered	200	209											409
Arrests	8	9											17
Juvenile Referrals	2	0											2
Traffic Citations	31	17											48
Warnings	243	212											455
MONTHLY TOTAL	484	447											931
YEARLY TOTAL	484	931											931

CURRENT MONTH BREAKDOWN

COMPLAINT BREAKDOWN

				<u>Property</u>		<u>MILES</u>		
Accidents	14	Sex Offenses	0	Thefts	3	Stolen	\$ 90	8219
Traffic Comp	3	Crim Damage	6	Disturbance	4	Recovered	90	
Veh Assist	14	Alarm	10	Fire	2	Difference	0	
Domestic	11	Assault	1	Deaths	1			
DUI	1	Animal	14	Juv Comp	6			
Missing Person	0	Drugs	0	Gen Comp	129			
Alcohol Viol	1	Homicide	0					

YEAR TO DATE BREAKDOWN

COMPLAINT BREAKDOWN

				<u>Property</u>		<u>MILES</u>		
Accidents	31	Sex Offenses	0	Thefts	8	Stolen	\$ 1916	11203
Traffic Comp	9	Crim Damage	9	Disturbance	8	Recovered	90	
Veh Assist	29	Alarm	19	Fire	6	Difference	1826	
Domestic	15	Assault	2	Deaths	2			
DUI	4	Animal	25	Juv Comp	14			
Missing Person	1	Drugs	1	Gen Comp	249			
Alcohol Viol	0	Homicide	0					

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Only paid invoices included.

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
10-20300 MEDICAL INSURANCE PAYABLE								
10-20300 MEDICAL INSURANCE PAYA	2077	ASSURITY LIFE INSURANCE C	4003603835	ACCIDENT INSURANCE	01/20/2022	5,821.85	5,821.85	02/03/2022
10-20300 MEDICAL INSURANCE PAYA	2077	ASSURITY LIFE INSURANCE C	4003630171	ACCIDENT INSURANCE	02/21/2022	5,795.83	5,795.83	02/16/2022
10-20300 MEDICAL INSURANCE PAYA	4523	GROUP ADMINISTRATORS, LTD	MAR 2022	HEALTH INSURANCE	02/22/2022	26,401.62	26,401.62	02/24/2022
10-20300 MEDICAL INSURANCE PAYA	8098	VAULT CAPTIVE LLC SERIES A	1529	CAPTIVE COLLATERAL	07/01/2021	33,376.10	33,376.10	02/10/2022
Total 10-20300 MEDICAL INSURANCE PAYABLE:						71,395.40	71,395.40	
10-20320 JCEF PAYABLE								
10-20320 JCEF PAYABLE	10139	ANGELA LATTERI	CM202100000	RESTITUTION	02/07/2022	50.00	50.00	02/10/2022
10-20320 JCEF PAYABLE	1960	ARIZONA STATE TREASURER	JAN 2022	COLLECTED FUNDS-THATCHE	02/02/2022	1,998.50	1,998.50	02/10/2022
10-20320 JCEF PAYABLE	1960	ARIZONA STATE TREASURER	JAN 2022	COLLECTED FUNDS-SAFFORD	02/02/2022	5,398.58	5,398.58	02/10/2022
10-20320 JCEF PAYABLE	1960	ARIZONA STATE TREASURER	JAN 2022	COLLECTED FUNDS-PIMA	02/02/2022	637.49	637.49	02/10/2022
10-20320 JCEF PAYABLE	10194	BOBBY J. BENITEZ	CM202100021	BOND REFUND	01/26/2022	500.00	500.00	02/03/2022
10-20320 JCEF PAYABLE	10164	CALVIN CAUTHEN	CM202200000	BOND REFUND	02/01/2022	500.00	500.00	02/03/2022
10-20320 JCEF PAYABLE	10194	CATHY LEYVAS	CM202100013	BOND REFUND	01/24/2022	500.00	500.00	02/10/2022
10-20320 JCEF PAYABLE	4302	CITY OF SAFFORD	JAN 2022	MONTHLY COURT REVENUE	02/10/2022	4,093.41	4,093.41	02/10/2022
10-20320 JCEF PAYABLE	10195	DAVID RIVERO	CM202200000	BOND REFUND	01/26/2022	300.00	300.00	02/03/2022
10-20320 JCEF PAYABLE	4406	GRAHAM CO UTILITIES	TR2020000014	RESTITUTION-M.PROFFITT	02/09/2022	500.00	500.00	02/16/2022
10-20320 JCEF PAYABLE	4470	GRAHAM COUNTY SHERIFF'S	JAN 2022	DUI HOUSING FEES	02/15/2022	60.00	60.00	02/24/2022
10-20320 JCEF PAYABLE	4505	GRAHAM COUNTY TREASURE	JAN 2022	Z052 ADDITIONAL ASSESSMEN	02/15/2022	4.56	4.56	02/24/2022
10-20320 JCEF PAYABLE	10142	GS MARKET	CR2017262/01	RESTITUTION	01/31/2022	4.20	4.20	02/03/2022
10-20320 JCEF PAYABLE	10195	MIRANDA ROSE VILLA	CM202100000	TAX INTERCEPT REFUND	02/17/2022	106.00	106.00	02/24/2022
10-20320 JCEF PAYABLE	6384	POLLOCK'S WESTERN OUTFIT	CM202100022	RESTITUTION	02/07/2022	25.00	25.00	02/10/2022
10-20320 JCEF PAYABLE	7775	TOWN OF PIMA	JAN 2022	MONTHLY COURT REVENUE	02/10/2022	328.51	328.51	02/10/2022
10-20320 JCEF PAYABLE	8245	WALMART COMMUNITY	CM202100001	RESTITUTION	02/07/2022	30.00	30.00	02/10/2022
10-20320 JCEF PAYABLE	8245	WALMART COMMUNITY	CM202100025	RESTITUTION	02/02/2022	24.98	24.98	02/10/2022
10-20320 JCEF PAYABLE	10194	YOLANDA MORALES	CM202100030	BOND REFUND	02/08/2022	1,500.00	1,500.00	02/10/2022
Total 10-20320 JCEF PAYABLE:						16,561.23	16,561.23	
10-50-250 EMPLOYEE BONUS								
10-50-250 EMPLOYEE BONUS	3273	COTTON COUNTRY DESIGNS	66	CLOTHING ORDER	02/12/2022	1,005.00	1,005.00	02/16/2022
10-50-250 EMPLOYEE BONUS	3273	COTTON COUNTRY DESIGNS	67	SWEATSHIRTS	02/12/2022	390.00	390.00	02/16/2022

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 10-50-250 EMPLOYEE BONUS:						1,395.00	1,395.00	
10-50-302 GENERAL INSURANCE								
10-50-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	540.00	540.00	02/16/2022
Total 10-50-302 GENERAL INSURANCE:						540.00	540.00	
10-50-310 TELEPHONE								
10-50-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	7.44	7.44	02/03/2022
10-50-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	2.06	2.06	02/24/2022
10-50-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	93.92	93.92	02/10/2022
Total 10-50-310 TELEPHONE:						103.42	103.42	
10-50-311 Cell Phones & Air Cards								
10-50-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	11.83	11.83	02/03/2022
10-50-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	20.25	20.25	02/24/2022
10-50-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	570.79	570.79	02/10/2022
Total 10-50-311 Cell Phones & Air Cards:						602.87	602.87	
10-50-326 ATTORNEY								
10-50-326 ATTORNEY	5667	MATT N. CLIFFORD, P.C.	FEB 2022	ADMIN	02/22/2022	2,386.17	2,386.17	02/03/2022
Total 10-50-326 ATTORNEY:						2,386.17	2,386.17	
10-50-344 PRINTING & ADVERTISING								
10-50-344 PRINTING & ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00012-004	PRINTING & ADVERTISING	01/31/2022	127.50	127.50	02/10/2022
10-50-344 PRINTING & ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00037-000	PRINTING & ADVERTISING	01/31/2022	75.00	75.00	02/10/2022
Total 10-50-344 PRINTING & ADVERTISING:						202.50	202.50	
10-50-590 MISC.								
10-50-590 MISC.	2469	BMO HARRIS MASTERCARD	02055683	AMAZON - CASE	02/05/2022	24.08	24.08	02/24/2022
10-50-590 MISC.	5910	MGRMC FOUNDATION	2022	BENEFIT GOLF TOURNAMENT/	02/23/2022	1,000.00	1,000.00	02/24/2022
Total 10-50-590 MISC.:						1,024.08	1,024.08	
10-50-600 ECONOMIC DEVELOPMENT								
10-50-600 ECONOMIC DEVELOPMEN	2469	BMO HARRIS MASTERCARD	02055739	SUPERBRIGHTLED	02/05/2022	1,519.79	1,519.79	02/24/2022

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 10-50-600 ECONOMIC DEVELOPMENT:						1,519.79	1,519.79	
10-52-122 HEALTH INS - ADMINISTRATION								
10-52-122 HEALTH INS - ADMINISTRATION	5679	MESTAZ LAW	89	00026-TOWN OF THATCHER	02/15/2022	10,000.00	10,000.00	02/16/2022
Total 10-52-122 HEALTH INS - ADMINISTRATION:						10,000.00	10,000.00	
10-52-302 GENERAL INSURANCE								
10-52-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUN	02/15/2022	225.00	225.00	02/16/2022
Total 10-52-302 GENERAL INSURANCE:						225.00	225.00	
10-52-310 TELEPHONE								
10-52-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	49.14	49.14	02/03/2022
10-52-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	13.64	13.64	02/24/2022
10-52-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	620.55	620.55	02/10/2022
Total 10-52-310 TELEPHONE:						683.33	683.33	
10-52-311 Cell Phones & Air Cards								
10-52-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	2.93	2.93	02/03/2022
10-52-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	5.02	5.02	02/24/2022
10-52-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	141.48	141.48	02/10/2022
Total 10-52-311 Cell Phones & Air Cards:						149.43	149.43	
10-52-312 WATER								
10-52-312 WATER	4302	CITY OF SAFFORD	16.161.01/0131	TOWN HALL	01/31/2022	265.61	265.61	02/16/2022
10-52-312 WATER	4302	CITY OF SAFFORD	17.529.02/0131	3670 W MAIN	01/31/2022	32.79	32.79	02/16/2022
Total 10-52-312 WATER:						298.40	298.40	
10-52-314 NATURAL GAS								
10-52-314 NATURAL GAS	4406	GRAHAM CO UTILITIES	4743-023/0211	HWY 70 WEST TOT SIGN	02/11/2022	23.71	23.71	02/16/2022
10-52-314 NATURAL GAS	7319	SOUTHWEST GAS	910003247045/	3700 W MAIN ST	02/11/2022	410.47	410.47	02/24/2022
Total 10-52-314 NATURAL GAS:						434.18	434.18	
10-52-325 PROFESSIONAL TECHNICAL SERVICE								
10-52-325 PROFESSIONAL TECHNICA	7032	SCOTT MEDICAL SOLUTIONS, L	03312651	D & A CONSORTIUM	02/09/2022	175.00	175.00	02/24/2022

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Total 10-52-325 PROFESSIONAL TECHNICAL SERVICE:						175.00	175.00	
10-52-342 BUILDING MAINTENANCE								
10-52-342 BUILDING MAINTENANCE	2852	CAMNET, INC	20721	VERKADA LICENSES CMTQ868	02/15/2022	4,579.32	4,579.32	02/16/2022
10-52-342 BUILDING MAINTENANCE	2852	CAMNET, INC	CMTQ8683	VERKADA/CAMERAS	02/01/2022	3,952.06	3,952.06	02/03/2022
10-52-342 BUILDING MAINTENANCE	3298	CRISLER PEST CONTROL, LLC	1192	PEST CONTROL	02/08/2022	50.00	50.00	02/10/2022
Total 10-52-342 BUILDING MAINTENANCE:						8,581.38	8,581.38	
10-52-344 PRINTING/ADVERTISING								
10-52-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00012-004	PRINTING & ADVERTISING	01/31/2022	85.00	85.00	02/10/2022
10-52-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00037-000	PRINTING & ADVERTISING	01/31/2022	50.00	50.00	02/10/2022
10-52-344 PRINTING/ADVERTISING	4491	GILA VALLEY CENTRAL	2145	SPORTS AD	02/01/2022	125.00	125.00	02/10/2022
Total 10-52-344 PRINTING/ADVERTISING:						260.00	260.00	
10-52-347 COMPUTER SOFTWARE SUPPORT								
10-52-347 COMPUTER SOFTWARE S	2905	CASELLE, INC.	114803	SOFTWARE SUPPORT	02/01/2022	773.50	773.50	02/10/2022
Total 10-52-347 COMPUTER SOFTWARE SUPPORT:						773.50	773.50	
10-52-535 POSTAGE								
10-52-535 POSTAGE	6355	PITNEY BOWES	010422	POSTAGE	01/04/2022	238.80	238.80	02/03/2022
10-52-535 POSTAGE	6355	PITNEY BOWES	1020069582	POSTAGE	02/09/2022	378.31	378.31	02/16/2022
Total 10-52-535 POSTAGE:						617.11	617.11	
10-52-540 OFFICE SUPPLIES								
10-52-540 OFFICE SUPPLIES	2469	BMO HARRIS MASTERCARD	02053385	WALMART - SUPPLIES	02/05/2022	63.22	63.22	02/24/2022
10-52-540 OFFICE SUPPLIES	2320	CHASE CARD SERVICES	012222	DLX - CHECKS	01/22/2022	1,126.10	1,126.10	02/16/2022
10-52-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	79.20	79.20	02/03/2022
10-52-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	10.22	10.22	02/03/2022
10-52-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	166.80	166.80	02/10/2022
10-52-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	206.52	206.52	02/24/2022
Total 10-52-540 OFFICE SUPPLIES:						1,652.06	1,652.06	
10-52-590 MISCELLANEOUS								
10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02040117	FEE	02/04/2022	130.36	130.36	02/24/2022
10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02053385	CARWASH	02/05/2022	7.00	7.00	02/24/2022

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10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02053385	FEE	02/05/2022	3.00	3.00	02/24/2022
10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055713	USPS	02/05/2022	16.10	16.10	02/24/2022
10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055713	SHUTTERSTOCK	02/05/2022	30.62	30.62	02/24/2022
10-52-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055713	SAFEWAY- CAKE	02/05/2022	32.57	32.57	02/24/2022
Total 10-52-590 MISCELLANEOUS:						219.65	219.65	
10-52-747 COMPUTER SOFTWARE								
10-52-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	02055333	ADOBE	02/05/2022	16.35	16.35	02/24/2022
10-52-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	256338	TEAM VIEWER	02/05/2022	519.77	519.77	02/24/2022
Total 10-52-747 COMPUTER SOFTWARE:						536.12	536.12	
10-52-748 COMPUTER SUPPORT								
10-52-748 COMPUTER SUPPORT	3435	DAN MARTIN	6078	IT CONSULTING	02/01/2022	600.00	600.00	02/03/2022
Total 10-52-748 COMPUTER SUPPORT:						600.00	600.00	
10-55-102 SALARIES/WAGES								
10-55-102 SALARIES/WAGES	10133	BARBARA ENRIQUEZ	021722	INSURANCE CORRECTIONS	02/17/2022	1,729.24	1,729.24	02/17/2022
Total 10-55-102 SALARIES/WAGES:						1,729.24	1,729.24	
10-55-302 GENERAL INSURANCE								
10-55-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	225.00	225.00	02/16/2022
Total 10-55-302 GENERAL INSURANCE:						225.00	225.00	
10-55-310 TELEPHONE								
10-55-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	2.52	2.52	02/03/2022
10-55-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	.70	.70	02/24/2022
10-55-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	31.87	31.87	02/10/2022
Total 10-55-310 TELEPHONE:						35.09	35.09	
10-55-312 WATER								
10-55-312 WATER	4302	CITY OF SAFFORD	73.045.09/0131	702 8TH AVE	01/31/2022	567.84	567.84	02/16/2022
Total 10-55-312 WATER:						567.84	567.84	

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10-55-535 POSTAGE								
10-55-535 POSTAGE	6355	PITNEY BOWES	010422	POSTAGE	01/04/2022	35.82	35.82	02/03/2022
10-55-535 POSTAGE	6355	PITNEY BOWES	1020069582	POSTAGE	02/09/2022	56.75	56.75	02/16/2022
Total 10-55-535 POSTAGE:						92.57	92.57	
10-55-540 OFFICE SUPPLIES								
10-55-540 OFFICE SUPPLIES	2469	BMO HARRIS MASTERCARD	02050934	WALMART - BOXES	02/05/2022	29.37	29.37	02/24/2022
10-55-540 OFFICE SUPPLIES	2469	BMO HARRIS MASTERCARD	02050934	WALMART - PLATES	02/05/2022	20.96	20.96	02/24/2022
10-55-540 OFFICE SUPPLIES	3560	DIGITAL IMAGING SYSTEMS	63096	COPIES	02/01/2022	24.34	24.34	02/10/2022
10-55-540 OFFICE SUPPLIES	3560	DIGITAL IMAGING SYSTEMS	63097	COPIES	02/01/2022	19.26	19.26	02/10/2022
10-55-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	11.55	11.55	02/03/2022
10-55-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	1.49	1.49	02/03/2022
10-55-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	24.33	24.33	02/10/2022
10-55-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	30.12	30.12	02/24/2022
10-55-540 OFFICE SUPPLIES	7365	SPARKLETTS	17051740 0122	WATER	01/22/2022	31.63	31.63	02/10/2022
Total 10-55-540 OFFICE SUPPLIES:						193.05	193.05	
10-55-542 BUILDING MATERIALS & SUPPLIES								
10-55-542 BUILDING MATERIALS & SU	2469	BMO HARRIS MASTERCARD	02050934	WALMART - SUPPLIES	02/05/2022	23.39	23.39	02/24/2022
10-55-542 BUILDING MATERIALS & SU	2469	BMO HARRIS MASTERCARD	02050934	WALMART - SUPPLIES	02/05/2022	20.40	20.40	02/24/2022
Total 10-55-542 BUILDING MATERIALS & SUPPLIES:						43.79	43.79	
10-55-548 COMPUTER MAINTENANCE								
10-55-548 COMPUTER MAINTENANC	1990	ARIZONA SUPREME COURT	2022-0000021	COMPUTERS/PRINTER	02/07/2022	2,363.88	2,363.88	02/16/2022
10-55-548 COMPUTER MAINTENANC	1990	ARIZONA SUPREME COURT	2022-0000026	COMPUTERS/PRINTER	02/07/2022	1,575.92	1,575.92	02/24/2022
Total 10-55-548 COMPUTER MAINTENANCE:						3,939.80	3,939.80	
10-55-590 MISCELLANEOUS								
10-55-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055689	EL MESQUITE	02/05/2022	67.69	67.69	02/24/2022
Total 10-55-590 MISCELLANEOUS:						67.69	67.69	
10-62-102 SALARIES/WAGES								
10-62-102 SALARIES/WAGES	117	Robert Casillas	021722	INSURANCE CORRECTIONS	02/17/2022	1,076.44	1,076.44	02/17/2022
Total 10-62-102 SALARIES/WAGES:						1,076.44	1,076.44	

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10-62-302 GENERAL INSURANCE								
10-62-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	495.00	495.00	02/16/2022
Total 10-62-302 GENERAL INSURANCE:						495.00	495.00	
10-62-311 Cell Phones & Air Cards								
10-62-311 Cell Phones & Air Cards	2832	SPARKLIGHT	105245682/020	INTERNET	02/02/2022	232.16	232.16	02/03/2022
10-62-311 Cell Phones & Air Cards	2832	SPARKLIGHT	105245682/021	INTERNET	02/16/2022	241.43	241.43	02/24/2022
10-62-311 Cell Phones & Air Cards	2832	SPARKLIGHT	121419568/022	INTERNET	02/22/2022	92.69	92.69	02/16/2022
10-62-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	2.23	2.23	02/03/2022
10-62-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	3.81	3.81	02/24/2022
10-62-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	107.33	107.33	02/10/2022
Total 10-62-311 Cell Phones & Air Cards:						679.65	679.65	
10-62-312 WATER								
10-62-312 WATER	4302	CITY OF SAFFORD	13.425.01/0131	DALEY ESTATES PARK	01/31/2022	275.58	275.58	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	14.950.01/0131	IRRIGATION	01/31/2022	32.79	32.79	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	15.268.01/0131	SPLASHPARK/CEMETERY	01/31/2022	150.08	150.08	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	15.785.01/0131	2161 HWY 70	01/31/2022	123.10	123.10	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	15.970.00/0131	EAGLE MEADOW	01/31/2022	49.14	49.14	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	16.385.01/0131	REAY LANE PARK	01/31/2022	39.66	39.66	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	17.830.01/0131	LANDSCAPE METER	01/31/2022	40.86	40.86	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	81.674.02/0131	8th ST LANDSCAPE	01/31/2022	32.78	32.78	02/16/2022
10-62-312 WATER	4302	CITY OF SAFFORD	81.675.02/0131	8th ST LANDSCAPE	01/31/2022	32.78	32.78	02/16/2022
Total 10-62-312 WATER:						776.77	776.77	
10-62-533 SMALL TOOLS/HARDWARE								
10-62-533 SMALL TOOLS/HARDWARE	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - TOOLS	02/05/2022	115.38	115.38	02/24/2022
Total 10-62-533 SMALL TOOLS/HARDWARE:						115.38	115.38	
10-62-539 SEED & FERTILIZER								
10-62-539 SEED & FERTILIZER	4125	FERTIZONA - THATCHER, LLC	19036074	FURST CLASS	01/13/2022	719.55	719.55	02/03/2022
10-62-539 SEED & FERTILIZER	4125	FERTIZONA - THATCHER, LLC	19036106	4 SPEED	01/27/2022	253.18	253.18	02/03/2022
Total 10-62-539 SEED & FERTILIZER:						972.73	972.73	
10-62-540 SPLASH PAD MAINTENANCE								
10-62-540 SPLASH PAD MAINTENANC	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - BIT SET	02/05/2022	28.33	28.33	02/24/2022

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10-62-540 SPLASH PAD MAINTENANC	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - TOOLS	02/05/2022	118.71	118.71	02/24/2022
10-62-540 SPLASH PAD MAINTENANC	5950	NCE MANAGEMENT TRUST	64658	PADLOCKS/KEYS	01/20/2022	106.00	106.00	02/03/2022
10-62-540 SPLASH PAD MAINTENANC	6880	SAFFORD BUILDERS SUPPLY C	920631	BALL VALVE	01/03/2022	557.95	557.95	02/03/2022
10-62-540 SPLASH PAD MAINTENANC	6880	SAFFORD BUILDERS SUPPLY C	920739	PVC	01/04/2022	47.21	47.21	02/03/2022
10-62-540 SPLASH PAD MAINTENANC	6880	SAFFORD BUILDERS SUPPLY C	922102	VALVE FLUSH	01/18/2022	278.79	278.79	02/03/2022
Total 10-62-540 SPLASH PAD MAINTENANCE:						1,136.99	1,136.99	
10-62-541 EQUIPMENT SUPPLIES								
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02055630	HOME DEPOT - PRUNER	02/05/2022	15.25	15.25	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02057091	HOME DEPOT - PRUNER	02/05/2022	57.50	57.50	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02057091	HOME DEPOT - SPRAYER	02/05/2022	94.88	94.88	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02057091	HOME DEPOT - NOZZLE	02/05/2022	95.32	95.32	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02057091	HOME DEPOT - SUPPLIES	02/05/2022	115.43	115.43	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02057091	TRACTOR SUPPLY- LOPPER	02/05/2022	61.06	61.06	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	4686	HORIZON DISTRIBUTORS INC	2V445120	HUNTER NOZ SET	02/02/2022	278.62	278.62	02/16/2022
10-62-541 EQUIPMENT SUPPLIES	4686	HORIZON DISTRIBUTORS INC	2V446035	ELECTRIC VALVES	02/22/2022	509.82	509.82	02/24/2022
10-62-541 EQUIPMENT SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	90.31	90.31	02/24/2022
Total 10-62-541 EQUIPMENT SUPPLIES:						1,318.19	1,318.19	
10-62-542 BLDG MATERIALS/SUPPLIES								
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055614	HOME DEPOT - PARK	02/05/2022	74.99	74.99	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055614	HOME DEPOT - REAY LN PARK	02/05/2022	13.54	13.54	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - SOCKET	02/05/2022	33.79	33.79	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055622	AMAZON- VALVE	02/05/2022	319.79	319.79	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055630	HOME DEPOT - POLY SCOOP	02/05/2022	49.19	49.19	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055630	HOME DEPOT - PIPE	02/05/2022	4.28	4.28	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055630	HOME DEPOT - SIGNS	02/05/2022	17.71	17.71	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055630	ACE - FASTENERS	02/05/2022	14.92	14.92	02/24/2022
10-62-542 BLDG MATERIALS/SUPPLIE	2469	BMO HARRIS MASTERCARD	02055739	GAMETIME	02/05/2022	364.61	364.61	02/24/2022
Total 10-62-542 BLDG MATERIALS/SUPPLIES:						892.82	892.82	
10-62-550 VEHICLE SUPPLIES								
10-62-550 VEHICLE SUPPLIES	2469	BMO HARRIS MASTERCARD	02055622	HARBOR FREIGHT- BATTERY	02/05/2022	16.35	16.35	02/24/2022
Total 10-62-550 VEHICLE SUPPLIES:						16.35	16.35	
10-62-553 TIRES & BATTERIES								
10-62-553 TIRES & BATTERIES	7669	TOM'S SERVICE CENTER	669	TRAILER TIRES	02/02/2022	522.76	522.76	02/16/2022

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Total 10-62-553 TIRES & BATTERIES:						522.76	522.76	
10-62-555 GAS/OIL/LUBRICANTS								
10-62-555 GAS/OIL/LUBRICANTS	6880	SAFFORD BUILDERS SUPPLY C	920252	BURN PIT	12/28/2021	13.04	13.04	02/03/2022
10-62-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	879.92	879.92	02/24/2022
Total 10-62-555 GAS/OIL/LUBRICANTS:						892.96	892.96	
10-62-590 MISCELLANEOUS								
10-62-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - SUPPLIES	02/05/2022	114.82	114.82	02/24/2022
10-62-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - THREADLOCKE	02/05/2022	37.70	37.70	02/24/2022
Total 10-62-590 MISCELLANEOUS:						152.52	152.52	
10-62-650 CEMETERY								
10-62-650 CEMETERY	7820	TRI COUNTY MATERIALS INC	90167	CEMETERY	01/05/2022	270.76	270.76	02/16/2022
10-62-650 CEMETERY	7820	TRI COUNTY MATERIALS INC	90370	CEMETERY	01/26/2022	338.46	338.46	02/16/2022
Total 10-62-650 CEMETERY:						609.22	609.22	
10-62-667 WEED CONTROL								
10-62-667 WEED CONTROL	5605	MATLOCK GAS & EQUIP CO	103593	WEED CONTROL	10/06/2021	119.41	119.41	02/24/2022
10-62-667 WEED CONTROL	5605	MATLOCK GAS & EQUIP CO	103644	PROPANE	11/09/2021	159.06	159.06	02/24/2022
10-62-667 WEED CONTROL	5605	MATLOCK GAS & EQUIP CO	105557	WEED CONTROL	06/07/2021	12.45	12.45	02/24/2022
Total 10-62-667 WEED CONTROL:						290.92	290.92	
10-62-730 NEW CONSTRUCTION - PARKS								
10-62-730 NEW CONSTRUCTION - PA	5950	NCE MANAGEMENT TRUST	64674	SERVICE CALL/LEVER LOCKS	01/27/2022	885.00	885.00	02/03/2022
10-62-730 NEW CONSTRUCTION - PA	7855	TROPHIES 'N TEES	25859	MEMORY PLAQUE	02/17/2022	314.21	314.21	02/24/2022
Total 10-62-730 NEW CONSTRUCTION - PARKS:						1,199.21	1,199.21	
10-62-741 MACHINERY & EQUIPMENT								
10-62-741 MACHINERY & EQUIPMENT	2852	CAMNET, INC	20721	VERKADA LICENSES CMTQ868	02/15/2022	4,579.34	4,579.34	02/16/2022
10-62-741 MACHINERY & EQUIPMENT	2852	CAMNET, INC	CMTQ8683	VERKADA/CAMERAS	02/01/2022	3,952.06	3,952.06	02/03/2022
Total 10-62-741 MACHINERY & EQUIPMENT:						8,531.40	8,531.40	

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
10-70-102 SALARIES/WAGES								
10-70-102 SALARIES/WAGES	120	Andrew Rodger	021722	INSURANCE CORRECTIONS	02/17/2022	1,803.36	1,803.36	02/17/2022
10-70-102 SALARIES/WAGES	10125	EVERETT CAUTHEN	021722	INSURANCE CORRECTIONS	02/17/2022	554.88	554.88	02/17/2022
10-70-102 SALARIES/WAGES	75	JAMES WHISMAN	021722	INSURANCE CORRECTIONS	02/17/2022	1,028.16	1,028.16	02/17/2022
10-70-102 SALARIES/WAGES	79	SHAFFEN WOODS	021722	INSURANCE CORRECTIONS	02/17/2022	367.20	367.20	02/17/2022
Total 10-70-102 SALARIES/WAGES:						3,753.60	3,753.60	
10-70-302 GENERAL INSURANCE								
10-70-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	495.00	495.00	02/16/2022
Total 10-70-302 GENERAL INSURANCE:						495.00	495.00	
10-70-310 TELEPHONE								
10-70-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	22.18	22.18	02/03/2022
10-70-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	6.16	6.16	02/24/2022
10-70-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	280.09	280.09	02/10/2022
Total 10-70-310 TELEPHONE:						308.43	308.43	
10-70-311 Cell Phones & Air Cards								
10-70-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	17.70	17.70	02/03/2022
10-70-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	30.28	30.28	02/24/2022
10-70-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	853.74	853.74	02/10/2022
Total 10-70-311 Cell Phones & Air Cards:						901.72	901.72	
10-70-344 PRINTING/ADVERTISING								
10-70-344 PRINTING/ADVERTISING	2469	BMO HARRIS MASTERCARD	02055499	INTERSTATE COPY SHOP	02/05/2022	246.50	246.50	02/24/2022
10-70-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00012-004	PRINTING & ADVERTISING	01/31/2022	140.25	140.25	02/10/2022
10-70-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00037-000	PRINTING & ADVERTISING	01/31/2022	82.50	82.50	02/10/2022
Total 10-70-344 PRINTING/ADVERTISING:						469.25	469.25	
10-70-350 VEHICLE MAINT.								
10-70-350 VEHICLE MAINT.	2469	BMO HARRIS MASTERCARD	02055481	CARWASH	02/05/2022	20.00	20.00	02/24/2022
10-70-350 VEHICLE MAINT.	2469	BMO HARRIS MASTERCARD	02055515	KIM'S WINDOW TINTING	02/05/2022	73.19	73.19	02/24/2022
10-70-350 VEHICLE MAINT.	4183	HORNE FREEDOM FORD	31876	REPAIR	01/07/2022	260.57	260.57	02/16/2022
Total 10-70-350 VEHICLE MAINT.:						353.76	353.76	

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10-70-360 ANIMAL CONTROL SERVICES								
10-70-360 ANIMAL CONTROL SERVIC	4420	GRAHAM CO BOARD OF SUPE	2022-0059	ANIMAL CONTROL	02/01/2022	200.00	200.00	02/10/2022
Total 10-70-360 ANIMAL CONTROL SERVICES:						200.00	200.00	
10-70-505 TRAINING/MEETING/TRAVEL								
10-70-505 TRAINING/MEETING/TRAVE	2469	BMO HARRIS MASTERCARD	02055424	QT	02/05/2022	60.80	60.80	02/24/2022
Total 10-70-505 TRAINING/MEETING/TRAVEL:						60.80	60.80	
10-70-515 K9								
10-70-515 K9	2320	CHASE CARD SERVICES	010422	HOME DEPOT - KENNEL	01/04/2022	112.12	112.12	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	010722	HOME DEPOT - KENNEL	01/07/2022	50.79	50.79	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	011122	ACE-KENNEL	01/11/2022	589.13	589.13	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	011322	HOME DEPOT - KENNEL	01/13/2022	268.65	268.65	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	012022	HOME DEPOT - KENNEL	01/20/2022	65.42	65.42	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	012122	HOME DEPOT - KENNEL	01/21/2022	14.14	14.14	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	01252022	HOME DEPOT - KENNEL	01/25/2022	140.18	140.18	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	012522	HOME DEPOT - RETURN	01/25/2022	55.56-	55.56-	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	012622	HOME DEPOT - KENNEL	01/26/2022	11.93	11.93	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	12282021	REVIVAL ANIMAL	12/28/2021	81.90	81.90	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	1228HD	HOME DEPOT - KENNEL	12/28/2021	574.60	574.60	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	1228TS	TRACTOR SUPPLY - K9	12/28/2021	96.00	96.00	02/16/2022
10-70-515 K9	2320	CHASE CARD SERVICES	122921	HOME DEPOT - KENNEL	12/29/2021	172.62	172.62	02/16/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	739633	RETURNS	01/25/2022	589.13-	589.13-	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	920377	SCREWS	12/29/2021	26.93	26.93	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	920545	K9 SUPPLIES	12/31/2021	77.17	77.17	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	920942	K9 SUPPLIES	01/05/2022	274.72	274.72	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	921217	K9 SUPPLIES	01/08/2022	12.42	12.42	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	921719	K9 SUPPLIES	01/13/2022	50.73	50.73	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	922087	K9 SUPPLIES	01/17/2022	102.08	102.08	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	922151	K9 SUPPLIES	01/18/2022	28.70	28.70	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	K18034	K9 SUPPLIES	01/06/2022	1,334.81	1,334.81	02/03/2022
10-70-515 K9	6880	SAFFORD BUILDERS SUPPLY C	K24614	K9 SUPPLIES	01/11/2022	432.28	432.28	02/03/2022
Total 10-70-515 K9:						3,872.63	3,872.63	
10-70-535 POSTAGE								
10-70-535 POSTAGE	6355	PITNEY BOWES	010422	POSTAGE	01/04/2022	35.82	35.82	02/03/2022
10-70-535 POSTAGE	6355	PITNEY BOWES	1020069582	POSTAGE	02/09/2022	56.75	56.75	02/16/2022

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Total 10-70-535 POSTAGE:						92.57	92.57	
10-70-540 OFFICE SUPPLIES								
10-70-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	44.55	44.55	02/03/2022
10-70-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	5.75	5.75	02/03/2022
10-70-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	93.83	93.83	02/10/2022
10-70-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	116.16	116.16	02/24/2022
Total 10-70-540 OFFICE SUPPLIES:						260.29	260.29	
10-70-541 EQUIPMENT SUPPLIES								
10-70-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02055424	WALMART - BATTERIES	02/05/2022	25.99	25.99	02/24/2022
10-70-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02055424	HOME DEPOT - BATTERIES	02/05/2022	194.13	194.13	02/24/2022
10-70-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02055473	VERIZON - SCREEN PROTECT	02/05/2022	147.26	147.26	02/24/2022
Total 10-70-541 EQUIPMENT SUPPLIES:						367.38	367.38	
10-70-544 AMMUNITION/GUN SUPPLIES								
10-70-544 AMMUNITION/GUN SUPPLI	6990	SAN DIEGO POLICE EQUIPMEN	650378	GUNS	01/10/2022	866.11	866.11	02/16/2022
10-70-544 AMMUNITION/GUN SUPPLI	6990	SAN DIEGO POLICE EQUIPMEN	650764	223 55GR	02/03/2022	3,261.00	3,261.00	02/24/2022
Total 10-70-544 AMMUNITION/GUN SUPPLIES:						4,127.11	4,127.11	
10-70-550 VEHICLE SUPPLIES								
10-70-550 VEHICLE SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-448205	WIPER BLADE	12/29/2021	34.40	34.40	02/16/2022
Total 10-70-550 VEHICLE SUPPLIES:						34.40	34.40	
10-70-555 GAS/OIL/LUBRICANTS								
10-70-555 GAS/OIL/LUBRICANTS	2469	BMO HARRIS MASTERCARD	02055440	OREILLY	02/05/2022	32.70	32.70	02/24/2022
10-70-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	3,149.26	3,149.26	02/24/2022
Total 10-70-555 GAS/OIL/LUBRICANTS:						3,181.96	3,181.96	
10-70-590 MISCELLANEOUS								
10-70-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055424	HOME DEPOT - SUPPLIES	02/05/2022	68.17	68.17	02/24/2022
10-70-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055424	LITTLE CAESARS	02/05/2022	20.84	20.84	02/24/2022
10-70-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02055515	LITTLE CAESARS	02/05/2022	35.73	35.73	02/24/2022

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Total 10-70-590 MISCELLANEOUS:						124.74	124.74	
10-70-741 MACHINERY & EQUIPMENT								
10-70-741 MACHINERY & EQUIPMENT	2469	BMO HARRIS MASTERCARD	02055473	WALMART - CAMERA	02/05/2022	260.75	260.75	02/24/2022
Total 10-70-741 MACHINERY & EQUIPMENT:						260.75	260.75	
10-70-747 COMPUTER SOFTWARE								
10-70-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	02055515	MICROSOFT	02/05/2022	8.72	8.72	02/24/2022
Total 10-70-747 COMPUTER SOFTWARE:						8.72	8.72	
10-70-748 COMPUTER SUPPORT								
10-70-748 COMPUTER SUPPORT	2469	BMO HARRIS MASTERCARD	02055424	TLO TRANSUNION	02/05/2022	175.43	175.43	02/24/2022
10-70-748 COMPUTER SUPPORT	3435	DAN MARTIN	6078	IT CONSULTING	02/01/2022	600.00	600.00	02/03/2022
Total 10-70-748 COMPUTER SUPPORT:						775.43	775.43	
10-70-750 VEHICLES								
10-70-750 VEHICLES	4042	ENTERPRISE FLEET MANAGEM	FBN4397080	FLEET MANAGEMENT	02/03/2022	4,095.80	4,095.80	02/16/2022
Total 10-70-750 VEHICLES:						4,095.80	4,095.80	
10-72-302 GENERAL INSURANCE								
10-72-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	1,440.00	1,440.00	02/16/2022
Total 10-72-302 GENERAL INSURANCE:						1,440.00	1,440.00	
10-72-310 TELEPHONE								
10-72-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	9.83	9.83	02/03/2022
10-72-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	2.73	2.73	02/24/2022
10-72-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	124.11	124.11	02/10/2022
Total 10-72-310 TELEPHONE:						136.67	136.67	
10-72-312 WATER								
10-72-312 WATER	4302	CITY OF SAFFORD	17.528.01/0131	FIRE DEPARTMENT	01/31/2022	114.16	114.16	02/16/2022
Total 10-72-312 WATER:						114.16	114.16	

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
10-72-505 TRAINING/MEETINGS/TRAVEL								
10-72-505 TRAINING/MEETINGS/TRAV	2469	BMO HARRIS MASTERCARD	02055424	QT	02/05/2022	72.49	72.49	02/24/2022
10-72-505 TRAINING/MEETINGS/TRAV	2469	BMO HARRIS MASTERCARD	0256338	HOME DEPOT - DRYWALL	02/05/2022	317.68	317.68	02/24/2022
Total 10-72-505 TRAINING/MEETINGS/TRAVEL:						390.17	390.17	
10-72-540 OFFICE SUPPLIES								
10-72-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	1.66	1.66	02/03/2022
10-72-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	.22	.22	02/03/2022
10-72-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	3.45	3.45	02/10/2022
10-72-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	4.29	4.29	02/24/2022
Total 10-72-540 OFFICE SUPPLIES:						9.62	9.62	
10-72-541 EQUIPMENT MAINT.								
10-72-541 EQUIPMENT MAINT.	2469	BMO HARRIS MASTERCARD	02058695	WALMART - CARB	02/05/2022	119.29	119.29	02/24/2022
10-72-541 EQUIPMENT MAINT.	7960	UNITED FIRE EQUIP. CO.	758645	HYDRO SCBA	01/26/2022	269.47	269.47	02/10/2022
Total 10-72-541 EQUIPMENT MAINT.:						388.76	388.76	
10-72-553 TIRES/BATTERIES								
10-72-553 TIRES/BATTERIES	2469	BMO HARRIS MASTERCARD	02058695	BANNER FIRE	02/05/2022	706.29	706.29	02/24/2022
Total 10-72-553 TIRES/BATTERIES:						706.29	706.29	
10-72-555 GAS/OIL/LUBRICANTS								
10-72-555 GAS/OIL/LUBRICANTS	2469	BMO HARRIS MASTERCARD	02058695	HOME DEPOT - TRUFUEL	02/05/2022	189.52	189.52	02/24/2022
10-72-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	672.98	672.98	02/24/2022
Total 10-72-555 GAS/OIL/LUBRICANTS:						862.50	862.50	
10-72-747 COMPUTER SOFTWARE								
10-72-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	02055424	MICROSOFT	02/05/2022	76.36	76.36	02/24/2022
10-72-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	02055424	MSFT	02/05/2022	163.65	163.65	02/24/2022
Total 10-72-747 COMPUTER SOFTWARE:						240.01	240.01	
10-81-140 CLOTHING ALLOWANCE								
10-81-140 CLOTHING ALLOWANCE	8332	CINTAS PHOENIX FIRE PROTE	13580551	CLOTHING	01/26/2022	318.62	318.62	02/16/2022

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Total 10-81-140 CLOTHING ALLOWANCE:						318.62	318.62	
10-81-302 GENERAL INSURANCE								
10-81-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	90.00	90.00	02/16/2022
Total 10-81-302 GENERAL INSURANCE:						90.00	90.00	
10-81-310 TELEPHONE								
10-81-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	4.91	4.91	02/03/2022
10-81-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	1.36	1.36	02/24/2022
10-81-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	62.05	62.05	02/10/2022
Total 10-81-310 TELEPHONE:						68.32	68.32	
10-81-311 Cell Phones & Air Cards								
10-81-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	2.58	2.58	02/03/2022
10-81-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	4.41	4.41	02/24/2022
10-81-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	124.40	124.40	02/10/2022
Total 10-81-311 Cell Phones & Air Cards:						131.39	131.39	
10-81-312 WATER								
10-81-312 WATER	4302	CITY OF SAFFORD	15.273.01/0131	SHOP	01/31/2022	183.83	183.83	02/16/2022
Total 10-81-312 WATER:						183.83	183.83	
10-81-341 EQUIPMENT MAINT.								
10-81-341 EQUIPMENT MAINT.	5950	NCE MANAGEMENT TRUST	64668	KEYS	01/25/2022	5.25	5.25	02/16/2022
10-81-341 EQUIPMENT MAINT.	5950	NCE MANAGEMENT TRUST	64679	KOHLER CARB	01/26/2022	225.00	225.00	02/16/2022
Total 10-81-341 EQUIPMENT MAINT.:						230.25	230.25	
10-81-342 BUILDING MAINTENANCE								
10-81-342 BUILDING MAINTENANCE	3298	CRISLER PEST CONTROL, LLC	1192	PEST CONTROL	02/08/2022	50.00	50.00	02/10/2022
Total 10-81-342 BUILDING MAINTENANCE:						50.00	50.00	
10-81-533 SMALL TOOLS/HARDWARE								
10-81-533 SMALL TOOLS/HARDWARE	2469	BMO HARRIS MASTERCARD	02058695	HARBOR FREIGHT - TOOLS	02/05/2022	38.98	38.98	02/24/2022
10-81-533 SMALL TOOLS/HARDWARE	2469	BMO HARRIS MASTERCARD	02058695	HARBOR FREIGHT - CHIPPING	02/05/2022	199.59	199.59	02/24/2022

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10-81-533 SMALL TOOLS/HARDWARE	5533	MAC TOOLS	D 46592	DIE GRINDER	01/25/2022	213.81	213.81	02/16/2022
10-81-533 SMALL TOOLS/HARDWARE	5533	MAC TOOLS	D 47135	TEST LEAD SET	02/22/2022	81.81	81.81	02/24/2022
10-81-533 SMALL TOOLS/HARDWARE	5788	MITCHELL 1	IB27087247	WEB TEAMWORKS	01/24/2022	263.67	263.67	02/03/2022
Total 10-81-533 SMALL TOOLS/HARDWARE:						797.86	797.86	
10-81-540 OFFICE SUPPLIES								
10-81-540 OFFICE SUPPLIES	2469	BMO HARRIS MASTERCARD	02055237	WALMART - OFFICE SUPPLIES	02/05/2022	58.36	58.36	02/24/2022
10-81-540 OFFICE SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	AMAZON DOT	02/05/2022	14.17	14.17	02/24/2022
10-81-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	4.95	4.95	02/03/2022
10-81-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	.64	.64	02/03/2022
10-81-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	10.43	10.43	02/10/2022
10-81-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	12.91	12.91	02/24/2022
Total 10-81-540 OFFICE SUPPLIES:						101.46	101.46	
10-81-541 EQUIPMENT SUPPLIES								
10-81-541 EQUIPMENT SUPPLIES	1252	AIRGAS USA, LLC	9121964903	COMP OXYGEN	01/25/2022	189.86	189.86	02/16/2022
10-81-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02055237	HARBOR FREIGHT - SUPPLIES	02/05/2022	121.27	121.27	02/24/2022
10-81-541 EQUIPMENT SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	282.22	282.22	02/24/2022
10-81-541 EQUIPMENT SUPPLIES	6025	NORTHERN TOOL & EQUIPMEN	47157014	WELDING SUPPLIES	01/25/2022	1,109.77	1,109.77	02/16/2022
Total 10-81-541 EQUIPMENT SUPPLIES:						1,703.12	1,703.12	
10-81-550 VEHICLE SUPPLIES								
10-81-550 VEHICLE SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRACTOR SUPPLY - HITCH	02/05/2022	76.36	76.36	02/24/2022
10-81-550 VEHICLE SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRACTOR SUPPLY - SHOP SUP	02/05/2022	56.14	56.14	02/24/2022
Total 10-81-550 VEHICLE SUPPLIES:						132.50	132.50	
10-81-555 GAS/OIL/LUBRICANTS								
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-449323	GREASE	01/03/2022	11.99	11.99	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-449367	AIR FILTER	01/04/2022	16.79	16.79	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-449664	LOCK KEY	01/05/2022	23.96	23.96	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-449943	BATTERY	01/06/2022	249.55	249.55	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-450934	WHEEL COVER	01/10/2022	21.81	21.81	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-451049	FOGGER	01/11/2022	9.81	9.81	02/16/2022
10-81-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	841.28	841.28	02/24/2022
10-81-555 GAS/OIL/LUBRICANTS	7317	SOUTHWESTERN WYNN'S PRO	1412	FUEL & OIL SUPPLEMENTS	02/09/2022	258.50	258.50	02/16/2022

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Total 10-81-555 GAS/OIL/LUBRICANTS:						1,433.69	1,433.69	
10-81-590 MISCELLANEOUS								
10-81-590 MISCELLANEOUS	2469	BMO HARRIS MASTERCARD	02058695	ZORO TOOLS	02/05/2022	81.38	81.38	02/24/2022
10-81-590 MISCELLANEOUS	3800	GOODMAN AG	CS30601	TEFLON TAPE	02/17/2022	42.63	42.63	02/24/2022
Total 10-81-590 MISCELLANEOUS:						124.01	124.01	
10-84-102 SALARIES/WAGES								
10-84-102 SALARIES/WAGES	3667	DRAKE HUGHES	021722	INSURANCE CORRECTIONS	02/17/2022	1,224.00	1,224.00	02/17/2022
10-84-102 SALARIES/WAGES	86	TOMMY NICHOLAS	021722	INSURANCE CORRECTIONS	02/17/2022	1,313.76	1,313.76	02/17/2022
Total 10-84-102 SALARIES/WAGES:						2,537.76	2,537.76	
10-84-302 GENERAL INSURANCE								
10-84-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	270.00	270.00	02/16/2022
Total 10-84-302 GENERAL INSURANCE:						270.00	270.00	
10-84-310 Telephone								
10-84-310 Telephone	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	7.44	7.44	02/03/2022
10-84-310 Telephone	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	2.06	2.06	02/24/2022
10-84-310 Telephone	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	93.92	93.92	02/10/2022
Total 10-84-310 Telephone:						103.42	103.42	
10-84-311 Cell Phones & Air Cards								
10-84-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	3.69	3.69	02/03/2022
10-84-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	6.32	6.32	02/24/2022
10-84-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	178.07	178.07	02/10/2022
Total 10-84-311 Cell Phones & Air Cards:						188.08	188.08	
10-84-341 EQUIPMENT MAINTENANCE								
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5486306	RING	01/04/2022	8.65	8.65	02/16/2022
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5486307	PADLOCK	01/04/2022	157.92	157.92	02/16/2022
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5492905	FILTERS	01/11/2022	90.70	90.70	02/16/2022
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5509850	filterS A	01/28/2022	98.58	98.58	02/16/2022
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5512710	ELEMENT S	02/01/2022	53.17	53.17	02/16/2022
10-84-341 EQUIPMENT MAINTENANC	4000	EMPIRE SOUTHWEST	EMPS5514179	O RING	02/02/2022	7.28	7.28	02/16/2022

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Total 10-84-341 EQUIPMENT MAINTENANCE:						416.30	416.30	
10-84-360 STREET MAINTENANCE								
10-84-360 STREET MAINTENANCE	2469	BMO HARRIS MASTERCARD	02055614	HOME DEPOT - CONCRETE	02/05/2022	7.06	7.06	02/24/2022
Total 10-84-360 STREET MAINTENANCE:						7.06	7.06	
10-84-532 SIGNS								
10-84-532 SIGNS	8491	ZUMAR INDUSTRIES INC	7030	SIGNS	01/21/2022	1,598.87	1,598.87	02/16/2022
10-84-532 SIGNS	8491	ZUMAR INDUSTRIES INC	7053	FLAT BLADE	01/31/2022	187.01	187.01	02/16/2022
Total 10-84-532 SIGNS:						1,785.88	1,785.88	
10-84-541 EQUIPMENT SUPPLIES								
10-84-541 EQUIPMENT SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	282.22	282.22	02/24/2022
Total 10-84-541 EQUIPMENT SUPPLIES:						282.22	282.22	
10-84-555 GAS/OIL/LUBRICANTS								
10-84-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-448790	MOTOR OIL	12/31/2021	122.06	122.06	02/16/2022
10-84-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	1,604.81	1,604.81	02/24/2022
Total 10-84-555 GAS/OIL/LUBRICANTS:						1,726.87	1,726.87	
10-84-665 DRAINAGE								
10-84-665 DRAINAGE	6165	PACIFIC CORRUGATED PIPE C	S 1443561	DRAIN PIPE	11/16/2021	22,062.16	22,062.16	02/16/2022
10-84-665 DRAINAGE	6165	PACIFIC CORRUGATED PIPE C	S 1443602	DRAIN PIPE	11/17/2021	11,031.08	11,031.08	02/16/2022
10-84-665 DRAINAGE	6165	PACIFIC CORRUGATED PIPE C	S 1444155	DRAIN PIPE	12/09/2021	12,119.56	12,119.56	02/16/2022
10-84-665 DRAINAGE	6165	PACIFIC CORRUGATED PIPE C	S 1444432	DRAIN PIPE	01/05/2022	13,850.93	13,850.93	02/16/2022
Total 10-84-665 DRAINAGE:						59,063.73	59,063.73	
10-84-715 SAFETY EQUIPMENT								
10-84-715 SAFETY EQUIPMENT	2982	CENTERLINE SUPPLY WEST, IN	ORD0054513	BARRICADE	02/07/2022	4,281.10	4,281.10	02/16/2022
Total 10-84-715 SAFETY EQUIPMENT:						4,281.10	4,281.10	
10-85-302 GENERAL INSURANCE								
10-85-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	45.00	45.00	02/16/2022

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Total 10-85-302 GENERAL INSURANCE:						45.00	45.00	
10-85-310 Telephone								
10-85-310 Telephone	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	9.83	9.83	02/03/2022
10-85-310 Telephone	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	2.73	2.73	02/24/2022
10-85-310 Telephone	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	124.11	124.11	02/10/2022
Total 10-85-310 Telephone:						136.67	136.67	
10-85-311 Cell Phones & Air Cards								
10-85-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	4.45	4.45	02/03/2022
10-85-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	7.61	7.61	02/24/2022
10-85-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	214.65	214.65	02/10/2022
Total 10-85-311 Cell Phones & Air Cards:						226.71	226.71	
10-85-344 PRINTING/ADVERTISING								
10-85-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00012-004	PRINTING & ADVERTISING	01/31/2022	42.50	42.50	02/10/2022
10-85-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00037-000	PRINTING & ADVERTISING	01/31/2022	25.00	25.00	02/10/2022
Total 10-85-344 PRINTING/ADVERTISING:						67.50	67.50	
10-85-350 Vehicle Maintenance								
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451261	ROTOR	01/12/2022	88.03	88.03	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451262	WIRE SET	01/12/2022	28.69	28.69	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451284	ACTUATOR	01/12/2022	46.59-	46.59-	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451290	FILTER	01/12/2022	53.00	53.00	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451480	FILTER	01/13/2022	57.57	57.57	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451482	FILTER	01/13/2022	5.13	5.13	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451486	OIL FILTER	01/13/2022	5.13-	5.13-	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451550	OIL FILTER	01/13/2022	10.65	10.65	02/16/2022
10-85-350 Vehicle Maintenance	3075	FIRST CALL AUTO PARTS	2752-451590	COIL	01/13/2022	37.50	37.50	02/16/2022
Total 10-85-350 Vehicle Maintenance:						228.85	228.85	
10-85-540 OFFICE SUPPLIES								
10-85-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	11.55	11.55	02/03/2022
10-85-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	1.49	1.49	02/03/2022
10-85-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	24.33	24.33	02/10/2022
10-85-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	30.12	30.12	02/24/2022

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Total 10-85-540 OFFICE SUPPLIES:						67.49	67.49	
10-85-555 GAS/OIL/LUBRICANTS								
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-453908	OIL FILTER	01/24/2022	51.57	51.57	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-454134	PULLEY	01/25/2022	22.82	22.82	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-454135	PULLEY	01/25/2022	39.32-	39.32-	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-454152	MICRO V BELT	01/25/2022	31.25	31.25	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-454224	FUEL FILTER	01/26/2022	108.86	108.86	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-454543	GASKET	01/27/2022	29.44	29.44	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-455244	SPARK PLUG	01/31/2022	26.10	26.10	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-455253	GSK MATERIAL	01/31/2022	26.39	26.39	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	3075	FIRST CALL AUTO PARTS	2752-455257	FUEL FILTER	01/31/2022	32.71	32.71	02/16/2022
10-85-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	306.36	306.36	02/24/2022
Total 10-85-555 GAS/OIL/LUBRICANTS:						596.18	596.18	
10-85-747 COMPUTER SOFTWARE								
10-85-747 COMPUTER SOFTWARE	2469	BMO HARRIS MASTERCARD	2055363	ADOBE	02/05/2022	196.25	196.25	02/24/2022
Total 10-85-747 COMPUTER SOFTWARE:						196.25	196.25	
10-87-852 PARK								
10-87-852 PARK	2469	BMO HARRIS MASTERCARD	02055614	HOME DEPOT - COUPLINGS	02/05/2022	43.47	43.47	02/24/2022
10-87-852 PARK	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - SUPPLIES	02/05/2022	54.42	54.42	02/24/2022
10-87-852 PARK	6880	SAFFORD BUILDERS SUPPLY C	921492	SOCCER FIELDS	01/11/2022	140.78	140.78	02/03/2022
10-87-852 PARK	6880	SAFFORD BUILDERS SUPPLY C	921711	SOCCER FIELDS	01/13/2022	124.66	124.66	02/03/2022
10-87-852 PARK	6880	SAFFORD BUILDERS SUPPLY C	922678	SOCCER FIELDS	01/24/2022	279.96	279.96	02/03/2022
10-87-852 PARK	7945	SENERGY PETROLEUM	SEN-262844	RED DYE	01/28/2022	1,570.33	1,570.33	02/10/2022
10-87-852 PARK	7945	SENERGY PETROLEUM	SEN-272383	RED DYE	02/15/2022	1,833.70	1,833.70	02/24/2022
Total 10-87-852 PARK:						4,047.32	4,047.32	
10-87-880 VAL'S BULDING MAINTENANCE								
10-87-880 VAL'S BULDING MAINTENA	1306	ADVANCED AIR SYSTEMS	32253828	AC PARTS - VALS BUILDING	02/23/2022	325.00	325.00	02/24/2022
Total 10-87-880 VAL'S BULDING MAINTENANCE:						325.00	325.00	
30-75-907 CDBG GRANT								
30-75-907 CDBG GRANT	2469	BMO HARRIS MASTERCARD	02051979	HOME DEPOT - COUPLINGS	02/05/2022	40.72	40.72	02/24/2022
30-75-907 CDBG GRANT	2469	BMO HARRIS MASTERCARD	02051979	HOME DEPOT - COMPRESSION	02/05/2022	41.09	41.09	02/24/2022

