

**Knoxville Utilities Board
Board Meeting
Minutes
Thursday, March 12, 2020 Noon**

Call to Order

The Knoxville Utilities Board met in regular session in the Larry A. Fleming Board Room at 445 S. Gay Street, on Thursday, March 12, 2020, pursuant to the public notice published in the January 4, 2020, edition of the *News Sentinel*. Chair Hamilton called the meeting to order at 12:00 p.m.

Roll Call

Commissioners Present: Jerry Askew, Kathy Hamilton, Celeste Herbert, Adrienne Simpson-Brown, and John Worden.

Commissioners Absent: Sara Pinnell and Tyvi Small

Approval of Minutes

The Minutes of the February 20, 2020 Board Meeting were approved as distributed upon a motion by Commissioner Askew and seconded by Commissioner Herbert.

Old Business

None

New Business

Resolution 1410, A Resolution Authorizing the Execution of an Agreement to Amend Power Contract TV-75110A, and to become a Participant in TVA's Green Invest Program

President Gabriel Bolas reviewed the proposed long-term partnership agreement with TVA, including the process KUB staff employed to review the contract. President Bolas advised the Board it was in the best interest of KUB and its customers to sign the long-term partnership agreement. President Bolas also discussed KUB entering into an agreement with TVA to participate in their Green Invest program, and that if approved by the Board, KUB was prepared to enter into agreements for the purchase of 212MW of solar power from TVA through the Green Invest program.

March 12, 2020

President Bolas recommended adoption of Resolution 1410 on first and final reading. His written recommendation is included in Attachment 1.

A motion to adopt Resolution 1410 was made by Commissioner Herbert and seconded by Commissioner Simpson-Brown. Public comments were heard from the following regarding Resolution 1410:

Kent Minault – 311 Glenwood Avenue – Knoxville, TN 37917

Stan Johnson – 2805 Woodbine Avenue – Knoxville, TN 37914

Maggie Shober – 2511 E. 5th Avenue – Knoxville, TN 37914

Erin Gill – Chief Policy Officer – City of Knoxville

Jeff Lyash – President and CEO – TVA

Resolution 1410 was adopted by a roll call vote on first and final reading. The following Commissioners voted “aye”: Askew, Hamilton, Herbert, Simpson-Brown, and Worden. No Commissioner voted “nay”.

President’s Report

NACWA Awards

President Bolas advised Commissioners that KUB has been recognized for utility excellence over the years. He recognized Josh Johnson, Manager of Plant Operations, to provide the details of two new awards KUB received from the National Association of Clean Water Agencies.


Other Business

Chair Hamilton advised Commissioners that the April 16 financial workshop will focus on the details of the fiscal year 2021 budget and an update on long-range plans, including proposed rate increases to be considered at the May Board meeting. The business meeting will begin at 10:00 a.m. The meeting will be brief and public comments will be welcome before the meeting is adjourned. Following the conclusion of the business meeting, we will begin the budget workshop. That session should conclude around noon.

March 12, 2020

Adjournment

There being nothing further to come before the Board, Chair Hamilton declared the meeting adjourned at 12:50 p.m.



Kathy Hamilton, Chair



Mark Walker, Board Secretary

Attachments

Attachment 1	Recommendation Letter and Resolution 1410 – A Resolution