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30-75-907 CDBG GRANT	2469	BMO HARRIS MASTERCARD	02055572	HOME DEPOT - HIGH SCHOOL	02/05/2022	400.55	400.55	02/24/2022
30-75-907 CDBG GRANT	2469	BMO HARRIS MASTERCARD	02055572	HOME DEPOT - HIGH SCHOOL	02/05/2022	129.36	129.36	02/24/2022
30-75-907 CDBG GRANT	2469	BMO HARRIS MASTERCARD	02055622	HOME DEPOT - COAXIAL CABL	02/05/2022	10.88	10.88	02/24/2022
30-75-907 CDBG GRANT	2531	BORDER STATES ELECTRIC SU	923642793	LITH AMR ATBM	02/02/2022	3,439.27	3,439.27	02/16/2022
30-75-907 CDBG GRANT	2830	C E S SAFFORD	SAF/047135	200A POST	01/26/2022	410.73	410.73	02/24/2022
30-75-907 CDBG GRANT	2975	CEM-TEC	108762	STEEL POLES	02/17/2022	11,227.07	11,227.07	02/24/2022
30-75-907 CDBG GRANT	3145	CKC MATERIALS DIVISION	T4138	AB HIGH SCHOOL AVE	01/31/2022	1,990.43	1,990.43	02/16/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920155	SUPPLIES - HIGH SCHOOL AVE	12/27/2021	202.45	202.45	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920323	SUPPLIES - HIGH SCHOOL AVE	12/28/2021	57.95	57.95	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920653	SUPPLIES - HIGH SCHOOL AVE	01/03/2022	420.01	420.01	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920656	SUPPLIES - HIGH SCHOOL AVE	01/03/2022	250.92	250.92	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920856	SUPPLIES - HIGH SCHOOL AVE	01/05/2022	169.91	169.91	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	920962	SUPPLIES - HIGH SCHOOL AVE	01/05/2022	214.46	214.46	02/03/2022
30-75-907 CDBG GRANT	6880	SAFFORD BUILDERS SUPPLY C	922739	SUPPLIES - HIGH SCHOOL AVE	01/25/2022	259.10	259.10	02/03/2022
30-75-907 CDBG GRANT	7820	TRI COUNTY MATERIALS INC	M48885	AB HIGH SCHOOL AVE	01/10/2022	85.01	85.01	02/16/2022
Total 30-75-907 CDBG GRANT:						19,349.91	19,349.91	
45-83-302 GENERAL INSURANCE								
45-83-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	45.00	45.00	02/16/2022
Total 45-83-302 GENERAL INSURANCE:						45.00	45.00	
45-83-334 LANDFILL COSTS								
45-83-334 LANDFILL COSTS	4302	CITY OF SAFFORD	1.432.01/01312	LANDFILL	01/31/2022	11,663.62	11,663.62	02/10/2022
Total 45-83-334 LANDFILL COSTS:						11,663.62	11,663.62	
45-83-341 EQUIP. MAINT.								
45-83-341 EQUIP. MAINT.	2469	BMO HARRIS MASTERCARD	02058695	EBAY - FILTER	02/05/2022	27.26	27.26	02/24/2022
45-83-341 EQUIP. MAINT.	2469	BMO HARRIS MASTERCARD	02058695	GENERAL INDUSTRIAL- VALVE	02/05/2022	177.51	177.51	02/24/2022
45-83-341 EQUIP. MAINT.	3800	GOODMAN AG	CS29875	HOSES	01/20/2022	205.54	205.54	02/16/2022
45-83-341 EQUIP. MAINT.	6070	OPEN LOOP ENERGY, INC.	29167	O RINGS	02/14/2022	4.08	4.08	02/24/2022
45-83-341 EQUIP. MAINT.	6070	OPEN LOOP ENERGY, INC.	29324	O RINGS	02/22/2022	3.90	3.90	02/24/2022
45-83-341 EQUIP. MAINT.	6880	SAFFORD BUILDERS SUPPLY C	921294	SHOP SUPPLIES	01/10/2022	101.60	101.60	02/03/2022
45-83-341 EQUIP. MAINT.	6880	SAFFORD BUILDERS SUPPLY C	921390	WATER TRAILER	01/10/2022	71.46	71.46	02/03/2022
45-83-341 EQUIP. MAINT.	6880	SAFFORD BUILDERS SUPPLY C	921391	WATER TRAILER	01/10/2022	1.85	1.85	02/03/2022
Total 45-83-341 EQUIP. MAINT.:						593.20	593.20	

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45-83-541 EQUIP. SUPPLIES								
45-83-541 EQUIP. SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRUCK PRO - OIL FILL CAN	02/05/2022	43.80	43.80	02/24/2022
45-83-541 EQUIP. SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRUCK PRO - PARTS	02/05/2022	81.35	81.35	02/24/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-451605	IGNITION MDL	01/13/2022	35.41	35.41	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-452774	IGN LOCK SWITCH	01/19/2022	27.07	27.07	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-452822	COOPER PLUG	01/19/2022	35.93	35.93	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-452968	ANTIFREEZE	01/20/2022	55.83	55.83	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-452978	TRANSFLUID	01/20/2022	117.70	117.70	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-453218	ANTI FREEZE	01/21/2022	137.40	137.40	02/16/2022
45-83-541 EQUIP. SUPPLIES	3075	FIRST CALL AUTO PARTS	2752-453877	PULLEY	01/24/2022	39.32	39.32	02/16/2022
45-83-541 EQUIP. SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	282.22	282.22	02/24/2022
Total 45-83-541 EQUIP. SUPPLIES:						856.03	856.03	
45-83-555 GAS/OIL/LUBRICANTS								
45-83-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	1,521.70	1,521.70	02/24/2022
Total 45-83-555 GAS/OIL/LUBRICANTS:						1,521.70	1,521.70	
50-86-302 GENERAL INSURANCE								
50-86-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	45.00	45.00	02/16/2022
Total 50-86-302 GENERAL INSURANCE:						45.00	45.00	
50-86-310 TELEPHONE								
50-86-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	4.91	4.91	02/03/2022
50-86-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	1.36	1.36	02/24/2022
50-86-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	62.05	62.05	02/10/2022
Total 50-86-310 TELEPHONE:						68.32	68.32	
50-86-311 Cell Phones & Air Cards								
50-86-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	.76	.76	02/03/2022
50-86-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	1.30	1.30	02/24/2022
50-86-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	36.59	36.59	02/10/2022
Total 50-86-311 Cell Phones & Air Cards:						38.65	38.65	
50-86-326 ATTORNEY								
50-86-326 ATTORNEY	5667	MATT N. CLIFFORD, P.C.	FEB 2022	SEWER	02/22/2022	568.25	568.25	02/03/2022

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Total 50-86-326 ATTORNEY:						568.25	568.25	
50-86-333 LAB TESTING								
50-86-333 LAB TESTING	5440	LEGEND TECHNICAL SERVICE	2201338	PROFESSIONAL SERVICES	01/27/2022	18.00	18.00	02/03/2022
50-86-333 LAB TESTING	5440	LEGEND TECHNICAL SERVICE	2202682	PROFESSIONAL SERVICES	02/22/2022	611.00	611.00	02/24/2022
50-86-333 LAB TESTING	7189	SILVER STEEL COMPANY	2050	WASTE WATER SAMPLE	02/04/2022	270.00	270.00	02/10/2022
Total 50-86-333 LAB TESTING:						899.00	899.00	
50-86-347 COMPUTER SOFTWARE SUPPORT								
50-86-347 COMPUTER SOFTWARE S	2905	CASELLE, INC.	114803	SOFTWARE SUPPORT	02/01/2022	386.75	386.75	02/10/2022
Total 50-86-347 COMPUTER SOFTWARE SUPPORT:						386.75	386.75	
50-86-350 VEHICLE MAINT.								
50-86-350 VEHICLE MAINT.	3075	FIRST CALL AUTO PARTS	2752-449675	MASTER CYLINDER	01/05/2022	137.40	137.40	02/16/2022
50-86-350 VEHICLE MAINT.	3075	FIRST CALL AUTO PARTS	2752-450823	BLEEDER KIT	01/10/2022	17.11	17.11	02/16/2022
Total 50-86-350 VEHICLE MAINT.:						154.51	154.51	
50-86-520 Utility Bills								
50-86-520 Utility Bills	4184	FREEDOM MAILING SERVICES,	42232	OUTSOURCE BILLING	02/03/2022	177.67	177.67	02/10/2022
Total 50-86-520 Utility Bills:						177.67	177.67	
50-86-541 EQUIPMENT SUPPLIES								
50-86-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRACTOR SUPPLY - PREMIX	02/05/2022	95.71	95.71	02/24/2022
50-86-541 EQUIPMENT SUPPLIES	2469	BMO HARRIS MASTERCARD	02058695	TRACTOR SUPPLY - COUPLER	02/05/2022	81.78	81.78	02/24/2022
50-86-541 EQUIPMENT SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	90.31	90.31	02/24/2022
Total 50-86-541 EQUIPMENT SUPPLIES:						267.80	267.80	
50-86-555 GAS/OIL/LUBRICANTS								
50-86-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	539.13	539.13	02/24/2022
Total 50-86-555 GAS/OIL/LUBRICANTS:						539.13	539.13	
50-86-570 SEWER SYSTEM MAINTENANCE								
50-86-570 SEWER SYSTEM MAINTEN	10195	BILL STEVENS	8397	OUT OF POCKET PLUMBING	02/01/2022	120.00	120.00	02/03/2022
50-86-570 SEWER SYSTEM MAINTEN	10195	MARGARET TRUJILLO	021122	SEWER LINE REPAIR OUT OF P	02/11/2022	280.54	280.54	02/24/2022

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Total 50-86-570 SEWER SYSTEM MAINTENANCE:						400.54	400.54	
50-86-571 SEWER SYSTEM SUPPLIES								
50-86-571	SEWER SYSTEM SUPPLIE	2469 BMO HARRIS MASTERCARD	02055739	ALLTERRA CENTRAL	02/05/2022	214.97	214.97	02/24/2022
50-86-571	SEWER SYSTEM SUPPLIE	7903 HUGHES SUPPLY	S163839781.0	PVC SW 2WAY	01/20/2022	602.49	602.49	02/10/2022
50-86-571	SEWER SYSTEM SUPPLIE	7903 HUGHES SUPPLY	S163839781.0	PVC SW 2WAY	01/26/2022	107.81	107.81	02/10/2022
50-86-571	SEWER SYSTEM SUPPLIE	7903 HUGHES SUPPLY	S163858355.0	PL FLEX	01/20/2022	31.80	31.80	02/10/2022
50-86-571	SEWER SYSTEM SUPPLIE	7903 HUGHES SUPPLY	S163858474.0	PL FLEX	01/26/2022	44.19	44.19	02/10/2022
50-86-571	SEWER SYSTEM SUPPLIE	7903 HUGHES SUPPLY	S164119098.00	SDR 35	02/22/2022	4,618.09	4,618.09	02/24/2022
50-86-571	SEWER SYSTEM SUPPLIE	8120 UNITED RENTALS(N. AMERICA)	203206715-00	RENTAL	02/15/2022	846.07	846.07	02/24/2022
Total 50-86-571 SEWER SYSTEM SUPPLIES:						6,465.42	6,465.42	
50-86-741 MACHINERY & EQUIP.								
50-86-741	MACHINERY & EQUIP.	2469 BMO HARRIS MASTERCARD	02055671	ALLAN J COLEMAN- REPAIR	02/05/2022	320.94	320.94	02/24/2022
50-86-741	MACHINERY & EQUIP.	2852 CAMNET, INC	20721	VERKADA LICENSES CMTQ868	02/15/2022	4,579.34	4,579.34	02/16/2022
50-86-741	MACHINERY & EQUIP.	2852 CAMNET, INC	CMTQ8683	VERKADA/CAMERAS	02/01/2022	3,952.06	3,952.06	02/03/2022
Total 50-86-741 MACHINERY & EQUIP.:						8,852.34	8,852.34	
50-86-748 COMPUTER SUPPORT								
50-86-748	COMPUTER SUPPORT	3435 DAN MARTIN	6078	IT CONSULTING	02/01/2022	600.00	600.00	02/03/2022
Total 50-86-748 COMPUTER SUPPORT:						600.00	600.00	
50-86-760 NEW CONSTRUCTION-SEWER SYSTEM								
50-86-760	NEW CONSTRUCTION-SE	4000 EMPIRE SOUTHWEST	EMRA0030489	RENTAL - REAY LN	01/05/2022	2,339.10	2,339.10	02/16/2022
Total 50-86-760 NEW CONSTRUCTION-SEWER SYSTEM:						2,339.10	2,339.10	
55-33-300 SERVICE FEES - ELECTRIC								
55-33-300	SERVICE FEES - ELECTRIC	10196 ANDREW BLANCO	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	46.72	46.72	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 BRYCE DAVIS	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	42.04	42.04	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 CHRISTINE LANE	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	20.65	20.65	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 ELLA BROOKS	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	203.23	203.23	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 ROBYN D MEREDITH	022322	OVERPAYMENT ON ELECTRIC-	02/23/2022	158.50	158.50	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 RYAN HELMS	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	32.76	32.76	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10195 SHANDA SMITH	022322	OVERPAYMENT ON ELECTRIC	02/23/2022	.44	.44	02/24/2022
55-33-300	SERVICE FEES - ELECTRIC	10050 TINA ANDERSON	020222	OVERPAYMENT ON ELECTRIC	02/02/2022	550.91	550.91	02/03/2022

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Total 55-33-300 SERVICE FEES - ELECTRIC:						1,055.25	1,055.25	
55-88-102 SALARIES & WAGES								
55-88-102 SALARIES & WAGES	116	Reo Evans	021722	INSURANCE CORRECTIONS	02/17/2022	1,224.00	1,224.00	02/17/2022
Total 55-88-102 SALARIES & WAGES:						1,224.00	1,224.00	
55-88-302 GENERAL INSURANCE								
55-88-302 GENERAL INSURANCE	6253	PHI CARES	2022	HELICOPTER PREMIUM	02/15/2022	135.00	135.00	02/16/2022
Total 55-88-302 GENERAL INSURANCE:						135.00	135.00	
55-88-310 TELEPHONE								
55-88-310 TELEPHONE	8050	CENTURY LINK	9284285110/01	TELEPHONE	01/22/2022	14.61	14.61	02/03/2022
55-88-310 TELEPHONE	4364	LINGO	32277123	LONG DISTANCE	02/11/2022	4.07	4.07	02/24/2022
55-88-310 TELEPHONE	8130	VALLEY TELECOM	33664002/0220	TELEPHONE	02/20/2022	184.49	184.49	02/10/2022
Total 55-88-310 TELEPHONE:						203.17	203.17	
55-88-311 Cell Phones & Air Cards								
55-88-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15230568-A8	INTERNET	01/22/2022	4.45	4.45	02/03/2022
55-88-311 Cell Phones & Air Cards	7827	TRANSWORLD NETWORK COR	15246135-A5	INTERNET	02/16/2022	7.61	7.61	02/24/2022
55-88-311 Cell Phones & Air Cards	8195	VERIZON WIRELESS	9898219302	AIR CARDS/CELL	01/26/2022	214.65	214.65	02/10/2022
Total 55-88-311 Cell Phones & Air Cards:						226.71	226.71	
55-88-325 PROFESSIONAL/TECHNICAL SERVICE								
55-88-325 PROFESSIONAL/TECHNICAL	5235	K.R. SALINE & ASSOCIATES, PL	1700	CONSULTING SERVICES	02/08/2022	1,526.12	1,526.12	02/10/2022
Total 55-88-325 PROFESSIONAL/TECHNICAL SERVICE:						1,526.12	1,526.12	
55-88-344 PRINTING/ADVERTISING								
55-88-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00012-004	PRINTING & ADVERTISING	01/31/2022	29.75	29.75	02/10/2022
55-88-344 PRINTING/ADVERTISING	5080	DOUBLE-R COMMUNICATIONS	129-00037-000	PRINTING & ADVERTISING	01/31/2022	17.50	17.50	02/10/2022
Total 55-88-344 PRINTING/ADVERTISING:						47.25	47.25	
55-88-347 COMPUTER SOFTWARE SUPPORT								
55-88-347 COMPUTER SOFTWARE S	2905	CASELLE, INC.	114803	SOFTWARE SUPPORT	02/01/2022	386.75	386.75	02/10/2022

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Total 55-88-347 COMPUTER SOFTWARE SUPPORT:						386.75	386.75	
55-88-380 ELECTRICAL SYSTEM MAINT.								
55-88-380 ELECTRICAL SYSTEM MAI	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - PADDLE SWITC	02/05/2022	217.11	217.11	02/24/2022
55-88-380 ELECTRICAL SYSTEM MAI	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - BOLT HUB	02/05/2022	48.96	48.96	02/24/2022
55-88-380 ELECTRICAL SYSTEM MAI	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - TIWIRE	02/05/2022	50.24	50.24	02/24/2022
Total 55-88-380 ELECTRICAL SYSTEM MAINT.:						316.31	316.31	
55-88-381 ELECTRICAL SYSTEM WHEELING								
55-88-381 ELECTRICAL SYSTEM WHE	4406	GRAHAM CO UTILITIES	JAN 2022	WHEELING	02/09/2022	69,332.00	69,332.00	02/10/2022
Total 55-88-381 ELECTRICAL SYSTEM WHEELING:						69,332.00	69,332.00	
55-88-385 PURCHASE OF POWER								
55-88-385 PURCHASE OF POWER	1885	ARIZONA POWER AUTHORITY	2022-0137	PURCHASE OF POWER	01/31/2022	2,785.47	2,785.47	02/03/2022
55-88-385 PURCHASE OF POWER	2728	BUREAU OF RECLAMATION	90960895	ADVANCE FUNDS CONTRACT	02/15/2022	2,944.72	2,944.72	02/24/2022
55-88-385 PURCHASE OF POWER	7333	SOUTHWEST PUBLIC POWER	4244	PUCHASE OF POWER	01/28/2022	196,885.64	196,885.64	02/03/2022
55-88-385 PURCHASE OF POWER	7677	THE BANK OF NEW YORK TRU	32922.18	LOWER COLORADO	09/01/2021	287.11	287.11	02/24/2022
55-88-385 PURCHASE OF POWER	8005	US DEPARTMENT OF ENERGY	1003187	PARKER DAVIS FIRM ELECTRIC	01/31/2022	3,242.71	3,242.71	02/03/2022
55-88-385 PURCHASE OF POWER	8005	US DEPARTMENT OF ENERGY	1003576	POINT TO POINT TRANSMISSIO	02/01/2022	311.40	311.40	02/03/2022
55-88-385 PURCHASE OF POWER	8005	US DEPARTMENT OF ENERGY	GG1229B0122	PURCHASE OF POWER	02/01/2022	1,605.72	1,605.72	02/03/2022
55-88-385 PURCHASE OF POWER	8005	US DEPARTMENT OF ENERGY	JJPB1229A012	PURCHASE OF POWER	02/11/2022	2,106.01	2,106.01	02/16/2022
Total 55-88-385 PURCHASE OF POWER:						210,168.78	210,168.78	
55-88-426 ATTORNEY								
55-88-426 ATTORNEY	5667	MATT N. CLIFFORD, P.C.	FEB 2022	ELECTRIC	02/22/2022	454.39	454.39	02/03/2022
Total 55-88-426 ATTORNEY:						454.39	454.39	
55-88-505 TRAINING/MEETINGS/TRAVEL								
55-88-505 TRAINING/MEETINGS/TRAV	2469	BMO HARRIS MASTERCARD	02055333	EXPEDIA	02/05/2022	193.60	193.60	02/24/2022
55-88-505 TRAINING/MEETINGS/TRAV	81	HEATH BROWN	021422	OUT OF POCKET	02/14/2022	41.00	41.00	02/16/2022
Total 55-88-505 TRAINING/MEETINGS/TRAVEL:						234.60	234.60	
55-88-520 Utility Bills								
55-88-520 Utility Bills	4184	FREEDOM MAILING SERVICES,	42232	OUTSOURCE BILLING	02/03/2022	177.67	177.67	02/10/2022
55-88-520 Utility Bills	6052	ON LINE COLLECTIONS	206600000020	COMMISSION ON COLLECTED	02/01/2022	40.22	40.22	02/10/2022

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Total 55-88-520 Utility Bills:						217.89	217.89	
55-88-525 Meter Reading								
55-88-525 Meter Reading	2780	BYRAM LABORATORIES	47911	AMR DATA TRANSFERS	01/31/2022	1,605.80	1,605.80	02/03/2022
Total 55-88-525 Meter Reading:						1,605.80	1,605.80	
55-88-533 SMALL TOOLS/HARDWARE								
55-88-533 SMALL TOOLS/HARDWARE	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - BAGS	02/05/2022	59.94	59.94	02/24/2022
55-88-533 SMALL TOOLS/HARDWARE	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - CIRCLE CUTTE	02/05/2022	66.67	66.67	02/24/2022
Total 55-88-533 SMALL TOOLS/HARDWARE:						126.61	126.61	
55-88-535 POSTAGE								
55-88-535 POSTAGE	4184	FREEDOM MAILING SERVICES,	42232	POSTAGE	02/03/2022	1,018.73	1,018.73	02/10/2022
55-88-535 POSTAGE	6355	PITNEY BOWES	010422	POSTAGE	01/04/2022	87.56	87.56	02/03/2022
55-88-535 POSTAGE	6355	PITNEY BOWES	1020069582	POSTAGE	02/09/2022	138.71	138.71	02/16/2022
Total 55-88-535 POSTAGE:						1,245.00	1,245.00	
55-88-540 OFFICE SUPPLIES								
55-88-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409040	OFFICE SUPPLIES	01/18/2022	11.55	11.55	02/03/2022
55-88-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22409978	OFFICE SUPPLIES	01/18/2022	1.49	1.49	02/03/2022
55-88-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22607119	OFFICE SUPPLIES	01/25/2022	24.33	24.33	02/10/2022
55-88-540 OFFICE SUPPLIES	6520	QUILL CORPORATION	22943531	OFFICE SUPPLIES	02/08/2022	30.12	30.12	02/24/2022
Total 55-88-540 OFFICE SUPPLIES:						67.49	67.49	
55-88-541 EQUIP. SUPPLIES								
55-88-541 EQUIP. SUPPLIES	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - TRASH CANS	02/05/2022	171.67	171.67	02/24/2022
55-88-541 EQUIP. SUPPLIES	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - WIRE COMBO	02/05/2022	66.45	66.45	02/24/2022
55-88-541 EQUIP. SUPPLIES	2210	MSC INDUSTRIAL SUPPLY CO	5200039001	NUTS & BOLTS	02/10/2022	101.60	101.60	02/24/2022
Total 55-88-541 EQUIP. SUPPLIES:						339.72	339.72	
55-88-550 VEHICLE SUPPLIES								
55-88-550 VEHICLE SUPPLIES	2469	BMO HARRIS MASTERCARD	2055580	HOME DEPOT - 3 WIRE	02/05/2022	43.63	43.63	02/24/2022
Total 55-88-550 VEHICLE SUPPLIES:						43.63	43.63	

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55-88-555 GAS/OIL/LUBRICANTS								
55-88-555 GAS/OIL/LUBRICANTS	7945	SENERGY PETROLEUM	SEN-272383	GAS/DIESEL	02/15/2022	868.52	868.52	02/24/2022
Total 55-88-555 GAS/OIL/LUBRICANTS:						868.52	868.52	
55-88-590 MISCELLANEOUS								
55-88-590 MISCELLANEOUS	8078	UPPER CASE PRINTING, INK	17955	INSERTS	02/07/2022	127.71	127.71	02/16/2022
Total 55-88-590 MISCELLANEOUS:						127.71	127.71	
55-88-741 MACHINERY/EQUIPMENT								
55-88-741 MACHINERY/EQUIPMENT	2780	BYRAM LABORATORIES	47804	METERS	01/20/2022	541.05	541.05	02/03/2022
55-88-741 MACHINERY/EQUIPMENT	2852	CAMNET, INC	20721	VERKADA LICENSES CMTQ868	02/15/2022	4,579.34	4,579.34	02/16/2022
55-88-741 MACHINERY/EQUIPMENT	2852	CAMNET, INC	CMTQ8683	VERKADA/CAMERAS	02/01/2022	3,952.03	3,952.03	02/03/2022
55-88-741 MACHINERY/EQUIPMENT	8290	WESCO RECEIVABLES CORP	001960	BUCKINGH	12/30/2021	1,235.71	1,235.71	02/16/2022
55-88-741 MACHINERY/EQUIPMENT	8290	WESCO RECEIVABLES CORP	1753358	ORDER	02/02/2022	20.83	20.83	02/16/2022
Total 55-88-741 MACHINERY/EQUIPMENT:						10,328.96	10,328.96	
55-88-748 COMPUTER SUPPORT								
55-88-748 COMPUTER SUPPORT	3435	DAN MARTIN	6078	IT CONSULTING	02/01/2022	600.00	600.00	02/03/2022
Total 55-88-748 COMPUTER SUPPORT:						600.00	600.00	
55-88-760 NEW CONSTRUCTION-ELEC. SYSTEM								
55-88-760 NEW CONSTRUCTION-ELE	4406	GRAHAM CO UTILITIES	JAN, 2022	W/O JAN 2022	02/09/2022	1,772.59	1,772.59	02/10/2022
Total 55-88-760 NEW CONSTRUCTION-ELEC. SYSTEM:						1,772.59	1,772.59	
55-88-770 POLES								
55-88-770 POLES	2975	CEM-TEC	108761	ROUND STEPPED POLE	01/31/2022	3,705.43	3,705.43	02/24/2022
Total 55-88-770 POLES:						3,705.43	3,705.43	
55-88-784 HARDWARE								
55-88-784 HARDWARE	2530	BORDER CONSTRUCTION	152414239-00	REBAR	01/27/2022	19.29	19.29	02/10/2022
55-88-784 HARDWARE	8290	WESCO RECEIVABLES CORP	021205	TRANSFORMER	01/31/2022	2,849.40	2,849.40	02/24/2022
Total 55-88-784 HARDWARE:						2,868.69	2,868.69	

GL Account and Title	Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Grand Totals:						<u>622,566.27</u>	<u>622,566.27</u>	

Dated: _____

Mayor: _____

Vice Mayor: _____

Town Council: _____

Depty Clerk: _____

Report Criteria:

Detail report.

Invoices with totals above \$0.00 included.

Only paid invoices included.

RESOLUTION NO. 699-2022

A RESOLUTION OF THE COUNCIL OF THE TOWN OF THATCHER, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED ORDINANCE NO. 194-2022 - "EXHIBIT A" WHICH AMENDS MULTIPLE SECTIONS OF CHAPTER 152 OF THE TOWN OF THATCHER SUBDIVISION ORDINANCE.

BE IT RESOLVED by the Town Council of the Town of Thatcher, Arizona as follows:

That certain document entitled Ordinance No. 194-2022 – "EXHIBIT A", is hereby declared to be a public record, and three (3) copies shall remain on file in the Planning and Zoning Department office of the Town of Thatcher for examination by the public.

PASSED AND ADOPTED by the Town Council of the Town of Thatcher, Arizona this 21st day of March, 2022.

Randy Bryce, Mayor

ATTEST:

Annie Reidhead, Deputy Clerk

APPROVED AS TO FORM:

Matt Clifford, Town Attorney

ORDINANCE NO. 194-2022

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF THATCHER, ARIZONA, AMENDING THE SUBDIVISION ORDINANCE OF THE THATCHER TOWN CODE BY AMENDING MULTIPLE SECTIONS AND ADOPTING BY REFERENCE PURSUANT TO A.R.S. §9-802, THESE AMENDMENTS WHICH ARE FULLY DESCRIBED IN “EXHIBIT A” ATTACHED HERETO.

WHEREAS, the Town of Thatcher pursuant to A.R.S. §9-462.01 may amend the Town of Thatcher Subdivision Ordinance.

WHEREAS, pursuant to A.R.S. §9-802 the Town of Thatcher may enact and publish by reference a lengthy public document and hereby adopts by Resolution No. 699-2022 said lengthy public document which is hereby referred to, adopted and made a part hereof as though fully set forth herein and three (3) copies of which are on file in the Planning and Zoning Department Office and available for public inspection; and

WHEREAS, the public hearings required pursuant A.R.S. §9-462.04 were advertised in the Eastern Arizona Courier on February 19, 2022 and the required Planning and Zoning Commission Citizen Review meeting was conducted on March 1, 2022 and the required Planning and Zoning Commission Public Hearing was conducted on March 8, 2022.

WHEREAS, the Thatcher Town Council, on March 21, 2022, after full compliance with the notice and hearing requirements set forth in A.R.S. §9-462.04, and after full and careful consideration of the recommendations of Town staff, the Planning and Zoning Committee, and careful consideration of the comments provided by the public on the issue, adopted, in the best interests of the Town, Thatcher Ordinance No 194-2022 and Exhibit A, attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF THATCHER, ARIZONA AS FOLLOWS:

Section 1. To the extent of any conflict between other Town ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing Town ordinance, resolution or regulation except as expressly set forth herein.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 3. This Ordinance shall become effective thirty (30) days after its adoption.

PASSED AND ADOPTED by the Mayor and Council of the Town of Thatcher, Arizona,
this 21st day of March, 2022.

Randy Bryce, Mayor

ATTEST:

Annie Reidhead, Deputy Clerk

APPROVED AS TO FORM:

Matt Clifford, Town Attorney

ORDINANCE 184-2019

EXHIBIT A

The attached Town of Thatcher Subdivision Ordinance, including proposed revisions comprise Exhibit A of this Ordinance.

RESOLUTION NO. 700-2022

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF THATCHER,
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE BOX CANYON RESALE AGREEMENT**

WHEREAS, Southwest Public Power Agency, Inc. (“SPPA”) intends to enter into a power purchase agreement (the “Box Canyon PPA”) to acquire the output of a combined photovoltaic and battery storage facility.

WHEREAS, the Town of Thatcher, SPPA, and certain SPPA Members wish to enter into an agreement that enables SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to such participants, including Thatcher.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Thatcher that:

1. The Box Canyon Resale Agreement between Southwest Public Power Agency and Participants, (the “Box Canyon Resale Agreement”), between Thatcher, SPPA and the entities listed as signatories in the Box Canyon Resale Agreement, as presented to the Town Council of the Town of Thatcher, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The Town Manager is authorized to execute the Box Canyon Resale Agreement with only such changes as approved by the signatory, in consultation with Thatcher’s legal counsel. From and after the execution and delivery of the Box Canyon Resale Agreement, the Town Manager is hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Box Canyon Resale Agreement.

Adopted this ____ day of _____, 2022.

Randy Bryce, Mayor

Attest:

Annie Reidhead, Deputy Clerk

Error! Unknown document property name.

EXHIBIT A

Box Canyon Resale Agreement

**RESOLUTION OF THE BOARD OF DIRECTORS
OF SOUTHWEST PUBLIC POWER AGENCY, INC.,
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE BOX CANYON RESALE AGREEMENT**

WHEREAS, Southwest Public Power Agency, Inc. (“SPPA”) intends to enter into a power purchase agreement (the “Box Canyon PPA”) to acquire the output of a combined photovoltaic and battery storage facility.

WHEREAS, SPPA, participating SPPA members, and participating nonmembers wish to enter into an agreement that enables SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to participants.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of SPPA that:

1. The Box Canyon Resale Agreement between Southwest Public Power Agency and Participants, (the “Box Canyon Resale Agreement”), between SPPA and the entities listed as signatories in the Box Canyon Resale Agreement, as presented to the Board of Directors of SPPA, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The President and any other officer of SPPA are authorized to execute the Box Canyon Resale Agreement with only such changes as approved by the signatory, in consultation with SPPA’s legal counsel and SPPA’s administrative agent. From and after the execution and delivery of the Box Canyon Resale Agreement, the officers of SPPA and SPPA’s administrative agent are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Box Canyon Resale Agreement.

Adopted this ____ day of _____, 2022.

Attest:

Secretary

EXHIBIT A

Box Canyon Resale Agreement

Box Canyon Resale Agreement

between

Southwest Public Power Agency

and

Participants

This Box Canyon Resale Agreement (“Agreement”) is made this ___ day of _____, 202_, (the “Effective Date”) by and among Southwest Public Power Agency (hereinafter “SPPA”), a political subdivision of the State of Arizona, organized and existing under the laws of the State of Arizona, including particularly the Act, and the other Persons that executed this Agreement as of the Effective Date or that become a party hereto thereafter (hereinafter “Participants” or, at times, individually as “Participant”). SPPA and Participants hereinafter referred to collectively as “Parties” or, at times, individually as “Party”.

WITNESSETH:

WHEREAS, SPPA consists of members (“Members”) which are (i) governmental entities organized and existing under the laws of the State of Arizona, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, SPPA is authorized under Sections 2(n) and 4 of its IGA to contract with its Members to establish projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and related products for its Members; and

WHEREAS, SPPA and its Members have established the SPPA Power Purchase Project Agreement, SPPA Project Contract 2021-2, pursuant to the [date], which authorizes SPPA to enter into power purchase agreements with Sellers to obtain Energy, Capacity Rights, Ancillary Services and Environmental Attributes for the benefit of subscribing Participants, and

WHEREAS, SPPA is authorized by Section 5(b) of the IGA to allow eligible non-member entities to participate in such Projects (Members and such nonmember entities participating in Projects to be referred to collectively as “Participants”); and

WHEREAS, Participants own and operate retail electric systems; and

WHEREAS, Participants are authorized under the laws of the State of Arizona to contract to buy from SPPA Energy, Capacity Rights, Ancillary Services and Environmental Attributes to meet a Participant’s present and future requirements; and

WHEREAS, SPPA intends to enter into a power purchase agreement to acquire the output of a combined photovoltaic and battery storage facility from Seller for a period of twenty (20) years commencing on the Delivery Start Date (the “Box Canyon PPA” as defined below in Article One), whereunder SPPA will purchase, on a combined basis and on behalf of the Participants, all usable output from the Box Canyon facility, including but not limited to the Energy, Capacity Rights, Ancillary Services and Environmental Attributes of Box Canyon (hereinafter referred to as the “Product” and which is defined in Article One), as components of the Product becomes available; and

WHEREAS, this Agreement is intended to enable SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to Participants, such that neither SPPA nor Participants obtain a benefit or incur a burden or obligation due to a drafting or other difference between this Agreement and the Box Canyon PPA.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE: DEFINITIONS

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the Box Canyon PPA or the SPPA Project Contract 2021-2. Any definitions from the Box Canyon PPA (whether explicitly defined herein or not) shall automatically reflect the definitions from the Box Canyon PPA as it may be amended from time to time.

Act means A.R.S. Section 11-952, as amended, and all laws amendatory or supplemental thereto.

Agreement means this Box Canyon Resale Agreement between Participants and SPPA.

Ancillary Services is defined in Exhibit A of the Box Canyon PPA.

Box Canyon PPA means the Power Purchase Agreement between SPPA and Seller for the period commencing on _____, as amended from time to time.

Business Day means any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by the Federal Reserve.

Buyer Default Security is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Account is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Amount shall be the amount determined and specified in Exhibit H of the Box Canyon PPA.

Capacity Rights is defined in Exhibit A of the Box Canyon PPA.

Commercial Operation Date means the date that the Box Canyon facility achieves Commercial Operation as Commercial Operation as defined in the Box Canyon PPA.

Contract Interest Rate is defined in Exhibit A of the Box Canyon PPA.

Contract Year means any consecutive twelve (12) month period during the term of the Box Canyon PPA, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

Delivery Point means SRP 230-KV Abel Substation.

Delivery Start Date means the date on which the Box Canyon facility begins delivering all or a portion of the Product and SPPA has the obligation to accept that delivery, as further defined in the Box Canyon PPA.

Effective Date means the date as of which this Agreement has been executed by SPPA and the initial Participants, as reflected on the signature page(s). For new Participants after the original Effective Date, the Effective Date will be the date when both the new Participant and SPPA have executed the form of Participation Agreement attached as Exhibit A.

Energy means electricity, measured in kWh or MWh, as the case may be.

Environmental Attributes are defined in Exhibit A of the Box Canyon PPA.

Event of Default shall have the meaning assigned to it in Section 11.1.

FERC means the Federal Energy Regulatory Commission, or its successor in function.

Governmental Authority means (a) any supranational, federal, state, local, municipal, tribal or other government or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including FERC, NERC and any applicable regional reliability entity) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power. Governmental Authority does not include SPPA or the Participants.

Green Tag is defined in Exhibit A of the Box Canyon PPA.

Green Tag Reporting Rights are defined in Exhibit A of the Box Canyon PPA.

IGA means the Intergovernmental Agreement among SPPA's members dated July, 31, 2014, which caused SPPA to be created.

Members means all members of SPPA, who are party to the IGA.

NERC means the North American Electric Reliability Corporation.

Participant means each SPPA Pool Participant that (i) has agreed to participate in this Project by executing the SPPA Power Purchase Project Agreement as of the Effective Date thereof (or for new Participants after the Effective Date, by executing a form of Participation Agreement attached thereto as Exhibit A); and (ii) has executed this Agreement as of the Effective Date hereof (or for new Participants after the Effective Date, that have executed a form of Participant Agreement attached hereto as Exhibit A), and in each case its permitted successors and assigns.

Participant Entitlement means the amount of Product which is the Participant's individual allocation of Product from the Box Canyon PPA. The initial Participant Entitlement is set forth in Schedule 4.1. Any Participant Entitlement may be adjusted from time to time pursuant to this Agreement, beginning on the first day of the month following the Delivery Start Date of the Box Canyon facility.

Participant Percentage means the fraction equal to the Participant Entitlement divided by SPPA's purchase amount under the Box Canyon PPA, expressed as a percentage.

Participation Agreement means an agreement signed by SPPA and a new Participant after the Effective Date of this Agreement, whereby such entity becomes a new Participant. A form of Participation Agreement is attached as Exhibit A.

Payment Default shall have the meaning assigned to it in Section 11.1(a).

Person means an individual, a corporation, a partnership, a limited liability company, a tribal entity, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

Pool Agreement means the September 1, 2014 SPPA Project Agreement for the SPPA Pool among SPPA and certain of its Members, pursuant to which SPPA acquires and manages resources for the benefit of the SPPA Pool, as such agreement may be amended from time to time.

Product is defined in Exhibit A of the Box Canyon PPA.

Prudent Electrical Practices are defined in Exhibit A of the Box Canyon PPA.

Seller means the counterparty to SPPA under the Box Canyon PPA, or its permitted successors and assigns.

Seller's Cost to Cover is defined in Exhibit A of the Box Canyon PPA.

Settlement Amount is defined in Exhibit A of the Box Canyon PPA.

Service Month means the month in which Product from Box Canyon is delivered.

Solar Project Account-Box Canyon means the operating sub-account into which SPPA deposits the payments by Participants in the Box Canyon PPA and out of which it pays the expenses associated with the Box Canyon PPA. This account is separate from the Buyer Working Capital Reserve Account.

SPPA means the Southwest Public Power Agency, Inc. and its permitted successors and assigns. SPPA is a political subdivision of the State of Arizona created pursuant to the IGA, under the authority granted under the Act.

SPPA Energy Management Agreement means the September 5, 2018 Amended and Restated Energy Management Agreement between SPPA and Arizona Electric Cooperative (“AEP Co”) wherein SPPA appoints AEP Co as the Administrative and Scheduling Agent for the SPPA Pool, as that agreement may be amended from time to time.

SPPA Pool means the power pool created by SPPA and some of its Members under Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Management Committee means the Committee created under Article Seven of the Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Participant means the parties, other than SPPA, to the Pool Agreement.

SPPA Power Purchase Project Agreement means the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) or any substantially identical agreement entered into among SPPA and Participants.

Term means the period in which this Agreement is in effect as set forth in Article Two.

Test Energy is defined in Exhibit A of the Box Canyon PPA.

Transmission Costs means Participant’s properly allocable share of all transmission-related costs paid by SPPA for the month that are directly related to the delivery to Participant of Energy from Box Canyon and that are not otherwise reimbursed to SPPA by the Participant pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, and any costs associated with Transmission Congestion Rights, in each case arising in connection with the Box Canyon facilities.

Tribal Participant means a Participant that is a tribal utility of its respective Indian Tribe, Nation, and/or Community.

ARTICLE TWO: TERM

2.1 Term. This Agreement shall be effective and binding upon execution by the Parties as reflected on the signature page(s) below (or for later joining Parties, upon the date of execution of the form of Participation Agreement attached as Exhibit A), and (absent earlier termination as permitted hereunder) shall continue in effect until termination of the Box Canyon PPA. Deliveries shall commence on the Delivery Start Date and continue through the end of the Term.

- (a) Member Terminations. Except as provided in this Section 2.1, the participation of individual Participants may not be terminated. If a Participant seeks to terminate its Participant Entitlement pursuant to Section 9.2, it shall provide written notice to SPPA and follow the procedures laid out in Section 9.2.
- (b) SPPA may terminate the Agreement as to an individual Participant in the event that such Participant is in default, pursuant to the provisions of Article Eleven.

ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS

3.1 Minimum Execution Level. SPPA is authorized to execute the Box Canyon PPA upon SPPA's receipt of an executed version of this Agreement or a Participation Agreement by Participants to purchase and pay for, in the aggregate, at least seventy-five percent (75%) of the Product. Participants agree that the execution of this Agreement or a Participation Agreement shall be deemed Participant's full consent and agreement that SPPA, upon SPPA's execution of Box Canyon PPA and prior to the Buyer Working Capital Reserve Account funding date, shall increase each Participant's initial percentage subscription to Box Canyon pro rata to all Participants, such that all Product is allocated to the Participants upon the Commercial Operation Date.

3.2 SPPA Management. SPPA will manage the Box Canyon PPA for the benefit of the Participants. SPPA's designated Administrative and Scheduling Agent will schedule and dispatch the resource pursuant to the terms of the Pool Agreement and the SPPA Energy Management Agreement.

3.3 SPPA Pool Resource Designation. SPPA and the Participants designate the Box Canyon PPA as a SPPA Pool Resource, in accordance with the terms of the SPPA Pool Agreement. SPPA will optimize the Box Canyon PPA with the other SPPA Pool Resources for the benefit of Participants.

3.4 Transmission. To the extent available, SPPA will use existing transmission entitlements that SPPA has arranged or that Members and Participants have designated as SPPA Pool Resources, or otherwise made available to SPPA to transmit the applicable Product from the Box Canyon facility from the Delivery Point to Participant loads. To the extent that SPPA and the Participants do not have sufficient transmission rights to effect delivery to Participant loads, it may be necessary for SPPA or such Participants to secure additional transmission arrangements. Such Participants shall obtain such arrangements at

their own expense, or reimburse SPPA for the expense of acquiring transmission for them. Payments from Participants for such additional transmission will be collected pursuant to a separate agreement, and will be handled outside of the Buyer Working Capital Reserve Account.

ARTICLE FOUR: PURCHASE AND SALE

4.1 Product. Subject to and in accordance with the terms and conditions of this Agreement during the contract Term, SPPA shall sell and make available to Participants at the Delivery Point, or as otherwise provided, and Participants shall purchase and pay for Product in amounts set forth in Schedule 4.1 of the Box Canyon PPA, such amounts to be scheduled in accordance with the provisions of the Pool Agreement.

4.2 Firmness. Energy produced by the photovoltaic portion of Box Canyon and Energy produced by discharge of the batteries will be scheduled as directed by SPPA's scheduling agent. Ancillary Services and Capacity Rights will be utilized as directed by SPPA or SPPA's scheduling agent for monetization (per and subject to the provisions of Section 4.6 of the Box Canyon PPA and Section 4.3 and Section 4.5 of this Agreement).

4.3 Resource Adequacy. To the extent regulatory requirements or market structure changes result in the establishment of a resource adequacy requirement or other form of capacity demonstration obligation in any balancing authority area where any Participant's load is located that requires such participant to identify specific generating resources underlying its firm power contracts, such participant shall be permitted to designate the Box Canyon facility as such capacity (up to an amount equal to the product of the amount of the Box Canyon capacity qualified for resource adequacy purchased by SPPA under the PPA and such Participant's Participant Entitlement of Capacity Rights).

4.4 Title and Risk of Loss. Title to and risk of loss related to Product shall transfer from SPPA to Participants at the Delivery Point or at such other time as specified in the Box Canyon PPA. SPPA will deliver to Participants the Product, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery, at the Delivery Point; provided, however that title to Green Tags shall transfer in accordance with the procedures of the registrar of the Green Tags.

4.5 Participant's Entitlement. Beginning on the Delivery Start Date, Participant shall purchase its Participant Percentage of the Product that SPPA purchases pursuant to the terms and conditions of the Box Canyon PPA. It is the intent of SPPA and the Participants that each Participant's Participant Percentage of the benefits and obligations accruing to SPPA under the Box Canyon PPA shall be flowed through to the Participant pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the Box Canyon PPA, the terms of the Box Canyon PPA shall prevail and Parties shall look to the terms of the Box Canyon PPA to resolve such conflict. The Participant Entitlements and Participant Percentages of all Participants shall be set forth in Schedule 4.1 attached to this Agreement. SPPA will update Schedule 4.1 periodically as necessary, including without limitation to reflect changes resulting from actions taken

pursuant to Articles Nine, Eleven, and Twelve, and/or any other applicable provision of this Agreement.

4.6 Cost Responsibility. Each Participant will pay its allocable share (as determined pursuant to this Article Four) of (a) all charges SPPA incurs for Product in connection with the Box Canyon PPA, (b) any other charges SPPA incurs under or in connection with the Box Canyon PPA, including but not limited to Buyer Default Security and funding the Buyer Working Capital Reserve Amount, and (c) all transmission costs SPPA incurs to deliver the Energy from the Delivery Point to the Participant; and (d) SPPA's administrative and other reasonable costs associated with its management of Box Canyon (which shall include an allocable share of SPPA's general costs of providing services that are not directly assignable to any given project) ("SPPA A&G"). Participant's obligation to pay for its allocable share of such costs, including Participant's share of the Buyer Working Capital Reserve Amount, shall be paid in accordance with Sections 4.7, 4.8 and 4.9 and shall continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Product, or the taking of any action permitted by the Box Canyon PPA obligations such as payment of Sellers' Cost to Cover, the need to fund Buyer Working Capital Reserve Amount, post Buyers' Default Security or the computation of a Settlement Amount due from Buyer). The provisions that follow are intended to implement, but not to narrow, this intention.

4.7 Buyer Working Capital Reserve Account. In accordance with the terms of the Box Canyon PPA, SPPA will establish a Buyer Working Capital Reserve Account with a starting balance 30 days prior to the expected Commercial Operation Date and throughout the Term of at least the Buyer Working Capital Reserve Amount. The Buyer Working Capital Reserve Account will be a segregated and dedicated SPPA fund, and amounts in the Buyer Working Capital Reserve Account may only be used by SPPA to make payments to Seller that are due and payable pursuant to the Box Canyon PPA, including without limitation, if a Participant has failed to timely pay its share of such amount in accordance with Section 4.9, 9.2 and/or 11.2. To fund the starting balance of the Buyer Working Capital Reserve Account, each Participant shall pay to SPPA its Participant Percentage of the starting balance of the Buyer Working Capital Reserve Amount by a date established by SPPA (no later than 45 days prior to the expected Commercial Operation Date). Except to the extent that Participants have been required to step-up their participation pursuant to Article Sixteen or to cover a default by another Participant under Article Twelve, SPPA may only use a Participant's contribution to the Buyer Working Capital Reserve Account to pay that Participant's Participant Percentage of a Seller invoice. For the avoidance of doubt, SPPA may not use one Participant's contribution to the Buyer Working Capital Reserve Account to pay another Participant's Participant Percentage of a Seller Invoice unless there has been a re-allocation pursuant to Article Twelve or Article Sixteen. When the Box Canyon PPA terminates and all obligations have been satisfied, all Non-Defaulting Participants shall receive their Participant Percentage of the Buyer Working Capital Reserve Account. When a Participant terminates its participation by transferring its Entitlement to others, its share of the Buyer Working Capital Reserve Account will be returned to it, once all its obligations have been satisfied and the transferee(s) have funded their share of the Buyer Working Capital Reserve Amount obligations. A Defaulting Participant will receive the amount of its share of the Buyer Working Capital Account that

remains, if any, after its obligations under this Agreement are satisfied including any costs provided by SPPA due to Participant's default. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Participants acknowledge and expressly consent that the Buyer Working Capital Reserve Account will be subject to an Account Control Agreement in favor of Seller in the event of a default by SPPA pursuant to the Box Canyon PPA.

4.8 Reserved

4.9 Payment Obligation. Starting prior to the Delivery Start Date, pursuant to the Box Canyon PPA, SPPA shall invoice each Participant and Participant shall pay its properly allocable share of all of SPPA's forecasted costs related to the Box Canyon PPA and forecasted SPPA A&G and any additional transmission costs. SPPA's invoicing procedures will be as follows:

- (a) On or before the 25th of the month that is prior to each Service Month, SPPA will issue an invoice to each Participant of the estimated costs SPPA expects to incur for each such Service Month, including but not limited to costs pursuant to the Box Canyon PPA, Transmission Costs, and SPPA A&G. Participant acknowledges that initial invoices from SPPA for a Service Month shall be premised on forecasts of the energy production during the Service Month and forecasts of SPPA expenses. Participant agrees that such invoices shall reflect estimates of all SPPA costs associated with the Box Canyon for the applicable Service Month and Participant will pay such invoices notwithstanding the use of forecasts and estimates.
- (b) On or before the 10th day of each Service Month (or the next Business Day if the 10th day of the Service Month is not a Business Day), the Participant shall pay SPPA in accordance with SPPA's payment instructions no less than the amount SPPA invoiced the Participant in accordance with Section 4.9(a). In addition to any other action SPPA may take with respect to a late payment, SPPA shall assess interest on all amounts not received by SPPA before the payment due date established by this Section 4.9(b). Interest shall accrue at the Contract Interest Rate over the actual number of days elapsed from the payment due date to the date such amounts are paid.
- (c) Participant's administrative charge each month shall be (i) an amount established by SPPA from time to time based on SPPA's budget, plus (ii) where applicable, Participant's portion of SPPA's costs incurred in the prior month that are related to Box Canyon but were not included in SPPA's budget. If SPPA acquires additional transmission rights for the benefit of one or more (but less than all) Participants, the cost of those additional rights shall be paid by those Participants according to their proportionate usage of such transmission.
- (d) Upon receipt of final invoices for all costs associated with the Service Month, SPPA shall compare Participant's pro rata share of all such costs

with the estimated amount SPPA invoiced Participant pursuant to Section 4.9(a). Any overpayments by Participant shall be credited on the next invoice provided to Participant, and any underpayments shall be added to the next invoice provided to Participant. To the extent SPPA receives credits or payments from the Seller pursuant to the terms of the Box Canyon PPA, SPPA shall maintain books and records to reflect that such credits or payments will be allocated pro rata for the benefit of the Participants. SPPA shall, in its reasonable discretion, apply such credits or payments to offset the Participants' requirement to purchase replacement Product if Box Canyon PPA Product is not available or to offset the Participants' cost responsibilities under the Box Canyon PPA.

4.10 Funding of Buyer Default Security. If, pursuant to Section 7.4.3 of the Box Canyon PPA, SPPA must post the Buyer Default Security, SPPA shall notify the Participants of the posting requirement and each Participant's share of the Buyer Default Security as soon as practicable but no later than ten (10) Business Days after the occurrence of the event giving rise to such obligation, after SPPA becomes aware of its need to post the Buyer Default Security. Participant shall, as soon as practicable after notice from SPPA but no later than 5 months from the date of such notice, take all such action, including the payment of funds to SPPA or arrangements for credit, as applicable, as SPPA may reasonably require in order for SPPA to post and maintain the Buyer Default Security.

ARTICLE FIVE: DISPUTES REGARDING BILLING AND PAYMENTS

5.1 Disputes. If Participant disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to SPPA. Any such protest shall be subject to the limitations set forth in Section 5.2. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

5.2 Restriction on Challenges. If a Participant questions or disputes the correctness of any invoice submitted to it by SPPA, the Participant shall make any net payment to SPPA as reflected on the invoice when due. The Participant may request an explanation of any amounts due to or from SPPA as soon as practicable, but in no event later than twenty-two (22) months of the receipt of such billing statement (or, if earlier, two months prior to any deadline for billing challenges under any Box Canyon PPA that is involved in the disputed invoice). SPPA shall review the relevant invoice. If the bill is determined to be incorrect, SPPA shall issue corrected invoices and make all payment adjustments with affected Participants as necessary to correct the error. No interest shall apply to such adjusted amounts. If SPPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the explanation has been requested, such dispute shall be resolved pursuant to Article Ten herein.

5.3 Pass-Through of Refunds.

- (a) If, pursuant to the Box Canyon PPA, SPPA receives any refund (as opposed to credits against its monthly bills, which will simply reduce SPPA's costs to be passed through to Participant hereunder) of any of its Box Canyon costs, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates.
- (b) If SPPA receives any refund (as opposed to credits that simply reduce SPPA's costs to be passed through to the Participant hereunder) of any market charges or transmission charges, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates; provided that if a Participant is in breach or default of its obligations under this Agreement, SPPA may deposit such refund amounts in the Buyer Working Capital Reserve Account for use as permitted hereunder until such time as Participant cures such breach or default.

5.4 Unconditional Nature of Payment Obligation. All amounts payable by Participant under this Agreement shall be due irrespective of the actual availability of Product, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of SPPA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE SIX: RESERVED

ARTICLE SEVEN: INFORMATION REGARDING PROJECT

7.1 SPPA Budgets. SPPA's annual budget will include allocations to the Power Purchase Agreement Project which is the subject of SPPA Project Contract No. 2021-2. Participants shall have the right to review and have input on the SPPA budget via the SPPA Board of Directors.

ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION

8.1 Except as provided below in Article Twelve, the Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of performance by SPPA or SPPA's agent of SPPA's obligations under this Agreement. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Agreement of SPPA or SPPA's agent; provided, however, that,

notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA or SPPA's agent that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the SPPA Pool Management Committee and was reasonably necessary in order to carry out such direction.

8.2 If a customer of a Participant makes a claim or brings an action against one or more of the other Participants for any death, injury, loss, or damage arising out of or in connection with this Agreement, the Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Participants and their directors, officers, attorneys, employees, subcontractors, agents and assigns from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA, SPPA's agent, or the other Participant(s).

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. This Box Canyon Resale Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any Participant except with the consent, in writing, (a) of SPPA and the other Participants, which consent shall not be unreasonably withheld, and (b) if and as necessary, of Seller. SPPA shall not assign this Agreement. Any Person taking assignment of this Agreement from a Participant shall agree in writing to be bound by the provisions of this Agreement, and as a condition to such assignment shall fund its portion of the Buyer Working Capital Reserve Account on or before the date of such assignment.

9.2 Voluntary Transfer of Participant Entitlement to Other Participant(s). For any reason, the Participant shall have the option of seeking to terminate its Participant Entitlement by transferring its Participant Entitlement to one or more other Participants. No provision in this Section 9.2 shall operate or be interpreted so as to relieve a Participant of any obligation to make a payment already due, relieve the Participant of any suspension by SPPA pursuant to Section 11.2, prevent or otherwise delay the Participant's termination pursuant to Section 11.2(d), or prevent or otherwise delay the permanent reallocation of Participant's Participant Entitlement pursuant to Article 12. In the event a Participant can and elects such termination under this Section 9.2, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the Participant seeking to terminate. Any part of the Participant Entitlement of the Participant seeking to terminate that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer. Such reoffering shall be repeated until the Participant Entitlement of the Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

- (i) If the Participant Entitlement of the Participant seeking to terminate has been fully reallocated to one or more non-defaulting Participants, that Participant shall be permitted to terminate its Participant Entitlement.
 - (ii) If the Participant Entitlement of the Participant seeking to terminate has not been fully reallocated to one or more non-defaulting Participants, that Participant may request that SPPA market the unallocated portion to eligible non-participants. Such buyers must agree to become Participants by executing the form of Participation Agreement attached as Exhibit A. The new Participants must meet any eligibility requirements to become Participants if they are not already. In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.
 - (iii) If SPPA does not succeed in remarketing the unallocated portion, that Participant shall not have the option of terminating its Participant Entitlement.
- (b) In the event of a termination of any Participant and reallocation of its Participant Entitlement pursuant to this Section 9.2, SPPA shall prepare a revised Schedule 4.1 reflecting the revised Participant Entitlements and Participant Percentages of all Participants.

9.3 Timing of Transfer of Funds. Notwithstanding anything to the contrary herein, no assigning Participant (a) shall be relieved of its obligations hereunder, (b) shall be entitled to receive any remaining amount of its share of Working Capital Reserve Amount, or (c) shall be entitled to a return of any of its posted security, in each such case, until the assignee(s) of such assigning Participant has fully funded its share of the Working Capital Reserve Amount and provided any posted security that is required of any assignee Participants.

ARTICLE TEN: DISPUTE RESOLUTION

10.1 Any controversy between or among two or more of the Parties hereto, arising out of or relating to this Agreement, or any breach hereof or default hereunder, may be submitted to binding arbitration upon agreement of the Parties in the dispute, or otherwise may be resolved in any court of competent jurisdiction. (subject to Section 10.4 if any Tribal Participants are parties to the dispute). Provided, however, that no Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.

10.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.

10.4 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.

- (a) Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Agreement, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article Ten, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in Exhibit B hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by

an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

- (b) The limited waivers set forth in this Section 10.4 shall apply to the enforcement of any agreement to arbitrate under this Agreement, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Agreement or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Section.

10.5 In no event shall any Party be liable to any other Party for indirect, special, consequential or exemplary damages arising out of or in any way related to this Agreement.

10.6 Agency Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE ELEVEN: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of Participant to make a payment when due under this Agreement, including to timely pay any invoice or post any required security under this Agreement (in each such case, a “Payment Default”); or
- (b) The failure of Participant to take any action required under this Agreement or as reasonably requested by SPPA under this Agreement or in furtherance of SPPA’s obligations under the Box Canyon PPA; or
- (c) Assignment of this Agreement by Participant, other than as permitted pursuant to Article Nine or any other action or omission by Participant that would cause SPPA to be in breach of any provision of the Box Canyon PPA; or
- (d) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; provided, however, that if such default cannot be cured within

such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

- (e) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies for Payment Default. In addition to any other available remedy for default, in the event of a Participant Payment Default, the following provisions shall apply:

- (a) If a Participant does not timely pay an invoice in accordance with Section 4.9(b), a Payment Default by such Participant shall be deemed to have occurred as of the day after such invoice was due and payable and SPPA shall promptly send notice to the defaulting Participant of such Payment Default.
- (b) Following SPPA's declaration of a Payment Default, SPPA may use that Participant's share of Buyer Working Capital Reserve Account to pay when due the Participant's share of any invoice SPPA has received for the Product. To the extent that SPPA uses funds in the Buyer Working Capital Reserve Account to pay a Participant's share of an invoice rendered to SPPA pursuant to the Box Canyon PPA and such use of funds reduces that Participant's contribution to the Buyer Working Capital Reserve Account to less than the Participant's Participant Percentage, SPPA shall deliver a notice to such Participant on the Business Day after such funds are used and the Participant shall, within 10 days of such notice from SPPA, restore its contribution to the Buyer Working Capital Reserve Account to its Participant Percentage. Such notice shall describe actions SPPA has taken with respect to the Participant's share of the Buyer Working Capital Reserve Account and Buyer Default Security.
- (c) If a Participant does not pay an invoice prior to the 25th of the Service Month, SPPA may suspend the Participant's rights to its Participant Entitlement to Product from Box Canyon. Following suspension of the Participant's rights, SPPA shall remarket the suspended Participant's allocated share, on an interim basis, to any other SPPA Participant that voluntarily assumes that share or any other eligible counterparty. If SPPA is unable to or otherwise does not remarket the share on a voluntary basis within thirty (30) days from the date of the defaulting Participant's suspension, SPPA shall reallocate the remaining portion of the suspended Participant's share pro rata (based upon the Participant Entitlements of Participants not in default), to all other Participants which are not in default. Notwithstanding the suspension, the Participant in Payment Default will

have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the Entitlement, up to the amount SPPA has been paid for such remarketed Entitlement less SPPA's cost. During the term of such suspension, SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay any portion of Participant's allocated share of all costs associated with Box Canyon or the Box Canyon PPA in excess of the amount received for any re-marketed or re-allocated Product. Such suspension shall continue until the earlier of the date that (i) Participant shall have cured such Payment Default, or (ii) the Participant shall have voluntarily transferred its Participant Entitlement to non-defaulting Participant(s) or to a new Participant pursuant to Section 9.2 and such new Participant(s) have paid the pro rata share of the Buyer Working Capital Reserve Amount.

- (d) If a Participant has not cured the Payment Default after 60 days of notice of the Payment Default, SPPA shall terminate the Participant, remarket the Participant's share on an interim basis, and reallocate the Participant's share on a permanent basis pursuant to Article Twelve of this Agreement. Notwithstanding the termination, the Participant will have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the allocation and been paid for such remarketed Entitlement, irrespective of the fact that the share has been remarketed on an interim or permanent basis. SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay Participant's allocated share of all costs associated with Box Canyon or Box Canyon PPA. SPPA shall promptly provide notice of any such termination to all Participants.

11.3 Remedies for other Defaults. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity and any other applicable provision of this Agreement, except as otherwise limited by this Agreement. The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.4 No Termination by Participant. In response to any Event of Default by SPPA, Participant shall not have the right to terminate this Agreement unless such termination is undertaken pursuant to Article Nine of this Agreement, including following the procedures in Section 9.2.

ARTICLE TWELVE: TRANSFER OF PARTICIPANT ENTITLEMENT FOLLOWING TERMINATION FOR DEFAULT

12.1 In the event of a default by any Participant and termination of such Participant's Participant Entitlement pursuant to Section 11.2(d) of this Agreement, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the defaulting Participant.
- (b) Any part of the Participant Entitlement of the defaulting Participant that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer.
- (c) Such reoffering shall be repeated until the Participant Entitlement of the defaulting Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

12.2 If the full amount of the defaulting Participant's Entitlement is not voluntarily accepted by other Participants, SPPA will attempt to market the remainder to entities that are not Participants, under the following conditions:

- (a) Such entities must meet all eligibility requirements to become Participants; and
- (b) Such entities must become Participants by executing the form of Participation Agreement attached as Exhibit A; and
- (c) In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.

12.3 SPPA shall transfer pro rata (based upon then-current Participant Entitlement), to all other Participants which are not in default, the remaining part of a defaulting Participant's Participant Entitlement if less than all of such Participant Entitlement has not been voluntarily accepted, pursuant to Section 12.1 above, by the non-defaulting Participants, or marketed to new Participants pursuant to Section 12.2 above, in all cases, within one hundred twenty (120) days after the date the Payment Default occurred. Upon the transfer of the full amount of the defaulting Participant's Participant Entitlement to other Participants (and such Participants' acceptance of such transfer), SPPA shall be relieved of any further obligation to attempt to dispose of such defaulting Participant's Participant Entitlement for the remaining months of SPPA's continued receipt of the Product.

12.4 Any part of the Participant Entitlement of a defaulting Participant voluntarily or involuntarily transferred pursuant to this Article Twelve to a non-defaulting Participant shall become a part of, and shall be added to, the Participant Entitlement of

each transferee Participant, and the transferee Participant shall be obligated to pay for its Participant Entitlement increased as aforesaid, (including contribution to the Buyer Working Capital Reserve Account and the posting of any security that is required of any transferee Participants, in each case, on or before the date that is concurrent with the transfer; provided that in the case of posting security, such date may be extended to such date that is required in order for SPPA to meet its obligations to post security pursuant to Section 7.4.3 of the Box Canyon PPA), as if the Participant Entitlement of the transferee Participant, increased as aforesaid, had been stated originally as the Participant Entitlement of the transferee Participant in the SPPA Power Purchase Project Agreement.

12.5 A defaulting Participant shall remain liable for all payments required to be made by it under its SPPA Power Purchase Project Agreement, except that the obligation of the defaulting Participant to pay SPPA shall be reduced to the extent that payments shall be received by SPPA for that part of the defaulting Participant's Participant Entitlement which is transferred to any existing or new Participant under Article 12 of this Agreement.

12.6 As provided in Article 4 of this Agreement, SPPA may use a defaulting Participant's share of the Working Capital Reserve Amount to cover the obligations of SPPA on behalf of the Defaulting Participant under the Box Canyon PPA. If any portion of defaulting Participant's share of the Working Capital Reserve Amount remains after satisfaction of such obligations, SPPA may withdraw such portion from the Working Capital Reserve Account only after all Participants with new or stepped-up obligations under this Article 12 have fully funded their new shares of the Working Capital Reserve Amount. SPPA may deduct from defaulting Participant's remaining portion of Working Capital any expenses incurred by SPPA on behalf of the Project Participants to manage the default by the defaulting Participant. If any amount of defaulting Participant's portion of Working Capital remains after all such expenses are satisfied, it shall be returned to defaulting Participant.

12.7 If a defaulting Participant's share of the Working Capital Reserve Amount is insufficient to cover the amounts SPPA owes on its behalf pursuant to the Box Canyon PPA, SPPA will allocate the costs among the Participants in Schedule 4.1 in proportion to their revised Participant Entitlements, such costs to be allocated concurrently with such voluntary or involuntary transfer.

ARTICLE THIRTEEN: UNCONTROLLABLE FORCE

13.1 To the extent a Force Majeure (as defined in the Box Canyon PPA) exists and relieves, delays or otherwise excuses either SPPA's or Seller's obligations under the Box Canyon PPA, the obligation of each Participant hereunder shall be relieved, delayed or excused during the continuance of such Force Majeure; provided that such relief, delay or excuse shall be limited to the extent and only for such obligations that are relieved, delayed or otherwise excused.

13.2 Under no circumstances shall the provisions of Section 13.1 provide relief, allow delay or otherwise excuse the obligations of a Participant to make payments required

by this Agreement or to increase its Participant Entitlement as required by Sections 12.2 and 12.3 of this Agreement.

ARTICLE FOURTEEN: REPRESENTATIONS AND WARRANTIES

14.1 SPPA's Representations. SPPA hereby makes the following representations, warranties and covenants to Participant as of the Effective Date and through the end of the Term:

- (a) SPPA is a political subdivision of the State of Arizona duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) The execution, delivery and performance by SPPA of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of SPPA, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of SPPA, threatened action or proceeding affecting SPPA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, SPPA's sole continuing covenant with respect to this Section 14.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) SPPA acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, SPPA hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

14.2 Participant's Representations. Participant hereby makes the following representations, warranties and covenants to SPPA as of the Effective Date and through the end of the Term:

- (a) Participant is a city, town, county, special taxing district established pursuant to Title 48, Chapters 11, 12, 17, 18, 19 or 22 of Arizona Revised

Statutes, or any Indian tribe authorized to form a separate legal entity pursuant to A.R.S. §§ 11-952 and 11-952.02, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

- (b) The execution, delivery and performance by Participant of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of Participant, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of Participant, threatened action or proceeding affecting Participant before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, Participant's sole continuing covenant with respect to this Section 14.2(e) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) Participant is, and shall remain throughout the term of this Agreement, a Pool Participant under the Pool Agreement.
- (f) Participant will establish, maintain and collect such rates, fees and charges so as to provide revenues at least sufficient to enable Participant to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.
- (g) The obligations of Participant to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by Participant pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The Participant shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The Participant shall not issue any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.
- (h) The Participant covenants to maintain its electric system in good repair in accordance with Prudent Electrical Practices, to cooperate with SPPA, and to keep accurate records and accounts.
- (i) The Participant shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the Participant assign all or any part of its Participant Entitlement or any or all of its interests under this Agreement, except upon the approval of SPPA, such approval not to be unreasonably withheld or delayed.

- (j) Participant's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by SPPA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.
- (k) Participant acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, Participant, unless it is a Tribal Participant that has provided a waiver described in Section 10.4, hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

ARTICLE FIFTEEN: CREDITWORTHINESS

15.1 The SPPA Pool Management Committee may increase the amount of security in the Buyer Working Capital Reserve Account described in Section 4.7 that may be required of individual Participants or for all Participants as credit concerns or Project needs may require.

15.2 Participant shall provide such financial information and operating data as SPPA is required to obtain from Participant under the Box Canyon PPA or any rules or regulations applicable to SPPA related to Box Canyon.

ARTICLE SIXTEEN: SPECIAL MEMBER PROVISIONS

16.1 RUS Approval. The effectiveness of this Agreement as to those Participants that are regulated by RUS (set forth on Exhibit D) (each, an "RUS Participant") is conditioned on approval by RUS of this Agreement as it applies to each such RUS Participant. No later than thirty (30) days after the Effective Date, each RUS Participant shall make an appropriate submission to RUS seeking the approval of this Agreement with respect to such RUS Participant. Each RUS Participant shall use reasonable best efforts to secure RUS approval. SPPA and each RUS Participant shall (at its own expense) cooperate with and assist one another in securing the necessary approval from RUS; provided that to the extent any information to be provided by a RUS Participant to RUS is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon RUS agreeing to maintain its confidentiality pursuant to a protective order or a confidentiality agreement.

16.2 RUS Denial or Modification; Reallocation. In the event RUS should deny approval of this Agreement with respect to a RUS Participant or require as a condition of approval of the Agreement any modifications that cannot be accommodated by an

amendment agreeable to all Participants that is executed on or before the date that is 30 days after the RUS provides such modifications, then the RUS Participant's Participant Entitlement shall be reduced by the amount subscribed by the terminated RUS Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating RUS Participant's prior Participant Entitlement (unless Participants agree on a different allocation) in a revised Schedule 4.1; provided that the entire amount purchased under the Box Canyon PPA is allocated and such allocation shall occur no later than the date that is the earlier to occur of (a) the date that is 30 days after such termination, and (b) the date that is 30 days prior to the expected Commercial Operation Date.

16.3 Cancellation Rights Under A.R.S. § 38-511. The Parties hereby acknowledge that the Participants listed on Exhibit E are political subdivisions that, pursuant to A.R.S. § 38-511, "may, within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract." The cancellation "shall be effective when written notice from . . . the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time."

16.4 Reallocation Upon Cancellation. Each of the Participants listed on Exhibit E agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Agreement, or based upon facts known prior to execution if, contrary to the parties' intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months' notice of such cancellation. If a Participant listed on Exhibit E exercises its cancellation rights as set forth in this Section 16.4, then the Participant Entitlement shall be reduced by the amount subscribed by the terminated Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating Participant's prior Participant Entitlement (unless Participants agree to another allocation) in a revised Schedule 4.1, and such reallocation shall occur (a) on the effective date of termination, if the effective date of termination is after the date that is 30 days before the expected Commercial Operation Date, or (b) the earlier to occur of (i) the date that is 30 days after such termination, and (ii) the date that is 30 days prior to the expected Commercial Operation Date, if the effective date of termination is before the date that is 30 days before the expected Commercial Operation Date; provided that the entire amount purchased under the Box Canyon PPA is allocated.

16.5 Buyer Working Capital Reserve and Security. Upon any termination under this Article 16, the terminating Participant (a) shall not be entitled to receive any amount of its share of Working Capital Reserve Amount, and (b) shall not be entitled to a return of any of its posted security, in each such case, until the Participants taking a reallocation of such terminating Participant's Participant Entitlement have fully funded their respective

share of the Working Capital Reserve Amount and provided any posted security that was required of the terminating Participant. Each Participant acknowledges and agrees that SPPA may use amounts of such terminating Participant in the Buyer Working Capital Reserve as needed to meet Participant's share of SPPA's obligations to Box Canyon under the Box Canyon PPA.

16.6 Consent and Waiver. It is further acknowledged that certain Participants have engaged legal counsel and/or technical consultants to represent them in connection with the development of this Agreement and activities related thereto, which legal counsel or technical consultants simultaneously represented one or more other Participants and/or SPPA in connection with the same activities, and such joint representation was consented to by the Participants and is a commonly used and efficient means of obtaining expert assistance with respect to matters of common interest to certain of the Participants. It is agreed and understood by all of the Parties that such representation of SPPA and any Participant in connection with this Agreement is not intended to be and shall not constitute a basis for invoking cancellation pursuant to A.R.S. § 38-511.

ARTICLE SEVENTEEN: MISCELLANEOUS

17.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arizona, without regard to conflicts of law doctrines.

17.2 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Participants at the addresses provided in Exhibit C, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update Exhibit C to reflect changes, without the necessity of amending this Agreement.

17.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17.5 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

17.6 Third-Party Beneficiaries. Seller is an express third party beneficiary of the following obligations and covenants in the Member Resale Agreement (Sections 4.5 (Participant's Entitlement), 4.6 (Cost Responsibility), 4.7 (Buyer Working Capital Reserve Account), 4.9 (Payment Obligation), 4.10 (Funding of Buyer Default Security), 5.3 (Pass-Through of Refunds), Section 9.2 (Voluntary Transfer of Participant Entitlement to Other Participant(s)), Section 9.3 (Timing of Transfer of Funds), Article Ten (Dispute Resolution) to the extent the dispute relates to a provision as to which Seller is a Third Party Beneficiary, Article Eleven (Defaults and Remedies), Article Twelve (Transfer of Participant Entitlement Following Termination for Default), and Section 15.2 (Creditworthiness) and Article Seventeen (Miscellaneous) and, accordingly, shall be entitled to enforce such covenants on behalf of Buyer, if Buyer fails to do so. Except as expressly provided in this Section 16.5, none of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

17.7 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

17.8 Headings and Table of Contents. Article and Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

17.9 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

17.10 Amendments and Waivers.

- (a) Except as expressly provided with respect to updates of Schedule 4.1, Exhibits A, B, C, D and E, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties, and if required by the Box Canyon PPA, the consent of Seller.
- (b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to

affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

17.11 Survival. Except for Articles Five (to the extent applicable to obligations arising prior to termination), Eight, Ten, and Eleven, which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement.

17.12 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

SOUTHWEST PUBLIC POWER AGENCY

By: _____

Name:

Title: General Manager

Dated: _____

PARTICIPANT OF [_____]

By: _____

Name:

Title:

Dated: _____

[SEAL]

Attest: _____

Name:

Title: Participant Clerk

Dated: _____

SCHEDULE 4.1

SPPA Project Contract 2021-2
 Box Canyon Resale Agreement Between SPPA And Participants
 (“Box Canyon Resale Agreement”)

Number	Participant	Participant Entitlement (Megawatts)	Participant Percentage
1	Aguila Irrigation District	3.9	1.30%
2	Ak-Chin Energy Services ⁽¹⁾	6.8	2.27%
3	Buckeye Water Conservation & Drainage District	3.9	1.30%
4	Electrical District No. 2 of Pinal County	34.2	11.40%
5	Electrical District No. 3 of Pinal County	63.4	21.13%
6	Electrical District No. 4 of Pinal County	26.4	8.80%
7	Electrical District No. 6 of Pinal County	6.8	2.27%
8	Electrical District No. 7 of Maricopa County	5.9	1.97%
9	Electrical District No. 8 of Maricopa County	21.5	7.17%
10	Gila River Indian Community Utility ⁽¹⁾	19.6	6.53%
11	Harquahala Valley Power District	9.8	3.27%
12	McMullen Valley Water Conservation & Drainage District	9.8	3.27%
13	Maricopa County Municipal Water	24.4	8.13%
14	Ocotillo Water Conservation District	1.9	0.63%
15	Roosevelt Irrigation District	5.9	1.97%
16	Safford (City of)	9.8	3.27%
17	Thatcher (Town of)	11.7	3.90%
18	Tonopah Irrigation District	5.9	1.97%
19	Tohono O’odham Utility Authority ⁽¹⁾	16.6	5.53%
20	Town of Wickenburg	5.9	1.97%
21	Williams (City of)	5.9	1.97%
	Total	300.0	100%

⁽¹⁾ Tribal Participant

EXHIBIT A

FORM OF PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT FOR THE SOUTHWEST PUBLIC POWER AGENCY, INC., PROJECT AGREEMENT FOR THE POWER PURCHASE AGREEMENT PROJECT (the “Participation Agreement”) is entered into as of the ___ day of _____, 202__, (“Participant Effective Date”) by and between _____ (the “Participant”) and the Southwest Public Power Agency, Inc. (“SPPA”).

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a “Participant” under the SPPA Project Contract No. 2021-2 (the “Project Agreement”), dated as of _____, 202__, by and among SPPA and the other Participants and under the Box Canyon Resale Agreement (“Box Canyon Resale Agreement”), dated as of _____, 202__, by and among SPPA and the “Participants” that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA’s execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Box Canyon Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Box Canyon Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article Fourteen of the Box Canyon Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement [and the Box Canyon Resale Agreement] shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Box Canyon Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Box Canyon Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Box Canyon Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit F of the Project Agreement and Exhibit C of the Box Canyon Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement reflecting the Participant’s initial

Voting Percentage and the adjusted Voting Percentages of the other Participants and an amended Schedule 4.1 of the Box Canyon Resale Agreement, to be effective as of the Participant Effective Date.

2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit B of the Box Canyon Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[PARTICIPANT]

By _____
Name: _____
Title: _____

Southwest Public Power Agency, Inc.

By _____
Name: _____
Title: _____

EXHIBIT B
COPIES OF TRIBAL RESOLUTIONS AND WAIVERS (SECTION 10.4)

EXHIBIT C
Notices (Section 16.2)
ADDRESSES FOR NOTICES

TO SPPA:

Southwest Public Power Agency, Inc.

160 North Pasadena
Suite 101
Mesa, AZ 08201

Attn: Dennis L. Delaney, dld@krsaline.com & Jennifer M Torpey, jmt@krsaline.com
with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

<p>Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>	<p>Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman</p> <p><i>With a copy to:</i></p> <p>Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282</p>
<p>Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager</p>	<p>City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager</p>
<p>City of Williams 113 South 1st Street Williams, AZ 86046 Attn: City Manager</p>	<p>Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128</p> <p>Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194</p> <p>Fax: 520-723-5252 Attn: General Manager</p>

<p>Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager</p>	<p>Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager</p>
<p>[reserved]</p>	<p>Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President</p>
<p>Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager</p>	<p>Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175 Gila Bend, AZ 85337 Attn: General Manager</p>
<p>Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager</p> <p><i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director</p> <p>The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson</p>	<p>Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>
<p>Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager</p>	<p>McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager</p>
<p>[reserved]</p>	<p>Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>

<p>Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent</p>	<p>Tohono O’odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager</p>
<p>Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator</p>	<p>Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager</p>
<p>Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager</p>	

EXHIBIT D
RUS PARTICIPANTS

1. Tohono O'odham Utility Authority

EXHIBIT E
ARIZONA MUNICIPAL PARTICIPANTS

1. City of Safford
2. City of Williams
3. Town of Thatcher
4. Town of Wickenburg

**RESOLUTION OF THE BOARD OF DIRECTORS
OF SOUTHWEST PUBLIC POWER AGENCY, INC.,
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE BOX CANYON PPA**

WHEREAS, Southwest Public Power Agency, Inc. (“SPPA”) wishes to enter into an agreement by which BOCA bn, LLC sells to SPPA certain renewable energy, capacity and associated environmental attributes, along with certain battery energy storage products (the “Box Canyon PPA”).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of SPPA that:

1. The Box Canyon PPA, as presented to the Board of Directors of SPPA, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The President and any other officer of SPPA, upon SPPA’s receipt of executed versions of the Box Canyon Resale Agreement or the nonmember Participation Agreements, which, in aggregate, commit to purchase and pay for at least seventy-five percent (75%) of the Product, as defined in Exhibit A of the Box Canyon PPA, are authorized to execute the Box Canyon PPA with only such changes as approved by the signatory, in consultation with SPPA’s legal counsel and SPPA’s administrative agent. From and after the execution and delivery of the Box Canyon PPA, the officers of SPPA and SPPA’s administrative agent are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Box Canyon PPA.

Adopted this ____ day of _____, 2022.

Attest:

Secretary

EXHIBIT A

Box Canyon PPA

POWER PURCHASE AGREEMENT

BETWEEN

BOCA BN, LLC

AND

SOUTHWEST PUBLIC POWER AGENCY, INC.

DATED [_____] , 2022

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EXHIBITS

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Exhibit C	Point of Delivery; Facility Meters; Metering Diagram
Exhibit D	Performance Guarantee and Round Trip Efficiency Provisions
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Exhibit F	Required Insurance
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Exhibit M	Form of Commercial Operation Date Certificate
Exhibit N	Form of Installed Capacity Certificate
Exhibit O	One Line Diagram of Facilities
Exhibit P	Resale Agreement
Exhibit Q	Example Invoice
Exhibit R	Form of Account Control Agreement

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”) is entered into as of [_____], 2022 (the “Effective Date”), by and between BOCA bn, LLC, a Delaware limited liability company (“Seller”), and Southwest Public Power Agency, Inc. or “SPPA”, an Arizona joint action agency (“Buyer”). Seller and Buyer are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, on November 2, 2020, Buyer issued a request for proposals for long term energy supply; and

WHEREAS, on April 8, 2021, BrightNight LLC, responded on behalf of Seller with a project named Box Canyon to Buyer’s request for proposals and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, from the Facility (as such term is defined in Exhibit A), certain renewable energy, capacity and associated environmental attributes, along with certain battery energy storage products; and

WHEREAS, Seller intends to construct, own, operate and maintain the Facility upon the terms and conditions set forth herein; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, Product (as such term is defined in Exhibit A) from the Facility, upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION 1 DEFINITIONS, RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any capitalized term appears, initially capitalized terms used in this Agreement shall have the following meanings included in Exhibit A.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Sections” or “Exhibits” are to sections of or exhibits to this Agreement; (c) all references to a particular entity or an electricity Market Price Index include a reference to such entity’s or index’s successors;

(d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined in this Agreement must be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Requirements of Law mean that Requirements of Law as amended, modified, supplemented or superseded from time to time and includes all rules and regulations promulgated thereunder; (i) the word “or” is not necessarily exclusive; (j) all references to energy and capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (k) reference to “days,” “months” and “years” means calendar days, months and years, respectively, unless expressly stated otherwise in this Agreement.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term in this Agreement must be construed according to its fair meaning and not strictly for or against either Party. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

1.2.3 Headings. The headings used for the sections of this Agreement are for convenience and reference purposes only and in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Service Contract. The Parties acknowledge and agree that they intend for this Agreement to be treated as a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

SECTION 2

TERM; CONDITIONS PRECEDENT; MILESTONES

2.1 Term. This Agreement shall be effective as of the Effective Date and, unless earlier terminated as provided in this Agreement, shall remain in effect until the twenty (20) year anniversary of the Commercial Operation Date (the “Term”).

2.2 Conditions Precedent. Seller’s obligations hereunder, including to construct the Facility, are expressly conditioned upon Seller having received (a) all material discretionary Permits on or before July 31, 2022, and (b) the Facilities Study on or before March 31, 2022, in each case on terms and conditions acceptable to Seller. If any of the conditions precedent in this Section 2.2 are not satisfied or waived, in each case, in Seller’s discretion by the dates specified in clause (a) and (b), as applicable, Seller may terminate this Agreement by delivering notice within thirty (30) days after the dates specified above without penalty and without triggering the default provisions in this Agreement or incurring any liability under this Agreement whatsoever, in which event the Parties shall have no further obligations to the other hereunder, except for those obligations which specifically survive the termination of this Agreement, including Buyer’s obligation to return the Project Development Security to Seller pursuant to Section 7.2. If Seller does not so terminate this Agreement, Seller shall be deemed to have waived the conditions in this Section 2.2, and this Agreement shall continue in full force and effect.

2.3 Milestones.

2.3.1 Guaranteed Commercial Operation Date Milestones. The “Guaranteed Commercial Operation Date” (as may be extended pursuant to the terms of this Section 2.3.1) for the Facility shall be determined pursuant to Part III of Exhibit H. The “Outside Commercial Operation Date” (as may be extended pursuant to the terms of this Agreement) for the Facility shall be the one year anniversary of the Guaranteed Commercial Operation Date. The Guaranteed Commercial Operation Date and Outside Commercial Operation Date shall be extended on a day-for-day basis to the extent that achievement of Commercial Operation is delayed (a) as a result of the actions or inactions of Buyer (including any Event of Default of Buyer or other breach by Buyer of this Agreement), (b) by or arising out of an event of Force Majeure, or (c) by the actions or inactions of the Interconnection Provider or otherwise related to the Generation Interconnection Agreement, unless Seller’s action or inaction was a substantial cause of the action or inaction by the Interconnection Provider.

2.3.2 Completion of Commercial Operation. Seller shall provide notice including completion certificates in the forms of Exhibits M and N to Buyer when the Facility has achieved Commercial Operation in accordance with the requirements of the definition of Commercial Operation, which notice shall include the Generating Facility Nameplate Capacity Rating of the Generating Facility, the Storage Capacity Rating of the Storage Facility, and the documentation required in the definition of Commercial Operation. If Buyer does not respond to Seller’s notice within ten (10) Business Days, then the Commercial Operation Date will be deemed to be the date of Commercial Operation Date as specified in such notice from Seller. If Buyer informs Seller in writing within such ten (10) Business Day period that Buyer believes the Facility has not achieved Commercial Operation, identifying the specific areas of deficiency, then Seller shall address the deficiencies stated in Buyer’s notice to the reasonable satisfaction of Buyer and resubmit its notice of achievement of Commercial Operation; provided that any disputes between the Parties with respect to whether the Facility has achieved Commercial Operation will be resolved in accordance with Section 23. The process of submitting a notice and resolving any deficiencies shall be repeated pursuant to this Section 2.3.2 until a notice from Seller complying with the first sentence of this paragraph demonstrating that the Facility has achieved Commercial Operation is agreed to or is finally determined pursuant to Section 23. In the event that the Generating Facility Nameplate Capacity Rating is less than the Expected Generating Facility Nameplate Capacity Rating or the Storage Capacity Rating is less than the Guaranteed Storage Capacity Rating upon Commercial Operation, then (i) Buyer’s obligations to pay for Product shall be based on actual installed nameplate capacity ratings for the Generating Facility and the Storage Facility, and (ii) subject to Section 2.3.3, the Performance Guarantee shall be based on the Expected Net Output adjusted for the installed Generating Facility Nameplate Capacity Rating.

2.3.3 Build-Out Period. If Commercial Operation is achieved with the Generating Facility or the Storage Facility at less than one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating or the Guaranteed Storage Capacity Rating, respectively, then Seller shall have (i) the right to bring the Generating Facility to one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating and (ii) the obligation to bring the Storage Facility to one hundred percent (100%) of the Guaranteed Storage Capacity Rating. Once Seller has completed the activities to bring the Generating Facility or Storage Facility, as applicable, to one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating or the Guaranteed Storage Capacity Rating, respectively, Seller shall provide Buyer with certificates and documentation described in the definition of Commercial

Operation, mutatis mutandis, with respect to such remaining capacity. If on the Build-Out Date, Seller has not completed all activities necessary to demonstrate that the Generating Facility can operate at one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating for all purposes of this Agreement, the Generating Facility shall include only the equipment and facilities which were part of the Generating Facility as of the Build-Out Date. In the event that the Generating Facility Nameplate Capacity Rating is less than the Expected Generating Facility Nameplate Capacity Rating on the Build-Out Date, then (i) Buyer's obligations to pay for Product shall be based on actual installed nameplate capacity rating for the Generating Facility, and (ii) the Performance Guarantee shall be based on the Expected Net Output adjusted for the final installed Generating Facility Nameplate Capacity Rating. For the avoidance of doubt, notwithstanding the occurrence of the Build-Out Date, Seller shall retain the obligation to bring the Storage Facility to one hundred percent (100%) of the Guaranteed Storage Capacity Rating as required by this Section 2.3.3.

2.3.4 Project Updates. Seller will provide quarterly updates to Buyer concerning the construction schedule and progress of Seller regarding the permitting, interconnection, engineering and design, major equipment procurement, financing, construction, and commissioning of the Facility, including any changes to Exhibit B and any significant developments or delays in achieving Commercial Operation by the Guaranteed Commercial Operation Date; provided that twelve (12) months prior to the Guaranteed Commercial Operation Date, Seller shall provide such updates to Buyer on a monthly basis; provided further that Seller shall promptly advise Buyer of any changes to the development and construction schedule of the Facility that would be reasonably expected to result in delays in achieving Commercial Operation by the Guaranteed Commercial Operation Date.

2.4 Delay Damages.

2.4.1 In the event that Commercial Operation has not occurred on or before the Guaranteed Commercial Operation Date (as it may be extended pursuant to the terms hereof), subject to the provisions on Section 2.4.3 and 2.4.4, Seller shall pay Buyer the Daily Delay Damage Amount for each Day of delay until Commercial Operation has been achieved.

2.4.2 Capacity Shortfall Damages.

(a) In the event that Commercial Operation has been achieved with the Generating Facility at less than the one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating and Seller exercises its right in Section 2.3.2 to bring the Generating Facility to one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating, Seller shall pay Buyer an amount equal to the Daily Delay Damage Amount multiplied by the Deficient Generating Facility Capacity Percentage for each Day after the Commercial Operation Date until the date that is the earlier to occur of (i) the date that the capacity of the Generating Facility equals the Expected Generating Facility Nameplate Capacity Rating, and (ii) the Build-Out Date.

(b) In the event that the capacity of the Generating Facility on the Build-Out Date is less than the Expected Generating Facility Nameplate Capacity Rating, Seller shall pay to Buyer an amount equal to: (i) Project Development Security amount multiplied by Final

Deficient Generating Facility Capacity Percentage; minus (ii) the total Daily Delay Damage Amounts paid or payable pursuant Section 2.4.1 multiplied by the Final Deficient Generating Facility Capacity Percentage; minus (iii) the sum of the amounts for each day after the Commercial Operation Date until the Build-Out Date equal to (A) the Daily Delay Damage Amount multiplied by (B) Final Deficient Generating Facility Capacity Percentage.

(c) In the event that Commercial Operation has been achieved with the Storage Facility at less than the one hundred percent (100%) of the Guaranteed Storage Capacity Rating, for each day commencing on the day after the first anniversary of the Commercial Operation Date, Seller shall pay Buyer Storage Capacity Damages for each MW of deficient capacity for each such day until the capacity of the Storage Facility equals the Guaranteed Storage Capacity Rating as demonstrated by a Storage Capacity Test. For the avoidance of doubt but subject to Section 2.4.3, the damages described by this Section 2.4.2(c) are in addition to any and all other damages Buyer may claim and shall be capped in aggregate at the Project Development Security (expressed as \$/kW of Guaranteed Storage Capacity Rating) multiplied by the applicable deficient capacity of the Storage Facility (expressed as kW). Buyer shall have the right to offset any payment due to Seller by amounts calculated by the Buyer in accordance with this Section 2.4.2(c).

2.4.3 Sole Remedy. Buyer's sole remedy and Seller's sole liability for the failure of (i) Seller to construct the Facility; (ii) Seller to achieve Commercial Operation by the Guaranteed Commercial Operation Date or the Outside Commercial Operation Date; or (iii) the Facility to achieve Commercial Operation at any capacity level or at all, shall be the payment by Seller of the Daily Delay Damage Amounts, as specified in Section 2.4.1, the liquidated damages payable pursuant to Section 2.4.2, and Buyer's right to terminate this Agreement (and payment by Seller of the Pre-COD Termination Payment) as specified in Section 2.4.4. In no event shall the liquidated damages collectively owing and payable pursuant to Section 2.4.1, Section 2.4.2, Section 2.4.4 and Part B.2.(d) of Exhibit D (paid prior to the Storage Facility achieving the Guaranteed Storage Facility Rating) exceed the Project Development Security amount.

2.4.4 Pre-COD Termination.

(a) In the event that Commercial Operation has not been achieved on or before the Outside Commercial Operation Date (as may be extended pursuant to the terms hereof), Buyer may, without further performance or financial obligations by either Party hereunder, terminate this Agreement effective upon written notice to Seller ("Buyer's Pre-COD Termination Notice") which shall be delivered no later than five (5) Business Days after the Outside Commercial Operation Date; provided that if on or before the date that is five (5) Business Days after receiving Buyer's Pre-COD Termination Notice, Seller provides written notice ("Seller's Extension Notice") to Buyer that it will pay Buyer's Cost to Cover for replacement Product for the period after the Outside Commercial Operation Date until Commercial Operation is achieved or Seller delivers a Seller's Retraction Notice to Buyer, Buyer may not terminate this Agreement pursuant to this Section 2.4.4(a) until such time that Seller delivers notice to Buyer that it will no longer pay Buyer's Cost to Cover per Seller's Extension Notice ("Seller's Retraction Notice"), in which such case Buyer may, without further performance or financial obligations by either Party hereunder, terminate this Agreement effective upon delivery of a Buyer's Pre-COD Termination Notice to Seller no later than five (5) Business Days after receipt of Seller's Retraction Notice;

provided further that if Commercial Operation is achieved prior to the date that Seller receives any Buyer's Pre-COD Termination Notice or if Seller achieves Commercial Operation after the Outside Commercial Operation Date after delivering a Seller Extension Notice (and prior to delivering any Seller's Retraction Notice), this Agreement shall not terminate and shall remain in full force and effect.

(b) If Buyer does not terminate this Agreement as and when permitted by Section 2.4.4(a):

(i) With respect to any portion of the Generating Facility and Storage Facility that have been installed and are capable of operating on a commercial basis as of the Outside Commercial Operation Date (such portion the "Operable Facility"), Seller shall inform Buyer as to the status of the Operable Facility and shall offer the Products associated with the Operable Facility to Buyer on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) (the "Offer"). Buyer will have sixty (60) days from receipt of the Offer to accept such Offer. If Buyer does not accept the Offer within such period, the Offer is rejected. If Buyer accepts the Offer, Buyer and Seller will amend this Agreement to reflect the size of the Operable Facility within ten (10) Business Days of Buyer's acceptance of the Offer. If Buyer rejects the Offer or does not respond within sixty (60) days from receipt of the Offer, this Agreement shall be terminated, and Seller may thereafter enter into a transaction with any third party in its sole and absolute discretion and without any financial liability or performance obligations to Buyer for the sale of the Products associated with the Operable Facility.

(ii) With respect to any portion of the Generating Facility and Storage Facility that have not been installed and that are not capable of operating on a commercial basis as of the Outside Commercial Operation Date (such portion the "Non-Operable Facility"), Seller shall have the right to terminate this Agreement. For a period of six (6) months after such termination, Seller shall inform Buyer as to Seller's plans to complete or abandon the Non-Operable Facility in whole or in part, and, to the extent that Seller plans to complete the Non-Operable Facility in whole or in part during such six (6)-month period, (A) Seller shall provide Buyer with all information that Buyer may reasonably request regarding Seller's plans to complete the Non-Operable Facility, and (B) Seller shall offer the Products associated with the Non-Operable Facility to Buyer on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) (the "Remainder Offer"). Buyer will have sixty (60) days from receipt of the Remainder Offer to accept such Remainder Offer. If Buyer does not accept the Remainder Offer within such period, the Remainder Offer is rejected. If Buyer accepts the Remainder Offer, Buyer and Seller will thereafter enter into an agreement within thirty (30) days of Buyer's acceptance of the Remainder Offer for the purchase and sale of the Products associated with the portion of the Non-Operable Facility Seller intends to complete with materially similar terms (including price) to those in this Agreement. If Buyer does not accept the Remainder Offer within the sixty (60) day period or if the Parties have not reached an agreement as to the Remainder Offer after six (6) months after the Outside Commercial Operation Date, Seller may thereafter enter into a transaction with any third party in its sole and absolute discretion and without any financial liability or performance obligations to Buyer with respect to Products that are associated with respect to the Non-Operable Facility.

(c) In the event of a termination pursuant to this Section 2.4.4 (or for any Event of Default before Commercial Operation where the Seller is the Defaulting Party), (i) Seller shall pay Buyer the Pre-COD Termination Payment, and (ii) the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination.

2.4.5 Liquidated Damages. Each Party acknowledges and agrees that: (a) the damages Buyer would incur due to Seller's delay in achieving Commercial Operation are difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Daily Delay Damage Amounts, the liquidated damages payable pursuant to Section 2.4.2, and the Pre-COD Termination Payment as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty.

2.5 Damages Invoicing. By the tenth (10th) day following (a) the end of each month in which Daily Delay Damage Amounts or liquidated damages pursuant to Section 2.4.2(a) accrue, (b) if liquidated damages are payable pursuant to Section 2.4.2(b), the Build Out Date, and (c) if liquidated damages are payable pursuant to Section 2.4.2(c), the date that the capacity of the Storage Facility equals the Guaranteed Storage Capacity Rating, in each case, Buyer will deliver to Seller an invoice for such amounts due Buyer. No later than thirty (30) days after receiving such an invoice and subject to Section 2.4, Section 9.3 and Section 9.4, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer, the amount stated in such invoice.

2.6 Facility Expansion. If Seller elects to develop, construct, own and operate an expansion of the Generating Facility or Storage Facility (a "Facility Expansion"), Seller shall prepare and send to Buyer a term sheet outlining the terms and conditions upon which Seller would propose, in good faith, to either include such Facility Expansion as an amendment to this Agreement or the terms and conditions for a new agreement that would govern such Facility Expansion (the "Facility Expansion Proposal"). For the avoidance of doubt, the repair, replacement, refurbishment, repowering, augmentation and any such other similar activity of or to the Facility shall not be considered a Facility Expansion. Upon receipt of a Facility Expansion Proposal, Buyer shall have a period of thirty (30) days to either accept or reject the terms of such Facility Expansion Proposal. If Buyer accepts such terms, the Parties will negotiate the agreement or agreements necessary to implement the Facility Expansion Proposal in good faith for a period of ninety (90) days, each acting in their sole and absolute discretion and with no obligation to enter into such agreement or agreements except on terms and conditions satisfactory to each such Party. If on or prior to the conclusion of the thirty (30) day period noted above, Buyer has rejected the Facility Expansion Proposal or fails to respond within such time, or at the conclusion of the ninety (90) day period noted above, the Parties have not executed the agreement or agreements necessary to implement the Facility Expansion Proposal, Seller shall be free to enter into an agreement with any third party with respect to the Facility Expansion; provided that, for the period of ninety (90) days after Buyer has rejected the Facility Expansion Proposal or fails to respond within the thirty (30) day period noted above, Seller shall not transact with any third party with respect to the Facility Expansion on terms that when taken as a whole are less favorable to Seller than those offered to Buyer; provided further, however, that any such Facility Expansion shall be separately sub-metered from the Facility such that the construction, operation, and maintenance of such

Facility Expansion shall be consistent with Prudent Electrical Practices and shall comply with all power quality requirements included in the Generation Interconnection Agreement. Regardless of whether Buyer accepts or rejects a Facility Expansion Proposal, Buyer shall reasonably cooperate with Seller's efforts to develop, construct, own and operate the associated Facility Expansion and Seller shall cooperate with Buyer to ensure Buyer bears no incremental costs as a result of the Facility Expansion and Buyer's use of the Facility is not limited by the Facility Expansion.

SECTION 3 REPRESENTATIONS AND WARRANTIES AND COVENANTS

3.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that:

3.1.1 Organization. It is duly incorporated, validly existing and in good standing under the laws of the State of its incorporation. It is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the execution and delivery of this Agreement and performance of its obligations under this Agreement makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement.

3.1.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with the terms hereof.

3.1.3 Organizational Actions. It has taken all organizational actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery of this Agreement and the performance of its obligations in this Agreement does not and will not (a) contravene or result in a violation or breach of or default under any provision of its organizational documents, or (b) require the consent or approval of any Governmental Authority or Person.

3.1.5 Valid and Enforceable Agreement. This Agreement is its valid and legally binding obligation, enforceable in accordance with the terms of this Agreement, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

3.1.6 Litigation. No judgment has been entered against Buyer with respect to litigation or arbitration, the effect of which would materially and adversely affect Buyer's performance of its obligations in this Agreement.

3.2 Seller's Representations, Warranties and Covenants. Seller represents, warrants, and covenants to Buyer that:

3.2.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State of its organization. It is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the execution and delivery of this Agreement and performance of its obligations under this Agreement makes qualification necessary, except where

the failure to be so qualified, licensed or in good standing would not reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement.

3.2.2 Authority. It: (a) has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with the terms hereof; (b) has (or will have prior to the Commercial Operation Date) all required legal authority to make wholesale sales of energy from the Facility; and (c) has the power and authority to own and operate the Facility and be present upon the Premises for the Term.

3.2.3 Organizational Actions. It has taken all organizational actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution and delivery of this Agreement and the performance of its obligations in this Agreement does not and will not (a) contravene or result in a violation or breach of or default under any provision of its organizational documents, or (b) require the consent or approval of any Governmental Authority or Person.

3.2.5 Valid and Enforceable Agreement. This Agreement is its valid and legally binding obligation, enforceable in accordance with the terms of this Agreement, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

3.2.6 Delivery of Product. On and after the Commercial Operation Date, Seller shall hold all legal and contractual rights sufficient to enable Seller to deliver Product to Buyer in accordance with the terms and conditions of this Agreement.

3.2.7 Litigation. No judgment has been entered against Seller with respect to litigation or arbitration, the effect of which would materially and adversely affect Seller's performance of its obligations in this Agreement.

3.2.8 No Third Party Sales. Seller has not sold, or entered into any contract or agreement to sell, to any Person (other than Buyer pursuant hereto) all or any portion of the Product.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties provided in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties provided in this Section 3 are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, either Party obtains actual knowledge of any event or information that would have caused any of its representations and warranties in this Agreement to be materially untrue or misleading at the time given, such Party shall as soon as practicable provide the other Party with notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct to the maximum extent possible.

3.5 Buyer Covenants. Buyer agrees that it shall not knowingly take any action that would give rise to a right by a Resale Participant to terminate its Participant Entitlement (as such term is defined in the Resale Agreement) pursuant to Sections 16.3, 16.4 or 16.5 of the Resale Agreement, or otherwise pursuant to Arizona Revised Statutes § 38-511.

SECTION 4 DELIVERIES OF NET OUTPUT

4.1 Purchase and Sale. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive all rights, title and interest that Seller has in and to the Product at the Contract Price and Storage Price specified in Exhibit H. In addition, subject to Section 5.1.1, prior to the Commercial Operation Date, Seller may sell and make available to Buyer (including through its Scheduling Agent), and Buyer shall purchase and receive, all Net Output and Green Tags from the Facility as Test Energy at the price and subject to the procedures specified in Section 5.1.1. If Seller decides to sell Test Energy pursuant to Section 5.1.1 (b), then Seller shall be entitled to proceeds of the sale of Test Energy less any associated, reasonable, documented, out of pocket costs to Buyer (including the cost of its Scheduling Agent if the services of the Scheduling Agent are used by Seller) and Buyer shall be entitled to all Green Tags associated with such Test Energy.

4.2 No Sales to Third Parties by Seller. Commencing on the Commercial Operation Date and except as otherwise provided for herein, one hundred percent (100%) of the Product from the Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Except as provided for in Section 5.1.1 and Section 10.5, Seller shall not: (a) sell, divert, grant, transfer or assign Product to any Person other than Buyer or report to any Person that any Product belongs to anyone other than Buyer; or (b) provide Buyer with any Product from any source other than the Facility; provided that the sale of some Net Output to the Interconnection Provider and the purchase of energy not generated by the Facility and then delivered to Buyer as imbalance energy in the process of scheduling the Facility's Net Output for delivery under this Agreement shall not be a breach of this Section 4.2; provided further that Seller shall have the right to sell Product to third parties in the event Buyer is in breach of the Agreement. It is understood that Buyer is purchasing the Product for resale to its members or other entities. Buyer or an entity to which the Buyer has resold all or any portion of the Product may report to any Person that it exclusively owns the amount of the Product that it has purchased, including the Capacity Rights, if any, and the Green Tags existing during the Term.

4.3 Delivery Responsibilities.

4.3.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Seller shall make available the Product (as applicable) to Buyer or its Scheduling Agent at the Point of Delivery; provided that Green Tags shall be delivered to Buyer pursuant to Section 4.5. Subject to Section 4.5 (including Section 4.5.4), Seller shall use commercially reasonable efforts to ensure that the Output produced from the Generating Facility is tracked for purposes of satisfying Section 4.5.2. If Buyer desires to claim the Facility as a Network Resource, then the Seller shall provide reasonable assistance to Buyer in conjunction with Buyer's efforts to have the Facility approved as a Network Resource.

If Buyer desires to claim the Facility as an Energy Imbalance Market participating resource, then the Seller shall provide reasonable assistance in conjunction with Buyer's efforts to have the Facility approved as an Energy Imbalance Market participating resource. Buyer shall reimburse Seller for any costs Seller incurs (other than de minimis costs) while providing assistance to Buyer or otherwise in connection with having the Facility approved as a Network Resource or an Energy Imbalance Market participating resource, pursuant to this Section 4.3.1.

4.3.2 Title and Risk of Loss of Net Output. Seller warrants that all Product made available to Buyer at the Point of Delivery, as applicable, shall be free and clear of all liens, claims and encumbrances of any nature or kind. Title to and risk of loss of all Net Output measured at the Point of Delivery shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be in exclusive control of, and responsible for, any damage or injury caused by, all Net Output up to the Point of Delivery. Buyer shall be in exclusive control of, and responsible for, any damages or injury caused by, Net Output at and after the Point of Delivery. Seller shall be responsible for all interconnection and transmission arrangements and costs required to deliver the Net Output and Test Energy from the Facility to the Point of Delivery, pursuant to the terms of the Generation Interconnection Agreement. Buyer shall be responsible for all transmission arrangements and costs or charges, if any, imposed in connection with the Net Output and Test Energy purchased by Buyer at and from the Point of Delivery, including transmission costs, transmission line losses, ancillary service arrangements and costs, generator imbalance services, imbalance charges and associated penalties; provided, however, to the extent Buyer incurs additional incremental costs as a result of Seller's willful misconduct or negligent act or omission, Seller shall be responsible for such additional incremental costs.

4.4 Curtailment.

4.4.1 Non-Compensable Curtailment. Buyer is not obligated to purchase, receive, pay for, or pay any damages associated with, Net Output that is not measured at the Point of Delivery due to any of the following: (a) the Facility is disconnected (or its interconnection is suspended or interrupted) from the System, in whole or in part, pursuant to the terms of the Generation Interconnection Agreement; (b) the Interconnection Provider directs an emergency curtailment of generation in the area of the Facility (which would include the Net Output); (c) the Facility is not fully integrated or synchronized with the System; or (d) an event of Force Majeure affecting Buyer's or its Scheduling Agent's ability to receive Net Output (collectively, "Non-Compensable Curtailment"). During any period of Non-Compensable Curtailment, Seller shall have the right to cause all curtailed Output to be used as Charging Energy without receiving a Charging Notice from Buyer or its Scheduling Agent, subject to the Storage Operating Parameters, the Generation Interconnection Agreement, and Prudent Electrical Practices; provided Seller shall promptly notify Buyer or its Scheduling Agent upon such occurrence.

4.4.2 Curtailed Amounts. Seller will reasonably determine the amount of Non-Compensable Curtailment and Compensable Curtailment based on the amount of Potential Net Output that could have been but was not generated as a result of Non-Compensable Curtailment or Compensable Curtailment. Seller shall provide Buyer and its Scheduling Agent with access to such information and data as Buyer and its Scheduling Agent may reasonably request to confirm to its reasonable satisfaction the amount of any Non-Compensable Curtailment or Compensable Curtailment. Any disputes between the Parties with respect to the amount or calculation of

Compensable Curtailment or Non-Compensable Curtailment will be resolved in accordance with Section 23.

4.5 Green Tags.

4.5.1 Title. Title to the Environmental Attributes shall pass from Seller to Buyer with the transfer of Green Tags pursuant to the WREGIS transfer mechanics as described in Section 4.5.2. The Parties acknowledge and agree that the number of Green Tags that are measured at the Point of Delivery will be lower than the amount of Output measured by the Generating Facility Meter (due to facility losses, parasitic load and station use which are not included in Net Output and Round Trip Efficiency Losses which are included in Net Output), and that the Product only includes those Green Tags that can be properly measured by the POD Meter (or if WREGIS Operating Rules permit the measurement by one of the other meters described in Exhibit C, such other meter). In the event that during the Term, applicable law changes such that Green Tags that are metered at the Generating Facility Metering Point may be claimed as the number of Green Tags that are available for transfer and retirement on WREGIS, the Parties agree to enter into good faith negotiations to amend this Agreement to account for such change in law; provided that any such amendment shall not alter the rights of (or result in additional costs to) Seller.

4.5.2 Documentation.

(a) Subject to the provisions of Section 4.5.4, Seller shall, at its own cost and expense register (and maintain its registration of) the Facility with the Center for Resource Solution's Green-e program, the Arizona Renewable Energy Standard requirements and, if eligible, certification with the California Energy Commission Renewable Portfolio Standard program, in each case including any successor programs, throughout the Term. Seller, at its own cost and expense, shall register with, pay fees required by, and comply with, reporting and other requirements of WREGIS Operating Rules relating to the Facility or Green Tags. Buyer shall, at its own cost and expense, register with, pay fees required by, and comply with, all other requirements of WREGIS Operating Rules in order to receive the Green Tags from Seller. Seller shall, at its own cost and expense, effectuate the transfer of WREGIS Certificates to Buyer in accordance with the WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Terms of Service Agreement (as such agreement is referred to in the CAISO Tariff) with Buyer or elect to act as its own or retain a third party WREGIS-defined Qualified Reporting Entity.

(b) To the extent that Seller breaches its obligations in Section 4.5.2(a) and, as a result, Seller does not effectuate the transfer of WREGIS Certificates to Buyer for Green Tags that Buyer would otherwise be entitled to in the absence of such breach, Buyer shall be entitled to a refund of the Green Tags Price Component for such Green Tags for which WREGIS Certificates are not delivered. Seller shall follow the timelines in the WREGIS Operating Rules for reporting such WREGIS Certificates and to correct any error and to allow for or cause the delivery of such WREGIS Certificates to Buyer in lieu of such refund payment. If Buyer is paid a refund pursuant to the preceding sentence and thereafter Seller corrects such deficiency and allows for or causes the delivery of such WREGIS Certificates to Buyer associated with the refunded Green Tags, Buyer shall remit to Seller the amount of any such refund upon the delivery of such WREGIS Certificates. Buyer shall not be entitled to any refund associated with the failure

to deliver WREGIS Certificates if such failure was caused by an action of Buyer acting in its capacity as a “WREGIS Account Holder” or a Qualified Reporting Entity, as applicable, pursuant to WREGIS Operating Rules. Seller shall promptly provide Buyer copies of all documentation it submits to WREGIS in connection with the foregoing.

(c) In the event that WREGIS (or any successor) ceases to exist, the Parties shall execute all additional documents and instruments in order to further document the transfer of the Green Tags to Buyer or its designees. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. For the avoidance of doubt and notwithstanding anything to the contrary herein, Seller will not be obligated to register the Facility in any renewable portfolio standard or similar program, or set of renewable portfolio standard or similar programs, that it or the Facility are not eligible for or that causes any violation of WREGIS Operating Rules.

4.5.3 Publicity. Seller shall not make any public statement or report under any program that any of the Green Tags purchased by Buyer hereunder belong to any Person other than Buyer.

4.5.4 Compliance Expenditure Cap. In the event that, after the Effective Date, (i) there is a change in the Requirements of Law or other applicable requirement, rules or regulations governing the obligations of Seller in Section 4.3.1 or Section 4.5.2 or (ii) Buyer wishes to register or maintain registration of the Facility with a renewable portfolio standard or equivalent program in states and programs other than those referenced in the first sentence of Section 4.5.2(a), in each case that requires Seller to incur costs above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under Section 4.3.1 or Section 4.5.2, then Seller’s required out-of-pocket expenses are limited to one hundred thousand dollars (\$100,000) in aggregate in any Contract Year (the “Compliance Expenditure Cap”). Any actions required for Seller to comply with its obligations set forth in the foregoing sentence, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions”. 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 written notice to Buyer of such anticipated out-of-pocket expenses. Buyer will have thirty (30) days to evaluate such notice (during which time period Seller is not obligated to take any Compliance Actions described in the notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (“Accepted Compliance Costs”), or (2) be deemed to have waived Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller (in which such case, for the avoidance of doubt, Seller shall not be required to take any such Compliance Actions and the other rights and obligations of the Parties in this Agreement shall not be affected). If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions. In the event that the Compliance Actions will result in Seller incurring costs in excess of the Accepted Compliance Costs as agreed upon by the Parties from time to time, Seller shall notify Buyer and Buyer may either agree to (and thereafter reimburse) Seller for such additional costs or

notify Seller that it will not agree to reimburse Seller for such additional costs. If Buyer notifies Seller that it will not agree to reimburse Seller for such additional costs, Seller will have no obligation to perform any Compliance Actions above those related to Accepted Compliance Costs as agreed by the Parties. Reimbursement of costs related to Compliance Actions shall be made within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

4.6 Capacity Rights; Ancillary Services.

4.6.1 Capacity Rights. Seller transfers to Buyer, and Buyer accepts from Seller, all right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Notwithstanding the foregoing, Seller shall not be required to take any action that would result in Seller incurring costs (including legal and other costs associated with obtaining consent from the Lender, if necessary), in excess of de minimis costs, necessary to provide or transfer Capacity Rights to Buyer or permit Buyer to monetize Capacity Rights; provided, however, that if Buyer agrees to reimburse Seller for all costs in excess of de minimis costs and Seller obtains consent from the Lender for such actions, Seller shall take the actions necessary to provide or transfer Capacity Rights to Buyer or permit Buyer to monetize Capacity Rights, and Buyer shall reimburse Seller for the costs Seller so incurs. Notwithstanding anything to the contrary herein, Seller shall not be obligated to alter, modify, augment or enhance the Facility in order to provide or transfer Capacity Rights to Buyer or permit Buyer to monetize Capacity Rights, if such alteration, modification, augmentation or enhancement will adversely affect the operation or maintenance of the Facility or reduce the residual value of the Facility at the termination of this Agreement.

4.6.2 Ancillary Services. For and in consideration of Buyer's agreement to purchase from Seller the Storage Product on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, all right, title, and interest that Seller may have in and to Ancillary Services, if any, existing during the Term; provided that all of Buyer's right, title, and interest in Ancillary Services shall be subject to its compliance with the Storage Operating Procedures and Interconnection Provider dispatch instructions. Notwithstanding the foregoing, Seller shall not be required to take any action that would result in Seller incurring costs (including legal and other costs associated with obtaining consent from the Lender, if necessary), in excess of de minimis costs, necessary to provide or transfer Ancillary Services to Buyer or permit Buyer to monetize or take the benefit of Ancillary Services; provided, however, that if Buyer agrees to reimburse Seller for all costs in excess of de minimis costs and Seller obtains consent from the Lender for such actions, Seller shall take actions necessary to provide or transfer Ancillary Services to Buyer or permit Buyer to monetize or take the benefit of Ancillary Services, and Buyer shall reimburse Seller for the costs Seller so incurs. Notwithstanding anything to the contrary herein, Seller shall not be obligated to alter, modify, augment or enhance the Facility in order to provide or transfer Ancillary Services to Buyer or permit Buyer to monetize Ancillary Services, if such alteration, modification, augmentation or enhancement will adversely affect the operation or maintenance of the Facility or reduce the residual value of the Facility at the termination of this Agreement.

SECTION 5
CONTRACT PRICE; COSTS AND TAXES

5.1 Product Payments. Buyer will pay Seller for the Product as stated in this Section 5.1, and Seller shall not be entitled to any compensation over and above the prices stated below for the Product.

5.1.1 Deliveries Prior to the Commercial Operation Date.

(a) No later than thirty (30) days prior to the expected date that the Generating Facility will first produce energy, Seller shall provide notice to Buyer specifying whether with respect to the energy generated prior to the Commercial Operation Date (“Test Energy”): (i) Seller will sell such Test Energy into the market or (ii) Seller will sell such Test Energy to Buyer; provided that, in the event Seller elects to sell such Test Energy to Buyer, Seller shall also provide non-binding day-ahead forecasts prior to each day.

(b) If Seller elects to sell Test Energy into the market in accordance with Section 5.1.1(a)(i), then, for the period prior to the Commercial Operation Date that the Generating Facility produces Test Energy, (i) Seller shall arrange transmission service to the Palo Verde hub, (ii) Buyer shall reasonably assist Seller with respect to such sales, including but not limited to Buyer’s use of its position as a buyer and seller of energy at the Palo Verde hub to sell Test Energy into the market on Seller’s behalf, (iii) Buyer shall remit the proceeds from such sales to Seller, net of Buyer’s reasonable costs to sell the Test Energy, and (iv) Seller shall be responsible for the costs and settlements of any imbalance between any schedule and the actual delivered power.

(c) If Seller elects to sell Test Energy to Buyer in accordance with Section 5.1.1(a)(ii), then, for the period prior to the Commercial Operation Date that the Generating Facility produces Test Energy, Buyer will pay to Seller an amount equal to thirty-five percent (35%) of the Contract Price for all Test Energy generated by the Generating Facility and measured by the POD Meter. The Parties agree that the Output may be used for start-up, testing and commissioning of the Storage Facility.

5.1.2 Deliveries On and After the Commercial Operation Date. For the period beginning on the Commercial Operation Date and thereafter during the Term, Buyer will pay to Seller: (a) the Contract Price per MWh of the sum of (i) Net Output plus (ii) Compensable Curtailment; (b) the Storage Capacity Payment; and (c) any amounts due pursuant to Section 10.2.2.

5.1.3 Non Compensable Deliveries. Buyer or its Scheduling Agent shall not be required to accept from Seller or pay Seller for: (a) any Non-Compensable Curtailment; or (b) Round Trip Efficiency Losses associated with Excess Charging Energy.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the delivery of Product, as applicable, up to the Point of Delivery. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and after the Point of Delivery.

5.3 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all existing and any new sales, use, excise, severance, ad valorem, real estate and any other similar taxes, imposed or levied by any Governmental Authority on the Product up to the Point of Delivery, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Product at and after the Point of Delivery (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. All Net Output delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Net Output. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such other Party reasonably requests with respect to any such taxes.

5.4 Tax Credits. For the avoidance of doubt, the Parties agree that neither the Contract Price nor Storage Price, nor the payment for Product delivered prior to Commercial Operation Date are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase of, price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Net Output or Storage Product from the Facility is eligible for, or receives Tax Credits during the Term.

5.5 Rates Not Subject to Review. The rates for service specified in this Agreement will remain in effect until expiration of the Term, and are not subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party will petition FERC to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or FERC acting *sua sponte* will be the "public interest" application of the "just and reasonable" standard of review as described 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), and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

5.6 Enel X Fees. Seller agrees that it shall (or shall cause its Affiliate to the Binding Bid Agreement to) satisfy the obligations in the Binding Bid Agreement to pay Enel X the transaction fee described therein.

SECTION 6 OPERATION AND CONTROL

6.1 Standard of Facility Construction and Operation.

6.1.1 General. At Seller's sole cost and expense, Seller shall operate and maintain the Facility in accordance with: (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, any Electric System Authority and any successors to the functions thereof; (b) the Generation Interconnection Agreement; (c) Permits; (d) Requirements of Law; (e) the requirements of this Agreement; and (f) Prudent Electrical Practice. The Parties acknowledge and agree that as between Seller and Buyer, Seller has full operational control over the Facility, including the right and authority to operate and maintain the Facility.

6.1.2 Fines and Penalties. Without limiting a Party's rights under Section 11.1.3, each Party must pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law as such fines and penalties relate to the subject matter of this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

6.2 Reserved.

6.3 Outages.

6.3.1 Planned Outages. Seller must provide Buyer and its Scheduling Agent with a written Notice of an annual forecast of Planned Outages that impact more than five percent (5%) of either the Generating Facility Nameplate Capacity Rating or the Storage Capacity Rating for each Contract Year at least forty-five (45) days, but no more than three (3) months, before the first day of each Contract Year, and may update such Planned Outage schedule as necessary to comply with the Generation Interconnection Agreement, the instructions of the Interconnection Provider and Electric System Authority, Prudent Electrical Practices or the Storage Operating Procedures, and any applicable resource adequacy capacity obligations. Any such update to the Planned Outage schedule must be promptly submitted to Buyer and its Scheduling Agent. Seller shall use commercially reasonable efforts to avoid scheduling Planned Outages in excess of five percent (5%) of operating hours during Summer Periods; provided, however, Seller may schedule Planned Outages (a) for the Generating Facility during the non-daylight hours of Summer Periods so long as it does not impact the operation of the Storage Facility during such hours and (b) for any portion of the Facility during Summer Periods if such maintenance is required to be performed during this period (and cannot be reasonably scheduled at a time other than during such Summer Period) in order to maintain equipment warranties or if such Planned Outages during this period are required to comply with equipment manufacturer requirements or Prudent Electrical Practices (such Planned Outages, the "Required Summer Planned Outages"). If Planned Outages during the Summer Period exceed five percent (5%) of operating hours, then Seller shall pay Buyer's Cost to Cover for replacement Product.

6.3.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage that impacts more than five percent (5%) of either the Generating Facility Nameplate Capacity Rating or the Storage Capacity Rating for the Facility, Seller must notify Buyer and its Scheduling Agent of such proposed Maintenance Outage as soon as practicable before each such Maintenance Outage begins. Notice of such proposed Maintenance Outage by Seller must include the expected start date and time of such Maintenance Outage, the amount of generation and storage capacity of the Facility that will not be available, and the expected completion date and time of such Maintenance Outage. Buyer will promptly respond to

such notice and may request reasonable modifications in the schedule for such Maintenance Outage. Seller must use commercially reasonable efforts to comply with any request to modify the schedule for such Maintenance Outage, provided that Seller may reject any change that has an adverse impact on Seller or the Facility. Once such Maintenance Outage has commenced, Seller shall keep Buyer and its Scheduling Agent reasonably apprised of any changes in the generation or storage capacity available from the Facility during such Maintenance Outage and any material changes in such expected Maintenance Outage completion date and time. Seller shall minimize any such Maintenance Outages during Summer Periods.

6.3.3 Forced Outages. Seller must promptly provide to Buyer and its Scheduling Agent verbal notice, via telephone to a number specified by Buyer (or other method approved by Buyer in writing), of any Forced Outage of the Facility resulting in more than five percent (5%) of the Generating Facility Nameplate Capacity Rating or five percent (5%) of the Storage Capacity Rating of the Storage Facility being unavailable. This notice from Seller must include the amount of the generation and storage capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation or storage capacity. Seller shall promptly update the notice as necessary to advise Buyer and its Scheduling Agent of any changed circumstances. Seller shall provide Buyer and its Scheduling Agent at least four (4) hours prior notice before re-energizing the Facility following a Forced Outage that lasted more than ten (10) consecutive days.

6.3.4 Effect of Outages on Expected Net Output. Seller represents and warrants that the Expected Net Output provided in Exhibit B takes into account the Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

6.4 Scheduling. Subject to Section 6.10, during the Term, Buyer (including through its Scheduling Agent) has the exclusive right and obligation to direct Seller to schedule the energy for the Generating Facility and the Storage Facility, and such obligation shall include the payment of all associated scheduling costs (including the costs of the Scheduling Agent). With respect to any and all scheduling requirements, (a) Seller shall cooperate with Buyer or its Scheduling Agent with respect to scheduling Planned Outages pursuant to Section 6.3.1, Maintenance Outages pursuant to Section 6.3.2, Net Output and Test Energy (if applicable), and (b) each Party will designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

6.5 Forecasting.

6.5.1 Long-Range Forecasts. Seller must, by September 1st and March 1st of each year during the Term, provide the expected long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile) through December and June of the following year, respectively. Seller must prepare such forecasts utilizing a renewable energy resource prediction model or service that is commonly used in the industry. The forecasts provided by Seller must comply with all applicable Electric System Authority tariff procedures, protocols, rules and testing as necessary and as may be modified from time to time. Seller will also provide periodic updates

to the forecasts provided above if it is reasonably expected there will be material changes to the expected Net Output that is projected in such forecasts.

6.5.2 Daily Forecasts and Updates. At Seller's cost and expense, Buyer will solicit and obtain from a qualified renewable energy production forecasting vendor, mutually agreed to by both Parties, forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services, a non-binding daily forecast for the next fourteen (14) days, and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Upon request by Buyer, Seller must provide a 24 hour telephone number that Buyer may contact to determine the then-current status of the Facility. Buyer will present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data. Seller must pay the amount stated on the invoice within thirty (30) days of receipt. The Parties must mutually agree to change the forecasting vendor.

6.6 Electronic Communications.

6.6.1 AGC.

(a) Beginning on the Commercial Operation Date, Buyer or its Scheduling Agent will direct Seller to dispatch the Facility through the AGC system installed by Seller.

(b) Buyer or its Scheduling Agent may notify Seller, through use of the AGC Set-Point, to curtail the delivery of Net Output to the Point of Delivery or Charging Energy to the Storage Facility Metering Point, for any reason and in its sole discretion and Seller shall promptly comply with such notification.

(c) The AGC Set-Point is calculated by Interconnection Provider and communicated electronically through the SCADA system. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the Facility control system manufacturer's set point margin of error.

(d) Unless otherwise directed by Buyer or its Scheduling Agent, Seller shall ensure that the Facility's AGC is in "Remote" set-point control during normal operations.

6.6.2 Telemetry. Seller shall during the Term provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement to Buyer's Scheduling Agent on a real-time basis, and will operate such equipment when requested by Buyer's Scheduling Agent to indicate:

- (a) instantaneous MW output at the Point of Delivery;
- (b) Output; and
- (c) the Facility's total instantaneous generation capacity.

Commencing on the date of the first delivery of Test Energy, Seller must also transmit or otherwise make accessible to Buyer's Scheduling Agent any other data from the Facility that Seller receives

on a real time basis, including Output and Storage Facility data. Such real time data must be made available to Buyer's Scheduling Agent on the same basis as Seller receives the data. If Seller uses a web-based performance monitoring system for the Facility, Seller must provide Buyer and its Scheduling Agent access to Seller's web-based performance monitoring system.

6.6.3 Dedicated Communication Circuit. Seller shall install the JSON and DNP3 communication systems/protocols, or such other communication systems/protocols reasonably agreed by the Parties to facilitate communication between Buyer's Scheduling Agent and the control center in the Facility's control room.

6.7 Reports and Records.

6.7.1 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller must provide Buyer and its Scheduling Agent with a copy of the electronic fault log within thirty (30) days after the end of the month to which the fault log applies.

6.7.2 Notice of Litigation. Seller shall promptly notify Buyer following its receipt of notice or knowledge of the commencement of any action, suit, or proceeding before any Governmental Authority against Seller relating to the Facility or this Agreement that would reasonably expect to materially and adversely affect Seller's performance of its obligations in this Agreement.

6.7.3 Additional Information. Seller shall provide to Buyer such other information as relevant to Seller's performance of its obligations under this Agreement or the Facility as Buyer may, from time to time, reasonably request. Such reports shall include, but are not limited to, (i) a monthly performance report showing monthly performance parameters such as Charging Energy, Discharging Energy, average state of charge, state of health, physical availability BMS level or PCS Level, temperature maximums and minimums, and performance score if applicable; and (ii) a quarterly report of operations and maintenance activities at the Facility.

6.7.4 Confidential Treatment. The reports and other information provided to Buyer under this Section 6.7 will be treated as Confidential Business Information. Seller will have the right to seek confidential treatment of any such reports and other information from any Governmental Authority entitled to receive such reports or other information.

6.8 Access Rights. Upon reasonable prior notice and subject to the prudent written safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Buyer and its employees, agents, inspectors and representatives ("Buyer Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment; (b) as necessary to witness any acceptance tests; (c) as necessary to witness any testing associated with the Facility, including testing with respect to the Performance Guarantee, Guaranteed Storage Availability and Storage Capacity Rating; and (d) for other reasonable purposes relevant to the administration of this Agreement at the reasonable request of Buyer. Buyer will release Seller from any and all Liabilities resulting from actions or omissions by any of the Buyer Representatives in connection with their access to the Facility, except to the

extent such Liabilities are caused by the willful misconduct or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

6.9 Performance Guarantee. If Seller fails to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit D, then Seller shall be liable to Buyer for the Performance Damages calculated and paid in accordance with Exhibit D. Each Party acknowledges and agrees that: (a) the damages Buyer would incur due to Seller's failure to satisfy the Performance Guarantee is difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Performance Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Notwithstanding the foregoing, Seller shall not be obligated to pay Performance Damages in aggregate in excess of the Performance Damage Cap. In the event the aggregate amount of Performance Damages exceeds Performance Damage Cap, Seller shall have the option to pay such excess damages in accordance with Exhibit D. If Seller does not pay such excess damages when due and payable, Buyer shall have the right to terminate the Agreement and neither Party shall have any further liability to the other Party with respect to the period following the effective date of such termination. If Buyer does not terminate the Agreement by the date that is thirty (30) calendar days after the date that any excess damages are due and payable (and after the application of any cure period without curing such failure), then Buyer shall not be able to terminate the Agreement (and no Performance Damages will be owed with respect to such excess amount) until the next time that Performance Damages are payable, in which such case the process described above shall repeat. Buyer's sole remedy and Seller's sole liability for the failure of Seller to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit D or any other failure to operate or maintain the Generating Facility in such a manner to achieve at least the Performance Guarantee shall be the payment by Seller of the Performance Damages, as specified in Exhibit D.

6.10 Storage Facility Charging and Capacity Tests.

6.10.1 Charging and Discharging Energy Management.

(a) Seller shall provide maintenance, repair or replacement of equipment in Seller's possession or control used to deliver Charging Energy from the Generating Facility to the Storage Facility, to charge the Storage Facility, and to discharge Discharging Energy from the Storage Facility to the Point of Delivery. The Storage Facility shall only be charged with Charging Energy until the date that is the six (6) year anniversary of the Placed In Service Date. At such time, in order to optimize the benefits of the Facility, including the use of grid energy to charge the Storage Facility, Buyer and Seller each agree to discuss in good faith potential reconfiguration of the Facility and potential modifications to the Agreement, as necessary; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement, and no grid energy shall be used to charge the Storage Facility until such terms are mutually accepted and incorporated as an amendment pursuant to Section 20.

(b) Subject to the requirements and limitations set forth in this Agreement, Buyer, through its Scheduling Agent, will have the right to direct Seller to charge and

discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) for all available components of the Storage Product, unless the Storage Facility is, in whole or in part, incapable of operations due to Force Majeure, Compensable Curtailment, a Planned Outage, Forced Outage, a Maintenance Outage, or the Storage Operating Parameters, by providing Charging Notices and Discharging Notices to Seller electronically. Each Charging Notice will be effective unless and until Buyer or its Scheduling Agent modifies such Charging Notice by providing Seller with an updated Charging Notice, and each Discharging Notice will be effective unless and until Buyer or its Scheduling Agent modifies such Discharging Notice by providing Seller with an updated Discharging Notice; provided if the Storage Facility reaches an operational constraint included in the Storage Operating Parameters or its continued operation in the current state would violate a manufacturer's warranty, the Storage Facility shall automatically adjust to remain within the Storage Operating Parameters pursuant to Exhibit K.

(c) Subject to Prudent Electrical Practices, Seller shall not charge or discharge the Storage Facility during the Term other than pursuant to a Charging Notice, a Discharging Notice, the Storage Operating Procedures, or in connection with a Storage Capacity Test; provided, that Seller may use the Facility's inverters to supply reactive power to the System as required under the Generation Interconnection Agreement so long as such use does not adversely impact (other than in a de minimis manner) Buyer's rights to direct Seller to charge and discharge the Storage Facility under this Section 6.10.1. If the Parties agree that use of the Storage Facility's inverters does adversely impact (other than in a de minimis manner) Buyer's rights to direct Seller to charge and discharge the Storage Facility under this Section 6.10.1, then Seller, at its option, shall cease its use of the Storage Facility's inverters to supply reactive power to the System or add reactive support at Seller's cost to alleviate the impact. If during the Term Seller (i) charges the Storage Facility to a stored energy level greater than the stored energy level provided for in the Charging Notice or Storage Operating Procedures or (ii) except as permitted under the Storage Operating Procedures, charges the Storage Facility without Buyer providing a Charging Notice (such excess energy deemed "Excess Charging Energy"), then: (A) Seller shall be responsible for all Round Trip Efficiency Losses associated with such Excess Charging Energy; (B) Buyer shall not be required to pay for Round Trip Efficiency Losses associated with such Excess Charging Energy; and (C) Buyer (including through its Scheduling Agent) shall be entitled to discharge such Excess Charging Energy and to all of the benefits (included as part of the Storage Product) associated with discharging such Excess Charging Energy. Notwithstanding anything in this Section 6.10.1(c), Seller shall be permitted to deliver Output to be used as Charging Energy during a Non-Compensable Curtailment, pursuant to Section 4.4.1, and any Charging Energy delivered during such a Non-Compensable Curtailment shall not be deemed Excess Charging Energy.

6.10.2 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete one or more Storage Capacity Tests in accordance with Exhibit L. Thereafter, at least once per Contract Year, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit L. Buyer shall have the right to require retests of the Storage Capacity Test in accordance with Exhibit L. Seller shall have the right to run one or more retests of the Storage Capacity Test in accordance with Exhibit L. All energy delivered to the Point of Delivery during

a Storage Capacity Test shall be treated as Net Output, including Buyer's obligation to receive such Net Output pursuant to Section 4.1.

(b) In accordance with and subject to Section 6.8, Buyer shall have the right, at its own cost and expense, to send one or more representative(s) to witness all Storage Capacity Tests. All costs of any Storage Capacity Test shall be borne by Seller unless a retest requested by Buyer results in the Storage Capacity Rating being at least equal to the Storage Capacity Rating established by the immediately preceding Storage Capacity Test, in which case Buyer shall be responsible for such costs.

(c) Following each Storage Capacity Test, Seller shall submit a testing report to Buyer in accordance with Exhibit L and reasonable support data requested by Buyer. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Storage Capacity Rating, then the actual capacity determined pursuant to such Storage Capacity Test (or re-test if applicable) shall become the new Storage Capacity Rating at the beginning of the month following the completion of the test for all purposes under this Agreement until a new Storage Capacity Rating is determined pursuant to a subsequent Storage Capacity Test. If the actual capacity determined pursuant to a Storage Capacity Test is greater than the then current Storage Capacity Rating, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Storage Capacity Rating at the beginning of the month following the completion of the test for all purposes under this Agreement until a new Storage Capacity Rating is determined pursuant to a subsequent Storage Capacity Test, provided in no event shall the Storage Capacity Rating be greater than the Guaranteed Storage Capacity Rating. In the event that a Storage Capacity Test determines that the Storage Capacity Rating is less than two hundred ninety-five (295) MW, Seller shall exercise commercially reasonable efforts to augment the Storage Facility as soon as reasonably practicable such that it meets the Guaranteed Storage Capacity Rating as determined pursuant to a subsequent Storage Capacity Test. Costs of such augmentation shall not count towards the Compliance Expenditure Cap in Section 4.5.4.

SECTION 7 SECURITY

7.1 Provision of Security. During the Term, (i) each of Seller and Buyer must provide and maintain Security as required by this Section 7, and (ii) if a Party satisfies the Credit Requirements, then such Party must thereafter provide every three (3) months all such financial information and records as the other Party may reasonably request in order to verify such Party continues to satisfy the Credit Requirements. Buyer will provide Resale Participants' financial information and operating data as Seller may reasonably request from time to time.

7.2 Project Development Security. If after the date that Buyer delivers the confirmation described in Section 2 of Part III of Exhibit H, and prior to the Commercial Operation Date, Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) Buyer requesting the posting of Project Development Security, Seller shall provide to Buyer and maintain Project Development Security in accordance with this Section 7. Within five (5) Business Days from receipt of a written request from Buyer at any time prior to the Commercial Operation Date, Seller shall provide to Buyer all such financial information and records as Buyer may reasonably request in order to verify that Seller continues to satisfy the

requirements of this Section 7, including that any Project Development Security and the associated Security Provider continues to satisfy the requirements of this Section 7. If at any time prior to the Commercial Operation Date Seller's Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) Buyer requesting the posting of alternate Project Development Security, Seller shall provide to Buyer and maintain in accordance with this Section 7 alternate Project Development Security. Subject to the provisions of Section 2.4, Buyer shall be entitled to draw upon the Project Development Security for any Daily Delay Damage Amounts due but unpaid to Buyer under this Agreement. Seller shall not be required to maintain the Project Development Security after the Commercial Operation Date if no damages are owed to Buyer under this Agreement and, if applicable, the Seller Default Security has been provided as required under this Agreement. If and when Seller is no longer required to provide Project Development Security under this Agreement, including upon termination of this Agreement and no obligations or liabilities remain due by Seller to Buyer, then Buyer shall return any Project Development Security (along with any reasonably requested confirmation of termination of such requirement) to Seller promptly upon request.

7.3 Seller Default Security. If on the Commercial Operation Date or at any time thereafter during the Term Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) Buyer requesting the posting of Seller Default Security, Seller shall provide to Buyer and maintain in accordance with this Section 7 Seller Default Security. Within five (5) Business Days from receipt of a written request from Buyer at any time after the Commercial Operation Date, Seller shall provide to Buyer all such financial information and records as Buyer may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 7, including that any Seller Default Security and the associated Security Provider continues to satisfy the requirements of this Section 7. If at any time after the Commercial Operation Date Seller's Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) Buyer requesting the posting of alternate Seller Default Security, Seller shall provide to Buyer and maintain in accordance with this Section 7 alternate Seller Default Security. Buyer shall be entitled to draw upon the Seller Default Security for damages if this Agreement is terminated under Section 10 because of a Seller Event of Default. If no obligations or liabilities remain due by Seller to Buyer upon termination of this Agreement, then Buyer shall return any remaining Seller Default Security to Seller within sixty (60) days following the termination of this Agreement.

7.4 Buyer Default Security.

7.4.1 Resale Agreement.

(a) Buyer is purchasing the Product from the Facility for resale to Resale Participants as described in the Resale Agreement. In the event of a conflict between the terms of this Agreement and the Resale Agreement: the terms of this Agreement shall prevail and Parties shall look to the terms of this Agreement to resolve such conflict.

(b) Pursuant to the Resale Agreement, the Resale Participants each commit to step-up obligations to assume cost responsibility for the shares of defaulting Resale Participants, to fund a working capital reserve account as described in the Resale Agreement and in Section 7.4.2, and to setting their rates, fees and charges at a sufficient level to pay their expenses, including their obligation to purchase the Product of the Facility from Buyer.

(c) Buyer shall comply with its obligations set forth in the Resale Agreement and, further, shall take such actions as are necessary to enforce the Resale Agreement in accordance with its terms with respect to the other parties thereto, including Section 4.5 (Participant's Entitlement), Section 4.6 (Cost Responsibility), Section 4.7 (Buyer Working Capital Reserve Account), Section 4.9 (Payment Obligation), Section 4.10 (Funding of Buyer Default Security), Section 5.3 (Pass-Through of Refunds), Section 9.2 (Voluntary Transfer of Participant Entitlement to Other Participant(s)), Section 9.3 (Timing of Transfer of Funds), Article Ten (Dispute Resolution), Article Eleven (Defaults and Remedies), Article Twelve (Transfer of Participant Entitlement Following Termination for Default), and Section 15.2 (Creditworthiness).

(d) Seller is an express third party beneficiary of the following obligations and covenants in the Resale Agreement: Section 4.5 (Participant's Entitlement), Section 4.6 (Cost Responsibility), Section 4.7 (Buyer Working Capital Reserve Account), Section 4.9 (Payment Obligation), Section 4.10 (Funding of Buyer Default Security), Section 5.3 (Pass-Through of Refunds), Section 9.2 (Voluntary Transfer of Participant Entitlement to Other Participant(s)), Section 9.3 (Timing of Transfer of Funds), Article Ten (Dispute Resolution) to the extent the dispute relates to a provision as to which Seller is a Third Party Beneficiary, Article Eleven (Defaults and Remedies), Article Twelve (Transfer of Participant Entitlement Following Termination for Default), Section 15.2 (Creditworthiness) and Article Seventeen (Miscellaneous) thereof. Seller shall be entitled to enforce such provisions on behalf of Buyer to the extent Buyer has failed to enforce such provisions (other than any breaches that are de minimis in nature). To the extent that Seller is an express third-party beneficiary of a provision of the Resale Agreement, Buyer shall not amend, terminate or otherwise modify such provisions without Seller's prior written consent, which consent shall not be unreasonably withheld (provided that it shall be reasonable for Seller to withhold its consent if its Lenders do not provide any required consent to Seller; provided further that if Seller intends to grant such consent, Seller exercises reasonable efforts to obtain such consent of the Lenders).

7.4.2 Buyer Working Capital Reserve Account.

(a) On or before the date that is the earlier to occur of the following: (a) fifteen (15) months prior to the Guaranteed Commercial Operation Date and (b) the date that Seller enters into definitive agreements with a Lender(s) in connection with the financing for the Project, Seller shall establish the Buyer Working Capital Reserve Account with the Account Bank and Buyer, Seller and the Account Bank shall enter into the Account Control Agreement. Each Party shall thereafter comply with their respective obligations under the Account Control Agreement. For the avoidance of doubt, the requirement of this Agreement to establish the Buyer Working Capital Reserve Account shall not require the deposit of any funds in the Buyer Working Capital Reserve Account until such time as required by Section 7.4.2(b).

(b) Beginning on the date that is thirty (30) days prior to the expected Commercial Operation Date and throughout the Term, Buyer shall fund and thereafter maintain, subject to the replenishment provisions referenced in Section 7.4.2(g), the Buyer Working Capital Reserve Account in an amount no less than the Buyer Working Capital Reserve Amount, except as permitted by this Agreement.

(c) Buyer shall deliver invoices to each Resale Participant for each month during the Term for Product that is to be delivered under this Agreement based on the amounts Buyer reasonably estimates that Seller will invoice Buyer for such month (with such other amounts that Buyer is required to bill such Resale Participants pursuant to the Resale Agreement) such that each Resale Participant is required to make payment for such invoice by the 10th day of such month (or the next Business Day if such 10th day of such month is not a Business Day). If a Resale Participant does not timely pay each such invoice by the 10th day of such month (or the next Business Day if such 10th day of such month is not a Business Day) and otherwise in accordance with Section 4.9(b) of the Resale Agreement, a “Payment Default” shall be deemed to occur in accordance with Section 11.2(a) of the Resale Agreement. Buyer shall send a notice of such “Payment Default” to the Resale Participant as soon as practicable after such “Payment Default” occurs. Buyer shall reallocate the defaulting Resale Participant’s share on a permanent basis to a new Resale Participant, the other Resale Participants, or such other entity as may be permitted under the Resale Agreement and such reallocation shall occur no later than the date that is one hundred twenty (120) days after the date that the “Payment Default” occurred.

(d) To the extent that Buyer has not received sufficient funds from a Resale Participant to satisfy any payment obligation of that Resale Participant under the Resale Agreement (any and each such deficiency, the “Resale Participant Deficient Amount”), Buyer shall (a) notify Seller of such event and the amount of such Resale Participant Deficient Amount, and (b) apply funds attributable to that Resale Participant from the Buyer Working Capital Reserve Account to make payments as required by this Agreement (such uses of such funds, each a “Working Capital Payment Use”). Amounts in the Buyer Working Capital Reserve Account shall not be used by Buyer (or Seller as permitted by Section 7.4.2(e) if Seller is exercising Exclusive Control over the Buyer Working Capital Reserve Account) for any other purpose.

(e) In the event of a Buyer Event of Default (and for the avoidance of doubt, after the expiration of any applicable cure period), Seller may issue a “Notice of Exclusive Control” (as described in the Account Control Agreement). Upon the issuance of such “Notice of Exclusive Control”, Seller may make draws from the Buyer Working Capital Reserve Account in amounts up to any Resale Participant Deficient Amounts to satisfy payment obligations owed to Seller under this Agreement (“Working Capital Event of Default Uses”). Notwithstanding the expiration of the cure period, if Buyer cures the originating Event of Default and there are no other Buyer Events of Default, Seller shall revoke or rescind its Notice of Exclusive Control.

(f) To the extent any draws are made by either Buyer or Seller from the Buyer Working Capital Reserve Account as permitted under this Section 7.4.2 for Working Capital Payment Uses or Working Capital Event of Default Uses, Buyer shall (a) deliver a notice to the applicable Resale Participants for whom funds are used in the Buyer Working Capital Reserve Account on the Business Day after such funds are used and (b) within ten (10) days after such funds are used, replenish the Buyer Working Capital Reserve Account in full. To the extent that

a Resale Participant is in breach or default of its obligations under the Resale Agreement, Buyer shall also deposit amounts received from Seller pursuant to this Agreement that would otherwise be payable to such Resale Participant under the Resale Agreement into the Buyer Working Capital Reserve until such time as the Resale Participant cures its breach or default under the Resale Agreement.

(g) To the extent any draws are made by Buyer from the Buyer Working Capital Reserve Account as permitted under this Section 7.4.2, Buyer shall cause the Buyer Working Capital Reserve Account to be maintained at an amount no less than the Buyer Working Capital Reserve Amount by periodically invoicing or otherwise requiring its Resale Participants to replenish the Buyer Working Capital Reserve Account in accordance with Section 4.6 (Cost Responsibility), Section 4.7 (Buyer Working Capital Reserve Account), Section 4.9 (Payment Obligation), Section 5.3 (Pass-Through of Refunds), Section 9.3 (Timing of Transfer of Funds), Article 11 (Defaults and Remedies) and Article 12 (Transfer of Participant Entitlement Following Termination for Default) of the Resale Agreement.

(h) Buyer shall not permit any Resale Participant to voluntarily terminate its Participant Entitlement (as such term is defined in the Resale Agreement) until such Resale Participant's Participant Entitlement has been fully allocated to other Resale Participants under the Resale Agreement.

(i) In the event that an Account Bank under any then existing Account Control Agreement issues a notice of termination to Buyer and Seller of such Account Control Agreement on or before the date that is thirty (30) days prior to the effective date of such termination, Buyer shall (a) identify a new Account Bank and provide Seller with a new Account Control Agreement that Buyer and the new Account Bank are willing to execute that is substantially in the form of Exhibit R, and (b) upon execution of the new Account Control Agreement by all parties thereto, cause the Buyer Working Capital Reserve Amount to be deposited into the new Buyer Working Capital Reserve Account at the new Account Bank. If as of the effective date of the termination of any then existing Account Control Agreement, the Buyer Working Capital Reserve Amount has not been deposited into the new Buyer Working Capital Reserve Account that is the subject of a newly executed Account Control Agreement with the new Account Bank, and the existing Account Bank remits funds to Seller under the existing Account Control Agreement, Seller shall hold such funds, in trust for and as agent of the respective Parties, in accordance with their interests, until such time as such new Account Control Agreement with the new Account Bank has been executed at which point Seller shall deposit such funds into the new Buyer Working Capital Reserve Account.

7.4.3 Buyer Default Security Requirement. If after the date that Seller either satisfies or waives the conditions precedent described in Section 2.2 or at any time thereafter during the Term, Buyer fails to satisfy the Credit Requirements, then within six (6) months after the earlier of Buyer's receipt of notice from (a) any source that Buyer no longer satisfies the Credit Requirements or (b) Seller requesting the posting of Buyer Default Security, Buyer shall provide to Seller and maintain in accordance with this Section 7, Buyer Default Security. Within five (5) Business Days from receipt of a written request from Seller at any time after the date that Buyer is required to post Buyer Default Security pursuant to the first sentence of this Section 7.4.3, Buyer shall provide to Seller all such financial information and records as Seller may reasonably request

in order to verify that Buyer continues to satisfy the requirements of this Section 7, including that any Buyer Default Security and the associated Security Provider continues to satisfy the requirements of this Section 7. If at any time after the date that Buyer is required to post Buyer Default Security pursuant to the first sentence of this Section 7.4.3, Buyer's Security Provider fails to satisfy the Credit Requirements, then within twenty (20) Business Days after the earlier of Buyer's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) Seller requesting the posting of alternate Buyer Default Security, Buyer must provide to Seller and maintain in accordance with this Section 7, alternate Buyer Default Security. Seller shall be entitled to draw upon the Buyer Default Security for damages if this Agreement is terminated under Section 10 because of a Buyer Event of Default. If no obligations or liabilities remain due by Buyer to Seller upon termination of this Agreement, then Seller must return any remaining Buyer Default Security to Buyer within sixty (60) days following the termination of this Agreement.

7.5 Security is Not a Limit on Liability. Excluding the Project Development Security and as otherwise provided for herein, the Security contemplated under this Section 7 constitutes security for, but is not a limitation of, the respective Party's obligations and liabilities under this Agreement and is not the other Party's exclusive remedy for the failure of the Party posting security to perform in accordance with this Agreement. If any Security provided pursuant to this Section 7 will terminate or expire by its terms within thirty (30) days and the providing Party has not delivered replacement Security in such amount and form as is required pursuant to this Section 7, then the other Party shall be entitled to draw the full amount of the Security and to hold such amount as Security until such time as the delinquent Party delivers replacement Security in such amount and form as is required pursuant to this Section 7. For greater certainty, (a) Seller and Buyer are required to replenish the Seller Default Security and Buyer Default Security that is drawn down, and (b) Seller shall not be required to replenish the Project Development Security.

SECTION 8 METERING

8.1 Installation of Metering Equipment. At Seller's cost and expense, Seller shall design, furnish, install, own, inspect, test, and maintain (a) the Generating Facility Meter, (b) the Storage Facility Meter, (c) Generating Facility Auxiliary Power Meter, (d) the metering equipment required by the Generation Interconnection Agreement, including at the Point of Delivery, and (e) for a Facility with a Two Storage Meter Configuration, a Storage Facility Auxiliary Power Meter. Metering diagrams are in Exhibit C (Attachment I) and one line diagrams are in Exhibit O.

8.2 Metering. Metering at the Point of Delivery shall be performed consistent with the Generation Interconnection Agreement and this Section 8. Metering at the Generating Facility Metering Point and the Storage Facility Metering Point shall be performed consistent with this Section 8.

8.3 Inspection, Testing, Repair and Replacement of Meters. Seller shall have the meters tested and inspected, at Sellers' expense, upon installation and at least annually thereafter. Upon request from Buyer, Seller also shall have additional inspections or tests of the metering equipment provided for in this Section 8 performed; provided that Buyer may not request more than one (1) additional test during any Contract Year unless Buyer provides information that reasonably supports the contention that a meter is providing readings in excess of one-half percent

(+/-0.5%); provided further that the costs of such additional inspection or test shall be Buyer's responsibility unless such inspection or test reveals an error exceeding one-half percent (+/-0.5%), either fast or slow. All tests shall be conducted by independent third parties acceptable to Buyer and Seller and qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If any of the inspections or tests disclose an error exceeding one-half percent (+/-0.5%), either fast or slow, then the necessary corrections based upon the inaccuracy found, shall be made to previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, then the proper correction shall be made to the measurements taken during the latter half of the time the metering equipment was in service since last tested, but not exceeding six (6) months, in the amount the metering equipment shall have been shown to be in error by such test so long as such adjustments are accepted by WREGIS. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment.

8.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility. The actual expense of any Buyer-requested additional inspections or tests shall be borne by Buyer, unless, upon such inspection or test such meter is found to register inaccurately by more than the allowable limits established in this Section 8, in which event the expense of the requested additional inspection or test shall be borne by Seller.

8.5 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS and report generation information to WREGIS pursuant to a WREGIS-approved meter dedicated to the Facility and only the Facility.

8.6 Meteorological Data. No later than the Commercial Operation Date, Seller shall install, own, inspect, test and maintain during the Term, six (6) industry approved remote sensing devices at the Premises in accordance with Prudent Electrical Practice. Seller shall bear all costs relating to performance of its obligations under this Section 8.6, provided that the actual expense of any Buyer-requested additional inspection or testing shall be borne by Buyer. Seller shall maintain all data obtained from such device for a period of at least two (2) years and shall make all such data available to Buyer and Buyer Representatives upon written request.

SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month during the Term, Seller shall deliver to Buyer an invoice showing the total amount due for such month, including Seller's computation of: (a) the Net Output during such month, (b) the Compensable Curtailment, if any, during such month; (c) any amounts owed under Section 10.2.2, as applicable, during such month; and (d) the Storage Capacity Rating of the Storage Facility. Subject to Section 9.4, Buyer shall pay each invoice on or before the later of (i) the twentieth (20th) day following receipt of such invoice or (ii) the thirtieth (30th) day following the end of the month to which such invoice applies. An example form of an invoice is in Exhibit Q.

9.2 Offsets. Either Party may offset any payment due under this Agreement against undisputed amounts owed by the other Party pursuant to this Agreement. Either Party's exercise of recoupment and set off rights will not limit the other remedies available to such Party under this Agreement.

9.3 Interest on Late Payments. Any amounts not paid when due under this Agreement will bear interest at the Contract Interest Rate from the date due until but not including the date paid.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due under an invoice provided under this Agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined in accordance with Section 23 to be due, then the amount due must be paid within ten (10) Business Days after such determination, along with interest at the Contract Interest Rate from the date due until but not including the date paid.

9.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its cost and expense and upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made under this Agreement or to verify the other Party's performance of its obligations under this Agreement. Upon request, each Party must provide to the other Party statements evidencing the quantities of Output metered at the Generating Facility Metering Point, Charging Energy and Discharging Energy metered at the Storage Facility Metering Point, and energy measured or metered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement will be issued and, subject to Section 9.4, any amount due by one Party to the other Party as a result of the corrected statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

SECTION 10 DEFAULTS AND REMEDIES

10.1 Defaults. An event of default ("Event of Default") shall occur with respect to a Party (the "Defaulting Party," and the other Party, the "Non-Defaulting Party") upon the occurrence of each of the following events and the expiration of any applicable cure period provided for below:

10.1.1 Defaults by Either Party.

(a) the Defaulting Party fails to make a payment when due under this Agreement and such failure is not cured within ten (10) Business Days after the Non-Defaulting Party gives notice to the Defaulting Party of such default.

(b) the Defaulting Party fails to perform any material obligation in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not otherwise an identified Event of Default in this Agreement, and such default is not cured within

thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of such default; provided, however, that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to cure such default, not to exceed ninety (90) days following the date of such notice of default.

(c) the Defaulting Party breaches one of its representations or warranties in this Agreement and such default is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of such default; provided, however, that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to cure the default, not to exceed ninety (90) days following the date of such notice of default.

(d) the Defaulting Party: (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(e) The Defaulting Party fails to comply with the provisions of Section 19 and such failure continues for ten (10) days after the Non-Defaulting Party gives notice to the Defaulting Party of such default.

10.1.2 Defaults by Seller

(a) Seller fails to deliver or maintain Security it is required to provide or maintain as required by Section 7, and such default is not cured within ten (10) Business Days after Buyer gives notice to Seller of such default.

(b) Seller sells, delivers or transfers Product from the Facility to a party other than Buyer in breach of Section 4.2, and Seller does not cease such sale, delivery or transfer within ten (10) days after Buyer gives notice to Seller of such default.

10.1.3 Defaults by Buyer

(a) Buyer fails to schedule and receive Net Output (or other Product, as applicable) as and when required by this Agreement, and such default is not caused by Seller's breach of its obligations under this Agreement or otherwise excused under the terms of this Agreement.

(b) Buyer fails to deliver or maintain the Buyer Default Security as required by Section 7, or otherwise breaches or fails to perform its obligations in Section 7 (including those related to the Buyer Working Capital Reserve Account), and such default is not cured within ten (10) Business Days after Seller gives notice to Buyer of such default.

(c) The Resale Agreement is not in full force and effect or Buyer is in default of or otherwise materially breaches the terms of the Resale Agreement.

10.2 Remedies for Failure to Deliver/Receive.

10.2.1 Remedy for Seller's Failure to Deliver. If Seller sells, delivers or transfers Product from the Facility to a party other than Buyer in breach of Section 4.2, then Seller shall pay Buyer within five (5) Business Days after receipt of an invoice from Buyer, an amount equal to the greater of (i) Seller's gross revenue from the sale to the third party less the revenue that would have been realized by selling such Product to Buyer; or (ii) the sum of (as applicable): (a) Buyer's Cost to Cover (for Net Output and Green Tags) multiplied by the Net Output delivered to a party other than Buyer; (b) additional transmission charges, if any, reasonably incurred by Buyer in moving replacement energy to the Point of Delivery or, if more cost-effective, to other points identified by Buyer; (c) damages incurred by Buyer as a result of the failure of Seller to sell and deliver Capacity Rights and Ancillary Services, if applicable, in accordance with this Agreement upon the occurrence and during the continuation of an Event of Default by Seller under Section 10.1.2(b); (d) damages incurred by Buyer as a result of the failure of Seller to sell and deliver Green Tags in accordance with this Agreement upon the occurrence and during the continuation of an Event of Default by Seller under Section 10.1.2(b), which shall be calculated based on the applicable Green Tags Price Component; and (e) any additional cost or expense incurred as a result of Seller's breach of Section 4.2, as reasonably demonstrated by Buyer; provided that any disputes between the Parties with respect to such amounts will be resolved in accordance with Section 23. Buyer's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 10.2.1 shall limit in any respect Buyer's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 10.3.

10.2.2 Remedy for Buyer's Failure to Purchase. If Buyer fails to purchase and receive any Net Output or any other Product as and when required by this Agreement, including upon the occurrence and during the continuation of an Event of Default by Buyer under Section 10.1.3(a), and such failure is not caused by Seller's breach of its obligations under this Agreement or otherwise excused by Seller's failure to perform under or comply with this Agreement or the terms of this Agreement, then Buyer shall pay Seller within five (5) Business Days after receipt of an invoice from Seller, an amount equal to (a) Seller's Cost to Cover multiplied by the amount of Net Output or Potential Net Output not purchased and received by Buyer, plus (b) additional transmission charges, if any, reasonably incurred by Seller in moving energy to the ultimate purchaser; plus (c) any additional cost or expense incurred as a result of Buyer's failure to purchase and receive any Net Output of any other Product when required by this Agreement, as reasonably demonstrated by Seller; provided that any disputes between the Parties with respect to any such amounts will be resolved in accordance with Section 23. Seller's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 10.2.2 shall limit in any respect Seller's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 10.3.

10.3 Termination and Remedies.

10.3.1 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the following rights:

(a) to send written notice, designating a day, no earlier than the day such notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement (the “Terminated Transaction”) and ends the Term effective as of the Early Termination Date;

(b) to collect, as applicable, as liquidated damages (i) the Pre-COD Termination Payment, or (ii) the Termination Payment calculated in accordance with Section 10.4 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; provided that if the Non-Defaulting Party does not elect to terminate the Agreement by the date that is thirty (30) days after the occurrence of the Event of Default, the Non-Defaulting Party shall not have the right to continue its suspension of performance and shall be deemed to have waived the Event of Default; and

(e) to 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 payment by the Defaulting Party of the Pre-COD Termination Payment, as applicable, or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

10.3.2 Termination. In the event of a termination of this Agreement:

(a) Each Party must pay to the other Party all amounts due to the other Party under this Agreement for all periods prior to termination, subject to offset by the Non-Defaulting Party against damages incurred by the Non-Defaulting Party.

(b) The amounts due under this Section 10.3 must be paid within thirty (30) days after delivery of an invoice to the Defaulting Party of such amounts and will bear interest at the Contract Interest Rate from the date of termination of this Agreement until but not including the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due under this Agreement.

(c) Without limiting the generality of the foregoing, all provisions of this Agreement that either expressly by their terms survive, or, by their nature are intended to survive or come into or continue in force and effect after the termination or expiration of this Agreement shall remain in effect.

10.4 Termination Damages. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction (a) occurring after the Commercial Operation Date or (b) occurring prior to the Commercial Operation Date where Buyer is the Defaulting Party (“Termination Payment”) shall be the aggregate of all Settlement Amounts plus any or all other

amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 10.4 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 10.4 is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

10.5 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages either Party may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement, including facilitating the marketing and delivery of the Products.

10.6 Security. In addition to pursuing any and all other remedies available at law or in equity, the Non-Defaulting Party may use any Seller Default Security or Buyer Default Security as applicable, that is held by such Party in whatever form to reduce the amounts that the Defaulting Party owes the Non-Defaulting Party arising from such Event of Default.

10.7 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to the Parties in this Agreement are cumulative and not exclusive of any rights or remedies of the Parties.

SECTION 11 INDEMNIFICATION AND LIABILITY

11.1 Indemnitees.

11.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 11.1.5, Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, members to which Product is resold and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Buyer Indemnitees") for, from and against any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by Seller of its obligations under this Agreement, or relating to the Facility or the Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third

party Person (not Affiliated with Buyer) resulting from the actions of Seller and any Seller Indemnitee, except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Buyer Indemnitee.

11.1.2 Indemnity by Buyer. To the extent permitted by Requirements of Law, Buyer shall indemnify, defend and hold harmless Seller and its Affiliates (which shall be deemed to include CPPIB Parties) and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) for, from and against any and all Liabilities resulting from, arising out of, or in any way connected with, (a) the breach, performance or non-performance by Buyer of its obligations under this Agreement for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person (not Affiliated with Seller) resulting from the actions of Buyer, any Buyer Indemnitee or the Buyer’s members to which Product is resold, except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Seller Indemnitee, or (b) any indemnity that Seller owes to the Account Bank for any reason other than (i) the issuance of a “Notice of Exclusive Control” (as described in the Account Control Agreement) to the Account Bank that was not permitted to be delivered by Seller to the Account Bank pursuant to the terms of this Agreement or the Account Control Agreement, (ii) a direction to the Account Bank to transfer funds in the Buyer Working Capital Reserve Account to Seller that is not permitted by the terms of this Agreement or the Account Control Agreement, or (iii) the negligence or willful misconduct of Seller in its performance under the Account Control Agreement.

11.1.3 Additional Cross Indemnity. Without limiting Section 11.1.1 and Section 11.1.2, (a) Seller shall indemnify, defend and hold harmless the Buyer Indemnitees for, from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Net Output prior to its delivery by Seller at the Point of Delivery and (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement, and (b) Buyer shall indemnify, defend and hold harmless the Seller Indemnitees for, from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Net Output at and after its delivery to Buyer at the Point of Delivery in accordance with this Agreement and (ii) any action by any Governmental Authority due to noncompliance by Buyer or Buyer’s member to which Product is resold with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any Buyer Indemnitee or Seller Indemnitees, respectively.

11.1.4 Indemnification Procedures. Any Indemnified Party seeking indemnification under this Agreement for any Liabilities shall give the Indemnifying Party notice of such Liabilities promptly but in any event on or before thirty (30) days after the Indemnified Party’s actual knowledge of the claim or action giving rise to the Liabilities. Such notice shall describe the Liability in reasonable detail, and shall indicate the amount (estimated if necessary) of the Liability that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice. The Indemnifying Party shall assume the defense of the claim or action giving rise to the Liabilities with counsel designated by the Indemnifying Party; provided, however, that if the defendants in

any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. Notwithstanding anything to the contrary contained herein, an Indemnified Party shall in all cases be entitled to control its own defense, at the expense of the Indemnifying Party, in any claim or action if it: (a) may result in injunctions or other equitable remedies with respect to the Indemnified Party; (b) may result in material liabilities which may not be fully indemnified hereunder; or (c) may have a material and adverse effect on the Indemnified Party (including a material and adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full. If the Indemnifying Party fails to assume the defense of a claim or action, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim or action may be made only with the Indemnifying Party's consent, which consent will not be unreasonably withheld, conditioned or delayed, or, absent such consent, a written opinion of the Indemnified Party's counsel must be completed that determines such claim is meritorious or warrants settlement.

11.1.5 Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, INCLUDING DELAY DAMAGES, PERFORMANCE DAMAGES, BUYER'S COST TO COVER DAMAGES AND SELLER'S COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.

11.2 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.

SECTION 12 INSURANCE

12.1 Required Policies and Coverages. Without limiting any liabilities or obligations of Seller under this Agreement, Seller shall secure and continuously carry the insurance coverage specified on and otherwise perform its obligations under Exhibit F commencing with the start of construction activities at the Premises and continuing thereafter during the Term or such longer period as is specified in Exhibit F.

SECTION 13 FORCE MAJEURE

13.1 Definition.

(a) “Force Majeure” means any act or event that delays or prevents a Party (“Affected Party”) from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, is beyond the reasonable control of and without the negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, are beyond the reasonable control of and without the negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; outbreak; epidemic or pandemic, including COVID-19 (or the related virus designated SARS-CoV-2) and all actions taken by a Governmental Authority in respect thereof, notwithstanding the existence or foreseeability of the occurrence thereof or delays attributable thereto as of the Effective Date; landslide; mudslide; sabotage; terrorism; Serial Defect during the first two (2) years following the Commercial Operation Date; earthquake; windstorm; hailstorm; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) 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 as described above; (iii) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure; or (iv) any act or event affecting Buyer’s members to which Product is to be resold.

13.2 No Liability If a Force Majeure Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure. The occurrence and continuation of a Force Majeure shall not suspend or excuse the obligation of a Party to make payments due hereunder.

13.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure, the Party suffering the Force Majeure shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the

cessation or termination of such Force Majeure, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure has occurred unless the delay in giving Notice materially prejudices the other Party.

13.4 Right to Terminate. If an event or events of Force Majeure prevents an Affected Party from substantially performing its obligations under this Agreement for a consecutive period exceeding three hundred sixty-five (365) days (despite the Affected Party's diligent efforts to remedy its inability to perform), then the other Party may terminate this Agreement by giving ten (10) days prior notice to the Affected Party. Upon such termination, neither Party will have any liability to the other Party with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

13.5 Buyer's Right to Extend. To the extent Seller's performance has been excused by an event or events of Force Majeure after the Commercial Operation Date and the amount of Net Output not delivered to Buyer during the Term of this Agreement as a result of such event or events of Force Majeure exceeds ten percent (10%) of the aggregate Expected Net Output throughout the Term of this Agreement (less any Potential Net Output attributable to Compensable Curtailment, Non-Compensable Curtailment, Planned Outages, Forced Outages, and Maintenance Outages), (a) such undelivered Net Output in excess of the ten (10%) of the aggregate Expected Net Output (as adjusted) throughout the Term of this Agreement shall be deemed "Deficient FM Net Output," and (b), Buyer and Seller shall each have the right to extend the Term of this Agreement until the amount of Net Output delivered to Buyer during such Term extension equals the amount of Deficient FM Net Output; provided, that Seller shall not be liable for any Performance Damages or Buyer's Cost to Cover damages during such extension. If either Party desires to extend the Term of this Agreement in accordance with this Section 13.5, it shall provide notice to the other Party not less than forty-eight (48) months prior to the date this Agreement would otherwise expire setting forth its calculated estimate of the number of days of Term extension needed to satisfy clause (b) above, and subject to the other Party's agreement of such estimate of the extension (not to be unreasonably withheld), the Term shall be extended by a period equal to such estimate plus thirty (30) days; provided, that in no event shall such Term extension exceed two (2) years. If both Parties fail to deliver such a notice, the rights under this Section 13.5 shall expire and have no further force or effect.

SECTION 14 SEVERAL OBLIGATIONS

Nothing in this Agreement will be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

SECTION 15 CHOICE OF LAW

This Agreement will be interpreted and enforced in accordance with the laws of the State of Arizona, without applying any choice of law rules that may direct the application of the laws of

another jurisdiction. Buyer acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. Buyer hereby knowingly, and expressly waives all existing rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement to the fullest extent allowed by Requirements of Law. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

SECTION 16 PARTIAL INVALIDITY

If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable terms, provisions or conditions which achieve the purpose intended by the Parties to the greatest extent permitted by law and preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 17 NON-WAIVER

No waiver of any provision of this Agreement will be effective unless the waiver is provided in writing that (a) expressly identifies the provision being waived and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement will not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 18 JURISDICTION OF GOVERNMENTAL AUTHORITIES

This Agreement is subject to the jurisdiction of those Governmental Authorities having jurisdiction over either Party, the Facility or this Agreement.

SECTION 19 SUCCESSORS AND ASSIGNS

19.1 Restriction on Assignments. Except as provided in this Section 19, neither Party may transfer, sell, pledge, encumber or assign (collectively, "Assign") this Agreement nor any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

19.2 Permitted Assignments. Notwithstanding Section 19.1, Seller may, without the need for consent from Buyer, assign this Agreement to an Affiliate; provided, however, that it shall be a condition precedent to such Assignment that such Affiliate enters into an assignment and assumption agreement pursuant to which such Affiliate assumes all of Seller's obligations under

this Agreement and otherwise agrees to be bound by the terms of this Agreement; provided, further that any Project Development Security or Seller Default Security required to be posted by Seller pursuant to Section 7 must be replaced with Security that complies with the requirements of Section 7 (or is otherwise acceptable to Buyer) or the existing Security must remain in full force and effect.

19.3 Project Lender. Seller may, without relieving itself from its obligations and liabilities under this Agreement, Assign this Agreement or the revenues or proceeds thereof, or all or any part of its ownership interest in the Facility, including the Premises, to a Lender in connection with a financing or refinancing of the Facility; provided, however, that it shall be a condition precedent to the effectiveness of any such Assignment that: (a) Seller provides no less than ten (10) Business Day's prior notice thereof to Buyer; and (b) if requested by Seller, Buyer agrees to execute a written consent to such collateral assignment substantially in the form attached hereto as Exhibit J or other form reasonably requested by the Lender (a "Lender Consent"), and provide estoppels, legal opinions and such other documents as may be reasonably requested by Seller; and (c) Seller shall reimburse Buyer for all reasonable costs and expenses incurred by or on behalf of Buyer in connection with providing the documentation requested pursuant to this Section 19.3.

SECTION 20 ENTIRE AGREEMENT; AMENDMENTS

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No amendment or modification of this Agreement is effective unless it is in writing and executed by both Parties, with the exception of Exhibits C, G, I, K, L, O, P and Q which may be amended by mutual written agreement among the Buyer and Seller representatives listed in "All Notices" in Exhibit I.

SECTION 21 NOTICES

21.1 Addresses and Delivery Methods. All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a "Notice") shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the addressees and addresses set out in Exhibit I, as the same may be modified from time to time by Notice from the respective Party to the other Party. All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be deemed effective and given upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed effective and given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 Local Time, and if transmitted after that time, on the following Business Day. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee set out in Exhibit I, as the same may be modified from time to time by Notice from the respective Party to the other Party, and the

delivery thereof is refused by such addressee, then such Notice shall be deemed given and effective upon such tender.

SECTION 22 CONFIDENTIALITY

22.1 Confidential Business Information. The following constitutes “Confidential Business Information,” whether oral or written: (a) the Parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date; (b) any information delivered by Buyer to Seller prior to the Effective Date relating to the market prices of energy and methodologies for its determination or estimation; and (c) any other documents and other written information relating to or required to be delivered from one Party to the other under this Agreement, including as described in Section 6.7, and which the delivering Party treats as confidential or proprietary. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. “Confidential Business Information” shall not include information that: (i) is in or enters the public domain through no fault of the Party receiving such information; or (ii) was in the possession of the receiving Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a), (b) and (c) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark such documents and materials as Confidential Business Information with the term “Confidential” on the front page of each document or material. If the Confidential Business Information is transmitted by electronic means such transmission shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 22, for the longer of a period of two (2) years from the date it is received by the receiving Party or two (2) years from the Commercial Operation Date, in each case, unless otherwise agreed to in writing by the Parties.

22.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other Person (other than its Affiliates, members, members’ governing bodies, accountants, auditors, counsel, consultants, credit rating agencies, financing parties, prospective financing parties, employees, officers and directors, which in respect of Seller, shall be deemed to include CPPIB Parties, and Buyer’s Scheduling Agent), without the prior written consent of the other Party; provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law; (ii) pursuant to an order of a Governmental Authority; or (iii) in order to enforce this Agreement or to seek approval hereof. In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible and as soon as practicable notify the other Party of the obligation to disclose such information. Each Party acknowledges that Buyer and many of its members are political subdivisions of the State of Arizona and are subject to Arizona’s open meeting laws and public records laws. The language of Section 22 notwithstanding, nothing in this Agreement is intended to prevent Buyer and its members from making any disclosures or retaining documents required to comply with their obligations pursuant to these laws. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Business Information is made pursuant to this Section 22.2, (A) Buyer shall as soon as practicable notify Seller of the existence of such request or demand and shall provide the Seller with a reasonable opportunity to seek an appropriate protective order

or other remedy, which both Parties will cooperate in seeking to obtain, and (B) Buyer and Seller shall use reasonable efforts to seek redaction of any commercially sensitive information in this Agreement (including Buyer Default Security, Project Development Security, Seller Default Security, Section 2.2, and commercially sensitive information in Exhibits B, C, D, H, L, and O). In the event that such appropriate protective order or other remedy is not obtained, the Buyer shall only disclose that portion of the Confidential Business Information that is legally required to be disclosed.

22.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 22 constitutes irreparable harm to the other Party, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

22.4 News Releases and Publicity. Before either Party issues any news release or publicly distributed promotional material that mentions this Agreement, such Party will first provide a copy thereof to the other Party for its review and approval, such approval not to be unreasonably withheld. Any use of either Party's name in any news release or promotional material must adhere to such Party's publicity guidelines then in effect. Any use of the name of any CPPIB Party requires Seller's prior written consent.

SECTION 23 DISAGREEMENTS

23.1 Negotiations. Prior to proceeding with formal dispute resolution, the Parties must first attempt in good faith to resolve informally all disputes arising out of, related to or in connection with this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place (which may be virtually) within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen (15) days after such referral, then either Party may initiate any legal remedies available to the Party. No statements of position or offers of settlement made in the course of the dispute process described in this Section 23.1 will: (a) be offered into evidence for any purpose in any litigation between the Parties; (b) be used in any manner against either Party in any such litigation; or (c) constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, will be promptly returned to the Party providing the same, subject to any applicable record retention laws.

23.2 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement ("Proceedings") will be brought exclusively in the federal court located in the State of Arizona, County of Maricopa. By execution and delivery of this Agreement, each Party: (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of the Proceedings; (b) irrevocably agrees to be bound by any final judgment (after any and all

appeals) of any such court arising out of the Proceedings; (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any of the Proceedings brought in such court (including any claim that any such Proceeding has been brought in an inconvenient forum) in connection herewith; (d) agrees that service of process in any such Proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address stated in this Agreement; and (e) agrees that nothing in this Agreement affects the right to effect service of process in any other manner permitted by law.

23.3 WAIVER OF JURY TRIAL. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

[Signature pages to follow]

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by its duly authorized officer or representative as of the date last written below.

BOCA BN, LLC

SOUTHWEST PUBLIC POWER AGENCY, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

DEFINITIONS

Unless otherwise required by the context in which any capitalized term appears, initially capitalized terms used in this Agreement shall have the following meanings:

“Acceptable BESS Supplier” means Powin, Sungrow, Tesla, BYD, CATL, Fluence, STEM, Samsung, LG, Wartsila, GE, NIDEC, RES, FlexGen, NEC, Mitsubishi, FREYR, Microvast, Panasonic or such other manufacturer mutually acceptable to Buyer and Seller; provided that either (a) the BESS Supply Agreement with such Person shall include technical specifications for a Projected Round Trip Efficiency level at commissioning equal to or greater than the percentage described for the first Contract Year in the table included in Part II.G of Exhibit D, or (b) if the BESS Supply Agreement does not so include a Projected Round Trip Efficiency level at commissioning equal to or greater than the percentage described for the first Contract Year in the table included in Part II.G of Exhibit D, then Seller has provided to Buyer a certificate from an independent engineer that the Storage Facility (and its component parts) is designed to reasonably be expected to achieve such Round Trip Efficiency level when tested at commissioning of the Storage Facility at a percentage equal to or greater than the percentage for the first Contract Year in the table included in Part II.G of Exhibit D. In the case of clause (b) above, the certification of the independent engineer shall be based on direct current round trip efficiency of the battery storage system, battery inverter conversion losses, medium voltage transformer losses, auxiliary power consumed by the Storage Facility during charge and discharge, and associated line losses up to the medium voltage storage facility meter, in each case in accordance with the technical specifications of such equipment, or absent such specifications, as reasonably assumed by the independent engineer.

“Accepted Compliance Costs” is defined in Section 4.5.4.

“Account Bank” means BMO Harris Bank N.A., or such other account bank reasonably acceptable to Seller, where Buyer maintains the Buyer Working Capital Reserve Account.

“Account Control Agreement” means a deposit account control agreement, substantially in the form of Exhibit R, or in such other form as required by the Account Bank but that is reasonably acceptable to Seller.

“Affected Party” is defined in Section 13.1.

“Affiliate” means, with respect to any designated Person, each Person that directly or indirectly controls, is controlled by, or is under common control with, such designated Person, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything to the contrary in this Agreement, except where noted herein, no CPPIB Party shall be deemed to be an “Affiliate” of Seller.

“AGC” means automatic generation control and refers to the equipment and capability of an electric generation or storage facility to automatically adjust the generation or discharge quantity.

“AGC Set-Point” means the digital signal sent to the Facility by the Interconnection Provider or the Market Operator representing the maximum Net Output for the Facility.

“Agreement” is defined in the Preamble.

“All-In PPA Price” means, with respect to each day for which the All-In PPA Price is being calculated, the amount equal to (a) the sum of (i) the Contract Price multiplied by the expected Net Output for such day as reasonably determined by Seller, plus (ii) the (A) Storage Price (expressed in \$/MW-day), multiplied by (B) the Guaranteed Storage Capacity Rating, divided by (b) the expected Net Output for such day as reasonably determined by Seller.

“Ancillary Services” means those services necessary to support the transmission of electric power from Seller to Buyer and to maintain reliable operations of the System, including voltage control, operating reserve, spinning reserve, frequency control, reactive power, and such other similar services as may be defined in the future by an Electric System Authority, FERC, Governmental Authority, or Interconnection Provider.

“Arizona Renewable Energy Standard” means the Arizona Renewable Energy Standard and Tariff, as adopted under the Opinion and Order of the Arizona Corporation Commission (ACC), Docket No. RE-00000C-05-0030, Decision No. 69127, In the Matter of the Proposed Rulemaking for the Renewable Energy Standard and Tariff Rules (November 14, 2006), as implemented by ACC final rules codified at Arizona Administrative Code (A.A.C.) R14-2-1801 through -1815 (2006).

“Assign” is defined in Section 19.1.

“Binding Bid Agreement” means the Binding Bid Agreement – Southwest Public Power Agency, Inc. (“SPPA”) Executable RFP for Long Term Energy Supply, executed by BrightNight, LLC on April 2, 2021.

“Build-Out Date” means the date that is the earlier to occur of the date that (a) is three hundred sixty-five (365) days after the Commercial Operation Date, and (b) Seller notifies Buyer that it no longer desires to continue to bring the Generating Facility to one hundred percent (100%) of the Expected Generating Facility Nameplate Capacity Rating; provided that the outside date for the Build-Out Date shall extend on a day-for-day basis beyond three hundred sixty-five (365) days after the Commercial Operation Date to the extent that the delay is (a) a result of the actions or inactions of Buyer (including any Event of Default of Buyer or other breach by Buyer of this Agreement), or (b) due to an event of Force Majeure.

“Business Day” means every day other than a Saturday, Sunday or day which is a legal holiday in Arizona on which banks are not generally open for business.

“Buyer” is defined in the Preamble.

“Buyer Default Security” means a Letter of Credit in an amount equal to the Buyer Default Security Amount.

“Buyer Default Security Amount” means the amount determined and specified in Part III of Exhibit H.

“Buyer Indemnitees” is defined in Section 11.1.1.

“Buyer Representatives” is defined in Section 6.8.

“Buyer Working Capital Reserve Account” means Buyer’s deposit account that is held at the Account Bank and is the subject of the Account Control Agreement.

“Buyer Working Capital Reserve Amount” means the amount determined and specified in Part III of Exhibit H.

“Buyer’s Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the Market Price Index plus (ii) the Green Tags Price Component plus (iii) the Capacity Component (converted to \$/MWh), in each case applicable to the Product for which Buyer’s Cost to Cover is being calculated and measured over the time period for which the determination is being made, minus (b) the sum of (i) the Contract Price and (ii) the Storage Price (converted to a \$/MWh), as applicable to the Product for which Buyer’s Cost to Cover is being calculated and that is in effect over such time period.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals, 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 FERC.

“California Energy Commission Renewable Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and implemented by applicable California Energy Commission regulations, resolutions and guidance.

“Capacity Component” means, if (a) a liquid market for capacity rights or resource adequacy benefits exists in Arizona and (b) Seller, Buyer, or both, as applicable, is able to access such market through the System, the price determined for such capacity rights or resource adequacy benefits from the established liquid market in a form and location that the Parties mutually determine reasonably represents the market value of the Capacity Rights delivered hereunder; provided, however, that, as of the Effective Date, the Parties agree that no such liquid market for capacity rights or resource adequacy benefits exists in Arizona, so the Capacity Component is assumed to be zero dollars.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are

measured in MW and do not include any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Charging Energy” means the Output that is made available at the Storage Facility Metering Point and measured by the Storage Facility Meter. Subject to Section 4.4.1, all Charging Energy shall be used for Buyer’s benefit in accordance with Charging Notices and Discharging Notices given by Buyer.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing delivery of Charging Energy to the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

“Commercial Operation” means that the Generating Facility Nameplate Capacity Rating is fully operational and reliable at or greater than the Required Percentage of the Expected Generating Facility Nameplate Capacity Rating, the Storage Facility is fully operational and capable of charging, storing and discharging energy at or greater than the Required Percentage of the Guaranteed Storage Capacity Rating for two (2) hours in accordance with the Expected Storage Requirements, and the Facility is fully interconnected, fully integrated, and synchronized with the System, which occurs when all of the following events (a) have occurred, all of which are Seller’s responsibility to achieve, receive or obtain, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives Buyer notice pursuant to Section 2.3 that Commercial Operation has occurred:

(i) Buyer has received a letter and completion certificates substantially in the form of Exhibits M and N for the Facility addressed to Buyer from a Licensed Professional Engineer certifying: (A) the Generating Facility Nameplate Capacity Rating at the anticipated time of Commercial Operation, which must be at least equal to or greater than the Required Percentage of the Expected Generating Facility Nameplate Capacity Rating; and (B) the Storage Capacity Rating at the anticipated time of Commercial Operation;

(ii) Buyer has received a letter addressed to Buyer from a Licensed Professional Engineer certifying that, in conformance with the requirements of the Generation Interconnection Agreement: (A) all required Interconnection Facilities have been constructed; (B) all required interconnection tests have been completed; and (C) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement which shall have been executed, with a copy delivered to Buyer, and which Generation Interconnection Agreement shall be in full force and effect;

(iii) Buyer has received a certificate from an officer of Seller stating that the Facility is in compliance in all material respects under any Requirements of Law and all applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for, reasonably expected to be received, and the absence of issuance of a regulatory authorization, approval or permit does not prevent the Facility from operating) and all applicable conditions thereof that must be satisfied in order to commence

operation of the Facility on the Commercial Operation Date have been satisfied and are in full force and effect;

(iv) If Seller does not meet the Credit Requirements on the Commercial Operation Date, Buyer has received the Seller Default Security pursuant to Section 7;

(v) Seller has paid Buyer for any Daily Delay Damage Amounts due and owing hereunder; and

(vi) Seller (with the reasonably requested cooperation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, Qualified Reporting Entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Green Tags transfers related to the Facility within the WREGIS system.

“Commercial Operation Date” means the date that Commercial Operation is achieved for the Facility in accordance with Section 2.3.2 but in no event earlier than one hundred eighty (180) days before the Guaranteed Commercial Operation Date, provided Seller has complied with Section 2.3.4 with respect to providing regular progress updates to Buyer.

“Compensable Curtailment” means Potential Net Output that is capable of being delivered to Buyer but is not delivered to Buyer due to (a) curtailment due to Buyer’s instruction in accordance with Section 6.6.1(b), or (b) Buyer’s failure to take or receive such Potential Net Output, including as a result of the inability to deliver Net Output to the Point of Delivery as a result of (i) the Discharging Energy being discharged by Buyer causing energy deliveries to the Point of Delivery to exceed the interconnection limit at the Point of Delivery, or (ii) the Net Output being delivered to the Point of Delivery being equal to the interconnection limit at the Point of Delivery and the Generating Facility being capable of generating additional Output that could be used as Charging Energy without violating the Storage Operating Procedures but Buyer not issuing a Charging Notice. Notwithstanding anything to the contrary, curtailed Net Output that is not deemed Non-Compensable Curtailment shall be deemed Compensable Curtailment.

“Compliance Action” is defined in Section 4.5.4.

“Compliance Expenditure Cap” is defined in Section 4.5.4.

“Confidential Business Information” is defined in Section 22.1.

“Contract Interest Rate” means, for any date, the lesser of: (a) the highest rate permitted under applicable Requirements of Law; or (b) two hundred (200) basis points per annum plus the prime rate reported in *The Wall Street Journal*’s “Money Rates” column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day, converted to a daily rate. In the event *The Wall Street Journal* ceases to report the prime rate, the prime rate for purposes of this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

“Contract Price” means the applicable price, expressed in \$/MWh, for all Product, excluding Storage Product, stated in Exhibit H.

“Contract Year” means any consecutive twelve (12) month period during the Term, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, financing costs (including prepayment penalties and make-whole amounts) and other third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“CPPIB Party” means Canada Pension Plan Investment Board and its portfolio and investee companies.

“Credit Requirements” means: (a) in the case of Buyer, Seller and a Qualifying Person, such Person has a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) or long term issuer credit rating of: (i) ‘BBB-’ or greater from S&P; or (ii) ‘Baa3’ or greater from Moody’s; provided that if such ratings are split, the lower of the two ratings must be at least ‘BBB-’ from S&P or ‘Baa3’ from Moody’s; and (b) in the case of a Qualifying Institution, such Qualifying Institution has a credit rating on its long-term senior unsecured debt of at least ‘A-’ from S&P and ‘A3’ from Moody’s.

“Daily Delay Damage Amount” means for any given day, the amount equal to (a) the amount of the Project Development Security divided by (b) three hundred sixty-five (365).

“Defaulting Party” is defined in Section 10.1.

“Deficient Generating Facility Capacity Percentage” means the percentage resulting from the following: (a) one (1) minus (b) (i) the Generating Facility Nameplate Capacity Rating on any given Day divided by (ii) the Expected Generating Facility Nameplate Capacity Rating.

“Discharging Energy” means all energy discharged by the Storage Facility as measured by the Storage Facility Meter.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures.

“Early Termination Date” is defined in Section 10.3.1.

“Effective Date” is defined in the Preamble.

“Electric System Authority” means each of NERC, WECC, RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to Seller or Buyer.

“Energy Imbalance Market” means the real-time electric energy market in the western United States administered by the Market Operator.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, as they may be defined under existing or future law. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by any Governmental Authority to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Event of Default” is defined in Section 10.1.

“Excess Charging Energy” is defined in Section 6.10.1(c).

“Expected Generating Facility Nameplate Capacity Rating” means the expected maximum instantaneous generation capacity of the Generating Facility at the Point of Delivery, expressed in MW AC, when operated in compliance with the Generation Interconnection Agreement and consistent with the Generating Facility’s equipment manufacturers’ operating parameters. The Expected Generating Facility Nameplate Capacity Rating is specified in Exhibit B.

“Expected Net Output” means the estimated Net Output in each full Contract Year as set forth in Exhibit B. If the Generating Facility Nameplate Capacity Rating is less than the Expected Generating Facility Nameplate Capacity Rating, then Exhibit B shall be amended to reflect the change and the Expected Net Output in each Contract Year shall be reduced proportionally for each full MW of Generating Facility Nameplate Capacity Rating below the Expected Generating Facility Nameplate Capacity Rating or as otherwise reasonably demonstrated by Seller and reasonably agreed by Buyer.

“Expected Storage Requirements” means the operating characteristics of the Storage Facility listed in Section 4 in Exhibit B.

“Facility” means the Generating Facility and the Storage Facility.

“Facilities Study” means a study performed by the Interconnection Provider as part of the interconnection process to determine a list of facilities and upgrades, the cost of those facilities and upgrades, and the time required to interconnect requesting projects to the Interconnection Provider’s transmission system.

“FERC” means the Federal Energy Regulatory Commission.

“Final Deficient Generating Facility Capacity Percentage” means the percentage resulting from the following: (a) one (1) minus (b) (i) the Generating Facility Nameplate Capacity Rating on the Build-Out Date divided by (ii) the Expected Generating Facility Nameplate Capacity Rating.

“Force Majeure” or an “event of Force Majeure” are defined in Section 13.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as described in Exhibit G, and specifically excludes any Maintenance Outage or Planned Outage.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Term.

“Generating Facility” means a solar-powered generating facility for the generation of electric energy, capacity and Ancillary Services (whether those services are currently defined or not) located in Pinal County, Arizona, as more fully described in Exhibit B, including all equipment, devices, associated appurtenances owned, controlled, operated and managed by or on behalf of Seller in connection with, or to facilitate, (a) the production, generation, transmission, delivery, or furnishing of electric energy by Seller to Buyer or (b) interconnection with the System.

“Generating Facility Auxiliary Power Meter” means the meter set described in Exhibit C as the Generating Facility Auxiliary Power Meter.

“Generating Facility Metering Point” means the point at which Output from the Generating Facility is metered by the Generating Facility Meter, as further described in Exhibit C.

“Generating Facility Meter” means the meter described in Exhibit C as the Generating Facility Meter.

“Generating Facility Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Generating Facility, expressed in MW, which cannot exceed 300 MW (alternating current), when operated in compliance with the Generation Interconnection Agreement and consistent with the Generating Facility’s equipment manufacturers’ operating parameters. The Generating Facility Nameplate Capacity Rating shall be specified by Seller in writing to Buyer and accepted or deemed accepted by Buyer, in each case, in accordance with the requirements of the definition of Commercial Operation and Section 2.3.2 or Section 2.3.3, as applicable.

“Generation Interconnection Agreement” means the generator interconnection agreement to be entered into between Seller and Interconnection Provider concerning the Interconnection Facilities.

“Governmental Authority” means any supranational, federal, provincial, state or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other Person owned or controlled by any of the foregoing.

“Green Tags” means the Green Tag Reporting Rights associated with such Environmental Attributes associated with all Net Output measured at the Point of Delivery (or if WREGIS Operating Rules permit the measurement by one of the other meters described in Exhibit C, such other meter), however commercially transferred or traded under any or other product names, such as “Renewable Energy Credits,” “CRS Listed,” or otherwise. One Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Generating Facility and measured at the Point of Delivery (or if WREGIS Operating Rules permit the measurement by one of the other meters described in Exhibit C, such other meter).

“Green Tags Price Component” means: (a) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three (3) nationally recognized independent Green Tag brokers mutually selected by the Parties pursuant to which Buyer could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (b) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that the Parties mutually determine reasonably represents the market value of the Green Tags delivered hereunder.

“Green Tag Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with applicable Requirements of Law to applicable Governmental Authorities or other Persons at such purchaser’s discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Guaranteed Amount” is defined in Exhibit D.

“Guaranteed Commercial Operation Date” means the date determined and specified in Part III of Exhibit H; as may be extended pursuant to the terms of Section 2.3.1.

“Guaranteed Storage Availability” is defined in Exhibit B.

“Guaranteed Storage Capacity Rating” is defined in Exhibit B.

“Guaranty” means a guaranty issued by a Qualifying Person substantially and in all material respects in the form attached as Exhibit E.

“ICE” means Intercontinental Exchange, Inc., its successor, or an equivalent price tracking entity as mutually agreed to by the Parties if ICE has ceased to exist.

“Indemnified Party” means any of the Buyer Indemnitees or the Seller Indemnitees as the indemnified parties pursuant to Sections 11.1.1, 11.1.2 or 11.1.3, as the case may be.

“Indemnifying Party” means Seller or Buyer as the indemnifying Party pursuant to Sections 11.1.1, 11.1.2 or 11.1.3, as the case may be.

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means SRP or its successor including a partial successor such as a regional transmission operator or independent system operator that provides interconnection or transmission service over facilities that, as of the date of this Agreement, are owned by SRP.

“ITC” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as the same may be amended from time to time.

“KW” means kilowatt.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller or its Affiliates), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Lender Consent” is defined in Section 19.3.

“Letter of Credit” means an irrevocable standby letter of credit naming Buyer (in the case of Project Development Security and Seller Default Security) or Seller (in the case of Buyer Default Security), as the case may be, as the party entitled to demand payment and present draw requests that:

- (a) is issued by a Qualifying Institution;
- (b) by its terms, permits such Party to draw up to the face amount thereof for the purpose of paying any and all amounts owing by the other Party under this Agreement;
- (c) permits such Party to draw the entire amount available if such letter of credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date with substitute Security in accordance with the requirements of Section 7;
- (d) is transferable by such Party to any Person to which such Party may assign this Agreement;
- (e) remains in effect for at least ninety (90) days after the end of the Term; and
- (f) is otherwise in form and substance reasonably acceptable to such Party.

“Liabilities” is defined in Section 11.1.1.

“Licensed Professional Engineer” means a Person proposed by Seller and reasonably acceptable to Buyer who: (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification, evaluation or opinion being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is providing a certification, evaluation or opinion; and (c) is not an employee of Seller or any Affiliate of Seller.

“Local Time” means Mountain Standard Time.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Term, and in the case where Seller is the Non-Defaulting Party shall include the value of any lost Tax Credits, depreciation or other loss in tax attributes associated with the Project.

“Maintenance Outage” means NERC Event Type MO, as described in Exhibit G, that specifically includes any outage involving all or a portion of the Generating Facility Nameplate Capacity Rating or the Storage Capacity Rating and is not a Forced Outage or a Planned Outage.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market.

“Market Price Index” means the hourly value calculated based on the average prices reported by the ICE Day-Ahead Palo Verde On-Peak Index and the ICE Day-Ahead Palo Verde Off-Peak Index as applicable. If any index is not available for a given period, the Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. If the Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose under this Agreement, during the Term, then the Parties must agree upon a replacement Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the hourly price of electricity for the applicable periods. If the System becomes part of a financially settled market with locational marginal pricing published for a node that represents the Point of Delivery, the Parties agree that the references above to ICE Day-Ahead Palo Verde On-Peak Index and the ICE Day-Ahead Palo Verde Off-Peak Index shall instead apply to the applicable locational marginal prices published for the node that represents the Point of Delivery.

“Moody’s” means Moody’s Investor Services, Inc.

“MW” means megawatt.

“MW AC” means megawatt alternating current.

“MWh” means megawatt-hour.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means (i) all energy generated by the Generating Facility and delivered to the Point of Delivery (whether delivered directly from the Generating Facility to the Point of Delivery or as Discharging Energy from the Storage Facility) and measured by the POD Meter (not including any negative measurements read by the POD Meter for auxiliary power supplied by grid energy for the Facility), plus (ii) all Round Trip Efficiency Losses. Example calculations of Net Output (for illustrative purposes only) are provided below:

Net Output for One Storage Meter Configuration	
Energy measured at the POD Meter:	73,000 MWh
Round Trip Efficiency Losses:	
(i) Charging Energy less Discharging Energy:	3,180 MWh
Net Output = Energy @ POD Meter + Round Trip Efficiency Losses = 73,000 MWh + 3,180 MWh = 76,180 MWh	
Net Output for a Two Storage Meter Configuration	
Energy measured at the POD Meter:	73,000 MWh
Round Trip Efficiency Losses:	
(i) Charging Energy less Discharging Energy:	1,440 MWh
(ii) Storage Facility Auxiliary Power Meter read during charging and discharging:	1,740 MWh
Net Output = Energy @ POD Meter + Round Trip Efficiency Losses = 73,000 MWh + 1,440 MWh + 1,740 MWh = 76,180 MWh	

“Network Resource” means a resource designated as a “Network Resource” under an applicable open access transmission tariff or equivalent classification.

“Non-Compensable Curtailment” is defined in Section 4.4.1.

“Non-Defaulting Party” is defined in Section 10.1.

“Notice” is defined in Section 21.1.

“One Storage Meter Configuration” means a battery energy storage facility using the energy storage equipment manufactured by Tesla, Inc. or another Acceptable BESS Supplier that does not have a separate meter for auxiliary power.

“Operable Facility” is defined in Section 2.4.4(b)(i).

“Output” means all energy produced by the Generating Facility as metered at the Generating Facility Metering Point.

“Outside Commercial Operation Date” means the date that is described in Section 2.3.1.

“Party” and “Parties” are defined in the Preamble.

“Performance Damages” is defined in Exhibit D.

“Performance Damage Cap” means an amount equal to the Seller Default Security.

“Performance Guarantee” is defined in Exhibit D.

“Permits” means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility or occupancy of the Premises.

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

“Placed in Service Date” means the date on which the Facility is placed into service for federal income tax purposes.

“Planned Outage” means NERC Event Type PO, as described in Exhibit G, that all or a portion of the Generating Facility Nameplate Capacity Rating or the Storage Capacity Rating and specifically excludes any Maintenance Outage or Forced Outage.

“POD Meter” means the meter set described in Exhibit C as the POD Meter.

“Point of Delivery” is defined in Exhibit C.

“Potential Net Output” means the quantity of Net Output that Seller is capable of making available to Buyer at any specific time. Potential Net Output will be determined by Seller utilizing the Facility’s SCADA system and calculated as the aggregate energy that the Generating Facility could make available at the Point of Delivery using (1) the same model(s) used to determine the Expected Net Output of the Generating Facility and (2) the best available data obtained through commercially reasonable methods, and shall be dependent on relevant meteorological conditions at the Generating Facility, Generating Facility availability, applicable manufacturer power curves provided by Seller to Buyer, and any other adjustments necessary to accurately reflect the Generating Facility’s capability to produce energy. The Potential Net Output shall be determined immediately upon access to the measured meteorological conditions and Generating Facility availability.

“Pre-COD Termination Payment” shall mean an amount payable by Seller as the Defaulting Party prior to the Commercial Operation Date equal to (a) the Project Development Security amount, minus (b) any Daily Delay Damage Amounts paid pursuant to Section 2.4.1 and the liquidated damages paid pursuant to Section 2.4.2 as of the effective date of termination pursuant to Section 2.4.4 or Section 10.3.

“Premises” means the real property on which the Facility is or will be located, as more fully described on Exhibit B.

“Proceedings” is defined in Section 23.2.

“Product” means all: (a) Net Output; (b) Green Tags; (c) Capacity Rights, (d) Ancillary Services, if applicable, arising from or relating to the Generating Facility and (e) Storage Product.

“Project Development Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to fifty dollars (\$50) per kW of the Expected Generating Facility Nameplate

Capacity Rating plus fifty dollars (\$50) per kW of the Guaranteed Storage Capacity Rating as defined in Exhibit B.

“Projected Round Trip Efficiency” or “Projected RTE” means the Round Trip Efficiency levels included in the technical specifications issued by the BESS Supplier (as defined in Exhibit D) for the battery equipment to be incorporated into the Storage Facility.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry for facilities of similar size and characteristics, or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices are not necessarily limited to the optimum practice, method or act, but shall include a spectrum of possible practices, methods and acts.

“Qualifying Institution” means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least Ten Billion Dollars (\$10,000,000,000) (net of reserves) and who satisfies the Credit Requirements or the National Rural Utilities Cooperative Finance Corporation if it satisfies the Credit Requirements. For the avoidance of doubt, the Parties agree that as of the Effective Date, the National Rural Utilities Cooperative Finance Corporation satisfies the Credit Requirements.

“Qualifying Person” means a Person who satisfies the Credit Requirements.

“Qualified Reporting Entity” means an organization providing renewable generation data to WREGIS for registered generating units.

“Required Percentage” means ninety percent (90%).

“Requirements of Law” means as at the applicable point in time, any applicable federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority (including those pertaining to electrical, building, zoning, environmental and wildlife protection, open meetings, public records, record retention and occupational safety and health).

“Resale Agreement” means the Box Canyon Resale Agreement between Buyer and the “Participants” that are or become a party thereto, and that is in the form of Exhibit P.

“Resale Participant” means each “Participant” as such term is defined in the Resale Agreement.

“Round Trip Efficiency” means the ratio of (i) the electrical energy delivered during the discharging of a battery energy storage facility compared to (ii) the sum of (a) the electrical energy utilized during the charging of such battery energy storage facility as measured by the same medium voltage meter, and, if applicable, (b) any auxiliary energy consumed by such storage facility during both charging and discharging hours that is metered by a separate auxiliary power meter.

“Round Trip Efficiency Losses” means (i) the amount of MWh equal to the Charging Energy less the Discharging Energy for any given period of time during the Term after the Commercial Operation Date, plus (ii) for a Two Storage Meter Configuration, the amount of MWh measured by the Storage Facility Auxiliary Power Meter during periods of charging and discharging the Storage Facility for any given period of time during the Term after the Commercial Operation Date.

“RTO” means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“S&P” means Standard & Poor’s Rating Group (a division of S&P Global, Inc.).

“SCADA” means supervisory control and data acquisition.

“Scheduling Agent” means the entity that will schedule the Facility on behalf of Buyer, currently the Arizona Electric Power Cooperative (AEPSCO) who has contracted with Alliance for Cooperative Energy Services Power Marketing LLC (ACES).

“Security” means Project Development Security, the Seller Default Security and/or Buyer Default Security

“Security Provider” means a Qualifying Person providing a Guaranty or a Qualifying Institution providing a Letter of Credit.

“Seller” is defined in the Preamble.

“Seller Default Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to fifty dollars (\$50) per kW of the Generating Facility Nameplate Capacity Rating.

“Seller Indemnitees” is defined in Section 11.1.2.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price (in \$/MWh) and (b) the net proceeds actually realized by Seller from the sale to a third party of Net Output not purchased by Buyer as required under this Agreement (in \$/MWh).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

“Serial Defect” means that twenty percent (20%) or more of the same component or equipment type included in the Facility is affected by the same defect in any Contract Year. In this context, a component shall contain a “defect” if such component (i) breaks or ceases to perform the function for which it was designed or installed (exclusive of normal wear and tear) and is not free of material defects in material and workmanship, or (ii) fails to conform to applicable technical or design specifications.

“SRP” means Salt River Project Agriculture Improvement and Power District.

“Storage Capacity Damages” shall equal for each applicable day (a) (i) the average of the two (2) highest Palo Verde Peak spot prices as published by ICE, less (ii) the average of the two (2) lowest Palo Verde Peak spot prices as published by ICE, less (iii) the All-in PPA Price, multiplied by (b) two (2) MWh for each MW of deficient capacity associated with the Storage Facility, multiplied by (c) seventy-five percent (75%).

“Storage Capacity Payment” means, for each month, an amount equal to Storage Price multiplied by the Storage Capacity Rating applicable for such month.

“Storage Capacity Rating” means the total capacity (in MW) of the Storage Facility, as determined from time to time in accordance with Section 6.10.2.

“Storage Capacity Test” means the testing procedures, requirements and protocols set forth in Section 6.10.2 and Exhibit L.

“Storage Facility” means Seller’s energy storage facility as further described in Exhibit B, including all equipment, devices, associated appurtenances owned, controlled, operated or managed by or on behalf of Seller in connection therewith, or to facilitate the charging and storage of energy produced by the Generating Facility and the discharging, delivery or furnishing of energy produced by the Generating Facility and discharged from the Storage Facility to Buyer.

“Storage Facility Auxiliary Power Meter” means the meter set described in Exhibit C as the Storage Facility Auxiliary Power Meter.

“Storage Facility Meter” means the meter described in Exhibit C as the Storage Facility Meter.

“Storage Facility Metering Point” is defined in Exhibit C.

“Storage Operating Parameters” are listed in the table at the end of Exhibit K.

“Storage Operating Procedures” means the procedures and protocols governing operations of the Storage Facility which are set forth in Exhibit K, including (a) minimum and maximum operating parameters, (b) procedures for scheduling and dispatch, and (c) methods of day-to-day communications.

“Storage Price” means the applicable price, expressed in \$/MW-month and \$/MW-day, for Storage Product stated in Exhibit H.

“Storage Product” means: (a) the right to direct Seller to charge, discharge and dispatch the Storage Facility pursuant to Section 6.4 and (b) Ancillary Services, if applicable, in each case, arising from or relating to the Storage Facility.

“Stored Energy Level” means, at a particular time, the amount of electric energy stored in the Storage Facility, expressed in MWh.

“Summer Period” means June 1 through September 30 of each Contract Year.

“System” means the electric transmission substation and transmission or distribution facilities owned, controlled, operated or maintained by Interconnection Provider, which includes the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as provided in the Generation Interconnection Agreement.

“Tax Credits” means any federal, state or local production tax credits, investment tax credits (including the ITC), tax deductions, grants, direct pay programs, or other tax benefits of any kind whatsoever specific to the production of renewable energy and/or investments in renewable energy or energy storage facilities.

“Term” is defined in Section 2.1.

“Terminated Transaction” is defined in Section 10.3.1.

“Termination Payment” is defined in Section 10.4.

“Test Energy” is defined in Section 5.1.1.

“Two Storage Meter Configuration” means a battery energy storage facility using the energy storage equipment manufactured by an Acceptable BESS Supplier that has a separate meter for auxiliary power.

“WECC” means the Western Electricity Coordinating Council.

“Working Capital Event of Default Uses” is defined in Section 7.4.2(e).

“Working Capital Payment Use” is defined in Section 7.4.2(d).

“WREGIS” means the Western Renewable Energy Generation Information System.

“WREGIS Certificate” means “Certificate” as defined by the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

Exhibit B

DESCRIPTION OF SELLER'S FACILITY

1. Name of Facility:

- (a) Location: Pinal County, Arizona
- (b) Location: 33°10'20.13"N 111°21'31.60"W
- (c) Point of Delivery: SRP 230-kV Abel Substation
- (d) Legal Description of the Premises: Portions of Parcel #s 201337000 and 201017000 (Arizona State Trust Land), located approximately 5 miles north of Florence, AZ, and just west of State Highway 79. Seller will update this Exhibit B with the actual location of the Facility on these parcels based on final design.

2. Equipment:

- (a) Type of Generating Facility: Solar photovoltaic
 - (i) Model: Jinko Solar 525W_p Bifacial monoPERC: JKM525M-7TL4-TV (or equivalent)
 - (ii) Number of Units: 693,000, subject to change with final design of the Generating Facility
- (b) Type of Storage Facility: AC-coupled Lithium-Iron-Phosphate battery (or equivalent)
 - (i) Model: BYD 320Ah, liquid cooled (or equivalent)
 - (ii) Number of Units: 84, subject to change with final design of the Storage Facility
- (c) Nameplate Capacity:
 - (i) Expected Generating Facility Nameplate Capacity Rating: 300 MW AC
 - (ii) Total gross output capacity: 300 MW AC
 - (iii) Guaranteed Storage Capacity Rating: 300 MW AC / 600 MWh

For the avoidance of doubt, in this section, “equivalent” means equipment with equal or better capability and material operating parameters from (a) with respect to the Generating Facility, a manufacturer that is identified as a “Tier 1 Supplier” by Bloomberg New Energy Finance, or such other manufacturer mutually acceptable to Buyer and Seller, and (b) with respect to the Storage Facility, an Acceptable BESS Supplier.

3. Operating Characteristics of Generating Facility at the Point of Delivery:

- (a) Rated Power Factor (PF) or reactive load (kVAR): 0.95 PF

- (b) Rated Output: 300,000 kW
- (c) Rated Output: 300,000 kVA
- (d) Rated Voltage (line to line): 230 kV
- (e) Rated Current (A): 260 A
- (f) Maximum kW Output: 300,000 kW
- (g) Maximum kVA Output: 300,000 kVA
- (h) Minimum kW Output: 0 kW
- (i) Number of Phases: 3
- (j) Power factor requirements: 0.95 at the Point of Delivery
- (k) Expected Net Output for the first Contract Year: 915,627 MWh as of the Effective Date; to be updated upon determination of the final design of the Generating Facility, including to account for the as-installed ac/dc ratio.
- (l) Expected Net Output shall be reduced 0.45% each Contract Year following the first Contract Year.

4. Operating Characteristics of Storage Facility available to Buyer:

- (a) Maximum charge capacity at the Point of Delivery: 300 MW
- (b) Maximum discharge capacity at the Point of Delivery: 300 MW
- (c) Discharge capacity at the Point of Delivery for 2-hour duration: 300 MW
- (d) Discharging Energy capacity at the Point of Delivery: 600 MWh
- (e) Guaranteed Storage Availability: 97%; provided the Guaranteed Storage Availability in Contract Year 1 shall be 95%.

Exhibit C

POINT OF DELIVERY; FACILITY METERS; METERING DIAGRAM

The “Point of Delivery” is the Abel 230-kV Substation which is the point of interconnection between the Facility and the System, and will be further described in the Generation Interconnection Agreement.

The “Generating Facility Metering Point” is the location of the revenue metering devices where the amount of Output generated by the Generating Facility will be measured by the Generating Facility Meter, as further described in Attachment 1 to this Exhibit C, which may be updated by Seller based on the final design.

The “Storage Facility Metering Point” is the location of the Storage Facility Meters where the amount of Charging Energy and Discharging Energy are measured for purposes of (i) determining the Net Output, (ii) determining the Storage Capacity Availability Payment True-Up Amount pursuant to Exhibit H, (iii) operating the Storage Facility pursuant to Exhibit K, and (iv) performing the Storage Capacity Test pursuant to Exhibit L, as further described in Attachment 1 to this Exhibit C, which may be updated by Seller based on the final design.

The “POD Meter” means the revenue grade measurement device installed by Seller and located at the “Point of Delivery” that is installed pursuant to the Generator Interconnection Agreement and used to measure the energy delivered to System (or received from the System for the purposes of providing auxiliary power for the Facility) and to determine the Net Output.

The “Generating Facility Meter” means the revenue grade measurement devices installed by Seller and located at the points labeled “Generating Facility Meter” on Attachment 1 to this Exhibit C that is used to measure the Output generated by the Generating Facility.

The “Storage Facility Meter” means the revenue grade measurement devices installed by Seller and located at the points labeled “Storage Facility Meter” on Attachment 1 that is used to measure the Charging Energy flowing into the Storage Facility and the Discharging Energy being discharged from the Storage Facility.

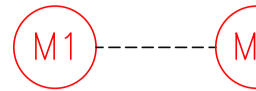


The “Storage Facility Auxiliary Power Meter” means the metering equipment installed by Seller and located at the point labeled “Storage Facility Auxiliary Power Meter” on Attachment 1 to this Exhibit C that is used to measure auxiliary power consumed by the Storage Facility for a Facility using a Two Storage Meter Configuration.

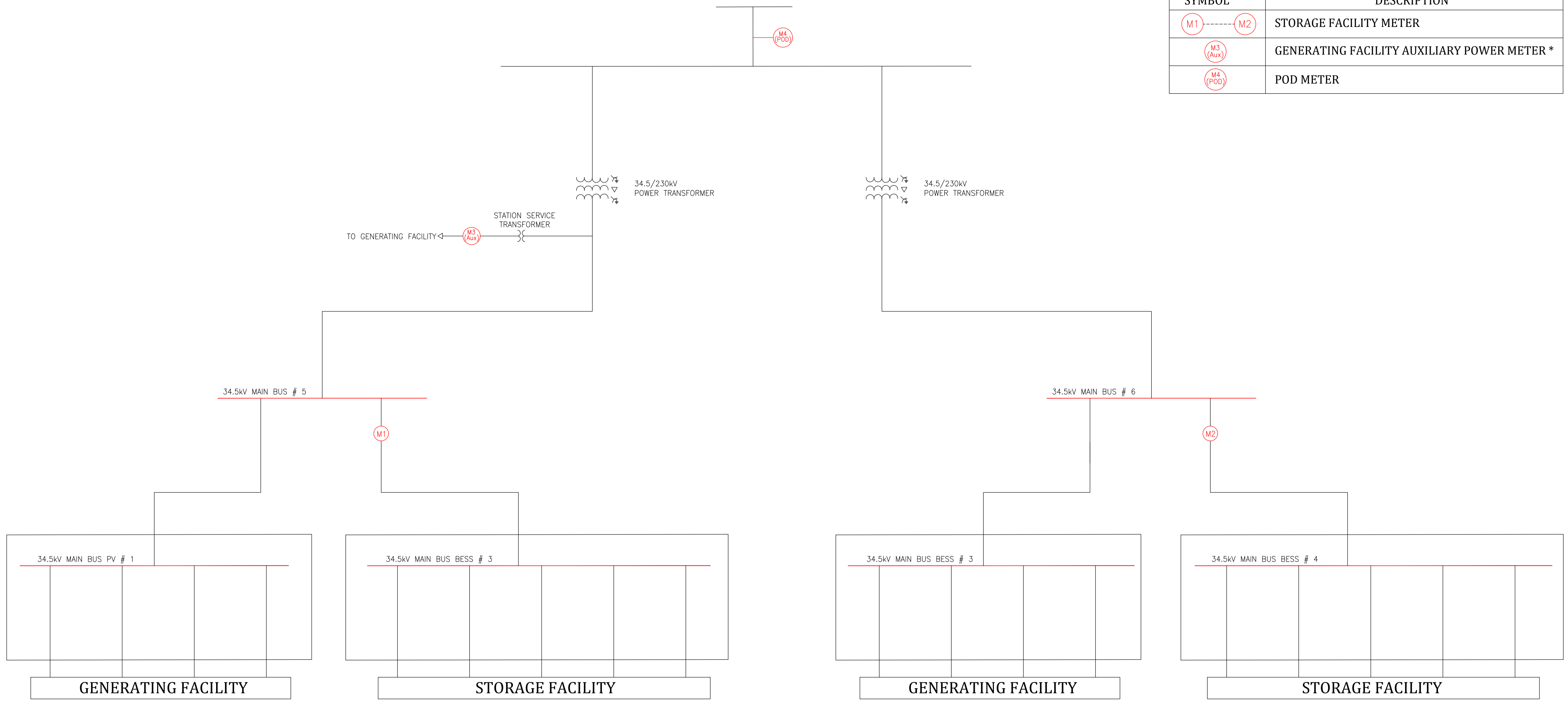
The “Generating Facility Auxiliary Power Meter” means the metering equipment installed by Seller and located at the point labeled “Auxiliary Power Meter” on Attachment 1 to this Exhibit C that is used to measure auxiliary power consumed by the Generating Facility. This meter shall not be used for determining payment obligations under this Agreement, but rather is intended to be used by Parties to support their accounting of RECs under the Agreement.

Attachment 1
Metering Diagram


For a Facility with a One Storage Meter Configuration:

[Attached]

LEGENDS:-	
SYMBOL	DESCRIPTION
	STORAGE FACILITY METER
	GENERATING FACILITY AUXILIARY POWER METER *
	POD METER



NOTE:-
 * FOR THE PURPOSES OF CLARITY, THE GENERATING FACILITY AUXILIARY POWER METER IS USED FOR TRACKING AND MONITORING PURPOSES ONLY, AND NOT FOR THE PURPOSES OF REVENUE CALCULATIONS UNDER THE AGREEMENT

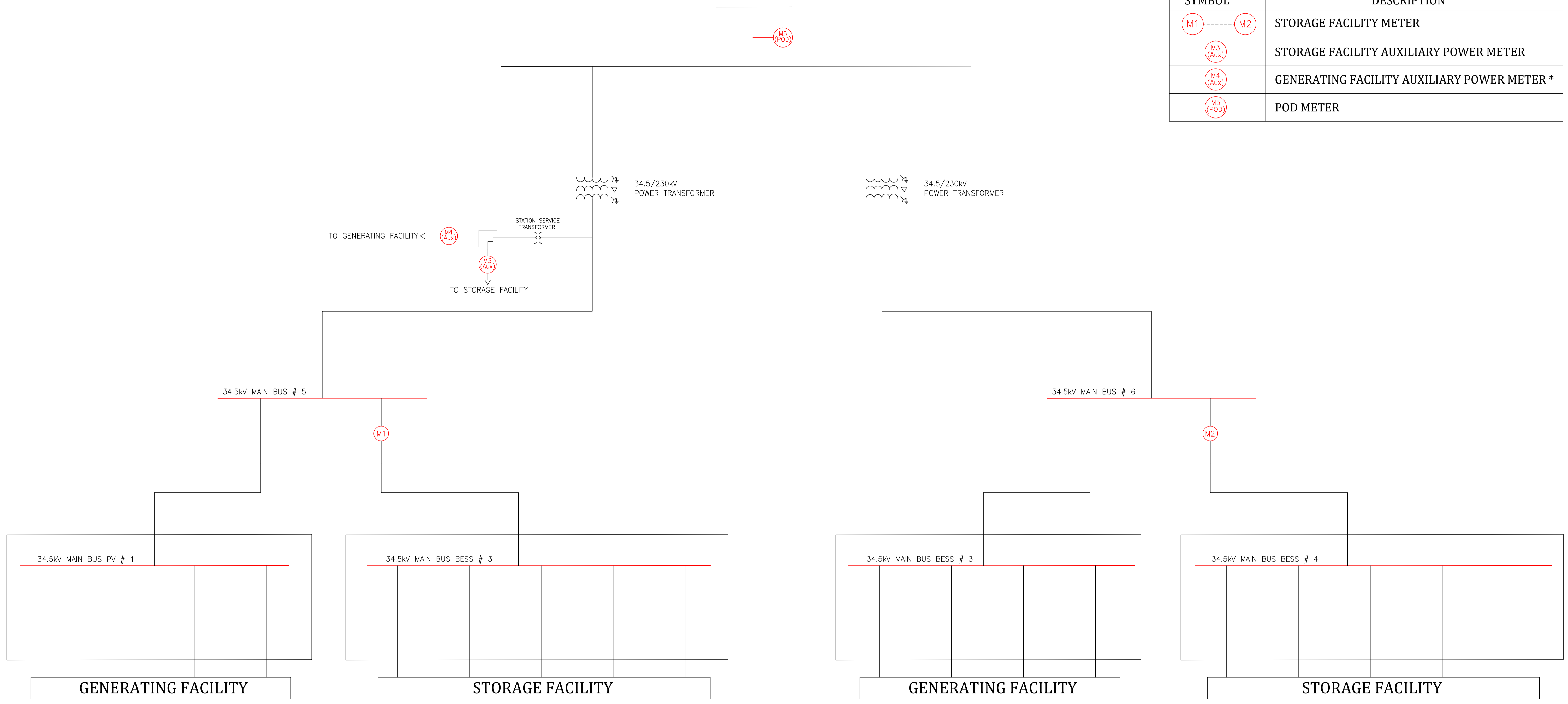
01-13-2022	00		YOGESH	KIRAN
DATE	REV.	REVISION PARTICULARS	DRAWN BY	APPD. BY
		BrightNight Power		
PROJECT NAME		BOX CANYON		
DRAWN		TITLE:- METERING DIAGRAM ONE STORAGE METER CONFIGURATION		
APPROVED		PROJECT NO:	DRAWING NO.	REV.
SCALE	NTS	01	01	1 OF 1

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For a Facility with a Two Storage Meter Configuration:

[Attached]

LEGENDS:-	
SYMBOL	DESCRIPTION
	STORAGE FACILITY METER
	STORAGE FACILITY AUXILIARY POWER METER
	GENERATING FACILITY AUXILIARY POWER METER *
	POD METER



NOTE:-

* FOR THE PURPOSES OF CLARITY, THE GENERATING FACILITY AUXILIARY POWER METER IS USED FOR TRACKING AND MONITORING PURPOSES ONLY, AND NOT FOR THE PURPOSES OF REVENUE CALCULATIONS UNDER THE AGREEMENT

01-13-2022	00		YOGESH	KIRAN
DATE	REV.	REVISION PARTICULARS	DRAWN BY	APPD. BY
		BrightNight Power		
PROJECT NAME		BOX CANYON		
DRAWN		TITLE:- METERING DIAGRAM TWO STORAGE METER CONFIGURATION		
APPROVED		PROJECT NO:	DRAWING NO.	REV.
SCALE	NTS	01	01	1 OF 1

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EXHIBIT D

PERFORMANCE GUARANTEE AND ROUND TRIP EFFICIENCY PROVISIONS

PART I: PERFORMANCE GUARANTEE

A. Definitions.

“Excluded Amount” has the meaning set forth in the definition of “Guaranteed Amount” in Section A of this Exhibit D.

“Guaranteed Amount” means, for any Performance Guarantee Period, (i) (a) seventy-seven and one-half percent (77.5%) of the aggregate Expected Net Output for the first Performance Guarantee Period, and (b) eighty percent (80%) of the aggregate Expected Net Output for each Performance Guarantee Period thereafter, less (ii) the sum of: (x) the Compensable Curtailment during each such Performance Guarantee Period; (y) the Non-Compensable Curtailment during such Performance Guarantee Period; and, without duplication, (z) any quantities of Net Output that were not delivered to Buyer in such Performance Guarantee Period during periods of Uncontrollable Circumstances or when the Generating Facility is not operational because of activities taken by Seller as permitted by Section 2.3.3 (such quantities to be calculated on the basis of the Potential Net Output during such periods) (the sum of (x), (y) and (z), measured in MWh, the “Excluded Amount”).

“Net Output Shortfall” has the meaning set forth in Section B(2)(b) of this Exhibit D.

“Performance Guarantee” has the meaning set forth in Section B(1)(a) of this Exhibit D.

“Performance Guarantee Period” means each consecutive two (2) Contract Year period during the Term (i.e., Contract Years 1 and 2, then Contract Years 2 and 3, then Contract Years 3 and 4, etc.).

“Performance Damages” has the meaning set forth in Section B(2) of this Exhibit D.

“Uncontrollable Circumstances” means, in respect of any Performance Guarantee Period, any periods during which the any part of the Facility was unable to deliver Net Output to Buyer (or during which Buyer failed to accept such delivery) due to one or more of the following events or circumstances, each as recorded by Seller’s SCADA and indicated by Seller’s electronic fault log and not caused by Seller’s acts or omissions: (a) an event of Force Majeure; (b) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Generating Facility; (c) a Weather Event; and (d) a material default by Buyer under this Agreement; provided, however, that if any of the events or circumstances described above in (a) through (d) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting.

“Weather Event” means extreme weather conditions (including hailstorms, dust storms and sandstorms) which prevent any part of the Facility from operating in accordance with applicable equipment operating manuals and Prudent Electrical Practices; provided that despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such Weather Event and the consequences thereof, Seller has been unable to prevent, avoid, mitigate or overcome such event or consequences.

B. Performance Guarantee; Performance Damages.

1. Performance Guarantee.

(a) Seller agrees to deliver to Buyer no less than the Guaranteed Amount during each Performance Guarantee Period during the Term (the “Performance Guarantee”).

(b) Seller agrees to deliver to Buyer no less than the Guaranteed Storage Capacity Rating identified in Exhibit B during each Contract Year during the Term.

2. Performance Damages. “Performance Damages” means the total liquidated damages Seller shall pay Buyer in the event that Seller does not comply with the Performance Guarantee.

(a) If the aggregate amount of Net Output delivered to Buyer during any Performance Guarantee Period is equal to or greater than the Guaranteed Amount for such Performance Guarantee Period, then Seller shall not be liable to Buyer for any Performance Damages in respect of the Guaranteed Amount during the Performance Guarantee Period.

(b) If the aggregate amount of Net Output delivered to Buyer during any Performance Guarantee Period is less than the Guaranteed Amount for such Performance Guarantee Period, then Seller shall determine the shortfall amount (the “Net Output Shortfall”) for such Contract Year (in MWh) in accordance with the following formula (each component determined for such Contract Year):

$$\text{Net Output Shortfall} = \text{Guaranteed Amount} - \text{Net Output}$$

Note: For any Contract Year included in a Performance Guarantee Period for which Seller has paid Performance Damages in respect of the Guaranteed Amount, the Net Output for such Contract Year shall be deemed to equal eighty percent (80%) of the Expected Net Output less Excluded Amount for the Contract Year for the purposes of determining the Guaranteed Amount and Net Output Shortfall for the immediately following Performance Guarantee Period.

(a) If the Net Output Shortfall is a positive number, then Seller shall pay Buyer liquidated damages in respect of such Performance Guarantee Period equal to the product of (i) the Net Output Shortfall for such Performance Guarantee Period, multiplied by (ii) Buyer's Cost to Cover (for Net Output and Green Tags) for such Performance Guarantee Period. If the Net Output Shortfall is a negative number, then Seller shall not be obligated to pay Buyer any Performance Damages in respect of the Guaranteed Amount for such Performance Guarantee Period. If Seller pays Buyer damages pursuant to the last sentence of Section 6.3.1 during a Performance Guarantee Period, all such damages shall reduce the amount of liquidated damages payable for such Performance Guarantee Period pursuant to this Section B.2.(c).

(b) If, after the date that Seller is no longer obligated to pay liquidated damages pursuant to Section 2.4.2(c), a Storage Capacity Test demonstrates that the Storage Capacity Rating is less than the Guaranteed Storage Capacity Rating identified in Exhibit B, then Seller shall pay Buyer liquidated damages equal to (i) the amount by which the Storage Capacity Rating is less than the Guaranteed Storage Capacity Rating, multiplied by (ii) the Storage Capacity Damages for each day until the capacity of the Storage Facility equals the Guaranteed Storage Capacity Rating as demonstrated by a Storage Capacity Test. Buyer's sole remedy and Seller's sole liability for the failure of Seller to maintain the Guaranteed Storage Capacity Rating identified in Exhibit B or any other failure to operate or maintain the Storage Facility in such a manner to maintain the Guaranteed Storage Capacity shall be the payment by Seller of the liquidated damages described in the foregoing sentence.

3. Invoicing. On the thirtieth (30th) day following the end of each Performance Guarantee Period, Seller shall deliver to Buyer a report (and reasonable supporting documentation regarding all data and calculations) detailing whether Seller satisfied the Performance Guarantee for such Performance Guarantee Period. If Seller failed to satisfy the Performance Guarantee for such Performance Guarantee Period, then Seller shall include in the report the Net Output Shortfall for such Performance Guarantee Period, together with reasonable supporting documentation regarding all data and calculations. If there is a Net Output Shortfall, then thirty (30) days after Buyer receives the report and all reasonable supporting documentation regarding all data and calculations provided for above, then Buyer shall deliver to Seller an invoice showing Buyer's computation of the Performance Damages calculated pursuant to Section B(2) of this Exhibit D. In preparing such invoice, Buyer shall utilize the meter data provided to Buyer for the relevant Performance Guarantee Period in question, but may also rely on historical averages and such other information as may be available to Buyer at the time of invoice preparation if the meter data for such Performance Guarantee Period is then incomplete or otherwise not available. Within twenty (20) days of receipt of the invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Buyer reserves its right under Section 9.2 to set off any amounts owed by Seller hereunder against any amounts owed by Buyer to Seller under this Agreement. The provisions of Section 9.4 shall apply with respect to any dispute Seller may have with respect to Buyer's invoice of Performance Damages.

PART II: ROUND TRIP EFFICIENCY

A. Definitions.

“BESS Supply Agreement” means the purchase agreement to be entered into between the Seller (or its contractor) and the BESS Supplier, as the same may be amended from time to time.

“BESS Supplier” means the Person manufacturing and supplying the battery energy system that makes up the Storage Facility pursuant to the BESS Supply Agreement, as selected by Seller in accordance with Exhibit B.

“Round Trip Efficiency Guarantee” means a guarantee of the Round Trip Efficiency, which in the case of the BESS Supply Agreement, is expected to be applicable to the tested efficiency at commissioning and corresponds to the percentage listed for Contract Year 1 in table included in Part II.G. of this Exhibit D, and, in the case of the LTSA, is expected to be applicable to each year of operations and over a twenty (20) year operating period and corresponds to the percentages listed in the table included in Part II.G. of this Exhibit D, and contains terms specified by the BESS Supplier and LTSA Service Provider regarding how to calculate such efficiency, including the adjustments, excuses, exclusions and verification, thereof relating to such calculation and guarantee, and in each case, subject to the other terms and conditions of the BESS Supply Agreement and LTSA, as applicable. Following an RTE Election, the Round Trip Efficiency Guarantee made pursuant to such RTE Election, shall be deemed to be the Round Trip Efficiency Guarantee hereunder.

“LTSA” means the long term service agreement to be entered into between Seller and the LTSA Service Provider, as the same may be amended from time to time.

“LTSA Service Provider” means the Person providing the operations and maintenance services to Seller with respect to the Storage Facility pursuant to the LTSA.

B. Seller shall exercise commercially reasonable efforts to include in the BESS Supply Agreement technical specifications for a Projected Round Trip Efficiency level at commissioning matching or exceeding the amount for the first Contract Year as set forth in the table included in Part II.G of this Exhibit D; provided, that if the Projected Round Trip Efficiency included in the BESS Supplier’s technical specifications is measured at a point other than the medium voltage meter associated with the battery storage facility, then Seller may satisfy its obligation in this Part II.B. of Exhibit D by exercising commercially reasonable efforts to include a technical specification for the Projected Round Trip Efficiency level reasonably equivalent to the first Contract Year as set forth in the table included in Part II.G of this Exhibit D, as adjusted for such point of measurement. The Parties acknowledge and agree that Seller does not make any representation or warranty to Buyer with respect to the adequacy of such Projected Round Trip Efficiencies or the ability of the Storage Project to achieve a Round Trip Efficiency at or above the percentages listed in the table included in Part II.G of this Exhibit D.

C. Buyer shall have the option to request that Seller seek a Round Trip Efficiency Guarantee in the BESS Supply Agreement and the LTSA if such is not offered by the BESS Supplier and the LTSA Service Provider. Buyer shall make such selection within five (5) days of Seller's notice to Buyer of the selection of the BESS Supplier and LTSA Service Provider, which selection may be made at different times in Seller's sole discretion. If Seller's costs (a) under the BESS Supply Agreement or as otherwise related to procuring the equipment for or constructing and placing in service the Storage Facility is greater than what the costs would have been in the absence of a Round Trip Efficiency Guarantee in the BESS Supply Agreement, or (b) under the LTSA or otherwise related to the administration, operation or maintenance of the Storage Facility would increase due to the inclusion of a Round Trip Efficiency Guarantee in the LTSA, then in each case, Seller shall provide written notice to Buyer of such anticipated increase in costs. Buyer will have ten (10) days from receipt of such notice to evaluate such notice and shall, within such time, provide written notice to Seller that Buyer either (1) irrevocably elects to have Seller include such Round Trip Efficiency Guarantees into both the BESS Supply Agreement and the LTSA and agrees to reimburse Seller for all such additional costs ("RTE Election"), or (2) irrevocably does not elect to have Seller include such Round Trip Efficiency Guarantees into both the BESS Supply Agreement and the LTSA, with Buyer's failure to provide a written notice to Seller by the tenth (10th) day after receipt of notice from Seller of the anticipated increase in costs associated with the Round Trip Efficiency Guarantee to be deemed to be an irrevocable election to not have Seller include such Round Trip Efficiency Guarantees into both the BESS Supply Agreement and the LTSA (in each case, a "RTE Rejection"). If Buyer makes a RTE Election, then Seller shall include such Round Trip Efficiency Guarantees into each of the BESS Supply Agreement and LTSA, and Buyer will reimburse Seller for such costs on or before the date that is thirty (30) days after an invoice is delivered therefor. If Buyer makes a RTE Rejection, then Seller shall not be required to include a Round Trip Efficiency Guarantee into the BESS Supply Agreement or the LTSA and Seller's obligations under this Part II of Exhibit D shall have no further force or effect. The Parties acknowledge and agree that when negotiating the terms of the BESS Supply Agreement and LTSA, the Round Trip Efficiency Guarantees that are described as applying separately in each such agreement may be offered on a combined basis in either the BESS Supply Agreement or the LTSA, in which case, the Parties agree that the provisions of this Part II of Exhibit D shall apply to and be deemed to reference such agreement and the corollary counterparty to such agreement.

D. In the event the Buyer makes a RTE Election, and such Round Trip Efficiency Guarantees are not achieved per the terms of the BESS Supply Agreement or LTSA, as applicable, then, subject to the remainder of this Part II.D. of Exhibit D, to the extent Seller receives corresponding liquidated damages from the BESS Supplier or LTSA Service Provider, as applicable, Seller will pass through those liquidated damages to Buyer as and when received from the BESS Supplier and LTSA Service Provider, as applicable. Seller shall use good faith efforts to obtain the liquidated damages specified in the BESS Supply Agreement and LTSA related to a failure to meet the Round Trip Efficiency Guarantee in the BESS Supply Agreement and LTSA; provided, that (i) Buyer shall reimburse Seller for any non de minimis costs incurred in its efforts to obtain such liquidated damages, and (ii) Seller shall not be obligated to commence litigation or other similar proceedings in respect thereof. Seller may deduct all such costs incurred in efforts to obtain such liquidated damages from the liquidated damage payment received from the BESS Supplier or LTSA Service Provider before passing such amounts through to Buyer or may invoice Buyer for such costs on a periodic basis, such reimbursement to be paid by Buyer within thirty (30) days

of such invoice. Seller shall not settle any claim relating solely to the Round Trip Efficiency Guarantees without providing Buyer an opportunity to review and consider such proposed settlement in advance, and considering any suggestions or comments made by Buyer in good faith.

E. Notwithstanding anything to the contrary herein, (i) Seller shall have sole discretion with respect to negotiation of the terms and conditions of the BESS Supply Agreement and the LTSA, and (ii) the consent of Buyer shall not be required for any modification, amendment, waiver, consent, termination or other action by Seller relating to the BESS Supply Agreement or LTSA; provided that if the Round Trip Efficiency Guarantees are included in the executed BESS Supply Agreement and LTSA, Seller will not agree to any amendment that relates solely to the terms of such Round Trip Efficiency Guarantees without the consent of Buyer. Seller shall have the right to terminate the BESS Supply Agreement and LTSA (for default or otherwise), and upon such termination the provisions of Part II.B. and C. of this Exhibit D with respect to any replacement BESS Supply Agreement and/or LTSA shall apply (and the remaining provisions of this Part II of Exhibit D shall apply based on whether Buyer makes an RTE Election or RTE Rejection thereafter).

F. Notwithstanding anything to the contrary herein, Buyer’s sole remedy and Seller’s sole liability for any shortfall in the target RTE percentages in the table below or any other failure to operate or maintain the Facility in such a manner as to achieve the target RTE percentages in the table below or any failure of the Facility to achieve the Round Trip Efficiency Guarantees if requested by Buyer to be included in the BESS Supply Agreement and the LTSA, shall be the pass through of any associated liquidated damages received by the BESS Supplier and LTSA Service Provider as described in and pursuant to Part II.C. and D of this Exhibit D.

G. Target RTE Percentage Table:

Contract Year	Target RTE Percentage
1	85.00%
2	84.89%
3	84.79%
4	84.68%
5	84.58%
6	84.47%
7	84.36%
8	84.26%
9	84.15%
10	84.05%
11	83.94%
12	83.84%
13	83.73%
14	83.63%
15	83.52%
16	83.42%

17	83.32%
18	83.21%
19	83.11%
20	83.00%

NOTE: Target RTE at standard temperature and pressure conditions (25 degrees C, 1 atm).

EXHIBIT E

FORM OF PARENT GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of [____], 20[___], is issued and delivered by [____], a [____] ("Guarantor") for the benefit of Southwest Public Power Agency, Inc. an Arizona joint action agency ("Beneficiary"), with reference to the following:

WHEREAS, Beneficiary and BOCA bn, LLC, a Delaware limited liability company ("Obligor") entered into that certain Power Purchase Agreement, dated as of [____], 2021 (the "Agreement"); and Guarantor delivers this Guaranty to Beneficiary as an inducement to Beneficiary to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, Guarantor hereby agrees as follows:

1. Guarantor absolutely and unconditionally guarantees to Beneficiary and its permitted successors, as an independent obligation of Guarantor, the prompt and complete payment when due of all of Obligor's present and future obligations and liabilities under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed Expenses as defined in Section 10, plus (a) [____] U.S. Dollars (U.S. \$[____]) for the period from the effective date of the Agreement, through but not including the Commercial Operation Date (as defined in the Agreement), and (b) [____] U.S. Dollars (U.S. \$[____]) for the period from the Commercial Operation Date (as defined in the Agreement) through the Expiration Date.

2. This Guaranty is one of payment and not of collection or performance and shall apply regardless of whether recovery of any Guaranteed Obligations may be or become barred by any bankruptcy, insolvency or other proceeding. All sums payable by Guarantor hereunder shall be made in immediately available funds without any setoff, deduction, counterclaim or withholding for taxes unless required by applicable law, in which case Guarantor shall pay, in addition to the payment to which Beneficiary is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by Beneficiary (free and clear of any setoff, deduction, counterclaim or withholding for taxes) will equal the full amount which Beneficiary would have received had no such setoff, deduction, counterclaim or withholding been required.

3. Beneficiary may at any time, whether before or after termination of this Guaranty, and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) apply any sums received to any indebtedness or other obligations for which Obligor is liable, whether or not such indebtedness is a Guaranteed Obligation; (b) modify, compromise, release, subordinate, substitute, exercise, alter, enforce or fail or refuse to exercise or enforce any claims, rights or remedies of any kind which Beneficiary may have, at any time against Obligor or Guarantor, endorser, or other party liable for the Guaranteed Obligations or any part or term thereof, or with respect to collateral or security of any kind Beneficiary may have, at any time, whether under the Guaranteed Obligations, or any

other agreement, or this Guaranty, or otherwise; (c) release, substitute, or surrender and to enforce, collect or liquidate or fail or refuse to enforce, collect or liquidate, any collateral or security of any kind Beneficiary may have, at any time, whether under this Guaranty or otherwise; (d) take and hold security for the payment and performance of the obligations guaranteed hereby, and exchange, enforce, waive, and release or apply such security and direct the order or manner of sale thereof as Beneficiary in its discretion may determine; (e) release or substitute any other guarantor of Obligor's payment or performance; and (f) assign this Guaranty in whole or in part or Beneficiary's rights hereunder to anyone at any time. Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

4. Guarantor's obligations hereunder shall not be affected by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Guaranteed Obligations that might otherwise constitute a legal or equitable discharge of or defense to Guarantor. Guarantor agrees that Beneficiary may resort to Guarantor for payment of any of the Guaranteed Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Obligor with respect to any of the Guaranteed Obligations. Beneficiary shall not be obligated to file any claim relating to the Guaranteed Obligations in the event that Obligor becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Beneficiary to so file shall not affect the Guarantor's obligations hereunder. If any payment to Beneficiary in respect of the Guaranteed Obligations is rescinded or must otherwise be returned as a result of Obligor becoming subject to a bankruptcy, reorganization or similar proceeding, Guarantor shall remain liable hereunder to Beneficiary with respect to such Guaranteed Obligations as if such payment had not been made. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Obligor in any creditors', receivership, bankruptcy or other proceedings; (b) the impairment, limitation or modification of liability of Obligor or the estate of Obligor in bankruptcy, or of any remedy for the enforcement of Obligor's liability under the Agreement resulting from the operation of any present or future provision of the Federal Bankruptcy Code or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Agreement in any such proceedings; (d) the assignment or transfer of the Agreement by Obligor; (e) any disability or other defense of Obligor; or (f) the cessation from any cause whatsoever of the liability of Obligor.

5. Guarantor expressly waives protest; notice of acceptance of this Guaranty by Beneficiary; presentment, demand for payment of any of the Guaranteed Obligations; notice of non-payment, non-performance, non-observance, default, dishonor and protest; and, any notice or defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Obligor for reimbursement, or any other rights of Guarantor to proceed against Obligor or against any other person, property or security provided however, that Guarantor reserves the right to assert, on behalf of Obligor, that such notices were not duly delivered to Obligor. Guarantor also waives all rights to assert or plead at any time any statute of limitations as relating to the Agreement to the extent that a claim for payment was made against the Obligor or Guarantor prior to the expiration of the statute of limitations, the obligations of Guarantor hereunder, and any and all surety defenses or other defenses in the nature thereof. Guarantor acknowledges that the provisions of the Agreement may be changed, modified, amended or waived without the consent of or notice to Guarantor and this Guaranty shall guarantee the payment of Obligor's Guaranteed Obligations under the Agreement

as so changed, modified, amended or waived. Notwithstanding anything to the contrary in this Guaranty, Guarantor expressly reserves to itself, and may raise as a defense to its obligations hereunder, all rights, limitations of liability, exclusions, setoffs, counterclaims and defenses to which Obligor is or may be entitled under the Agreement.

6. This Guaranty shall continue in full force and effect with respect to all Guaranteed Obligations until all of the Guaranteed Obligations have been satisfied in full. The delay or failure of Beneficiary to enforce any of the provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. All remedies of Beneficiary shall be cumulative and shall be in addition to all rights, powers and remedies given to the Beneficiary by law. Every right, power, remedy and discretion by Beneficiary may be exercised repeatedly.

7. Until all Guaranteed Obligations are indefeasibly paid in full, Guarantor hereby waives all rights of subrogation from Obligor and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Guaranteed Obligations. No payment in respect of any such subordinated debts shall be received by Guarantor. Upon any Guaranteed Obligation becoming due, Obligor or its assignee, trustee in bankruptcy, receiver, or any other person having custody or control over any or all of Obligor's property is authorized and directed to pay to Beneficiary the entire unpaid balance of the debt before making any payments to Guarantor, and for that purpose. Any amounts received by Guarantor in violation of the foregoing shall be received as trustee for the benefit of Beneficiary and shall forthwith be paid over to Beneficiary.

8. This Guaranty shall remain in full force and effect until the date Section 7 of the Agreement provides for the release of or the date that security is no longer required (the "Expiration Date"); provided, however, Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

9. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws. Guarantor and Beneficiary hereby irrevocably submit, consent to, and require that the state and federal courts located in the States of Arizona and New York have concurrent jurisdiction over any disputes arising or relating to this Guaranty, and the parties hereby consent to the personal jurisdiction of such courts and to extra-territorial service of process.

10. To the extent expressly provided for in the Agreement, Guarantor agrees to pay interest accruing on the guaranteed indebtedness and all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts ("Expenses").

11. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A

TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS GUARANTY.

12. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. Each provision hereof shall be severable from every other provision when determining its legal enforceability such that this Guaranty may be enforced to the maximum extent permitted under applicable law. This Guaranty may only be amended or modified by an instrument in writing signed by each of Guarantor and Beneficiary. There are no intended third party beneficiaries of this Guaranty.

13. Guarantor's obligations under this Guaranty shall be binding on the successors, heirs, and assigns of Guarantor by operation of law or otherwise (including any receiver or bankruptcy trustee). Guarantor may not assign its rights nor delegate its obligations under this Guaranty in whole or part, without written consent of Beneficiary, and any purported assignment or delegation absent such consent is void; provided however, that this Guaranty may be assigned or transferred without the prior written consent of Beneficiary to any Qualifying Person or to any entity which meets the Credit Requirements, which in each case, upon such transfer becoming effective, shall release Guarantor of all of its obligations hereunder. Except as set forth in the preceding sentence, in no event shall Guarantor be released by any assignment or delegation by it of its obligations hereunder. This Guaranty may be assigned by Beneficiary voluntarily or by operation of law to any entity that takes assignment of (and is a permitted assignee under) the Agreement, without reducing or modifying the liability of Guarantor hereunder. Guarantor agrees to properly execute, or cause to be executed, all documents reasonably required by Beneficiary in connection herewith in order to fulfill the intent and purposes hereof.

14. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing to Guarantor or to Beneficiary, as applicable, at its address as indicated below:

If to Guarantor, at:

With a copy to:

If to Beneficiary, at:

With a copy to:

or such other address as Guarantor or Beneficiary shall from time to time specify. Notice shall be deemed given when received, or refusal to receive, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail.

15. Guarantor represents and warrants to Beneficiary:

(a) it has read the Agreement and this Guaranty and understands the content hereof, and that this Guaranty is enforceable against Guarantor in accordance with its terms, and that the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which Guarantor is a party;

(b) it is duly organized, validly existing and in good standing under the laws of the State of its organization, it is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the execution and delivery of this Guaranty and performance of its obligations under this Guaranty makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to materially and adversely affect its ability to perform its obligations under this Guaranty;

(c) it has the requisite power and authority to execute and deliver this Guaranty and to perform its obligations under this Guaranty;

(d) it has taken all organizational actions required to be taken by it to authorize the execution, delivery and performance of this Guaranty;

(e) the execution and delivery of this Guaranty and the performance of its obligations in this Guaranty does not and will not (i) contravene or result in a violation or breach of or default under any provision of its organizational documents, or (ii) require the consent or approval of any Governmental Authority or Person; and

(f) this Guaranty is its valid and legally binding obligation, enforceable in accordance with the terms of this Guaranty, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

By: _____
Name:
Title:

EXHIBIT F
REQUIRED INSURANCE

1.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller must secure and continuously carry with an insurance company or companies rated not lower than “A-/VII” by the A.M. Best Company the insurance coverage specified below, to the extent commercially available:

- 1.1.1. Commercial general liability insurance, issued on an occurrence basis, covering bodily injury liability and property damage liability arising from operations and activities at the Facility, including the loss of use of the Facility or any tangible personal property that is not physically damaged, with a combined single limit of liability and aggregate limits of not less than \$2,000,000 per occurrence, including the following coverages:
 - 1.1.1.1. Broad form property damage coverage;
 - 1.1.1.2. Contractual liability coverage for the obligations assumed in this Agreement, but only to the extent coverage is not otherwise provided;
 - 1.1.1.3. Products and completed operations liability coverage for a term extending not less than five (5) years after achieving Commercial Operation;
 - 1.1.1.4. Business interruption loss or damage; and
 - 1.1.1.5. Independent Contractor’s liability, to the extent such policy is applicable to any such contractor.
- 1.1.2. Workers’ compensation insurance and employer liability insurance, including coverage for occupational diseases, in amounts not less than the minimum amount required by law, but in no event less than \$1,000,000 per accident.
- 1.1.3. Environmental impairment liability insurance covering damages, injuries or losses resulting from Seller’s acts or omissions or the construction or operation of the Facility, and damages or injury resulting from spillage or release of any hazardous substance or dangerous freight, with a liability limit of not less than \$10,000,000 per occurrence.
- 1.1.4. Combined, single limit automobile liability insurance covering liability for bodily injury and property damage of not less than \$1,000,000 per occurrence, with coverage extending to owned, leased and any non-owned vehicle used by or on behalf of Seller or Seller’s invitees.
- 1.1.5. Excess liability insurance in an amount not less than \$23,000,000 insuring any losses, damages, costs, expenses and/or liabilities covered by any policy of insurance required to be maintained by Seller under this Agreement, including

without limitation, any commercial general liability or environmental impairment liability policy.

1.2 Additional Provisions or Endorsements.

1.2.1 Except for workers' compensation and property insurance, the policies required must include provisions or endorsements as follows:

- (a) naming Buyer, parent, divisions, officers, directors and employees as additional insureds;
 - (b) include provisions that such insurance is primary insurance with respect to the interests of Buyer and that any other insurance maintained by Buyer is excess and not contributory insurance with the insurance required under this schedule; and
 - (c) cross liability coverage or severability of interest
- 1.2.2 Unless prohibited by applicable law, all required insurance policies must contain provisions that the insurer will have no right of recovery or subrogation against Buyer.

1.3 Certificates of Insurance. Seller must provide Buyer with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained, in ACORD or similar industry form. The certificates must indicate that the insurer will provide thirty (30) days prior notice of cancellation. If any coverage is written on a "claims-made" basis, the certification accompanying the policy must conspicuously state that the policy is "claims made."

1.4 Term of Commercial General Liability Coverage. Commercial general liability coverage must be maintained by Seller for a minimum period of two (2) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

EXHIBIT G
NERC EVENT TYPES

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year.
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

EXHIBIT H
CONTRACT PRICE; STORAGE PRICE

PART I: CONTRACT PRICE AND STORAGE PRICE

Contract Price: as determined by Part III of this Exhibit H.

If the aggregate amount of Net Output delivered to Buyer during any Contract Year is greater than one hundred twenty-five (125%) of the Expected Net Output for such Contract Year, Seller shall reimburse Buyer the costs for such excess Net Output delivered so Buyer only pays 35% of the Contract Price for any Net Output delivered in excess of one hundred twenty-five (125%) of the Expected Net Output for the Contract Year.

Storage Price: \$3,800 per MW-month or \$124.93/MW-day.

If Storage Capacity Tests determine the Storage Capacity Rating to be less than the Guaranteed Storage Capacity Rating, then Buyer shall only be obligated to pay the Storage Price for the determined Storage Capacity Rating until the Storage Facility has been augmented such that the Storage Capacity Rating is determined to be equal to the Guaranteed Storage Capacity Rating.

PART II: STORAGE CAPACITY AVAILABILITY PAYMENT TRUE-UP

Within sixty (60) days after each Contract Year of the Term, Buyer shall calculate the Annual Storage Capacity Availability for the Contract Year in accordance with the Annual Storage Capacity Availability Calculation described below. If such Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next monthly Storage Capacity Payment(s) (the "Storage Capacity Availability Payment True-Up"), and (2) provide Seller with a written statement of the calculation of the Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount.

"Storage Capacity Availability Payment True-Up Amount" means an amount equal to $A \times B$, where:

A = The sum of the Storage Capacity Payments for the applicable Contract Year

B = The Capacity Availability Shortfall Factor

"Capacity Availability Shortfall Factor" means:

(A) If the Annual Storage Capacity Availability is equal to or greater than the Guaranteed Storage Availability, then:

Capacity Availability Shortfall Factor = 0

(B) If the Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, but greater than or equal to eighty percent (80%), then:

$$\text{Capacity Availability Shortfall Factor} = \frac{\text{Guaranteed Storage Availability} - \text{Annual Storage Capacity Availability}}{\text{Annual Storage Capacity Availability}}$$

(C) If the Annual Storage Capacity Availability is less than eighty (80%), then:

$$\text{Capacity Availability Shortfall Factor} = (\text{Guaranteed Storage Availability} - \text{Annual Storage Capacity Availability}) * 1.5$$

“Effective Storage Capacity” means the maximum dependable operating capacity of the Storage Facility (measured in MW) to discharge energy for two (2) hours of continuous discharge, as measured at the Point of Delivery pursuant to the most recent Storage Capacity Test; provided, that the Effective Storage Capacity shall be no greater than 300 MW.

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

Following the end of each Contract Year during the Term, Buyer shall calculate the “Annual Storage Capacity Availability” for such Contract Year using the formula set forth below:

$$\text{Unavailable Calculation Interval} = 1 \text{ Calculation Interval} \times \frac{\text{Available Storage Capacity}}{\text{Effective Storage Capacity}}$$

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Sum of Unavailable Calculation Intervals}}{\text{Total Calculation Intervals}}$$

“Calculation Interval” means each successive fifteen-minute interval during the Contract Year but excluding all such intervals where the Facility is unavailable due to Force Majeure, a Planned Outage, a Maintenance Outage, Storage Capacity Tests, actions or inactions of Buyer (including breaching the Agreement) or during periods when the Storage Facility is not operational because of activities taken by Seller permitted by Section 2.3.3.

“Sum of Unavailable Calculation Intervals” means the sum of year-to-date Unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

“Available Storage Capacity” shall be the lesser of (i) the sum of the individual capacities, in MW AC, of all available Storage Facility inverters in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines) and (ii) the sum of the individual capacities, in MW AC, of all available battery modules in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines); provided that the Available Storage Capacity shall never exceed the Effective Storage Capacity. For the purposes of clarity, an inverter or battery module that is offline and not available during a Calculation Interval would not be counted as available when determining the Available Storage Capacity for such Calculation Interval, unless such unavailability is due to Force Majeure, a Planned Outage or a Maintenance Outage.

“Total Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals during such Contract Year for which the Annual Storage Capacity Availability is being calculated.

Example:

Assumptions:

For Calculation Interval X:

- Effective Storage Capacity: 300 MW
- Available Storage Capacity: 290 MW

For Contract Year 3:

- Unavailable Calculation Intervals: 1,400
- Total Calculation Intervals: 35,040
- Guaranteed Storage Availability: 97%
- Total Storage Capacity Payments: \$13,680,000

Calculations:

For each Calculation Interval during the Contract Year (in this example, Calculation X), the calculation of Unavailable Calculation Interval shall be as follows:

$$\begin{aligned}\text{Unavailable Calculation Interval} &= 1 - (290 \text{ MW}/300 \text{ MW}) \\ &= 1 - 0.9667 \\ &= 0.0333\end{aligned}$$

For each Contract Year (in this example, Contract Year 3), the calculation of the Storage Capacity Availability Payment True-up Amount shall be as follows:

$$\begin{aligned}\text{Annual Storage Capacity Availability (\%)} &= 1 - (1,400 \text{ Calculation} \\ &\text{Intervals}/35,040 \text{ Calculation Intervals}) \\ &= 1 - 0.0400 \\ &= 0.96 \\ &= 96\%\end{aligned}$$

$$\begin{aligned}\text{Capacity Availability Shortfall Factor} &= 97\% - 96\% \\ &= 1\%\end{aligned}$$

$$\begin{aligned}\text{Storage Capacity Availability Payment True-Up Amount} &= \$13,680,000 \times 1\% \\ &= \$136,800\end{aligned}$$

Part III: CONTRACT PRICE DETERMINATION

1. The Contract Price, the Guaranteed Commercial Operation Date, the Buyer Working Capital Reserve Amount and the Buyer Default Security Amount shall be determined as follows:

(a) On November 1, 2022, Seller shall deliver to Buyer a proposal on the Contract Price that would apply to the Agreement (the "Contract Price Proposal Notice"), which may be equal to or greater than \$21.91/MWh.

(b) If the Contract Price set forth in the Contract Price Proposal Notice is equal to \$21.91/MWh, then such Contract Price shall apply to the Agreement, the Guaranteed Commercial Operation Date shall be May 31, 2025, the Buyer Working Capital Reserve Amount shall be equal to thirteen million six hundred eighty thousand dollars (\$13,680,000), and the Buyer Default Security Amount shall be ten million dollars (\$10,000,000).

(c) If the Contract Price set forth in the Contract Price Proposal Notice is greater than \$21.91/MWh, then within ten (10) Business Days of receipt of such Contract Price Proposal Notice, Buyer shall deliver a notice to Seller either agreeing to or rejecting the Contract Price described in the Contract Price Proposal Notice.

(d) If Buyer delivers a notice agreeing to the Contract Price set forth in the Contract Price Proposal Notice (the "Buyer's Acceptance Notice"), then the Contract Price in such Contract Price Proposal Notice shall apply to the Agreement, the Guaranteed Commercial Operation Date shall be May 31, 2025, the Buyer Working Capital Reserve Amount shall be equal to the Buyer Working Capital Reserve Amount (Adjusted), and the Buyer Default Security Amount shall be equal to the Buyer Default Security (Adjusted).

(e) If Buyer delivers a notice rejecting the Contract Price in the Contract Price Proposal Notice (the "Buyer's Rejection Notice"), then the Parties shall negotiate, in good faith and for a period of thirty (30) days after receipt of Buyer's Rejection Notice, to attempt to agree on the Contract Price that would apply to the Agreement, each acting in its sole and absolute discretion.

(i) If on or prior to the conclusion of such thirty (30)-day period, the Parties have agreed on the Contract Price, then such Contract Price shall apply to the Agreement, the Guaranteed Commercial Operation Date shall be May 31, 2025, the Buyer Working Capital Reserve Amount shall be equal to the Buyer Working Capital Reserve Amount (Adjusted), and the Buyer Default Security Amount shall be equal to the Buyer Default Security (Adjusted).

(ii) If at the conclusion of such thirty (30)-day period, the Parties have not agreed on the Contract Price, then Seller, in its sole discretion, may deliver to Buyer within five (5) Business Days a proposal that the Guaranteed Commercial Operation Date that would apply to the Agreement be May 31, 2026, in which case the Contract Price that would apply to the Agreement shall equal \$21.91/MWh (the "GCOD Extension Notice").

(iii) If Seller delivers a GCOD Extension Notice, then on or before December 31, 2022, Buyer shall deliver a notice to Seller either agreeing to or rejecting the proposal set forth in such GCOD Extension Notice.

(iv) If Buyer delivers a notice agreeing to the proposal in the GCOD Extension Notice (the “Buyer’s GCOD Extension Acceptance Notice”), then the Contract Price of \$21.91/MWh shall apply to the Agreement, the Guaranteed Commercial Operation Date shall be May 31, 2026, the Buyer Working Capital Reserve Amount shall be equal to thirteen million six hundred eighty thousand dollars (\$13,680,000), and the Buyer Default Security Amount shall be ten million dollars (\$10,000,000).

(v) If (A) Seller does not deliver a GCOD Extension Notice, (B) Buyer delivers a notice rejecting the proposal in the GCOD Extension Notice (the “Buyer’s GCOD Extension Rejection Notice”), or (C) Buyer does not deliver a Buyer’s Acceptance Notice or Buyer’s Rejection Notice by December 31, 2022, then (1) this Agreement shall terminate, (2) Buyer shall pay Seller a termination payment equal to Two Hundred Fifty Thousand Dollars (\$250,000), and (3) except as set forth in clause (2) which such payment obligation shall survive termination, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination.

(f) If Buyer does not deliver a Buyer’s Acceptance Notice or Buyer’s Rejection Notice within such ten (10) Business Day period, then Buyer shall be deemed to have delivered a Buyer’s Rejection Notice and the provisions of clause (e) shall apply.

(g) Notwithstanding the foregoing, so long as the Contract Price has not previously been determined pursuant to Section 1 of this Part III of Exhibit H, Seller may at any time prior to December 31, 2022 deliver to Buyer a notice that the Contract Price that shall apply to the Agreement is \$21.91/MWh (the “Binding Contract Price Proposal Notice”). Upon Buyer’s receipt of such Binding Contract Price Proposal Notice, such Contract Price shall apply to the Agreement, the Guaranteed Commercial Operation Date shall be May 31, 2025, the Buyer Working Capital Reserve Amount shall be equal to thirteen million six hundred eighty thousand dollars (\$13,680,000), and the Buyer Default Security Amount shall be ten million dollars (\$10,000,000).

2. Following the determination of the Contract Price, the Guaranteed Commercial Operation Date, the Buyer Working Capital Reserve Amount and the Buyer Default Security Amount in accordance with Section 1 of this Part III of Exhibit H above, Buyer shall execute and deliver a written notice in the form of Attachment 1 to this Exhibit H within two (2) Business Days confirming such Contract Price, the Guaranteed Commercial Operation Date, the Buyer Working Capital Reserve Amount and the Buyer Default Security Amount that will apply to this Agreement. The Parties agree that such confirmation is for record keeping purposes only and that the Contract Price, the Guaranteed Commercial Operation Date, the Buyer Working Capital Reserve Amount and the Buyer Default Security Amount shall be determined by the terms of this Part III of Exhibit H.

3. Definitions.

“Buyer Working Capital Reserve Amount (Adjusted)” means an amount (rounded upwards to the nearest \$1,000) equal to (a) thirteen million six hundred eighty thousand dollars (\$13,680,000), multiplied by (b) the (i) Contract Price as agreed by the Parties pursuant to Section 1(d) or Section 1(e)(i) of Part III of Exhibit H divided by (ii) \$21.91/MWh.

“Buyer Default Security (Adjusted)” means an amount (rounded upwards to the nearest \$1,000) equal to (a) ten million dollars (\$10,000,000), multiplied by (b) the (i) Contract Price as agreed by the Parties pursuant to Section 1(d) or Section 1(e)(i) of Part III of Exhibit H divided by (ii) \$21.91/MWh.

Attachment 1 to Exhibit H

Form of Confirmation of Contract Price, Guaranteed Commercial Operation Date, Buyer Working Capital Reserve Amount and Buyer Default Security Amount

[DATE], 2022

Southwest Public Power Agency, Inc.
c/o SPPA Project Manager
K.R. Saline & Associates, PLC
160 N. Pasadena, Suite 101
Mesa, AZ 85201-6764

Attention: Dennis L Delaney & Jennifer M Torpey
Telephone No.: (480) 610-8741
Facsimile No: (480) 610-8796
Emails: dld@krsaline.com
jmt@krsaline.com

Re: Confirmation of Contract Price, Guaranteed Commercial Operation Date, Buyer Working Capital Reserve Amount and Buyer Default Security Amount

Dear Mr. Delaney and Ms. Torpey:

Reference is made to that certain Power Purchase Agreement (the "Agreement") that was entered into as of [_____], 2022, by and between BOCA bn, LLC, a Delaware limited liability company ("Seller"), and Southwest Public Power Agency, Inc. or "SPPA", an Arizona joint action agency ("Buyer"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Pursuant to Section 1 of Part III of Exhibit H of the Agreement, the Contract Price, Guaranteed Commercial Operation Date, Buyer Working Capital Reserve Amount, and Buyer Default Security Amount have been determined and Section 2 of Part III of Exhibit H of requires that Buyer execute and deliver a written notice in this form within two (2) Business Days of such request by Seller. As such, please execute below to confirm as follows and return such confirmation on or before the date that is two (2) Business Days after the date of this letter:

The Contract Price applicable to the Agreement shall be [\$21.91/MWh][\$/_____/MWh].

The Guaranteed Commercial Operation Date applicable to the Agreement shall be [May 31, 2025][May 31, 2026].

The Buyer Working Capital Reserve Amount applicable to the Agreement shall be [thirteen million six hundred eighty thousand dollars (\$13,680,000)][_____]
(\$_____)].

The Buyer Default Security Amount applicable to the Agreement shall be [ten million dollars (\$10,000,000)][_____ (\$_____)].

Sincerely,

BOCA bn, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND CONFIRMED BY:

Southwest Public Power Agency, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT I
PARTY NOTICE INFORMATION

Notices	Buyer	Seller
All Notices:	<p>Southwest Public Power Agency, Inc. c/o SPPA Project Manager K.R. Saline & Associates, PLC 160 N. Pasadena, Suite 101 Mesa, AZ 85201-6764</p> <p>Attention: Dennis L Delaney & Jennifer M Torpey Telephone No.: (480) 610-8741 Facsimile No: (480) 610-8796 Emails: dld@krsaline.com jmt@krsaline.com</p> <p>Copy to: Clark Hill c/o Sheryl A. Sweeney 3200 N. Central Ave., Suite 1600 Phoenix, Arizona 85012 ssweeney@clarkhill.com Tel: 602-440-4824 (office) 602-739-8259 (cell)</p>	<p>BOCA bn, LLC c/o BrightNight Legal Department 13123 E Emerald Coast Pkwy Ste B#158 Inlet Beach, FL 32461 Telephone: 1-888-614-2626 Email: legal@brightnightpower.com</p> <p>Copy to: Amis, Patel & Brewer, LLP c/o Nik Patel 1050 K Street, NW 5th Floor Washington, D.C. 20001 nikpatel@apblp.com Tel: 202-601-8503 (office) 202-731-0809 (cell)</p>
All Invoices:	Same as All Notices	<p>BOCA bn, LLC c/o Accounting Department 13123 E Emerald Coast Pkwy Ste B#158 Inlet Beach, FL 32461 Telephone: 1-888-614-2626 Email: accounting@brightnightpower.com</p>
Scheduling:	<p>ACES West Regional Trading Center 1000 S. Hwy 80 Benson, AZ 85602 Telephone: 1-520-586-5015 or 520-586-5407 Fax: 520-586-5445 Email: ACES-WRTCTraders@acespower.com</p>	To Be Provided (no later than 30 days prior to delivery of Test Energy)
Payments:	Same as All Notices	Same as All Invoices
Wire Transfer:	<p>Bank: BMO Harris Bank ABA: 071000288 Account: 4026555</p>	To Be Provided Separately

Notices	Buyer	Seller
Credit and Collections:	Same as All Notices	Same as All Invoices
Notices of an Event of Default or Potential Event of Default:	Same as All Notices and Copy to: Clark Hill c/o Sheryl A. Sweeney 3200 N. Central Ave., Suite 1600 Phoenix, Arizona 85012 ssweeney@clarkhill.com Tel: 602-440-4824 (office) 602-739-8259 (cell)	Same as All Notices

EXHIBIT J

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of [____], 20[___], is entered into by and among Southwest Public Power Agency, Inc. an Arizona joint action agency (together with its permitted successors and assigns, “SPPA”), [____], in its capacity as [Administrative Agent/Collateral Agent] for the Lenders (as hereinafter defined) (together with its successors, assigns and designees in such capacity, “Agent”), and BOCA bn, LLC, a Delaware limited liability company (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the PPA (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately 300 MW solar-powered electric generating facility and 300 MW integrated storage facility located in Pinal County, Arizona (the “Project”).

[WHEREAS, in order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [Financing Agreement], dated as of [____], [____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.

WHEREAS, SPPA and Borrower have entered into that certain Power Purchase Agreement, dated as of [____], [____] (collectively with all documents entered into in connection therewith that are listed on Schedule A attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).

WHEREAS, pursuant to a security agreement executed by Borrower and Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.]

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

SECTION 1. CONSENT TO ASSIGNMENT

SPPA acknowledges the collateral assignment by Borrower of, among other things all of its right, title and interest in, to and under the PPA to Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents, consents to an assignment of the PPA pursuant thereto, and agrees with Agent as follows:

(A) Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA and in Section 1(C) below. Upon receipt of notice from Agent, SPPA agrees to accept such exercise and cure by Agent if timely made by Agent under the PPA and this Consent. Upon receipt of Agent's written instructions, SPPA agrees to make directly to Agent all payments to be made by SPPA to Borrower under the PPA from and after SPPA's receipt of such instructions, and Borrower consents to any such action.

(B) SPPA will not, without the prior written consent of Agent (such consent not to be unreasonably withheld, conditioned or delayed), cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof.

(C) SPPA agrees to deliver duplicates or copies of all notices of default delivered by SPPA under or pursuant to the PPA to Agent in accordance with the notice provisions of this Consent. SPPA may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Agent shall have the later of (i) sixty (60) days after the end of the applicable cure period under the PPA or (ii) ninety (90) days from the date notice of default or breach is delivered to Agent to cure such default; provided that in respect of monetary defaults, such period shall be thirty (30) days. If possession of the Project is necessary to cure such breach or default, and Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, then Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings but not to exceed one hundred (120) days. SPPA consents to the transfer of Borrower's interest under the PPA to Agent or a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of or after such foreclosure and agrees that upon such foreclosure, sale or conveyance, SPPA shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). For purposes of this Consent, "Qualified Transferee" means a Person that, together with its Affiliates has (or agrees to contract with an operator who has) at least three (3) years of experience operating, owning or managing a photovoltaic-powered electric generating facility and integrated storage facility of similar technology to the Project.

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, SPPA will enter into a new contract with a Qualified Transferee. Such new contract shall be on the same terms and conditions as the original PPA for

the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent SPPA reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, SPPA, or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental authorities and all judicial orders, judgments and decrees (hereinafter “Applicable Law”) in effect at such time. Lenders or Agent shall cure or cause the cure of any payment defaults then existing under the original PPA prior to SPPA entering into a new contract.

(E) In the event Agent, the Lenders or their designees or assignees elect to perform Borrower’s obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of SPPA against Agent, Lenders or their designees and assignees shall be limited to such parties’ interests in the Project, the Project Development Security and Seller Default Security required under the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

(F) In the event a Qualified Transferee succeeds to Borrower’s interest under the PPA, Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not capable of being cured and do not materially impair SPPA’s rights under the PPA. Agent, the Lenders and their designees or assignees shall have the right to assign the PPA or the new contract entered into pursuant to subparagraph 1(D) above to any Qualified Transferee to whom Borrower’s interest in the Project is transferred, provided that such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment.

SECTION 2. REPRESENTATIONS AND WARRANTIES

SPPA hereby represents and warrants that as of the date of this Consent:

(A) It (i) is duly incorporated and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business, and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) this Consent has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(D) the execution, delivery and performance by it of this Consent, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material

contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(E) the PPA is in full force and effect; and

(F) neither SPPA nor, to SPPA's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder.

Agent hereby represents and warrants that as of the date of this Consent:

(A) It (i) is duly incorporated and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business, and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder; and

(B) this Consent has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Borrower hereby represents and warrants that as of the date of this Consent:

(A) It (i) is duly organized and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business, and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite limited liability company power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent have been duly authorized by all necessary limited liability company action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) this Consent has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(D) the execution, delivery and performance by it of this Consent, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(E) the PPA is in full force and effect; and

(F) neither Borrower nor, to Borrower's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to SPPA:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

If to Agent:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

If to Borrower:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from SPPA by providing written notice to SPPA of Tax Investor's address for notices. SPPA's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

SPPA agrees to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, SPPA may perform as set forth herein and that neither the execution of this Consent, the performance by SPPA of any of the obligations of SPPA hereunder, the exercise of any of the rights of SPPA hereunder, or the acceptance by SPPA of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by SPPA to, or impute knowledge to SPPA of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by SPPA of any of its rights under the PPA. Borrower and Agent acknowledge hereby for the benefit of SPPA that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against SPPA on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

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

SPPA

By: _____

Name: _____

Title: _____

_____,

a _____

By: _____

Name: _____

Title: _____

_____,

as Agent for the Lenders

[Borrower]

By: _____

Name: _____

Title: _____

EXHIBIT K
STORAGE OPERATING PROCEDURES

I. Facility Master Controller, Telemetry and Interoperability

A. Facility Master Controller. The Storage Facility shall be controlled by a master controls system that shall communicate with, monitor, and control all Facility equipment in order to safely and optimally deliver the Storage Product (Facility Master Controller). Parties shall cooperate to integrate the systems and controls necessary to implement the Storage Operating Procedures.

- 1) Buyer's systems may monitor the Facility Master Controller system while the Facility Master Controller will act as the master.
- 2) The Facility Master Controller shall be compatible with Buyer's historian database and applicable protocols. The Facility Master Controller system shall incorporate a remote terminal unit (RTU) to send data to Buyer's historian.
- 3) The monitoring system of the Facility Master Controller shall provide energy generation data, historical data, meteorological data, and all other applicable data to record operational history. Seller shall design the system so that the data can be retrieved remotely. The monitoring system shall be configured for automatic reporting of generation statistics required by Buyer.

B. Facility Storage Telemetry. In addition to Section 6.6.2, Seller must provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility on a real-time basis:

- 1) Available charging energy of the Storage Facility;
- 2) Available discharging energy of the Storage Facility;
- 3) Current status of the Storage Facility, expressed as a state of charge (SOC) percentage;
- 4) Physical availability and major faults incurred in the system which will limit market participation for the following day; and
- 5) Such real time data must be made available to Buyer on the same basis as Seller receives the data.

- C. In the event of loss of communication between Buyer and the Facility Master Controller, a provision must be made for the Storage Facility systems to institute Buyer's desired behavior in such circumstance, including maintaining the previously communicated operating behavior, accepting a curtailment command from a local terminal, or a safe and linear shutdown.

II. Storage Facility Design and Operation

- A. The Power Conversion System (PCS) is the interface between the direct current (DC) battery system and the alternating current (AC) system and provides for charging and discharging of the battery and may consist of one or more parallel units.

- 1) The PCS, in conjunction with the Facility Master Controller, shall be capable of completely automatic unattended operation by Seller, including self-protection, synchronizing and paralleling with the utility, and disconnect functions.
- 2) The control of the PCS shall be integrated with the Facility Master Controller. The Facility Master Controller shall be the primary interface with Buyer's systems and the Facility Master Controller's protocol shall be compatible with Buyer's existing SCADA system. The self-protective features shall not allow the PCS to be operated in a manner that may be unsafe or damaging.

- B. Storage Facility Operation Mode. The Storage Facility shall be capable of being operated by Seller in a completely automatic mode, as directed to Seller by Buyer's system operations or through a local system interface and shall be capable of four quadrant (operation to provide for peak power limiting operations, smoothing of intermittent generation, charge/discharge operations, VAR support, and other operating support).

C. Facility Storage Control Functions.

- 1) Real Power Controls
 - 1. Function Direct Charge/Discharge Storage - This is a basic function that can be used to discharge or charge the Storage Facility to a specified SOC and at a specified rate.
 - 2. No-Grid-Charging Mode – Storage Facility shall adjust power levels and other conditions automatically when grid charging is not active.

2) Miscellaneous and Support Functions

1. Scheduling Function – The Storage Facility can be operated based on time schedule or it can simply follow Real Power (P) and Reactive Power (Q) set points from Buyer’s SCADA to the Facility Master Controller.
2. Event Logging and Reporting Function – This function shall be used to record any protection events triggered by the inverters including but not limited to over current, over voltage, over temperature, sequence of event reporting (SER), etc.
3. Status Monitoring Function – This function shall include voltages, SOC, inverter status, usable energy, battery energy storage system (BESS) rack and module temperature, present operating mode, inverter active, reactive power output, power factor, present line frequency, connect/disconnect status, operating time, connected time, and possibly other BESS information.

D. Charging and Discharging – Requirements and Limitations

- 1) Buyer shall direct Seller to charge and discharge the Storage Facility pursuant to limitations included in Exhibit B and the Storage Operating Parameters listed at the end of this Exhibit.
- 2) Facility Master Controller shall allow Buyer’s dispatcher to initiate remotely the Seller-specified/programmed charge and discharge cycles. The maximum demand required by the charging cycle shall be Buyer selectable but shall not exceed Seller maximum charge or discharge rate listed in Exhibit B.
- 3) Seller shall also specify additional restrictions, if any, on operation of the Storage Facility consistent with Prudent Electrical practices or manufacturer warranties.
- 4) Automatic or programmed charge cycles shall be implemented to prevent SOC going below the battery vendor specified SOC limits.
- 5) During Storage Capacity Tests, Seller will indicate any required rest (neither charging nor discharging of the Storage Facility) periods and their duration.

E. Cooperation

- F.
- 1) The design must include prudent provisions for improvement to accommodate technology and market changes. For example:
 1. Grid charging after expiration of an ITC recapture period, subject to Section 6.10.1(a).
 2. Bidding into the Energy Imbalance Market and Extended Day Ahead Market (EDAM)

III. Forecasting and Scheduling

- A. Buyer will provide to Seller, per the Western Electricity Coordinating Council ("WECC") pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging and Discharging Notice will incorporate Seller's solar resource availability per the day-ahead forecasts provided under Section 6.5.2.
- B. Buyer may direct Seller to schedule the Storage Facility for seven (7) days per week and twenty-four (24) hours per day (including holidays) for all available components of the Storage Product, unless the Storage Facility is, in whole or in part, incapable of operations due to Force Majeure, Compensable Curtailment, a Planned Outage, Forced Outage, a Maintenance Outage, or the Storage Operating Parameters.

IV. Charging and Discharging Notices

- A. Buyer shall have the right to direct Seller to charge and discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices and Discharging Notices to Seller electronically. Buyer shall direct Seller to schedule Charging Energy and Discharging Energy via the Facility Master Controller or simply by sending P and Q commands. Each Charging Notice will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice, and each Discharging Notice will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice; provided if the Storage Facility reaches an operational constraint included in the Storage Operating Parameters or its continued operation in the current state would violate a manufacturer's warranty, the Facility Master Controller shall automatically adjust levels to remain within the Storage Operating Parameters (e.g., if Buyer provides a Charging Notice for 303 MW, the Facility Master Controller shall automatically adjust the level to 300 MW or lower depending upon PV energy availability).

V. Measurement and Verification

- A. Buyer will have real-time access to view the Seller's Energy Management System (EMS) and data historian that will monitor the Storage Facility's state of health metrics as well as usage metrics such as equivalent full cycles to date. In accordance with the Storage Operating Parameters below, Buyer shall be allowed to cycle the Storage Facility 365 equivalent full cycles (i.e., discharge 219,000 MWh of Discharging Energy) per year. Buyer shall be able to monitor the number of cycles that have occurred over the life of the Storage Facility on a real-time basis.

VI. Scheduling Reports

- A. Seller will send out a monthly performance report showing monthly performance parameters such as Charging Energy, Discharging Energy, average SOC, state of health, physical availability BMS level or PCS Level, temperature max and mins, and performance score if applicable.
- B.
- C. A detailed annual report shall be provided by the Seller on the anniversary of Commercial Operation Date including the degradation of the Storage Facility. This report shall be used for commercial and warrantee purposes during the operational phase.

VII. Storage Operating Parameters

#	Operating Parameter	Values	Notes
1	Charging Method	Constant Power (CP) Constant Voltage (CV)]	
2	Discharging Method	Constant Power (CP)	
3	Maximum CP-rate for Charging and Discharging the Storage Facility	300 MW AC	Measured at the Point of Delivery
4	Charging Source	Generating Facility for first 5 Contract Years, then Generating Facility and grid charging, subject to <u>Section 6.10.1(a)</u> .	This is for main power. Station power to feed auxiliary loads to come from grid charging.
6	Maximum Annual Average State of Charge (SOC)	40-70%	
7	Minimum Resting State of Charge (SOC) of the Storage Facility	10%-20% or as per manufacturer recommendation	When not actively charging or discharging for more than a period of 120 hours, the SOC of the Storage Facility shall be maintained in this range
8	Operational State of Charge (SOC) Limits	3%-100% or as per manufacturer recommendation	

9	Maximum Number of Equivalent Full Cycles per Calendar Year	365	
10	Maximum Cumulative Energy Discharge per Calendar Year	219,000 MWh	which is <u>300</u> MW (the Storage Capacity Rating) * 2 hr * 365 = 219,000 MWh
11	Additional operating limitations e.g. thermal or seasonal limits		

EXHIBIT L STORAGE CAPACITY TEST

Upon no less than ten (10) Business Days prior notice to Buyer, and at any time and from time to time up until the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test to determine the Storage Capacity Rating of the Storage Facility for the first Contract Year. The Storage Capacity Test shall require the Seller to maintain Discharging Energy from the Storage Facility for two (2) consecutive hours, and the Storage Capacity Rating in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the two (2) hour test period, as measured at the Point of Delivery, divided by two (2); provided, however, that if the Storage Capacity Rating is greater than three hundred (300) MWs, the Storage Capacity Rating shall be deemed to be three hundred (300) MW in such case.

Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than five (5) Business Days prior notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In each Contract Year, Seller shall have the right to run additional retests of the Storage Capacity Test at any time upon five (5) days prior written notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Electrical Practices). In addition, Buyer shall have the right to require one (1) retest of the Storage Capacity Test each Contract Year upon five (5) days prior written notice to Seller (or other period reasonably acceptable to Seller consistent with Prudent Electrical Practices) if Buyer reasonably believes that the Storage Capacity Rating has varied materially from the results of the most recent tests; provided, that if the Storage Facility fails a Buyer-requested Storage Capacity Test, Buyer shall have the right to require one (1) additional retest of the Storage Capacity Test during the applicable Contract Year for each failed Storage Capacity Test.

No later than fifteen (15) days following any Storage Capacity Test, whether test was successfully passed or failed, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility.

Seller will perform a Storage Capacity Test generally in the following manner and utilizing the following steps:

- 1) At all times during a Storage Capacity Test, the Storage Facility, including all auxiliary equipment, shall be operated in compliance with Exhibit K, Prudent Electrical Practices and all operating protocols and conditions recommended, required, or established by the equipment suppliers.
- 2) Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 3 below;
- 3) Seller will fully charge the Storage Facility so that it is in a state that it is made commonly and typically available to Buyer as fully charged and dispatchable;

- 4) When the Storage Facility is charged exclusively with Output, the Storage Capacity Test should be conducted under full sun ($>500\text{W}/\text{m}^2$) and stable sky conditions, generally between the hours of 10:00 am and 2:00 pm Local Time;
 - a. If such conditions are not available on the scheduled day of the Storage Capacity Test, then the Storage Capacity Test will be postponed until the earlier of the date on which such conditions exist or three (3) Business Days following the originally scheduled date of the Storage Capacity Test;
 - b. If such conditions are not available within three (3) Business Days of the originally scheduled date of the Storage Capacity Test, then the Parties shall reasonably cooperate to schedule testing as soon as practicable under stable sky conditions with a minimum irradiance of $200\text{W}/\text{m}^2$;
 - c. If the Storage Facility is charged using grid energy, the Storage Capacity Test may be conducted under any sky conditions; provided the Storage Facility shall only be tested with grid energy if such charging does not impact the value of the ITC to Seller;
- 5) Seller will discharge the Storage Facility at full capacity, over a duration of two (2) consecutive hours;
- 6) Seller will add the quantity of MWh produced by the Storage Facility during the two (2) consecutive hours to produce a sum quantity of MWh for the two (2) hour full discharge of the Storage Facility; and
- 7) Seller will divide the sum quantity of MWh produced over the two (2) hour full discharge of the Storage Facility by a factor of two (2) to produce a value that will become the Storage Capacity Rating; provided that the resulting Storage Capacity Rating shall never exceed the Guaranteed Storage Capacity Rating.

Example:

Hour 1 Discharge = 300 MWh

Hour 2 Discharge = 295 MWh

Duration = 2 hour discharge

$300 + 295 = 595 \text{ MWh}$

Storage Capacity Rating = $595 \text{ MWh} / 2 \text{ hours} = 297.5 \text{ MW}$

EXHIBIT M
FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by [_____] (“Licensed Professional Engineer”) to [_____] (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated [_____] (“Agreement”) by and between BOCA bn, LLC and Buyer. 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]_____, Licensed Professional Engineer hereby certifies and represents to Buyer the following:

1. Seller has installed equipment for the Generating Facility and the Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than the Required Percentage of the Expected Generating Facility Nameplate Capacity Rating for the Generating Facility at the Point of Delivery, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted.
2. Seller has installed equipment for the Storage Facility including a Storage Capacity Test demonstrating peak electrical output of no less than the Required Percentage of the Guaranteed Storage Capacity Rating for 2 hours at the Point of Delivery.
3. Authorization to parallel the Facility was obtained from the Interconnection Provider, on _____[DATE]_____.
4. The Interconnection Provider has provided notification supporting Commercial Operation on _____[DATE]_____.

EXECUTED by [Licensed Professional Engineer]
this _____ day of _____, 20__.

[Licensed Professional Engineer]
By: _____
Its: _____
Date: _____

EXHIBIT N
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“Certification”) of Generating Facility Nameplate Capacity Rating and Storage Capacity Rating is delivered by [_____] (“Licensed Professional Engineer”) to [_____] (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated [_____] (“Agreement”) by and between BOCA bn, LLC and Buyer. 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 the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of [_____] MW AC at the Point of Delivery, as adjusted for ambient conditions on the date of the performance test (“Generating Facility Nameplate Capacity Rating”); and

(b) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of [_____] MW AC to the Point of Delivery, in accordance with the testing procedures, requirements and parameters set forth in Exhibits K and L (the “Storage Capacity Rating”); and

EXECUTED by [Licensed Professional Engineer]
this _____ day of _____, 20__.

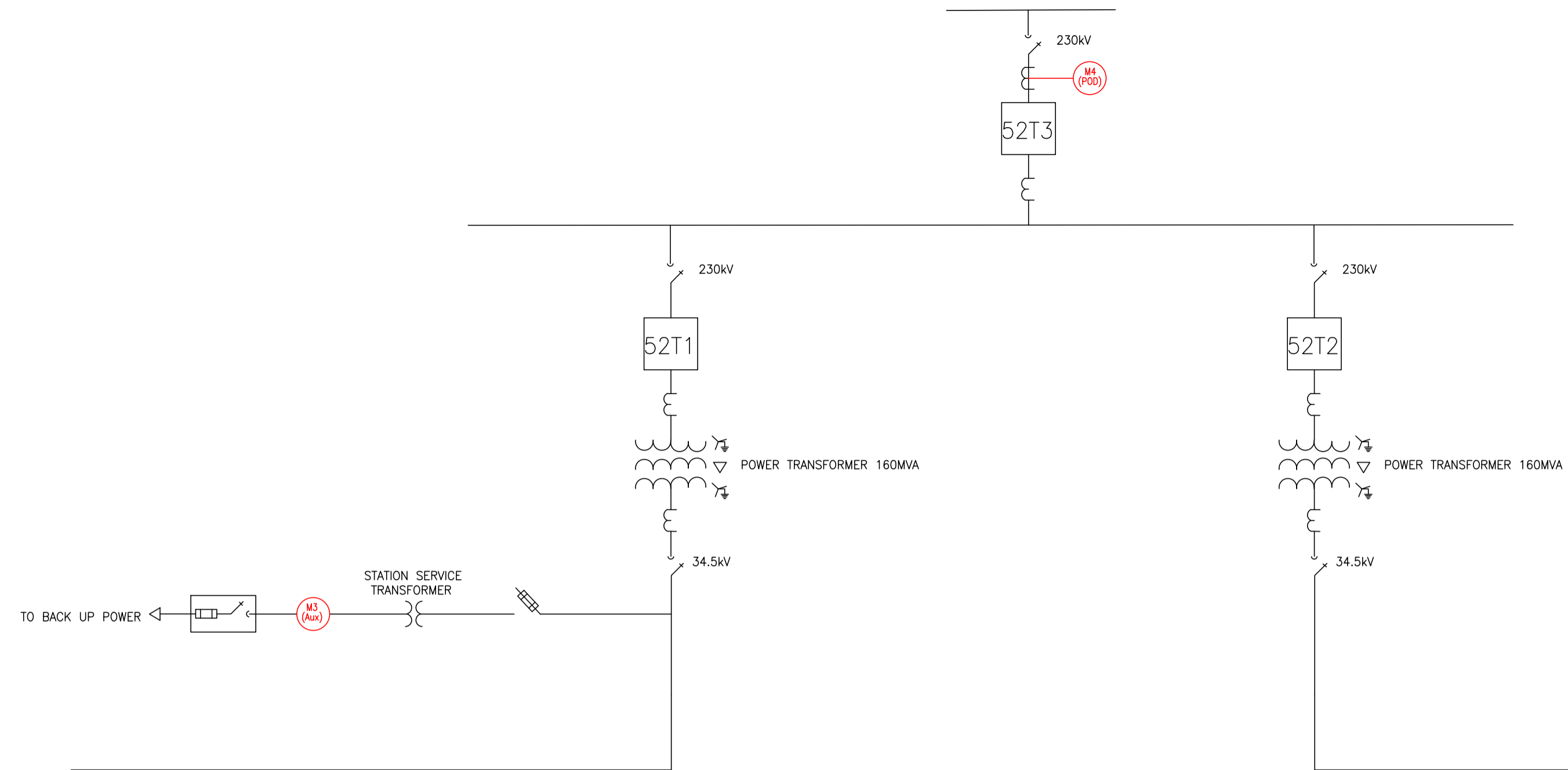
[Licensed Professional Engineer]

By: _____
Its: _____
Date: _____

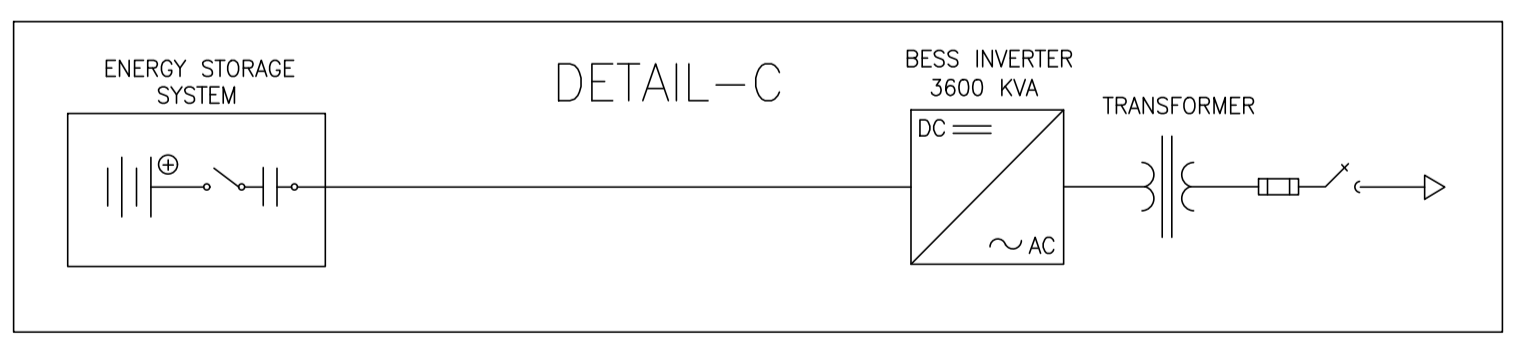
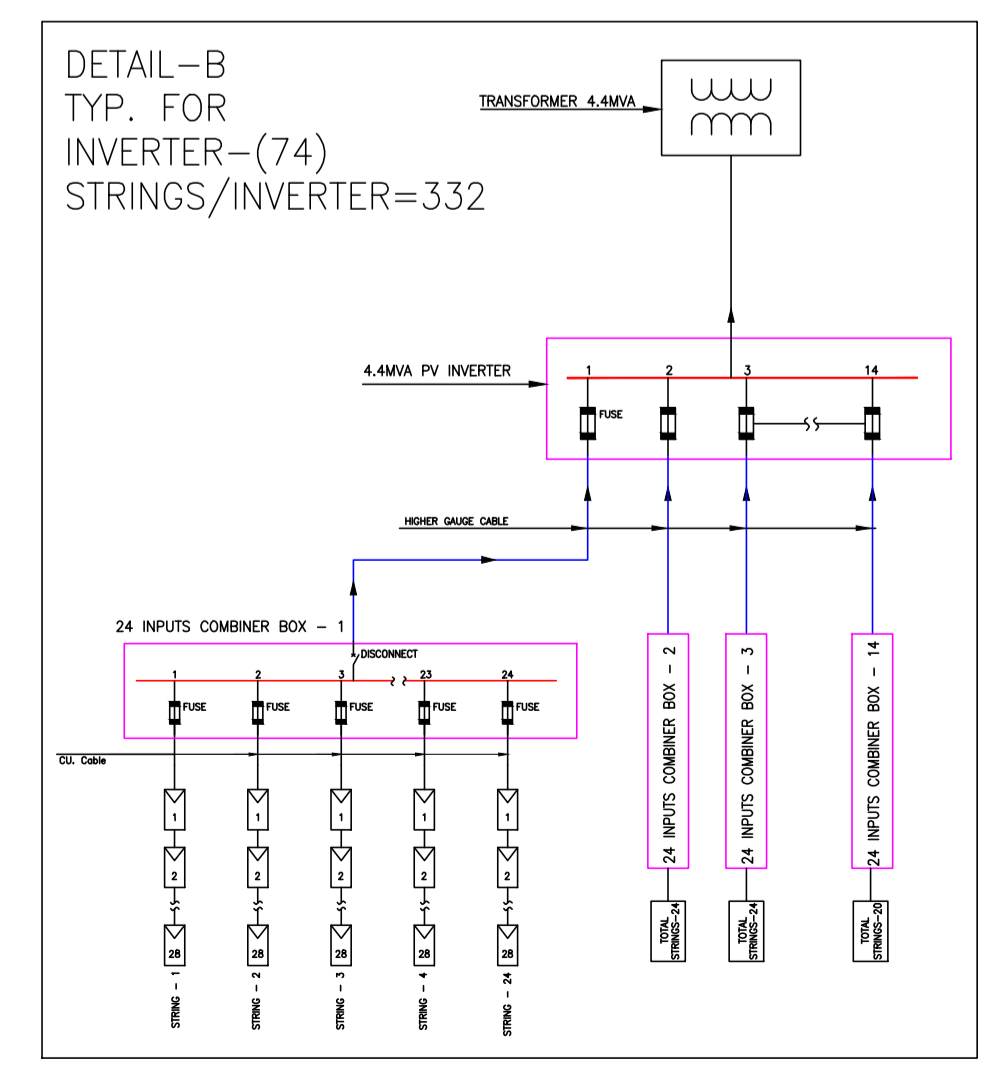
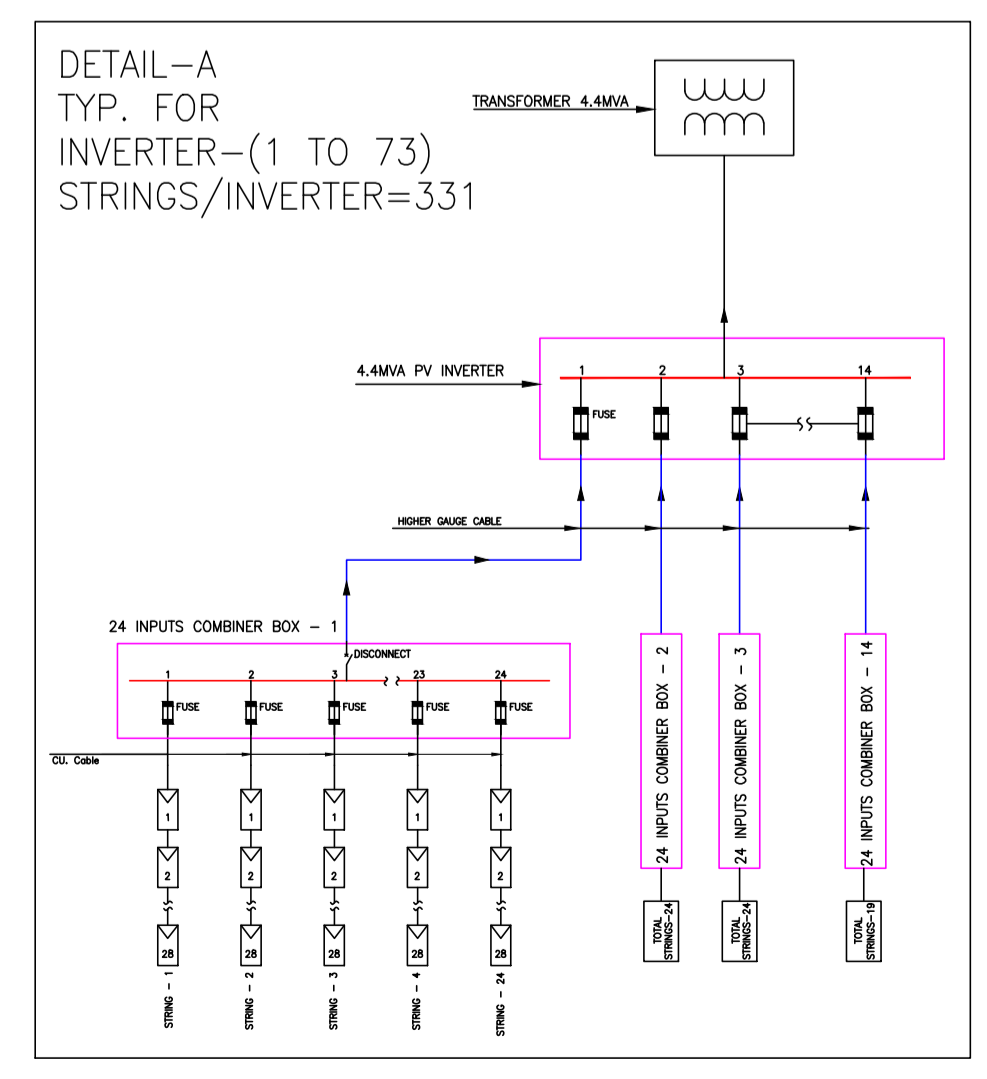
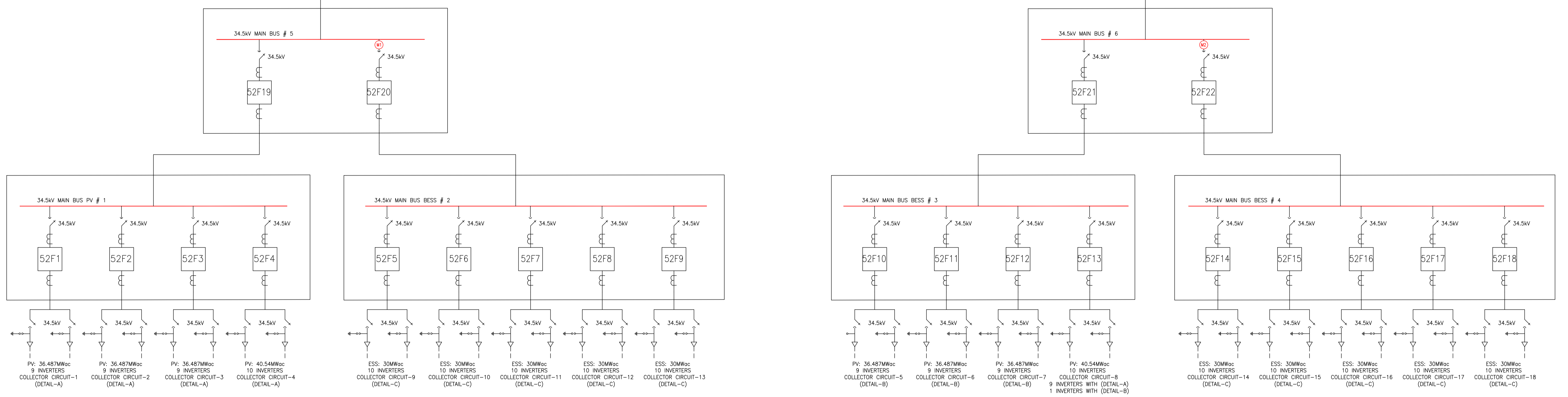
**EXHIBIT O
ONE LINE DIAGRAM OF FACILITIES**

For a Facility with a One Storage Meter Configuration:

[Attached]



LEGENDS:-	
SYMBOL	DESCRIPTION
	STORAGE FACILITY METER
	GENERATING FACILITY AUXILIARY POWER METER *
	POD METER



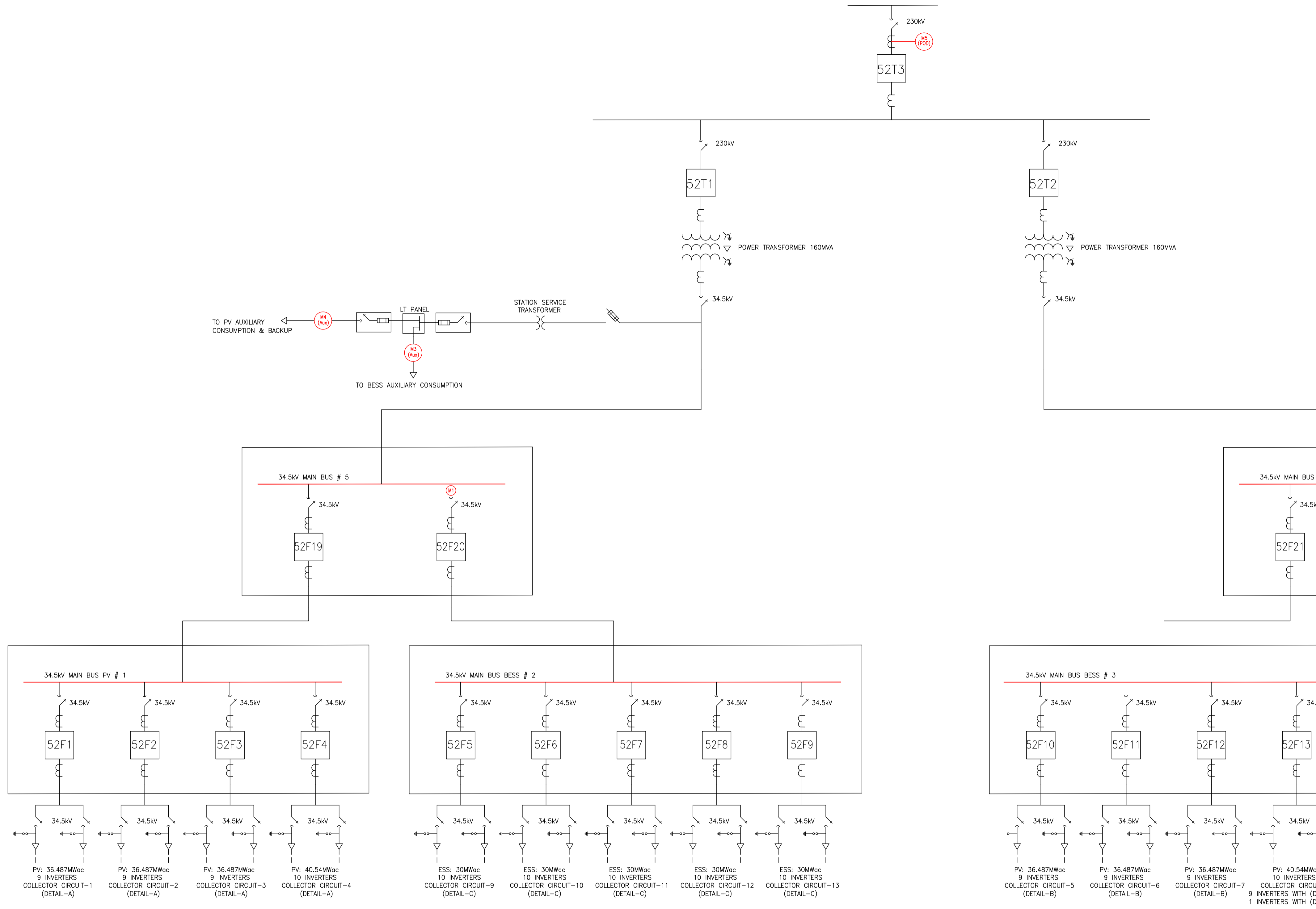
NOTE:-
* FOR THE PURPOSES OF CLARITY, THE GENERATING FACILITY AUXILIARY POWER METER IS USED FOR TRACKING AND MONITORING PURPOSES ONLY, AND NOT FOR THE PURPOSES OF REVENUE CALCULATIONS UNDER THE AGREEMENT

01-13-2022	00		YOGESH	KIRAN
DATE	REV.	REVISION PARTICULARS	DRAWN BY	APPD. BY
		BrightNight Power		
		PROJECT NAME: BOX CANYON		
DRAWN		TITLE:- SINGLE LINE DIAGRAM ONE STORAGE METER CONFIGURATION		
APPROVED		PROJECT NO:	DRAWING NO.	REV.
SCALE	NTS	01	01	SHEET 1 OF 1

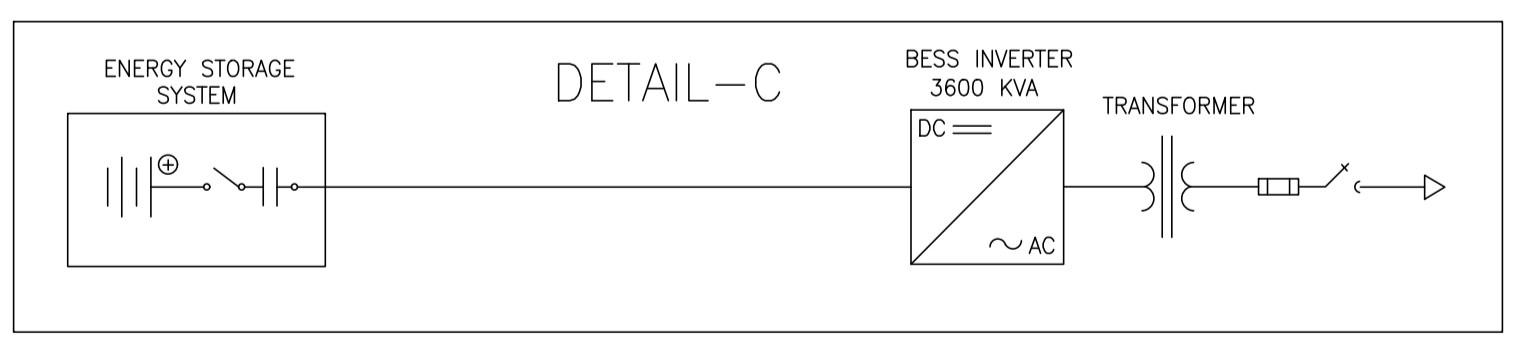
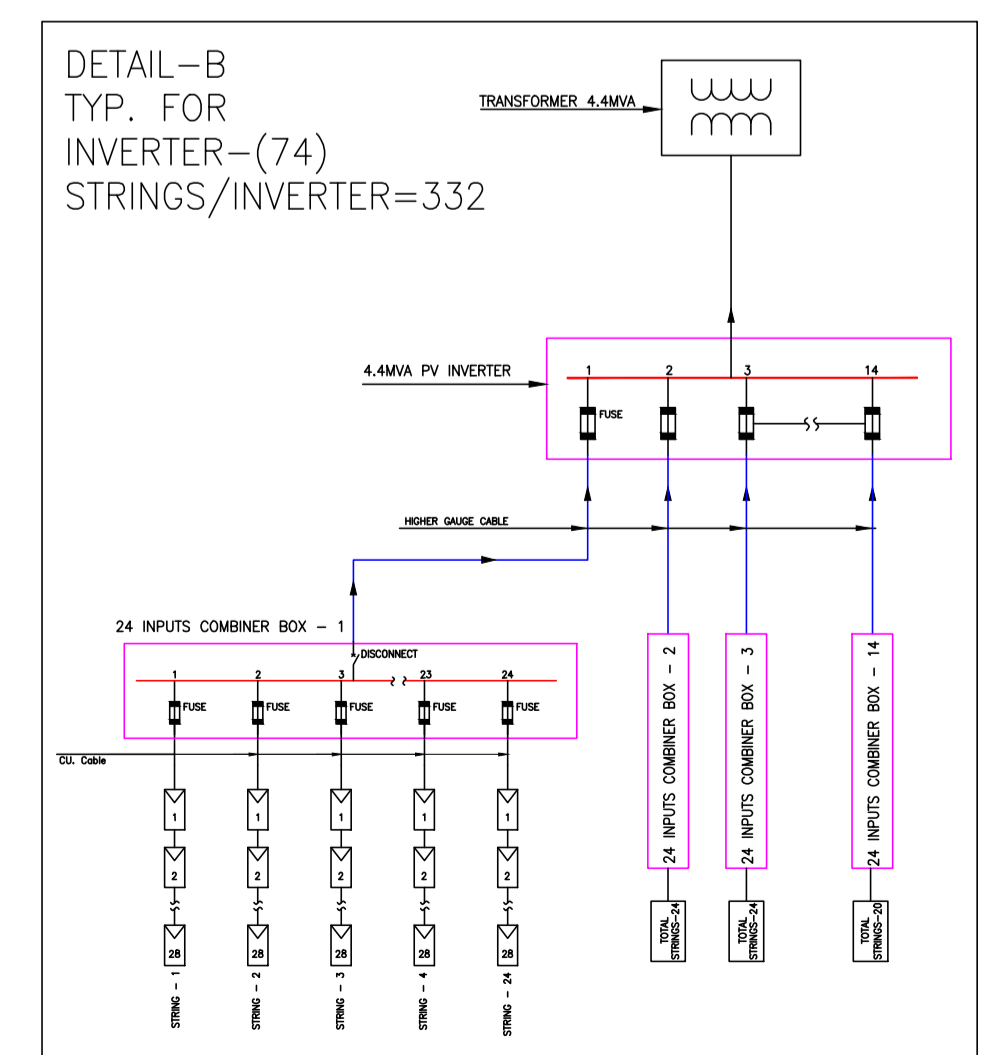
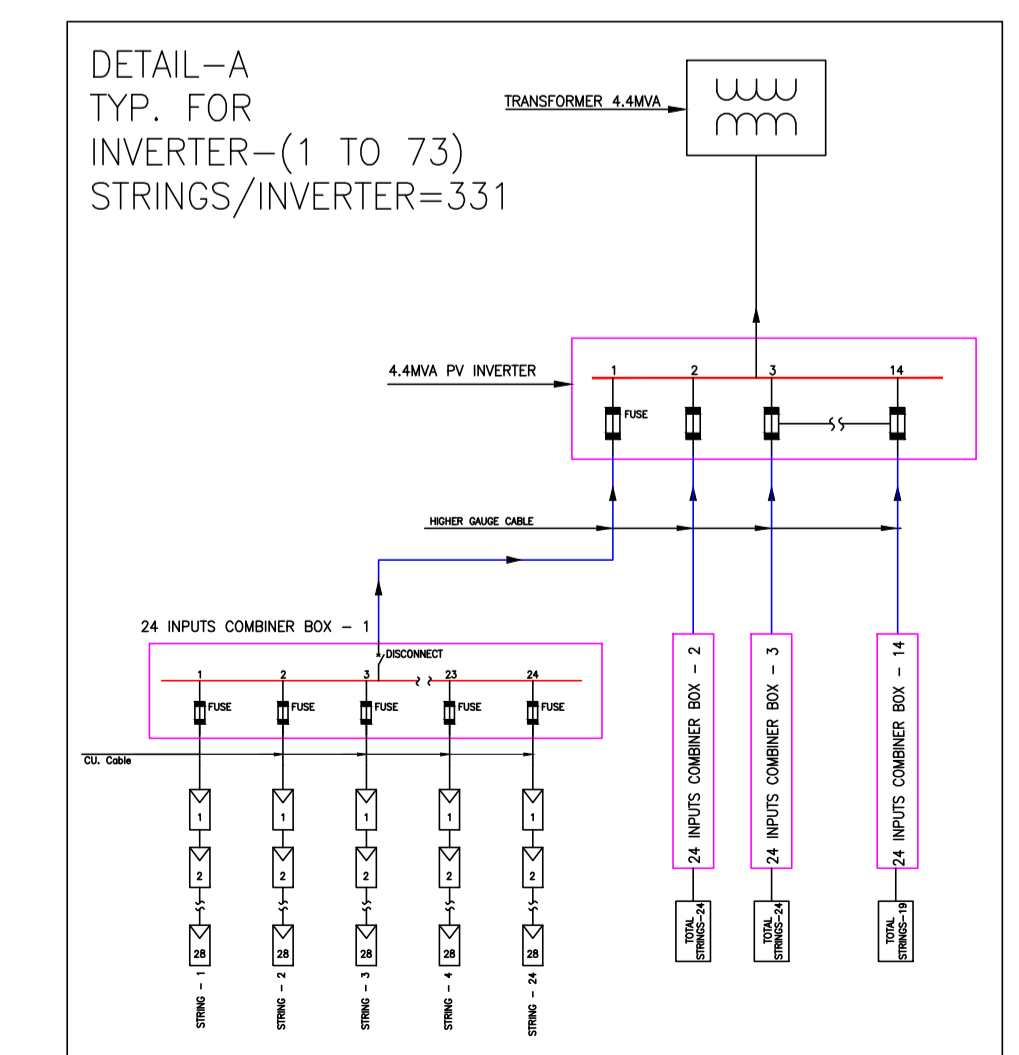
NOTE :-
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For a Facility with a Two Storage Meter Configuration:

[Attached]



LEGENDS:-	
SYMBOL	DESCRIPTION
	STORAGE FACILITY METER
	STORAGE FACILITY AUXILIARY POWER METER
	GENERATING FACILITY AUXILIARY POWER METER *
	POD METER



NOTE:-
 * FOR THE PURPOSES OF CLARITY, THE GENERATING FACILITY AUXILIARY POWER METER IS USED FOR TRACKING AND MONITORING PURPOSES ONLY, AND NOT FOR THE PURPOSES OF REVENUE CALCULATIONS UNDER THE AGREEMENT

01-13-2022	00		YOGESH	KIRAN
DATE	REV.	REVISION PARTICULARS	DRAWN BY	APPD. BY

BRIGHT NIGHT **BrightNight Power**

PROJECT NAME: BOX CANYON

TITLE:- SINGLE LINE DIAGRAM
TWO STORAGE METER CONFIGURATION

DRAWN	APPROVED	PROJECT NO:	DRAWING NO.	REV.	SHEET
		01	01		1 OF 1

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**EXHIBIT P
RESALE AGREEMENT**

[Attached]

Box Canyon Resale Agreement

between

Southwest Public Power Agency

and

Participants

This Box Canyon Resale Agreement (“Agreement”) is made this ___ day of _____, 202_, (the “Effective Date”) by and among Southwest Public Power Agency (hereinafter “SPPA”), a political subdivision of the State of Arizona, organized and existing under the laws of the State of Arizona, including particularly the Act, and the other Persons that executed this Agreement as of the Effective Date or that become a party hereto thereafter (hereinafter “Participants” or, at times, individually as “Participant”). SPPA and Participants hereinafter referred to collectively as “Parties” or, at times, individually as “Party”.

WITNESSETH:

WHEREAS, SPPA consists of members (“Members”) which are (i) governmental entities organized and existing under the laws of the State of Arizona, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, SPPA is authorized under Sections 2(n) and 4 of its IGA to contract with its Members to establish projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and related products for its Members; and

WHEREAS, SPPA and its Members have established the SPPA Power Purchase Project Agreement, SPPA Project Contract 2021-2, pursuant to the [date], which authorizes SPPA to enter into power purchase agreements with Sellers to obtain Energy, Capacity Rights, Ancillary Services and Environmental Attributes for the benefit of subscribing Participants, and

WHEREAS, SPPA is authorized by Section 5(b) of the IGA to allow eligible non-member entities to participate in such Projects (Members and such nonmember entities participating in Projects to be referred to collectively as “Participants”); and

WHEREAS, Participants own and operate retail electric systems; and

WHEREAS, Participants are authorized under the laws of the State of Arizona to contract to buy from SPPA Energy, Capacity Rights, Ancillary Services and Environmental Attributes to meet a Participant’s present and future requirements; and

WHEREAS, SPPA intends to enter into a power purchase agreement to acquire the output of a combined photovoltaic and battery storage facility from Seller for a period of twenty (20) years commencing on the Delivery Start Date (the “Box Canyon PPA” as defined below in Article One), whereunder SPPA will purchase, on a combined basis and on behalf of the Participants, all usable output from the Box Canyon facility, including but not limited to the Energy, Capacity Rights, Ancillary Services and Environmental Attributes of Box Canyon (hereinafter referred to as the “Product” and which is defined in Article One), as components of the Product becomes available; and

WHEREAS, this Agreement is intended to enable SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to Participants, such that neither SPPA nor Participants obtain a benefit or incur a burden or obligation due to a drafting or other difference between this Agreement and the Box Canyon PPA.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE: DEFINITIONS

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the Box Canyon PPA or the SPPA Project Contract 2021-2. Any definitions from the Box Canyon PPA (whether explicitly defined herein or not) shall automatically reflect the definitions from the Box Canyon PPA as it may be amended from time to time.

Act means A.R.S. Section 11-952, as amended, and all laws amendatory or supplemental thereto.

Agreement means this Box Canyon Resale Agreement between Participants and SPPA.

Ancillary Services is defined in Exhibit A of the Box Canyon PPA.

Box Canyon PPA means the Power Purchase Agreement between SPPA and Seller for the period commencing on _____, as amended from time to time.

Business Day means any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by the Federal Reserve.

Buyer Default Security is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Account is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Amount shall be the amount determined and specified in Exhibit H of the Box Canyon PPA.

Capacity Rights is defined in Exhibit A of the Box Canyon PPA.

Commercial Operation Date means the date that the Box Canyon facility achieves Commercial Operation as Commercial Operation as defined in the Box Canyon PPA.

Contract Interest Rate is defined in Exhibit A of the Box Canyon PPA.

Contract Year means any consecutive twelve (12) month period during the term of the Box Canyon PPA, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

Delivery Point means SRP 230-KV Abel Substation.

Delivery Start Date means the date on which the Box Canyon facility begins delivering all or a portion of the Product and SPPA has the obligation to accept that delivery, as further defined in the Box Canyon PPA.

Effective Date means the date as of which this Agreement has been executed by SPPA and the initial Participants, as reflected on the signature page(s). For new Participants after the original Effective Date, the Effective Date will be the date when both the new Participant and SPPA have executed the form of Participation Agreement attached as Exhibit A.

Energy means electricity, measured in kWh or MWh, as the case may be.

Environmental Attributes are defined in Exhibit A of the Box Canyon PPA.

Event of Default shall have the meaning assigned to it in Section 11.1.

FERC means the Federal Energy Regulatory Commission, or its successor in function.

Governmental Authority means (a) any supranational, federal, state, local, municipal, tribal or other government or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including FERC, NERC and any applicable regional reliability entity) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power. Governmental Authority does not include SPPA or the Participants.

Green Tag is defined in Exhibit A of the Box Canyon PPA.

Green Tag Reporting Rights are defined in Exhibit A of the Box Canyon PPA.

IGA means the Intergovernmental Agreement among SPPA's members dated July, 31, 2014, which caused SPPA to be created.

Members means all members of SPPA, who are party to the IGA.

NERC means the North American Electric Reliability Corporation.

Participant means each SPPA Pool Participant that (i) has agreed to participate in this Project by executing the SPPA Power Purchase Project Agreement as of the Effective Date thereof (or for new Participants after the Effective Date, by executing a form of Participation Agreement attached thereto as Exhibit A); and (ii) has executed this Agreement as of the Effective Date hereof (or for new Participants after the Effective Date, that have executed a form of Participant Agreement attached hereto as Exhibit A), and in each case its permitted successors and assigns.

Participant Entitlement means the amount of Product which is the Participant's individual allocation of Product from the Box Canyon PPA. The initial Participant Entitlement is set forth in Schedule 4.1. Any Participant Entitlement may be adjusted from time to time pursuant to this Agreement, beginning on the first day of the month following the Delivery Start Date of the Box Canyon facility.

Participant Percentage means the fraction equal to the Participant Entitlement divided by SPPA's purchase amount under the Box Canyon PPA, expressed as a percentage.

Participation Agreement means an agreement signed by SPPA and a new Participant after the Effective Date of this Agreement, whereby such entity becomes a new Participant. A form of Participation Agreement is attached as Exhibit A.

Payment Default shall have the meaning assigned to it in Section 11.1(a).

Person means an individual, a corporation, a partnership, a limited liability company, a tribal entity, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

Pool Agreement means the September 1, 2014 SPPA Project Agreement for the SPPA Pool among SPPA and certain of its Members, pursuant to which SPPA acquires and manages resources for the benefit of the SPPA Pool, as such agreement may be amended from time to time.

Product is defined in Exhibit A of the Box Canyon PPA.

Prudent Electrical Practices are defined in Exhibit A of the Box Canyon PPA.

Seller means the counterparty to SPPA under the Box Canyon PPA, or its permitted successors and assigns.

Seller's Cost to Cover is defined in Exhibit A of the Box Canyon PPA.

Settlement Amount is defined in Exhibit A of the Box Canyon PPA.

Service Month means the month in which Product from Box Canyon is delivered.

Solar Project Account-Box Canyon means the operating sub-account into which SPPA deposits the payments by Participants in the Box Canyon PPA and out of which it pays the expenses associated with the Box Canyon PPA. This account is separate from the Buyer Working Capital Reserve Account.

SPPA means the Southwest Public Power Agency, Inc. and its permitted successors and assigns. SPPA is a political subdivision of the State of Arizona created pursuant to the IGA, under the authority granted under the Act.

SPPA Energy Management Agreement means the September 5, 2018 Amended and Restated Energy Management Agreement between SPPA and Arizona Electric Cooperative (“AEP Co”) wherein SPPA appoints AEP Co as the Administrative and Scheduling Agent for the SPPA Pool, as that agreement may be amended from time to time.

SPPA Pool means the power pool created by SPPA and some of its Members under Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Management Committee means the Committee created under Article Seven of the Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Participant means the parties, other than SPPA, to the Pool Agreement.

SPPA Power Purchase Project Agreement means the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) or any substantially identical agreement entered into among SPPA and Participants.

Term means the period in which this Agreement is in effect as set forth in Article Two.

Test Energy is defined in Exhibit A of the Box Canyon PPA.

Transmission Costs means Participant’s properly allocable share of all transmission-related costs paid by SPPA for the month that are directly related to the delivery to Participant of Energy from Box Canyon and that are not otherwise reimbursed to SPPA by the Participant pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, and any costs associated with Transmission Congestion Rights, in each case arising in connection with the Box Canyon facilities.

Tribal Participant means a Participant that is a tribal utility of its respective Indian Tribe, Nation, and/or Community.

ARTICLE TWO: TERM

2.1 Term. This Agreement shall be effective and binding upon execution by the Parties as reflected on the signature page(s) below (or for later joining Parties, upon the date of execution of the form of Participation Agreement attached as Exhibit A), and (absent earlier termination as permitted hereunder) shall continue in effect until termination of the Box Canyon PPA. Deliveries shall commence on the Delivery Start Date and continue through the end of the Term.

- (a) Member Terminations. Except as provided in this Section 2.1, the participation of individual Participants may not be terminated. If a Participant seeks to terminate its Participant Entitlement pursuant to Section 9.2, it shall provide written notice to SPPA and follow the procedures laid out in Section 9.2.
- (b) SPPA may terminate the Agreement as to an individual Participant in the event that such Participant is in default, pursuant to the provisions of Article Eleven.

ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS

3.1 Minimum Execution Level. SPPA is authorized to execute the Box Canyon PPA upon SPPA's receipt of an executed version of this Agreement or a Participation Agreement by Participants to purchase and pay for, in the aggregate, at least seventy-five percent (75%) of the Product. Participants agree that the execution of this Agreement or a Participation Agreement shall be deemed Participant's full consent and agreement that SPPA, upon SPPA's execution of Box Canyon PPA and prior to the Buyer Working Capital Reserve Account funding date, shall increase each Participant's initial percentage subscription to Box Canyon pro rata to all Participants, such that all Product is allocated to the Participants upon the Commercial Operation Date.

3.2 SPPA Management. SPPA will manage the Box Canyon PPA for the benefit of the Participants. SPPA's designated Administrative and Scheduling Agent will schedule and dispatch the resource pursuant to the terms of the Pool Agreement and the SPPA Energy Management Agreement.

3.3 SPPA Pool Resource Designation. SPPA and the Participants designate the Box Canyon PPA as a SPPA Pool Resource, in accordance with the terms of the SPPA Pool Agreement. SPPA will optimize the Box Canyon PPA with the other SPPA Pool Resources for the benefit of Participants.

3.4 Transmission. To the extent available, SPPA will use existing transmission entitlements that SPPA has arranged or that Members and Participants have designated as SPPA Pool Resources, or otherwise made available to SPPA to transmit the applicable Product from the Box Canyon facility from the Delivery Point to Participant loads. To the extent that SPPA and the Participants do not have sufficient transmission rights to effect delivery to Participant loads, it may be necessary for SPPA or such Participants to secure additional transmission arrangements. Such Participants shall obtain such arrangements at

their own expense, or reimburse SPPA for the expense of acquiring transmission for them. Payments from Participants for such additional transmission will be collected pursuant to a separate agreement, and will be handled outside of the Buyer Working Capital Reserve Account.

ARTICLE FOUR: PURCHASE AND SALE

4.1 Product. Subject to and in accordance with the terms and conditions of this Agreement during the contract Term, SPPA shall sell and make available to Participants at the Delivery Point, or as otherwise provided, and Participants shall purchase and pay for Product in amounts set forth in Schedule 4.1 of the Box Canyon PPA, such amounts to be scheduled in accordance with the provisions of the Pool Agreement.

4.2 Firmness. Energy produced by the photovoltaic portion of Box Canyon and Energy produced by discharge of the batteries will be scheduled as directed by SPPA's scheduling agent. Ancillary Services and Capacity Rights will be utilized as directed by SPPA or SPPA's scheduling agent for monetization (per and subject to the provisions of Section 4.6 of the Box Canyon PPA and Section 4.3 and Section 4.5 of this Agreement).

4.3 Resource Adequacy. To the extent regulatory requirements or market structure changes result in the establishment of a resource adequacy requirement or other form of capacity demonstration obligation in any balancing authority area where any Participant's load is located that requires such participant to identify specific generating resources underlying its firm power contracts, such participant shall be permitted to designate the Box Canyon facility as such capacity (up to an amount equal to the product of the amount of the Box Canyon capacity qualified for resource adequacy purchased by SPPA under the PPA and such Participant's Participant Entitlement of Capacity Rights).

4.4 Title and Risk of Loss. Title to and risk of loss related to Product shall transfer from SPPA to Participants at the Delivery Point or at such other time as specified in the Box Canyon PPA. SPPA will deliver to Participants the Product, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery, at the Delivery Point; provided, however that title to Green Tags shall transfer in accordance with the procedures of the registrar of the Green Tags.

4.5 Participant's Entitlement. Beginning on the Delivery Start Date, Participant shall purchase its Participant Percentage of the Product that SPPA purchases pursuant to the terms and conditions of the Box Canyon PPA. It is the intent of SPPA and the Participants that each Participant's Participant Percentage of the benefits and obligations accruing to SPPA under the Box Canyon PPA shall be flowed through to the Participant pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the Box Canyon PPA, the terms of the Box Canyon PPA shall prevail and Parties shall look to the terms of the Box Canyon PPA to resolve such conflict. The Participant Entitlements and Participant Percentages of all Participants shall be set forth in Schedule 4.1 attached to this Agreement. SPPA will update Schedule 4.1 periodically as necessary, including without limitation to reflect changes resulting from actions taken

pursuant to Articles Nine, Eleven, and Twelve, and/or any other applicable provision of this Agreement.

4.6 Cost Responsibility. Each Participant will pay its allocable share (as determined pursuant to this Article Four) of (a) all charges SPPA incurs for Product in connection with the Box Canyon PPA, (b) any other charges SPPA incurs under or in connection with the Box Canyon PPA, including but not limited to Buyer Default Security and funding the Buyer Working Capital Reserve Amount, and (c) all transmission costs SPPA incurs to deliver the Energy from the Delivery Point to the Participant; and (d) SPPA's administrative and other reasonable costs associated with its management of Box Canyon (which shall include an allocable share of SPPA's general costs of providing services that are not directly assignable to any given project) ("SPPA A&G"). Participant's obligation to pay for its allocable share of such costs, including Participant's share of the Buyer Working Capital Reserve Amount, shall be paid in accordance with Sections 4.7, 4.8 and 4.9 and shall continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Product, or the taking of any action permitted by the Box Canyon PPA obligations such as payment of Sellers' Cost to Cover, the need to fund Buyer Working Capital Reserve Amount, post Buyers' Default Security or the computation of a Settlement Amount due from Buyer). The provisions that follow are intended to implement, but not to narrow, this intention.

4.7 Buyer Working Capital Reserve Account. In accordance with the terms of the Box Canyon PPA, SPPA will establish a Buyer Working Capital Reserve Account with a starting balance 30 days prior to the expected Commercial Operation Date and throughout the Term of at least the Buyer Working Capital Reserve Amount. The Buyer Working Capital Reserve Account will be a segregated and dedicated SPPA fund, and amounts in the Buyer Working Capital Reserve Account may only be used by SPPA to make payments to Seller that are due and payable pursuant to the Box Canyon PPA, including without limitation, if a Participant has failed to timely pay its share of such amount in accordance with Section 4.9, 9.2 and/or 11.2. To fund the starting balance of the Buyer Working Capital Reserve Account, each Participant shall pay to SPPA its Participant Percentage of the starting balance of the Buyer Working Capital Reserve Amount by a date established by SPPA (no later than 45 days prior to the expected Commercial Operation Date). Except to the extent that Participants have been required to step-up their participation pursuant to Article Sixteen or to cover a default by another Participant under Article Twelve, SPPA may only use a Participant's contribution to the Buyer Working Capital Reserve Account to pay that Participant's Participant Percentage of a Seller invoice. For the avoidance of doubt, SPPA may not use one Participant's contribution to the Buyer Working Capital Reserve Account to pay another Participant's Participant Percentage of a Seller Invoice unless there has been a re-allocation pursuant to Article Twelve or Article Sixteen. When the Box Canyon PPA terminates and all obligations have been satisfied, all Non-Defaulting Participants shall receive their Participant Percentage of the Buyer Working Capital Reserve Account. When a Participant terminates its participation by transferring its Entitlement to others, its share of the Buyer Working Capital Reserve Account will be returned to it, once all its obligations have been satisfied and the transferee(s) have funded their share of the Buyer Working Capital Reserve Amount obligations. A Defaulting Participant will receive the amount of its share of the Buyer Working Capital Account that

remains, if any, after its obligations under this Agreement are satisfied including any costs provided by SPPA due to Participant's default. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Participants acknowledge and expressly consent that the Buyer Working Capital Reserve Account will be subject to an Account Control Agreement in favor of Seller in the event of a default by SPPA pursuant to the Box Canyon PPA.

4.8 Reserved

4.9 Payment Obligation. Starting prior to the Delivery Start Date, pursuant to the Box Canyon PPA, SPPA shall invoice each Participant and Participant shall pay its properly allocable share of all of SPPA's forecasted costs related to the Box Canyon PPA and forecasted SPPA A&G and any additional transmission costs. SPPA's invoicing procedures will be as follows:

- (a) On or before the 25th of the month that is prior to each Service Month, SPPA will issue an invoice to each Participant of the estimated costs SPPA expects to incur for each such Service Month, including but not limited to costs pursuant to the Box Canyon PPA, Transmission Costs, and SPPA A&G. Participant acknowledges that initial invoices from SPPA for a Service Month shall be premised on forecasts of the energy production during the Service Month and forecasts of SPPA expenses. Participant agrees that such invoices shall reflect estimates of all SPPA costs associated with the Box Canyon for the applicable Service Month and Participant will pay such invoices notwithstanding the use of forecasts and estimates.
- (b) On or before the 10th day of each Service Month (or the next Business Day if the 10th day of the Service Month is not a Business Day), the Participant shall pay SPPA in accordance with SPPA's payment instructions no less than the amount SPPA invoiced the Participant in accordance with Section 4.9(a). In addition to any other action SPPA may take with respect to a late payment, SPPA shall assess interest on all amounts not received by SPPA before the payment due date established by this Section 4.9(b). Interest shall accrue at the Contract Interest Rate over the actual number of days elapsed from the payment due date to the date such amounts are paid.
- (c) Participant's administrative charge each month shall be (i) an amount established by SPPA from time to time based on SPPA's budget, plus (ii) where applicable, Participant's portion of SPPA's costs incurred in the prior month that are related to Box Canyon but were not included in SPPA's budget. If SPPA acquires additional transmission rights for the benefit of one or more (but less than all) Participants, the cost of those additional rights shall be paid by those Participants according to their proportionate usage of such transmission.
- (d) Upon receipt of final invoices for all costs associated with the Service Month, SPPA shall compare Participant's pro rata share of all such costs

with the estimated amount SPPA invoiced Participant pursuant to Section 4.9(a). Any overpayments by Participant shall be credited on the next invoice provided to Participant, and any underpayments shall be added to the next invoice provided to Participant. To the extent SPPA receives credits or payments from the Seller pursuant to the terms of the Box Canyon PPA, SPPA shall maintain books and records to reflect that such credits or payments will be allocated pro rata for the benefit of the Participants. SPPA shall, in its reasonable discretion, apply such credits or payments to offset the Participants' requirement to purchase replacement Product if Box Canyon PPA Product is not available or to offset the Participants' cost responsibilities under the Box Canyon PPA.

4.10 Funding of Buyer Default Security. If, pursuant to Section 7.4.3 of the Box Canyon PPA, SPPA must post the Buyer Default Security, SPPA shall notify the Participants of the posting requirement and each Participant's share of the Buyer Default Security as soon as practicable but no later than ten (10) Business Days after the occurrence of the event giving rise to such obligation, after SPPA becomes aware of its need to post the Buyer Default Security. Participant shall, as soon as practicable after notice from SPPA but no later than 5 months from the date of such notice, take all such action, including the payment of funds to SPPA or arrangements for credit, as applicable, as SPPA may reasonably require in order for SPPA to post and maintain the Buyer Default Security.

ARTICLE FIVE: DISPUTES REGARDING BILLING AND PAYMENTS

5.1 Disputes. If Participant disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to SPPA. Any such protest shall be subject to the limitations set forth in Section 5.2. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

5.2 Restriction on Challenges. If a Participant questions or disputes the correctness of any invoice submitted to it by SPPA, the Participant shall make any net payment to SPPA as reflected on the invoice when due. The Participant may request an explanation of any amounts due to or from SPPA as soon as practicable, but in no event later than twenty-two (22) months of the receipt of such billing statement (or, if earlier, two months prior to any deadline for billing challenges under any Box Canyon PPA that is involved in the disputed invoice). SPPA shall review the relevant invoice. If the bill is determined to be incorrect, SPPA shall issue corrected invoices and make all payment adjustments with affected Participants as necessary to correct the error. No interest shall apply to such adjusted amounts. If SPPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the explanation has been requested, such dispute shall be resolved pursuant to Article Ten herein.

5.3 Pass-Through of Refunds.

- (a) If, pursuant to the Box Canyon PPA, SPPA receives any refund (as opposed to credits against its monthly bills, which will simply reduce SPPA's costs to be passed through to Participant hereunder) of any of its Box Canyon costs, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates.
- (b) If SPPA receives any refund (as opposed to credits that simply reduce SPPA's costs to be passed through to the Participant hereunder) of any market charges or transmission charges, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates; provided that if a Participant is in breach or default of its obligations under this Agreement, SPPA may deposit such refund amounts in the Buyer Working Capital Reserve Account for use as permitted hereunder until such time as Participant cures such breach or default.

5.4 Unconditional Nature of Payment Obligation. All amounts payable by Participant under this Agreement shall be due irrespective of the actual availability of Product, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of SPPA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE SIX: RESERVED

ARTICLE SEVEN: INFORMATION REGARDING PROJECT

7.1 SPPA Budgets. SPPA's annual budget will include allocations to the Power Purchase Agreement Project which is the subject of SPPA Project Contract No. 2021-2. Participants shall have the right to review and have input on the SPPA budget via the SPPA Board of Directors.

ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION

8.1 Except as provided below in Article Twelve, the Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of performance by SPPA or SPPA's agent of SPPA's obligations under this Agreement. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Agreement of SPPA or SPPA's agent; provided, however, that,

notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA or SPPA's agent that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the SPPA Pool Management Committee and was reasonably necessary in order to carry out such direction.

8.2 If a customer of a Participant makes a claim or brings an action against one or more of the other Participants for any death, injury, loss, or damage arising out of or in connection with this Agreement, the Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Participants and their directors, officers, attorneys, employees, subcontractors, agents and assigns from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA, SPPA's agent, or the other Participant(s).

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. This Box Canyon Resale Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any Participant except with the consent, in writing, (a) of SPPA and the other Participants, which consent shall not be unreasonably withheld, and (b) if and as necessary, of Seller. SPPA shall not assign this Agreement. Any Person taking assignment of this Agreement from a Participant shall agree in writing to be bound by the provisions of this Agreement, and as a condition to such assignment shall fund its portion of the Buyer Working Capital Reserve Account on or before the date of such assignment.

9.2 Voluntary Transfer of Participant Entitlement to Other Participant(s). For any reason, the Participant shall have the option of seeking to terminate its Participant Entitlement by transferring its Participant Entitlement to one or more other Participants. No provision in this Section 9.2 shall operate or be interpreted so as to relieve a Participant of any obligation to make a payment already due, relieve the Participant of any suspension by SPPA pursuant to Section 11.2, prevent or otherwise delay the Participant's termination pursuant to Section 11.2(d), or prevent or otherwise delay the permanent reallocation of Participant's Participant Entitlement pursuant to Article 12. In the event a Participant can and elects such termination under this Section 9.2, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the Participant seeking to terminate. Any part of the Participant Entitlement of the Participant seeking to terminate that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer. Such reoffering shall be repeated until the Participant Entitlement of the Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

- (i) If the Participant Entitlement of the Participant seeking to terminate has been fully reallocated to one or more non-defaulting Participants, that Participant shall be permitted to terminate its Participant Entitlement.
 - (ii) If the Participant Entitlement of the Participant seeking to terminate has not been fully reallocated to one or more non-defaulting Participants, that Participant may request that SPPA market the unallocated portion to eligible non-participants. Such buyers must agree to become Participants by executing the form of Participation Agreement attached as Exhibit A. The new Participants must meet any eligibility requirements to become Participants if they are not already. In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.
 - (iii) If SPPA does not succeed in remarketing the unallocated portion, that Participant shall not have the option of terminating its Participant Entitlement.
- (b) In the event of a termination of any Participant and reallocation of its Participant Entitlement pursuant to this Section 9.2, SPPA shall prepare a revised Schedule 4.1 reflecting the revised Participant Entitlements and Participant Percentages of all Participants.

9.3 Timing of Transfer of Funds. Notwithstanding anything to the contrary herein, no assigning Participant (a) shall be relieved of its obligations hereunder, (b) shall be entitled to receive any remaining amount of its share of Working Capital Reserve Amount, or (c) shall be entitled to a return of any of its posted security, in each such case, until the assignee(s) of such assigning Participant has fully funded its share of the Working Capital Reserve Amount and provided any posted security that is required of any assignee Participants.

ARTICLE TEN: DISPUTE RESOLUTION

10.1 Any controversy between or among two or more of the Parties hereto, arising out of or relating to this Agreement, or any breach hereof or default hereunder, may be submitted to binding arbitration upon agreement of the Parties in the dispute, or otherwise may be resolved in any court of competent jurisdiction. (subject to Section 10.4 if any Tribal Participants are parties to the dispute). Provided, however, that no Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.

10.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.

10.4 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.

- (a) Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Agreement, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article Ten, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in Exhibit B hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by

an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

- (b) The limited waivers set forth in this Section 10.4 shall apply to the enforcement of any agreement to arbitrate under this Agreement, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Agreement or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Section.

10.5 In no event shall any Party be liable to any other Party for indirect, special, consequential or exemplary damages arising out of or in any way related to this Agreement.

10.6 Agency Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE ELEVEN: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of Participant to make a payment when due under this Agreement, including to timely pay any invoice or post any required security under this Agreement (in each such case, a “Payment Default”); or
- (b) The failure of Participant to take any action required under this Agreement or as reasonably requested by SPPA under this Agreement or in furtherance of SPPA’s obligations under the Box Canyon PPA; or
- (c) Assignment of this Agreement by Participant, other than as permitted pursuant to Article Nine or any other action or omission by Participant that would cause SPPA to be in breach of any provision of the Box Canyon PPA; or
- (d) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; provided, however, that if such default cannot be cured within

such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

- (e) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies for Payment Default. In addition to any other available remedy for default, in the event of a Participant Payment Default, the following provisions shall apply:

- (a) If a Participant does not timely pay an invoice in accordance with Section 4.9(b), a Payment Default by such Participant shall be deemed to have occurred as of the day after such invoice was due and payable and SPPA shall promptly send notice to the defaulting Participant of such Payment Default.
- (b) Following SPPA's declaration of a Payment Default, SPPA may use that Participant's share of Buyer Working Capital Reserve Account to pay when due the Participant's share of any invoice SPPA has received for the Product. To the extent that SPPA uses funds in the Buyer Working Capital Reserve Account to pay a Participant's share of an invoice rendered to SPPA pursuant to the Box Canyon PPA and such use of funds reduces that Participant's contribution to the Buyer Working Capital Reserve Account to less than the Participant's Participant Percentage, SPPA shall deliver a notice to such Participant on the Business Day after such funds are used and the Participant shall, within 10 days of such notice from SPPA, restore its contribution to the Buyer Working Capital Reserve Account to its Participant Percentage. Such notice shall describe actions SPPA has taken with respect to the Participant's share of the Buyer Working Capital Reserve Account and Buyer Default Security.
- (c) If a Participant does not pay an invoice prior to the 25th of the Service Month, SPPA may suspend the Participant's rights to its Participant Entitlement to Product from Box Canyon. Following suspension of the Participant's rights, SPPA shall remarket the suspended Participant's allocated share, on an interim basis, to any other SPPA Participant that voluntarily assumes that share or any other eligible counterparty. If SPPA is unable to or otherwise does not remarket the share on a voluntary basis within thirty (30) days from the date of the defaulting Participant's suspension, SPPA shall reallocate the remaining portion of the suspended Participant's share pro rata (based upon the Participant Entitlements of Participants not in default), to all other Participants which are not in default. Notwithstanding the suspension, the Participant in Payment Default will

have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the Entitlement, up to the amount SPPA has been paid for such remarketed Entitlement less SPPA's cost. During the term of such suspension, SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay any portion of Participant's allocated share of all costs associated with Box Canyon or the Box Canyon PPA in excess of the amount received for any re-marketed or re-allocated Product. Such suspension shall continue until the earlier of the date that (i) Participant shall have cured such Payment Default, or (ii) the Participant shall have voluntarily transferred its Participant Entitlement to non-defaulting Participant(s) or to a new Participant pursuant to Section 9.2 and such new Participant(s) have paid the pro rata share of the Buyer Working Capital Reserve Amount.

- (d) If a Participant has not cured the Payment Default after 60 days of notice of the Payment Default, SPPA shall terminate the Participant, remarket the Participant's share on an interim basis, and reallocate the Participant's share on a permanent basis pursuant to Article Twelve of this Agreement. Notwithstanding the termination, the Participant will have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the allocation and been paid for such remarketed Entitlement, irrespective of the fact that the share has been remarketed on an interim or permanent basis. SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay Participant's allocated share of all costs associated with Box Canyon or Box Canyon PPA. SPPA shall promptly provide notice of any such termination to all Participants.

11.3 Remedies for other Defaults. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity and any other applicable provision of this Agreement, except as otherwise limited by this Agreement. The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.4 No Termination by Participant. In response to any Event of Default by SPPA, Participant shall not have the right to terminate this Agreement unless such termination is undertaken pursuant to Article Nine of this Agreement, including following the procedures in Section 9.2.

ARTICLE TWELVE: TRANSFER OF PARTICIPANT ENTITLEMENT FOLLOWING TERMINATION FOR DEFAULT

12.1 In the event of a default by any Participant and termination of such Participant's Participant Entitlement pursuant to Section 11.2(d) of this Agreement, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the defaulting Participant.
- (b) Any part of the Participant Entitlement of the defaulting Participant that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer.
- (c) Such reoffering shall be repeated until the Participant Entitlement of the defaulting Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

12.2 If the full amount of the defaulting Participant's Entitlement is not voluntarily accepted by other Participants, SPPA will attempt to market the remainder to entities that are not Participants, under the following conditions:

- (a) Such entities must meet all eligibility requirements to become Participants; and
- (b) Such entities must become Participants by executing the form of Participation Agreement attached as Exhibit A; and
- (c) In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.

12.3 SPPA shall transfer pro rata (based upon then-current Participant Entitlement), to all other Participants which are not in default, the remaining part of a defaulting Participant's Participant Entitlement if less than all of such Participant Entitlement has not been voluntarily accepted, pursuant to Section 12.1 above, by the non-defaulting Participants, or marketed to new Participants pursuant to Section 12.2 above, in all cases, within one hundred twenty (120) days after the date the Payment Default occurred. Upon the transfer of the full amount of the defaulting Participant's Participant Entitlement to other Participants (and such Participants' acceptance of such transfer), SPPA shall be relieved of any further obligation to attempt to dispose of such defaulting Participant's Participant Entitlement for the remaining months of SPPA's continued receipt of the Product.

12.4 Any part of the Participant Entitlement of a defaulting Participant voluntarily or involuntarily transferred pursuant to this Article Twelve to a non-defaulting Participant shall become a part of, and shall be added to, the Participant Entitlement of

each transferee Participant, and the transferee Participant shall be obligated to pay for its Participant Entitlement increased as aforesaid, (including contribution to the Buyer Working Capital Reserve Account and the posting of any security that is required of any transferee Participants, in each case, on or before the date that is concurrent with the transfer; provided that in the case of posting security, such date may be extended to such date that is required in order for SPPA to meet its obligations to post security pursuant to Section 7.4.3 of the Box Canyon PPA), as if the Participant Entitlement of the transferee Participant, increased as aforesaid, had been stated originally as the Participant Entitlement of the transferee Participant in the SPPA Power Purchase Project Agreement.

12.5 A defaulting Participant shall remain liable for all payments required to be made by it under its SPPA Power Purchase Project Agreement, except that the obligation of the defaulting Participant to pay SPPA shall be reduced to the extent that payments shall be received by SPPA for that part of the defaulting Participant's Participant Entitlement which is transferred to any existing or new Participant under Article 12 of this Agreement.

12.6 As provided in Article 4 of this Agreement, SPPA may use a defaulting Participant's share of the Working Capital Reserve Amount to cover the obligations of SPPA on behalf of the Defaulting Participant under the Box Canyon PPA. If any portion of defaulting Participant's share of the Working Capital Reserve Amount remains after satisfaction of such obligations, SPPA may withdraw such portion from the Working Capital Reserve Account only after all Participants with new or stepped-up obligations under this Article 12 have fully funded their new shares of the Working Capital Reserve Amount. SPPA may deduct from defaulting Participant's remaining portion of Working Capital any expenses incurred by SPPA on behalf of the Project Participants to manage the default by the defaulting Participant. If any amount of defaulting Participant's portion of Working Capital remains after all such expenses are satisfied, it shall be returned to defaulting Participant.

12.7 If a defaulting Participant's share of the Working Capital Reserve Amount is insufficient to cover the amounts SPPA owes on its behalf pursuant to the Box Canyon PPA, SPPA will allocate the costs among the Participants in Schedule 4.1 in proportion to their revised Participant Entitlements, such costs to be allocated concurrently with such voluntary or involuntary transfer.

ARTICLE THIRTEEN: UNCONTROLLABLE FORCE

13.1 To the extent a Force Majeure (as defined in the Box Canyon PPA) exists and relieves, delays or otherwise excuses either SPPA's or Seller's obligations under the Box Canyon PPA, the obligation of each Participant hereunder shall be relieved, delayed or excused during the continuance of such Force Majeure; provided that such relief, delay or excuse shall be limited to the extent and only for such obligations that are relieved, delayed or otherwise excused.

13.2 Under no circumstances shall the provisions of Section 13.1 provide relief, allow delay or otherwise excuse the obligations of a Participant to make payments required

by this Agreement or to increase its Participant Entitlement as required by Sections 12.2 and 12.3 of this Agreement.

ARTICLE FOURTEEN: REPRESENTATIONS AND WARRANTIES

14.1 SPPA's Representations. SPPA hereby makes the following representations, warranties and covenants to Participant as of the Effective Date and through the end of the Term:

- (a) SPPA is a political subdivision of the State of Arizona duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) The execution, delivery and performance by SPPA of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of SPPA, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of SPPA, threatened action or proceeding affecting SPPA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, SPPA's sole continuing covenant with respect to this Section 14.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) SPPA acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, SPPA hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

14.2 Participant's Representations. Participant hereby makes the following representations, warranties and covenants to SPPA as of the Effective Date and through the end of the Term:

- (a) Participant is a city, town, county, special taxing district established pursuant to Title 48, Chapters 11, 12, 17, 18, 19 or 22 of Arizona Revised

Statutes, or any Indian tribe authorized to form a separate legal entity pursuant to A.R.S. §§ 11-952 and 11-952.02, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

- (b) The execution, delivery and performance by Participant of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of Participant, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of Participant, threatened action or proceeding affecting Participant before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, Participant's sole continuing covenant with respect to this Section 14.2(e) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) Participant is, and shall remain throughout the term of this Agreement, a Pool Participant under the Pool Agreement.
- (f) Participant will establish, maintain and collect such rates, fees and charges so as to provide revenues at least sufficient to enable Participant to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.
- (g) The obligations of Participant to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by Participant pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The Participant shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The Participant shall not issue any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.
- (h) The Participant covenants to maintain its electric system in good repair in accordance with Prudent Electrical Practices, to cooperate with SPPA, and to keep accurate records and accounts.
- (i) The Participant shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the Participant assign all or any part of its Participant Entitlement or any or all of its interests under this Agreement, except upon the approval of SPPA, such approval not to be unreasonably withheld or delayed.

- (j) Participant's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by SPPA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.
- (k) Participant acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, Participant, unless it is a Tribal Participant that has provided a waiver described in Section 10.4, hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

ARTICLE FIFTEEN: CREDITWORTHINESS

15.1 The SPPA Pool Management Committee may increase the amount of security in the Buyer Working Capital Reserve Account described in Section 4.7 that may be required of individual Participants or for all Participants as credit concerns or Project needs may require.

15.2 Participant shall provide such financial information and operating data as SPPA is required to obtain from Participant under the Box Canyon PPA or any rules or regulations applicable to SPPA related to Box Canyon.

ARTICLE SIXTEEN: SPECIAL MEMBER PROVISIONS

16.1 RUS Approval. The effectiveness of this Agreement as to those Participants that are regulated by RUS (set forth on Exhibit D) (each, an "RUS Participant") is conditioned on approval by RUS of this Agreement as it applies to each such RUS Participant. No later than thirty (30) days after the Effective Date, each RUS Participant shall make an appropriate submission to RUS seeking the approval of this Agreement with respect to such RUS Participant. Each RUS Participant shall use reasonable best efforts to secure RUS approval. SPPA and each RUS Participant shall (at its own expense) cooperate with and assist one another in securing the necessary approval from RUS; provided that to the extent any information to be provided by a RUS Participant to RUS is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon RUS agreeing to maintain its confidentiality pursuant to a protective order or a confidentiality agreement.

16.2 RUS Denial or Modification; Reallocation. In the event RUS should deny approval of this Agreement with respect to a RUS Participant or require as a condition of approval of the Agreement any modifications that cannot be accommodated by an

amendment agreeable to all Participants that is executed on or before the date that is 30 days after the RUS provides such modifications, then the RUS Participant's Participant Entitlement shall be reduced by the amount subscribed by the terminated RUS Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating RUS Participant's prior Participant Entitlement (unless Participants agree on a different allocation) in a revised Schedule 4.1; provided that the entire amount purchased under the Box Canyon PPA is allocated and such allocation shall occur no later than the date that is the earlier to occur of (a) the date that is 30 days after such termination, and (b) the date that is 30 days prior to the expected Commercial Operation Date.

16.3 Cancellation Rights Under A.R.S. § 38-511. The Parties hereby acknowledge that the Participants listed on Exhibit E are political subdivisions that, pursuant to A.R.S. § 38-511, "may, within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract." The cancellation "shall be effective when written notice from . . . the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time."

16.4 Reallocation Upon Cancellation. Each of the Participants listed on Exhibit E agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Agreement, or based upon facts known prior to execution if, contrary to the parties' intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months' notice of such cancellation. If a Participant listed on Exhibit E exercises its cancellation rights as set forth in this Section 16.4, then the Participant Entitlement shall be reduced by the amount subscribed by the terminated Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating Participant's prior Participant Entitlement (unless Participants agree to another allocation) in a revised Schedule 4.1, and such reallocation shall occur (a) on the effective date of termination, if the effective date of termination is after the date that is 30 days before the expected Commercial Operation Date, or (b) the earlier to occur of (i) the date that is 30 days after such termination, and (ii) the date that is 30 days prior to the expected Commercial Operation Date, if the effective date of termination is before the date that is 30 days before the expected Commercial Operation Date; provided that the entire amount purchased under the Box Canyon PPA is allocated.

16.5 Buyer Working Capital Reserve and Security. Upon any termination under this Article 16, the terminating Participant (a) shall not be entitled to receive any amount of its share of Working Capital Reserve Amount, and (b) shall not be entitled to a return of any of its posted security, in each such case, until the Participants taking a reallocation of such terminating Participant's Participant Entitlement have fully funded their respective

share of the Working Capital Reserve Amount and provided any posted security that was required of the terminating Participant. Each Participant acknowledges and agrees that SPPA may use amounts of such terminating Participant in the Buyer Working Capital Reserve as needed to meet Participant's share of SPPA's obligations to Box Canyon under the Box Canyon PPA.

16.6 Consent and Waiver. It is further acknowledged that certain Participants have engaged legal counsel and/or technical consultants to represent them in connection with the development of this Agreement and activities related thereto, which legal counsel or technical consultants simultaneously represented one or more other Participants and/or SPPA in connection with the same activities, and such joint representation was consented to by the Participants and is a commonly used and efficient means of obtaining expert assistance with respect to matters of common interest to certain of the Participants. It is agreed and understood by all of the Parties that such representation of SPPA and any Participant in connection with this Agreement is not intended to be and shall not constitute a basis for invoking cancellation pursuant to A.R.S. § 38-511.

ARTICLE SEVENTEEN: MISCELLANEOUS

17.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arizona, without regard to conflicts of law doctrines.

17.2 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Participants at the addresses provided in Exhibit C, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update Exhibit C to reflect changes, without the necessity of amending this Agreement.

17.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17.5 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

17.6 Third-Party Beneficiaries. Seller is an express third party beneficiary of the following obligations and covenants in the Member Resale Agreement (Sections 4.5 (Participant's Entitlement), 4.6 (Cost Responsibility), 4.7 (Buyer Working Capital Reserve Account), 4.9 (Payment Obligation), 4.10 (Funding of Buyer Default Security), 5.3 (Pass-Through of Refunds), Section 9.2 (Voluntary Transfer of Participant Entitlement to Other Participant(s)), Section 9.3 (Timing of Transfer of Funds), Article Ten (Dispute Resolution) to the extent the dispute relates to a provision as to which Seller is a Third Party Beneficiary, Article Eleven (Defaults and Remedies), Article Twelve (Transfer of Participant Entitlement Following Termination for Default), and Section 15.2 (Creditworthiness) and Article Seventeen (Miscellaneous) and, accordingly, shall be entitled to enforce such covenants on behalf of Buyer, if Buyer fails to do so. Except as expressly provided in this Section 16.5, none of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

17.7 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

17.8 Headings and Table of Contents. Article and Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

17.9 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

17.10 Amendments and Waivers.

- (a) Except as expressly provided with respect to updates of Schedule 4.1, Exhibits A, B, C, D and E, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties, and if required by the Box Canyon PPA, the consent of Seller.
- (b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to

affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

17.11 Survival. Except for Articles Five (to the extent applicable to obligations arising prior to termination), Eight, Ten, and Eleven, which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement.

17.12 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

SOUTHWEST PUBLIC POWER AGENCY

By: _____

Name:

Title: General Manager

Dated: _____

PARTICIPANT OF [_____]

By: _____

Name:

Title:

Dated: _____

[SEAL]

Attest: _____

Name:

Title: Participant Clerk

Dated: _____

SCHEDULE 4.1

SPPA Project Contract 2021-2

Box Canyon Resale Agreement Between SPPA And Participants

("Box Canyon Resale Agreement")

Number	Participant	Participant Entitlement (Megawatts)	Participant Percentage
1	Aguila Irrigation District	3.9	1.30%
2	Ak-Chin Energy Services ⁽¹⁾	6.8	2.27%
3	Buckeye Water Conservation & Drainage District	3.9	1.30%
4	Electrical District No. 2 of Pinal County	34.2	11.40%
5	Electrical District No. 3 of Pinal County	63.4	21.13%
6	Electrical District No. 4 of Pinal County	26.4	8.80%
7	Electrical District No. 6 of Pinal County	6.8	2.27%
8	Electrical District No. 7 of Maricopa County	5.9	1.97%
9	Electrical District No. 8 of Maricopa County	21.5	7.17%
10	Gila River Indian Community Utility ⁽¹⁾	19.6	6.53%
11	Harquahala Valley Power District	9.8	3.27%
12	McMullen Valley Water Conservation & Drainage District	9.8	3.27%
13	Maricopa County Municipal Water	24.4	8.13%
14	Ocotillo Water Conservation District	1.9	0.63%
15	Roosevelt Irrigation District	5.9	1.97%
16	Safford (City of)	9.8	3.27%
17	Thatcher (Town of)	11.7	3.90%
18	Tonopah Irrigation District	5.9	1.97%
19	Tohono O'odham Utility Authority ⁽¹⁾	16.6	5.53%
20	Town of Wickenburg	5.9	1.97%
21	Williams (City of)	5.9	1.97%
	Total	300.0	100%

⁽¹⁾ Tribal Participant

EXHIBIT A

FORM OF PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT FOR THE SOUTHWEST PUBLIC POWER AGENCY, INC., PROJECT AGREEMENT FOR THE POWER PURCHASE AGREEMENT PROJECT (the “Participation Agreement”) is entered into as of the ___ day of _____, 202__, (“Participant Effective Date”) by and between _____ (the “Participant”) and the Southwest Public Power Agency, Inc. (“SPPA”).

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a “Participant” under the SPPA Project Contract No. 2021-2 (the “Project Agreement”), dated as of _____, 202__, by and among SPPA and the other Participants and under the Box Canyon Resale Agreement (“Box Canyon Resale Agreement”), dated as of _____, 202__, by and among SPPA and the “Participants” that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA’s execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Box Canyon Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Box Canyon Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article Fourteen of the Box Canyon Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement [and the Box Canyon Resale Agreement] shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Box Canyon Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Box Canyon Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Box Canyon Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit F of the Project Agreement and Exhibit C of the Box Canyon Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement reflecting the Participant’s initial

Voting Percentage and the adjusted Voting Percentages of the other Participants and an amended Schedule 4.1 of the Box Canyon Resale Agreement, to be effective as of the Participant Effective Date.

2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit B of the Box Canyon Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[PARTICIPANT]

By _____
Name: _____
Title: _____

Southwest Public Power Agency, Inc.

By _____
Name: _____
Title: _____

EXHIBIT B
COPIES OF TRIBAL RESOLUTIONS AND WAIVERS (SECTION 10.4)

EXHIBIT C
Notices (Section 16.2)
ADDRESSES FOR NOTICES

TO SPPA:

Southwest Public Power Agency, Inc.

160 North Pasadena

Suite 101

Mesa, AZ 08201

Attn: Dennis L. Delaney, dld@krsaline.com & Jennifer M Torpey, jmt@krsaline.com
with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

<p>Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>	<p>Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman</p> <p><i>With a copy to:</i></p> <p>Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282</p>
<p>Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager</p>	<p>City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager</p>
<p>City of Williams 113 South 1st Street Williams, AZ 86046 Attn: City Manager</p>	<p>Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128</p> <p>Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194</p> <p>Fax: 520-723-5252 Attn: General Manager</p>

<p>Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager</p>	<p>Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager</p>
<p>[reserved]</p>	<p>Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President</p>
<p>Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager</p>	<p>Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175 Gila Bend, AZ 85337 Attn: General Manager</p>
<p>Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager</p> <p><i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director</p> <p>The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson</p>	<p>Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>
<p>Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager</p>	<p>McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager</p>
<p>[reserved]</p>	<p>Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>

<p>Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent</p>	<p>Tohono O’odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager</p>
<p>Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator</p>	<p>Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager</p>
<p>Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager</p>	

EXHIBIT D
RUS PARTICIPANTS

1. Tohono O’odham Utility Authority

EXHIBIT E
ARIZONA MUNICIPAL PARTICIPANTS

1. City of Safford
2. City of Williams
3. Town of Thatcher
4. Town of Wickenburg

**EXHIBIT Q
EXAMPLE INVOICE**

[Attached]

BOCA bn, LLC

[Address]

To:

Southwest Public Power Agency, Inc.

[Address]

Invoice #

Invoice Date:

Payment Due Date:

Description	Units	Unit Price	Amount
Net Output			
Energy measured at the POD Meter	[XX,XXX] MWh	\$21.91/MWh	
Roundtrip Efficiency Losses	[X,XXX] MWh	\$21.91/MWh	
Compensable Curtailment	[X,XXX] MWh	\$21.91/MWh	
Storage Capacity Rating	[YYY] MW	\$3,800/MW	
Total Charges		<i>Subtotal</i>	-
<i>Placeholder for Performance Guaranties and other charges, penalties, credits</i>			
Total:			-

Payment is due on or before [the later of the 20th day following receipt of the invoice or the 30th day of the current month]

Notification: For any questions, please notify Accounting Department upon receipt:
(e) accounting@brightnightpower.com
(p) (888) 614-2626

Please wire transfer your payment as follows:

Beneficiary Name:
Beneficiary Address:
Account #:
ABA #:
Bank Address:

EXHIBIT R
FORM OF ACCOUNT CONTROL AGREEMENT

[Attached]

ACCOUNT CONTROL AGREEMENT
[DATE]

BOCA bn, LLC, a Delaware limited liability company, having an address at [_____] (“Secured Party”); Southwest Public Power Agency, Inc., a political subdivision of the State of Arizona, having a principal address at c/o Dennis Delaney, SPPA Project Manager, K. R. Saline & Associates, 160 North Pasadena, Suite 101, Mesa, Arizona 85201-6764 (“Obligor”); and BMO Harris Bank N.A., a national banking association having an address at [_____] , as depository (“Depository”, and with the Secured Party and Obligor, each a “Party” and collectively the “Parties”) hereby agree as follows:

Recitals:

1. On the date hereof, Obligor and Secured Party entered into that certain Power Purchase Agreement, dated as of _____, 2022 (as amended, supplemented, extended, restated or modified from time to time, the “PPA”).
2. Obligor and Secured Party wish to establish, by this Account Control Agreement (the “Agreement”), the terms and conditions that shall regulate the Account (as defined below), including the rules for transfer and release of the amounts deposited in the Account from time to time.
3. Obligor has established with Depository a deposit account with account number [_____] in the name of Obligor (the “Account”).
4. Secured Party, Obligor and Depository are entering into this Agreement to provide for the control of the Account.
5. Capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the PPA.

Agreement:

Section 1. The Account. Obligor and Depository each hereby represent and warrant for the benefit of the Secured Party that (a) the Account has been established in the name of Obligor as recited above, and (b) except for the claims and interest of Secured Party and Obligor in the Account, and any claim in favor of Depository permitted under Section 2, Obligor and Depository do not know of any claim to, or interest in, the Account. All parties agree that the Account will be treated as a “deposit account” under Article 9 of the Uniform Commercial Code of the State of New York.

Section 2. Priority of Lien. Except as provided in the following paragraph, Depository hereby subordinates all liens, encumbrances, claims and rights of setoff it may have against the Account, or any funds held in the Account, and agrees that it will not assert any such lien, encumbrance, claim or right against the Account or any funds held in the Account. Depository will not agree with any third party that Depository will comply with instructions originated by such party directing disposition of the funds in the Account without the prior written consent of Secured Party and Obligor.

Notwithstanding the foregoing, Depository retains and may assert a lien, encumbrance, claim and right of setoff against the Account, and all funds held in the Account, and may charge and debit the Account, (a) to pay all fees and charges due to Depository in connection with the Account and services provided in connection with the Account, and (b) to reimburse Depository for any deposited check or other item (including electronic payments such as ACH) that is returned for any reason unpaid, or paid and later returned, or the subject of a breach of warranty claim (and for any associated interest or earnings credit) (collectively the “Charges”).

Section 3. Control by Obligor. Except as otherwise provided herein, Obligor shall control the Account and the Depository shall accept Obligor’s directions with respect to the Account, until such time as Depository receives a Notice of Exclusive Control and has had reasonable opportunity to comply as provided in Section 4. Any withdrawals from the Account that are initiated by Obligor shall be made by issuing an entitlement order in the form of Exhibit A which shall be sent by Obligor to Depository at least five (5) Business Days prior to the requested date of withdrawal. Contemporaneously with sending the entitlement order to Depository, Obligor will send Secured Party a copy of each such entitlement order.

Section 4. Control by Secured Party. Upon the occurrence of an Event of Default by Obligor under the PPA, and Obligor’s failure to cure such Event of Default within any cure or grace period, Secured Party may deliver a written notice to Depository in the form of attached Exhibit C that Secured Party is thereby exercising exclusive control over the Account. Such notice is referred to herein as the “Notice of Exclusive Control.” After Depository receives the Notice of Exclusive Control and has had reasonable opportunity to comply, it will cease complying with instructions concerning disposition of funds in the Account originated by Obligor or its representatives, and Depository will thereafter only comply with instructions originated by Secured Party concerning disposition of funds in the Account.

Section 5. Withdrawal Rights as between Obligor and Secured Party; Revocation of Notice of Exclusive Control. Solely as between Obligor and Secured Party, if an Event of Default has occurred with respect to Obligor under the PPA and the Event of Default is not cured within any grace period specified in the PPA, Secured Party shall have the right to withdraw funds from the Account to make payments to the Secured Party that are due and payable pursuant to the PPA in such amounts as are permitted under the PPA solely for the purpose of curing SPPA’s default under the PPA. Depository shall have no duty to monitor the application of funds withdrawn from the Account or any such matters, or otherwise limit the ability of Obligor or Secured Party to withdraw funds from the Account, except as expressly set forth herein.

After Depository receives notice from Secured Party that a previously delivered Notice of Exclusive Control is revoked or rescinded and has had reasonable opportunity to comply, then Secured Party’s right to exercise exclusive control over the Account shall cease, and Obligor shall once again control the Account as provided in Section 3 above. Any provision of this Agreement to the contrary notwithstanding, nothing in this Agreement shall modify Obligor’s duties to Secured Party under the PPA.

Section 6. Statements, Confirmations and Notices of Adverse Claims. Depository will send copies of all statements and confirmations concerning the Account to each of Obligor

and Secured Party at the address set forth in the heading of this Agreement. Upon receipt of written notice of any lien, encumbrance, or adverse claim against the Account or in any financial asset carried therein, Custodian will make reasonable efforts to notify Secured Party and Obligor thereof. Upon Secured Party's request and at the sole expense of Obligor, Depository will provide Depository's standard bank statements covering deposits to and withdrawals from the Account.

Section 7. Limited Responsibility of Depository. Depository shall have no responsibility or liability to Obligor for complying with a Notice of Exclusive Control or complying with instructions concerning the Account originated by Secured Party. Depository shall have no responsibility or liability to Secured Party with respect to the value of the Account or any asset held therein. Depository shall have no duty to investigate or make any determination as to whether a default exists under any agreement between Obligor and Secured Party and shall comply with a Notice of Exclusive Control even if it believes that no such default exists. Depository shall be entitled to rely, and shall be fully protected in relying, upon any entitlement order in the form of Exhibit A or B, a Notice of Exclusive Control in the form of Exhibit C, a Notice of Termination in the form of Exhibit D, and any other instruction believed by Depository in good faith to be genuine and correct and to have been signed, sent, or made by the proper person. Depository may consult with legal counsel and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel or experts. Depository shall have no liability to either Obligor or Secured Party, or their respective successors and assigns, for any liability, loss, expense, claim, cost, or damage (collectively, "Loss") that either or both may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement, or any transaction or service contemplated by the provisions hereof, other than those Losses that resulted directly from Depository's acts or omissions constituting negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable order. Depository's obligations hereunder shall be that of a depository bank, and nothing in this Agreement shall create custodial or bailee obligations of Depository or otherwise create any agency, fiduciary, joint venture or partnership relationship among any of Depository, Obligor, and Secured Party. This Agreement does not create any obligation or duty of Depository other than those expressly set forth herein. Depository shall have no obligation to follow instructions of Secured Party or Obligor set forth herein or otherwise if Depository in good faith believes that it is or may be restricted by law from following such instructions. Notwithstanding any other term or provision of this Agreement, if Depository is properly served with a writ, garnishment, judgment, warrant of attachment, execution, or similar process or any claim or an interest in or against any funds in the Account (any of the foregoing, a "Court Order") or that affects or purports to affect the Account, Depository may act in accordance with such Court Order.

Section 8. Indemnification of Depository. Obligor hereby agrees to indemnify, defend, and hold harmless Depository, its directors, officers, agents and employees against any and all Loss (including without limitation, any and all court costs and reasonable attorney's fees) in any way related to or arising out of or in connection with this Agreement or any action take or not taken pursuant hereto (including complying with a Notice of Exclusive Control and/or transferring funds at the direction of Secured Party), except to the extent caused by Depository's negligence or willful misconduct. Any such amounts payable by Obligor shall be paid within ten (10) business days of demand therefor by Depository. Secured Party hereby agrees to indemnify,

defend, and hold harmless Depository, its directors, officers, agents and employees against any and all Loss in any way related to or arising out of or in connection with this Agreement that results from the negligence or willful misconduct of Secured Party, except to the extent caused by Depository's negligence and willful misconduct. To the extent not reimbursed by Obligor pursuant to the first sentence of this Section 8 within ten (10) business days of demand by Depository, Secured Party agrees to indemnify, defend, and hold harmless Depository, its directors, officers, agents and employees against any and all Loss incurred as a result of Depository complying with a Notice of Exclusive Control and/or transferring funds at the direction of Secured Party; provided that Depository shall not be required to make demand on Obligor if such demand is prohibited by applicable law, including any automatic stay under bankruptcy law.

Section 9. Customer Agreement. In the event of a conflict between this Agreement and any other agreement between Depository and Obligor, the terms of this Agreement will prevail. Regardless of any provision in any such agreement relating to the law governing the Account, the parties hereto agree that the establishment and maintenance of the Account, and all interests, duties and obligations with respect thereto, shall be governed by the law of the State of New York.

Section 10. Termination. The rights and powers granted herein to Secured Party have been granted in order to perfect its security interest in the Account, are powers coupled with an interest and will neither be affected by the dissolution or bankruptcy of Obligor nor by the lapse of time. Unless earlier terminated by Depository pursuant to this section, the obligations of Depository under Sections 2, 3, 4 and 5 above shall continue in effect until Secured Party has notified Depository in writing that this Agreement is to be terminated by serving a notice of termination in the form of Exhibit D ("Notice of Termination"). Upon receipt of a Notice of Termination, the obligations of Depository under Sections 2, 3, 4 and 5 above with respect to the operation and maintenance of the Account after the receipt as such notice shall terminate, Secured Party shall have no further right to deliver instructions to Depository concerning the Account and any previous Notice of Exclusive Control delivered by Secured Party shall be deemed to be of no further force and effect. This Agreement may be terminated at any time by Depository upon at least forty-five (45) days' prior written notice to each of the other parties. If as of the effective date of such termination, there remain funds on deposit in the Account, Depository shall remit such funds to Secured Party into an account designated by the Secured Party. Such funds shall be held in trust by the Secured Party for and as agent of the respective Parties, in accordance with their interests, until such time a new Depository is established, and a new Account Control Agreement is executed. Funds held by Secured Party shall continue to be subject to the PPA. Sections 7 and 8 shall survive termination of this Agreement.

Section 11. This Agreement. This Agreement, including the Recitals and any schedules or exhibits hereto and the instructions and notices required or permitted to be executed and delivered hereunder, set forth the entire agreement of the parties with respect to the subject matter hereof.

Section 12. Amendments. No amendment, modification or (except as otherwise specified in Section 10 above) termination of this Agreement, nor any assignment of any rights hereunder, shall be binding on any party hereto unless it is in writing and is signed by each of the

parties hereto, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null and void. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought. The number of the Account shall not be changed without the prior written consent of Secured Party.

Section 13. Severability. If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

Section 14. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives. Obligor may not assign this Agreement or any of its rights or obligations under this Agreement to any other person or entity without the prior written consent of Secured Party. Secured Party may, without the consent of the Obligor and the Depository, assign this Agreement (collaterally or otherwise) to any of Secured Party's or its affiliates' Lenders, including its rights and/or obligations under this Agreement.

Section 15. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such parties' name at the heading of this Agreement. Any party may change his address for notices in the manner set forth above.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Section 17. Choice of Law. This Agreement shall be governed by and construed in accordance with the law of the State of New York.

Section 18. Submission to Jurisdiction and Venue; Waiver of Jury Trial.

(a) Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Arizona or New York court or federal court of the United States of America sitting in Phoenix, Arizona, or the Borough of Manhattan, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in either state's State court or, to the extent permitted by law, in a federal court sitting in either state.

(b) **EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT**

PERMITTED BY APPLICABLE LAW, ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE SECURED PARTY TO ENTER INTO THIS AGREEMENT.

(c) NO CLAIM SHALL BE MADE BY ANY PARTY HERETO OR ANY OTHER PERSON AGAINST ANY PARTY HERETO, ANY OTHER SECURED PARTIES OR ANY OF THEIR SUCCESSORS IN INTEREST OR THEIR AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE, AND WHETHER OR NOT THE CLAIM WAS FORESEEABLE), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATING TO, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS AGREEMENT, THE PPA OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE PPA, AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

Section 19. UCC.

(a) The parties hereto hereby agree that (i) Depository is a “bank” within the meaning of Section 9-102(a)(8) of the New York Uniform Commercial Code (the “UCC”) that maintains the Assigned Account, (ii) the Assigned Account is a “deposit account” within the meaning of Section 9-102(a)(29) of the UCC and (iii) the “jurisdiction” of Depository for purposes of Section 9-304(b) of the UCC is the State of New York. This Agreement is “an agreement between the bank and its customer governing the deposit account” within the meaning of Section 9-304(b) of the UCC.

(b) This Agreement (including, without limitation, the designation of Depository’s jurisdiction for purposes of the UCC) controls in the event of any conflict between this Agreement and any other document or written or oral statement. This Agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof.

[Signatures on following pages.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

BOCA bn, LLC,
as Secured Party

By: _____

Southwest Public Power Agency, Inc.,
as Obligor

By: _____

BMO Harris Bank N.A.,
as Depository

By: _____

[SPPA Letterhead]

[Date]

[NAME AND ADDRESS OF DEPOSITORY]

Re: Entitlement Order for Account No. ____ (the "Account")

Ladies and Gentlemen:

We (the "Obligor") are a party to that Account Control Agreement dated _____, 20__, among, you, and BMO Harris Bank N.A., as Secured Party, a copy of which is attached (the "Agreement").

The Account is not subject to a Notice of Exclusive Control from the Secured Party. You are hereby instructed to withdraw funds in the amount of \$_____ from the Account and to wire the funds to:

You are instructed to deliver a copy of this notice by facsimile transmission to the Secured Party five (5) business days prior to the withdrawal of funds from the Account.

The undersigned represents and warrants that it is entitled to deliver this instruction to the Depository and that the disposition of the funds as directed above is in compliance with the Agreement and all agreements referenced therein.

Very truly yours,

[SPPA]

By: _____

Name

Title

c: _____

[Letterhead of Secured Party]

[Date]

[NAME AND ADDRESS OF DEPOSITORY]

Re: Entitlement Order for Account No. _____

Ladies and Gentlemen:

Secured Party has delivered to Depository the Notice of Exclusive Control for Account No. _____, pursuant to that agreement dated _____, 20__, among _____ (the "Obligor"), you, and the undersigned, copy of which is attached (the "Agreement").

You are hereby instructed to dispose of the funds held in the Account as follows:

The undersigned represents and warrants that it is entitled to deliver this instruction to the Depository and that the disposition of the funds as directed above is in compliance with the Agreement and all agreements referenced therein.

You are instructed to deliver a copy of this notice by facsimile transmission to the Obligor.

Very truly yours,

[SECURED PARTY]

By: _____

Name

Title

c: _____

[Letterhead of Secured Party]

[Date]

[NAME AND ADDRESS OF DEPOSITORY]

Re: Notice of Exclusive Control for Account No. _____

Ladies and Gentlemen:

As referenced in the Agreement, dated _____, 20__ (the "Agreement"), among [_____] (the "Obligor"), you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over the following account number _____ (the "Account"):

Project Revenue Account with number _____ in the name of Obligor.

You are hereby instructed not to accept any direction, instructions or entitlement orders with respect to the above listed Account from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to Obligor.

Very truly yours,

[SECURED PARTY]

By: _____
Name
Title

c: _____

[Letterhead of Secured Party]

[Date]

[NAME AND ADDRESS OF DEPOSITORY]

Re: Termination of Agreement

You are hereby notified that the Agreement, dated _____, 20__ (the "Agreement") among [_____] (the "Obligor"), you and the undersigned (a copy of which is attached), is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Account number _____ from Obligor. This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to Obligor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to Obligor.

Very truly yours,

[SECURED PARTY]

By: _____
Name
Title

c:

RESOLUTION 701-2022

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF THATCHER
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE SPPA PROJECT CONTRACT NO. 2021-2
(POWER PURCHASE AGREEMENT PROJECT)**

WHEREAS, the Town of Thatcher and certain Southwest Public Power Agency, Inc. (“SPPA”) members have requested SPPA to create a new project (the “Project”) for the purchase of power and power-related attributes.

WHEREAS, to create the Project, it is necessary for the Town of Thatcher to approve, execute and implement the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) (the “Project Contract”), a copy of which is attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Thatcher that:

1. The Project agreement between Thatcher, SPPA and the entities listed in the Project Contract, as presented to the Town Council of the Town of Thatcher, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The Town Manager is authorized to execute the Project Contract with only such changes as approved by the signatory, in consultation with Thatcher’s legal counsel. From and after the execution and delivery of the Project Contract, the Town Manager is hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Project Contract.

Adopted this ____ day of _____, 2022.

Randy Bryce, Mayor

Attest:

Annie Reidhead, Deputy Clerk

EXHIBIT A

[Power Purchase Agreement Project]

**RESOLUTION OF THE BOARD OF DIRECTORS
OF SOUTHWEST PUBLIC POWER AGENCY, INC.,
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE SPPA PROJECT CONTRACT NO. 2021-2
(POWER PURCHASE AGREEMENT PROJECT)**

WHEREAS, certain Southwest Public Power Agency, Inc. (“SPPA”) members have requested SPPA to create a new project (the “Project”) for the purchase of power and power-related attributes.

WHEREAS, to create the Project, it is necessary for SPPA to approve, execute and implement the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) (the “Project Contract”), a copy of which is attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of SPPA that:

1. The Project agreement between SPPA and the entities listed in the Project Contract, as presented to the Board of Directors of SPPA, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The President and any other officer of SPPA are authorized to execute the Project Contract with only such changes as approved by the signatory, in consultation with SPPA’s legal counsel and SPPA’s administrative agent. From and after the execution and delivery of the Project Contract, the officers of SPPA and SPPA’s administrative agent are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Project Contract.

Adopted this ____ day of _____, 2022.

Attest:

Secretary

EXHIBIT A

[Power Purchase Agreement Project]

SPPA PROJECT CONTRACT NO. 2021-2
(Power Purchase Agreement Project)

This SPPA Project Contract No. 2021-2 (the “Project Contract”) is to be effective as of the 14th day of March, 2022 (the “Effective Date”), and is entered into by and among Southwest Public Power Agency, Inc., an Arizona nonprofit corporation and a political subdivision of the State of Arizona (“SPPA”), and those entities who have executed this Project Contract or the form of Participation Agreement attached hereto as **Exhibit C** and one or more Resale Agreements (defined below) (each a “Project Participant” and, collectively, the “Project Participants”).

RECITALS

A. SPPA is a political subdivision of the State of Arizona created pursuant to an Intergovernmental Agreement, dated July 31, 2014 (the “IGA”), entered into by a number of public entities (the “SPPA Members”), including some of the Project Participants, under the authority granted under A.R.S. § 11-952.

B. Section 4 of the IGA grants numerous powers to SPPA, including the power to enter into contracts with one or more of the SPPA Members, including a contract for a project.

C. Under Section 2(n) of the IGA, a Project Contract is a contract between SPPA and two or more of the SPPA Members that are a party to the IGA, providing to each such SPPA Member an entitlement or a right to participate in the capacity, output, service and costs of a project of SPPA, and obligating each such SPPA Member to make payments with respect to the costs thereof in accordance with the terms of the Project Contract.

D. The project which is the subject of this Project Contract is referred to herein as the “Project”.

E. The undersigned SPPA Members wish to participate in this Project and to become Project Participants with an initial listing in **Exhibit A**, which table SPPA may update from time to time as may be necessary to reflect changes to the Project Participants.

F. Under Section 5(b) of the IGA, SPPA may offer Project participation to entities that are not signatories to the IGA.

G. SPPA intends to enter into one or more Power Purchase Agreements (“PPA”) for the purchase of power and power-related attributes (the “Product”). A copy of each PPA, in final form, will be attached in an Appendix hereto. In addition, for each PPA, SPPA will enter into a Resale Agreement with SPPA Members who wish to purchase some or all of the Product available under that PPA.

H. On November 2, 2020, SPPA issued a Request for Proposals (“RFP”) for the purchase of a variety of power products, including solar, solar plus storage and natural gas generated electricity.

I. Initially, SPPA intends to contract for the following Products:

a. A PPA with BOCA BN, LLC (as “Seller”) for the purchase of solar plus storage power and power-related attributes from the Box Canyon Project (the “Box Canyon PPA”).

b. A PPA with Lone Butte Solar LLC (as “Seller”) for the purchase of solar plus storage power and power-related attributes from the Lone Butte Project (the “Lone Butte PPA”).

J. The initial Project Participants, by execution of this Project Contract or the form of Participation Agreement attached hereto as **Exhibit C** and a Box Canyon Resale Agreement in substantially the form attached hereto as **Exhibit B**, will purchase all or a portion of the Box Canyon Product.

K. From time to time, SPPA is likely to issue other RFPs for the purchase of power and/or power-related attributes and otherwise purchase power on behalf of Project Participants. Upon approval by the Project Management Committee, such future purchases also may be included as part of this Project. Any resulting, approved PPA will be included as an Appendix hereto.

L. Scheduling of the Product which is the subject of this Project Contract will be done pursuant to the individual PPAs, the Resale Agreements, the SPPA Project Agreement of the SPPA Pool, dated September 1, 2014 (the “Pool Agreement”) and the WREGIS Operating Rules.

M. Each Project Participant will pay for its respective share of the Project Power Costs and the Project Administrative Costs, in accordance with the terms of this Project Contract and the Resale Agreements.

N. Pursuant to Section 5(b) of the IGA, when a Project Contract is entered into between two or more SPPA Members, the limitations on the exercise of common powers of the Members contained in the IGA are only applicable to the common powers of the SPPA Members entering into the Project Contract. The Project Participants have the common powers to purchase the Product.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Project Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE 1 **DEFINITIONS**

1.1 “Box Canyon PPA” means the Power Purchase Agreement between SPPA and BOCA BN, LLC for the Box Canyon Project, as amended from time to time.

- 1.2 “Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the State of Arizona.
- 1.3 “Lone Butte PPA” means the Power Purchase Agreement between SPPA and Lone Butte Solar, LLC, managed by Clenera LLC, for the Lone Butte Project, as amended from time to time.
- 1.4 “Effective Date” has the meaning given in the preamble to this Project Contract.
- 1.5 “Event of Default” has the meaning given in Article 11.
- 1.6 “Force Majeure” means any act or event that delays or prevents a Party (“Affected Party”) from timely performing all or a portion of its obligations under this Project Contract or from complying with all or a portion of the conditions under this Project Contract if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. This definition of Force Majeure applies to this Project Agreement and does not apply to the PPAs or Resale Agreements, which are governed by their respective Force Majeure or equivalent provisions.

Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; outbreak; epidemic or pandemic, including COVID-19 (or the related virus designated SARS-CoV-2) and all actions taken by a governmental authority in respect thereof, notwithstanding the existence or foreseeability of the occurrence thereof or delays attributable thereto as of the Effective Date; landslide; mudslide; sabotage; terrorism; earthquake; windstorm; hailstorm; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party.

- 1.7 “Good Utility Practice” means any of the practices methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

- 1.8 “Participation Agreement” means the agreement executed between SPPA and an entity that is not an initial Project Participant, making that entity a Project Participant. A form of Participation Agreement is attached at **Exhibit C**.
- 1.9 “Party” or “Parties” means SPPA or any Project Participant(s).
- 1.10 “Penalty Interest Rate” means, for any day of a calendar month, 1/365 of the sum of the per annum prime lending rate published in *The Wall Street Journal* under “Money Rates” on the first Business Day of such month, plus two (2) percentage points (two hundred (200) basis points), provided that the Penalty Interest Rate shall not exceed the maximum rate permitted by applicable law.
- 1.11 “Power Purchase Agreement” or “PPA” is a contract between an energy seller and a buyer.
- 1.12 “Product” means the Product described in each PPA and related Resale Agreements.
- 1.13 “Project Administrative Costs” means any necessary expenditures related to obtaining or managing a PPA and related Resale Agreement, including, but not limited to, the cost of SPPA personnel or contractors performing work attributable to the Project and legal costs attributable to the Project.
- 1.14 “Project Contract” means this Project Contract, as fully executed by SPPA and the Project Participants.
- 1.15 “Project Costs” means the amounts billed to SPPA for the purchase of the Product and the net costs of any associated transmission and distribution service, ancillary services, Seller performance damage payments, Seller storage availability true-up payments, environmental compliance costs or payments and any necessary associated facilities. It also includes study, working capital, guaranty and security deposit costs.
- 1.16 “Project Management Committee” means the Committee composed of one designated representative (or an alternate) of each Project Participant, as described in Article 9.
- 1.17 “Project Participant” means an entity that has executed (i) this Project Contract as an original signatory, or (ii) a Participation Agreement in the form of **Exhibit C** making it a Party hereto, and whose participation herein has not been terminated.
- 1.18 “Project Participant Effective Date” means, (i) for each of the original Project Participants, the Project Effective Date, and (ii) for each Project Participant that was not an original signatory, the date as of which it became a Party hereto by executing a Participation Agreement and one or more Resale Agreements.
- 1.19 “Resale Agreements” means the resale agreements between SPPA and the Project Participants for each individual PPA.
- 1.20 “Seller(s)” means a seller of a Product pursuant to a PPA.
- 1.21 “SPPA” means the Southwest Public Power Agency, Inc.

- 1.22 “SPPA Member” means a signatory to the IGA whose participation therein has not been terminated.
- 1.23 “WREGIS” means the renewable energy certificate tracking system Western Renewable Generation Information System (WREGIS).
- 1.24 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 2
PROJECT

- 2.1 This Project Contract will facilitate SPPA entering into one or more PPAs and managing such PPAs now and in the future.

ARTICLE 3
PPAS AND RESALE AGREEMENTS

- 3.1 Each PPA approved by the Project Management Committee, now and in the future, together with the Resale Agreements related thereto, shall become an Addendum to this Project Contract.
- 3.2 Each Project Participant executing a Resale Agreement commits to purchasing or paying for the portion of the Product set forth for that Project Participant in the Resale Agreement.
- 3.3 The rates paid under the Resale Agreements may be blended rates, utilizing the rates under each approved PPA.

ARTICLE 4
FUNDING

- 4.1 Each Project Participant shall pay SPPA its share of the Project Costs and the Project Administrative Costs, as provided in the respective Resale Agreements.

ARTICLE 5
MEETINGS

- 5.1 The Project Management Committee may hold meetings, but Project Participants currently contemplate receiving progress reports and discussing the Project at the Pool Agreement Management Committee meeting and/or the SPPA board of directors’ meetings.

ARTICLE 6
TERM AND TERMINATION

- 6.1 The term of this Project Contract will begin on the Effective Date and continue through the term of all of the PPAs. Thereafter, the Project Contract will be automatically renewed every five years unless and until Project Participants vote to terminate, suspend or replace it. In the event of termination, the provisions of this Project Contract shall survive with

respect to such matters as billing, payment, confidentiality and indemnification as they relate to the period prior to termination.

- 6.2 At such time as a Project Participant is no longer a party to any Resale Agreement under this Project Contract, the Project Participant may withdraw from the Project Contract by providing six months' advance notice to SPPA. Such termination will not affect the rights of the other Project Participants continuing under the Project Contract.

ARTICLE 7
ADDITION, WITHDRAWAL AND REMOVAL OF POOL PARTICIPANTS AND CHANGES IN CATEGORY PARTICIPATION

- 7.1 Upon approval of the Project Management Committee pursuant to Article 9, new Project Participants may be added as Parties to this Project Contract.
- 7.1.1 Each new Project Participant shall execute (i) the form of Participation Agreement attached hereto as **Exhibit C**; and (ii) one or more new Resale Agreements or Participation Agreements for existing Resale Agreements, as updated to reflect the new Project Participant.
- 7.1.2 Acceptance of a new Project Participant may be subject to a requirement that it make a payment determined by the Project Management Committee. Such payments shall be set forth in the new Project Participant's Participation Agreement. Such payments will be used as directed by the Project Management Committee, to reduce fees and/or accumulate equity for the benefit of the Project, or for other appropriate purposes.
- 7.2 Notwithstanding Article 21.3 hereof, changes to **Exhibit A** to reflect the entry of a new Project Participant or termination of this Project Contract with respect to a Project Participant shall be made as a matter of course by SPPA and shall not require formal amendment of this Project Contract.

ARTICLE 8
STANDARD OF CONDUCT

- 8.1 In discharging its duties and responsibilities hereunder, SPPA shall at all times perform these functions in accordance with the terms of this Project Contract and other applicable agreements, all lawful directions of the Project Management Committee, applicable laws and government approvals and Good Utility Practice.

ARTICLE 9
PROJECT MANAGEMENT COMMITTEE

- 9.1 Project Participants shall make decisions regarding activities hereunder, and oversee and guide SPPA's management of the Project, the PPAs and the Resale Agreements through the Project Management Committee.

- 9.2 The Project Management Committee shall consist of one authorized representative from each Project Participant. Each Project Participant may designate a representative and one or more alternates, but only one representative for each Project Participant may vote on any occasion when a vote is taken. The same individual may be appointed to serve as the representative or alternate for more than one Project Participant. However, a Project Participant shall not appoint as its representative or alternate (i) any employee of SPPA or (ii) any employee or principal of a consulting firm or law firm providing services under a contract to SPPA, unless such individual is by contract acting in a management capacity for the Project Participant.
- 9.3 Each Project Participant shall evidence the appointment of its representative (and alternate(s), if applicable) by written notice to SPPA, which SPPA shall promptly distribute to the other Project Participants, and by similar notice, any Project Participant may change its representative (or alternate(s)) on the Project Management Committee at any time. On an annual basis, at SPPA's request, each Project Participant shall provide written confirmation to SPPA of the names of its representative and any alternates. The Project Management Committee will also develop and provide to SPPA a list of all necessary and appropriate contacts of Project Participant personnel. Each Project Participant shall promptly inform SPPA in writing whenever there is a change in its personnel to be included on the list.
- 9.4 If a matter comes before the Project Management Committee that is related to a specific PPA, only the Project Participants that are parties to the Resale Agreement for that PPA are entitled to vote. Each such Project Participant shall be entitled to one vote on such matters. Approval of such matters shall be obtained by the assenting vote of a majority of such Project Participants. If any such Project Participant requests entitlement voting, the Project Management Committee shall employ entitlement voting ("Entitlement Voting"), with each such Project Participant having the number of votes equal to that Participant's entitlement under that PPA. In such case, approval shall be obtained by the assenting vote of the majority of the PPA entitlement votes cast by such Project Participants.
- On all other matters, each Project Participant shall be entitled to one vote on matters that come before the Project Management Committee. Project Management Committee approval shall be obtained by the assenting vote of the majority of the Project Management Committee.
- 9.5 As an example of how the number of votes are determined for Entitlement Voting, the Box Canyon PPA entitlements are set forth in Schedule 4.1 of the Box Canyon Resale Agreement. The column entitled "Participant Entitlement" in said Schedule 4.1 sets forth the number of votes to which each Project Participant would be entitled to vote on a Project Management Committee decision related to the Box Canyon PPA.
- 9.6 At its first meeting, the Project Management Committee shall, by majority vote, select a chairperson from among the Project Participant representatives serving on the Project Management Committee. Chairperson elections shall occur every two years thereafter. If no election occurs, the then current Chairperson shall remain in that position until a

successor is elected. The Project Management Committee may elect additional officers as it deems appropriate.

- 9.7 The Project Management Committee shall attempt to meet on a regular schedule as determined by the Project Management Committee, or at least, annually. It is anticipated that regular meetings will be held in conjunction with meetings of the SPPA Pool Management Committee. SPPA shall arrange for the location and other logistical support (e.g., teleconference access, refreshments) for meetings of the Project Management Committee, issue meeting notices, keep records of the meetings, and provide all other reasonable and necessary facilitation of such meetings.
- 9.8 Special meetings of the Project Management Committee may be convened by the chairperson between scheduled meetings, and shall be convened by the chairperson if he or she receives a request from two (2) or more Project Management Committee members or SPPA.
- 9.9 Actions by the Project Management Committee pursuant to this Project Contract, including the giving of instructions and/or authority to SPPA in connection with its responsibilities hereunder, shall be taken at meetings of the Project Management Committee duly called and with adequate notice to all Project Participants. SPPA shall provide written notice of any meeting of the Project Management Committee (a) to each Project Participant in the same manner, with as much advance notice as is practicable (normally one week in advance), and (b) in compliance with applicable open-meeting laws.
- 9.10 Participation by authorized representatives at Project Management Committee meetings may be in person, electronically, via virtual meeting or telephone. A quorum shall consist of those authorized representatives present in person or otherwise representing a numerical majority of the Project Participants.
- 9.11 The following matters shall be decided by the Project Management Committee:
 - a) The addition of any new Project Participant to this Project Contract.
 - b) Actions in response to an Event of Default by a Project Participant pursuant to Article 11. The defaulting Project Participant may not participate in any such votes.
 - c) The termination of this Project Contract in its entirety (Project Participants may not terminate this Project Contract unless the PPAs have been terminated).

ARTICLE 10

BILLING AND PAYMENT

- 10.1 Billing and Payment shall be governed by the Resale Agreements and the Pool Agreement.

ARTICLE 11
DEFAULT

- 11.1 The following shall constitute an event of default on the part of the applicable Party (“Event of Default”):
- 11.1.1 A Party defaults under a Resale Agreement.
- 11.2 A defaulting Project Participant shall not have the right to vote on matters coming before the Project Management Committee during the period in which the default remains uncured, although its representative (or alternate(s)) may still attend all meetings of the Project Management Committee; provided, however, the Project Management Committee may exclude the defaulting Project Participant from discussions regarding the defaulting Project Participant.
- 11.3 Upon the occurrence and during the continuance of an Event of Default by a Project Participant, the Project Management Committee may, voting without the defaulting Project Participant, do any or all of the following: (i) take such actions as are permitted or required under the relevant Resale Agreement; (ii) terminate this Project Contract with respect to such Project Participant; and/or (iii) pursue any and all other remedies against the defaulting Project Participant available at law or in equity, subject to the dispute resolution procedures set forth in the relevant Resale Agreement and the other limitations set forth in this Project Contract.
- 11.4 Upon the occurrence and during the continuance of an Event of Default by SPPA, one or more affected Project Participants may pursue the dispute resolution procedures set forth in the relevant Resale Agreement, subject to all applicable limitations set forth in this Project Contract. In no event, however, shall any Project Participant be entitled, by virtue of an Event of Default by SPPA, to (i) terminate the Project Participant’s participation in this Project Contract other than in accordance with Article 6, or (ii) terminate this Project Contract in its entirety.
- 11.5 Each Project Participant acknowledges that (i) effective operation of the Project for the benefit of the Project Participants will require exercise of business judgment by SPPA officers, directors, personnel and consultants on the basis of information available to them, and (ii) while SPPA’s aim will be to enhance value and reduce risk to the Project Participants, it is not reasonable to expect that value will be ideally maximized or that risk will be fully eliminated. In no event shall a claim of breach or Event of Default by SPPA be based on the dissatisfaction of one or more Project Participants with the PPAs, absent a showing of gross negligence or willful misconduct by SPPA. The sole remedy available to a Project Participant that is dissatisfied with SPPA’s ability to achieve the Project’s goals is to withdraw from participation in this Project Contract in accordance with Article 6.

ARTICLE 12
INDEMNIFICATION

- 12.1 The Project Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of SPPA's performance of its obligations under this Project Contract. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Project Contract of SPPA; provided, however, that, notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the Project Management Committee and was reasonably necessary in order to carry out such direction.
- 12.2 If a customer of a Project Participant makes a claim or brings an action against one or more of the other Project Participants for any death, injury, loss, or damage arising out of or in connection with this Project Contract, the Project Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Project Participants and their directors, officers, and employees for, from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA or the other Project Participant(s).

ARTICLE 13
PROJECT PARTICIPANT OBLIGATIONS

- 13.1 Each Project Participant will cooperate with SPPA and the other Project Participants in fulfilling the objectives of this Project Contract. Without limiting the foregoing, each of the Project Participants agrees that it will cooperate with SPPA, promptly, as and when reasonably requested by SPPA in order for it to perform its duties, responsibilities and obligations under this Project Contract, including taking all reasonable actions necessary to comply with applicable laws and to obtain any necessary or desirable government approvals, and executing and delivering documents, certificates or instruments necessary or appropriate to SPPA's duties, responsibilities and obligations under this Project Contract.

ARTICLE 14
TRANSFERS AND ASSIGNMENTS

- 14.1 SPPA shall not assign this Project Contract.
- 14.2 No Project Participant shall have the power or the right, without the prior approval of a simple majority of the Project Management Committee, voting without the transferring Project Participant, which approval shall not be unreasonably delayed or withheld, to permanently transfer or assign all or any part of its rights and duties under this Project Contract.

- 14.3 Should any Project Participant desire to permanently transfer or assign its rights and obligations under this Project Contract (the “Transfer Interest”) to any other entity or agency (including without limitation one or more other Project Participants), the following conditions shall apply:
- 14.3.1 At the time of the transfer either (a) the transferring Project Participant must not be in default of any of its material obligations under this Project Contract or (b) such default must be cured on or prior to the transfer date.
- 14.3.2 The transferring Project Participant must transfer or assign to the same transferee or assignee the Project Participant’s interest and obligations under any Resale Agreement to which the Project Participant is a Party, pursuant to the terms of such Resale Agreement.
- 14.3.3 The transferee or assignee must meet any and all eligibility requirements to become a Project Participant.
- 14.3.4 The transfer shall be made subject to all of the rights, benefits and burdens of this Project Contract and shall not relieve the transferring Project Participant of any obligations or liabilities incurred prior to the transfer.
- 14.3.5 The proposed transferee shall, effective as of the receipt of such Transfer Interest, assume and agree, in writing, delivered to the other Parties, to perform the provisions of this Project Contract, and at such point shall be deemed a Project Participant under this Project Contract. Upon receipt of such written agreement by the transferee to assume all of the transferring Project Participant’s rights and obligations being assigned, the other Parties shall release the transferring Project Participant from any liability accruing or arising after the date of the transfer in respect of the rights and obligations so assigned. The transferee shall designate a representative to fulfil the commitments under Article 9.
- 14.3.6 In no event shall any transfer be permitted if, in the written opinion of SPPA’s bond counsel, the transfer would jeopardize the tax-exempt status of any bonds issued by SPPA.

ARTICLE 15
SCHEDULING

- 15.1 Scheduling of the Product which is the subject of this Project Contract will be done pursuant to the individual PPAs, the Resale Agreements, the Pool Agreement and the WREGIS Operating Rules.

ARTICLE 16
FORCE MAJEURE

- 16.1 The Force Majeure provisions or similar provisions in the relevant PPA and Resale Agreement will apply under this Project Contract. For the removal of doubt, no event of

Force Majeure shall operate to provide relief, allow delay or otherwise excuse the obligations of a Party to make payments required by this Project Contract.

ARTICLE 17
DISPUTE RESOLUTION

- 17.1 No Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such senior executives succeed in resolution of the controversy, then the resolution of the dispute will be reduced in writing and signed by the senior executives who were involved. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.
- 17.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PROJECT CONTRACT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS PROJECT CONTRACT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
- 17.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.
- 17.4 Disputes under the relevant PPA or Resale Agreements will be handled according to the terms of those agreements.

ARTICLE 18
REPRESENTATIONS AND WARRANTIES

- 18.1 Each Party hereby represents and warrants as follows to each other Party (i) as of the Effective Date, for SPPA and each of the initial Project Participants, and (ii) as of the subsequent Effective Date for SPPA and each subsequent Project Participant:
- 18.2 It: (a) is duly formed, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, (b) has all requisite power and all material government approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is duly qualified to do business in all jurisdictions in which the nature of the business conducted by it or proposed to be conducted by it makes such qualification necessary.

- 18.3 It has all necessary power and authority to execute, deliver and perform its obligations under this Project Contract, and the execution, delivery and performance by it of this Project Contract have been duly authorized by all necessary action on its part.
- 18.4 The execution, delivery and performance by it of this Project Contract does not and shall not:
- 18.4.1 Violate its constituent documents; or
- 18.4.2 Result in a breach of or constitute a default under any other material agreement to which it is a party.
- 18.5 This Project Contract: (a) has been duly authorized and duly and validly executed under Arizona law and delivered by it; and (b) assuming the due authorization, execution and delivery thereof by the other Parties hereto, constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, conditions and provisions, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general principles of equity.
- 18.6 The effectiveness of this Project Contract as to those Project Participants that are regulated by Rural Utilities Service ("RUS") (set forth on **Exhibit D**) is conditioned on approval hereof by RUS. Except for such RUS approval, all government approvals necessary under any applicable law in connection with the due execution and delivery of, and performance by it of its obligations and the exercise of its rights under, this Project Contract have been duly obtained or made and are in full force and effect, are final and not subject to appeal or renewal, are held in its name and are free from conditions or requirements compliance with which could reasonably be expected to have a material adverse effect or which it does not reasonably expect to have a material adverse effect or which it does not reasonably expect to be able to satisfy.

ARTICLE 19
ARIZONA STATUTORY PROVISIONS

- 19.1 The Parties hereby acknowledge that certain of the Parties that are political subdivisions may, pursuant to A.R.S. § 38-511, "within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."
- 19.2 Each of the Parties subject to A.R.S. § 38-511 agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Project Contract, or based upon facts known prior to execution if, contrary to the parties' intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months' notice of such cancellation.

ARTICLE 20
WAIVERS

20.1 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.

20.1.1 Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Project Contract, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article 16, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in **Exhibit C-1** hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions, filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

20.1.2 The limited waivers set forth in this Article 20 shall apply to the enforcement of any agreement to arbitrate under this Project Contract, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Project Contract or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Article.

ARTICLE 21
MISCELLANEOUS

- 21.1 Severability. Each provision set forth in this Project Contract is independent and severable from the others, and no restriction will be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part. If any provision of this Project Contract is unenforceable for any reason whatsoever, that provision will be appropriately limited and given effect to the maximum extent permitted by applicable law.
- 21.2 Binding Effect. This Project Contract will be binding upon the Parties' respective successors and assigns, whether by agreement or operation of law.
- 21.3 Entire Agreement. This Project Contract, and the Exhibits and Appendices hereto, contain the entire agreement between the parties with regard to the establishment and administration of the Project and supersedes and replaces any and all other agreements, written or oral, made prior to the date of this Project Contract with regard to the same subject matter. All prior negotiations and understandings with regard to the establishment and administration of the Project are merged into this Project Contract. Modification or amendment of this Project Contract will be made only in writing and subscribed to by the parties.
- 21.4 Construction. The parties agree that they have had the opportunity to participate in the drafting of this Project Contract and that the respective legal counsel for such Parties has had the opportunity to review this Project Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied to the interpretation of this Project Contract. No inference in favor of, or against, any party may be drawn from the fact that one party has drafted any portion of this Project Contract.
- 21.5 Governing Law. This Project Contract and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona.
- 21.6 Notices. Unless otherwise expressly provided for in this Project Contract, all notices to a Party in connection with this Project Contract shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Project Participants at the addresses provided in **Exhibit E**, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update **Exhibit E** to reflect changes, without the necessity of amending this Project Contract.

21.7 Execution in Counterparts. This Project Contract may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

[Signatures on following pages.]

Signature Pages

In Witness Whereof, each Party has executed this Project Contract with the approval of its governing body.

FOR SOUTHWEST PUBLIC POWER AGENCY, INC. ("SPPA"):

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

FOR PROJECT PARTICIPANTS:

AGUILA IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

AK-CHIN ENERGY SERVICES

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 2 OF PINAL COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

ELECTRICAL DISTRICT NO. 4 OF PINAL COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

ELECTRICAL DISTRICT NO. 6 OF PINAL COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

ELECTRICAL DISTRICT NO. 7 OF MARICOPA COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

ELECTRICAL DISTRICT NO. 8 OF MARICOPA COUNTY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

GILA RIVER INDIAN COMMUNITY UTILITY AUTHORITY

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

HARQUAHALA VALLEY POWER DISTRICT

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO. 1

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

MCMULLEN VALLEY WATER CONSERVATION AND DRAINAGE DISTRICT

Approved as to Form:

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

OCOTILLO WATER CONSERVATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ROOSEVELT IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SAFFORD (CITY OF)

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOHONO O'ODHAM UTILITY AUTHORITY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TONOPAH IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF THATCHER

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF WICKENBURG

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

WILLIAMS (City of)

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

List of Exhibits and Appendices

Exhibit A – Power Purchase Agreement Project Listing of Project Participants

Exhibit B – Form of Box Canyon Resale Agreement

Exhibit C – Form of Participation Agreement

Exhibit D – Project Participants Regulated by Rural Utilities Service (“RUS”)

Exhibit E – Notices

Appendix A-1 – Box Canyon PPA

Appendix A-2 – Box Canyon Resale Agreement

Appendix B-1 – Lone Butte PPA

Appendix B-2 – Lone Butte Resale Agreement

Appendix C-1 – Copies of Resolutions and Waivers

EXHIBIT A

**Power Purchase Agreement Project
Listing of Project Participants**

Number	Project Participants
1	Aguila Irrigation District
2	Ak-Chin Energy Services ⁽¹⁾
3	Buckeye Water Conservation & Drainage District
4	Electrical District No. 2 of Pinal County
5	Electrical District No. 3 of Pinal County
6	Electrical District No. 4 of Pinal County
7	Electrical District No. 6 of Pinal County
8	Electrical District No. 7 of Maricopa County
9	Electrical District No. 8 of Maricopa County
10	Gila River Indian Community Utility ⁽¹⁾
11	Harquahala Valley Power District
12	McMullen Valley Water Conservation & Drainage District
13	Maricopa County Municipal Water
14	Ocotillo Water Conservation District
15	Roosevelt Irrigation District
16	Safford (City of)
17	Thatcher (Town of)
18	Tonopah Irrigation District
19	Tohono O’odham Utility Authority ⁽¹⁾
20	Town of Wickenburg
21	Williams (City of)

⁽¹⁾ Tribal Participant

EXHIBIT B

Form of Box Canyon Resale Agreement

EXHIBIT C

Form of Participation Agreement

THIS PARTICIPATION AGREEMENT FOR THE SPPA PROJECT CONTRACT NO. 2021-2 FOR THE POWER PURCHASE AGREEMENT PROJECT (the “Participation Agreement”) is entered into as of the ___ day of _____, 202__, (“Participant Effective Date”) by and between _____ (the “Participant”) and the Southwest Public Power Agency, Inc. (“SPPA”).

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a “Participant” under the SPPA Project Contract No. 2021-2 (the “Project Agreement”), dated as of _____, 202__, by and among SPPA and the other Participants and under the Resale Agreement (“Resale Agreement”), dated as of _____, 20__, by and among SPPA and the “Participants” that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA’s execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article ___ of the Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement [and the Resale Agreement] shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement and the Resale Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit E of the Project Agreement and Exhibit ___ of the Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement and an amended Schedule 4.1 of the Resale Agreement, to be effective as of the Participant Effective Date.
2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit ____ of the Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[PARTICIPANT]

By _____

Name: _____

Title: _____

Southwest Public Power Agency, Inc.

By _____

Name: _____

Title: _____

EXHIBIT D

**Power Purchase Agreement Project
Project Participants Regulated by Rural Utilities Service (“RUS”)**

1. Tohono O’odham Utility Authority

EXHIBIT E

Notices

TO SPPA:

Southwest Public Power Agency, Inc.

160 North Pasadena

Suite 101

Mesa, AZ 08201

Attn: Dennis L. Delaney, dld@krsaline.com & Jennifer M Torpey, jmt@krsaline.com with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

<p>Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>	<p>Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman</p> <p><i>With a copy to:</i></p> <p>Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282</p>
<p>Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager</p>	<p>City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager</p>
<p>City of Williams 113 South 1st Street Williams, AZ 86046 Attn: City Manager</p>	<p>Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128</p> <p>Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194</p> <p>Fax: 520-723-5252</p> <p>Attn: General Manager</p>

<p>Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager</p>	<p>Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager</p>
<p>[reserved]</p>	<p>Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President</p>
<p>Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager</p>	<p>Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175 Gila Bend, AZ 85337 Attn: General Manager</p>
<p>Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager</p> <p><i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director</p> <p>The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson</p>	<p>Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>
<p>Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager</p>	<p>McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager</p>
<p>[reserved]</p>	<p>Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager</p>

<p>Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent</p>	<p>Tohono O’odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager</p>
<p>Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator</p>	<p>Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager</p>
<p>Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager</p>	

APPENDIX A-1

**Power Purchase Agreement Project
Box Canyon Power Purchase Agreement**

APPENDIX A-2

**Power Purchase Agreement Project
Box Canyon Resale Agreement (“Resale” Agreement)**

APPENDIX B-1

Lone Butte Power Purchase Agreement

APPENDIX B-2

Lone Butte Resale Agreement

Appendix C-1

Copies of Resolutions and Waivers

RSL Club Soccer Plan

Thatcher, AZ

1. April 1, 2022 start advertising on Social Media, Flyers, News Papers, and signage.
2. June 1, 2022 open registration.
3. June 2, 3, 4 (Potential Dates for a Soccer Camp)
4. August 8-19, Begin open practices/player evaluation. (This player evaluation will be used to create equally balanced teams)
5. August 20th (create teams and assign coaches)
6. August 27th first weekend of Games
7. November 19th HS Aged Kids season complete
8. December 17th (Possibly sooner) Younger teams complete season

Field cost to club \$100 a month.

Cost to play (Approximately \$60) per child

I would ask to have Town of Thatcher to please place lines on the fields to designate fields of play.

Club will provide additional goals with nets needed for league play.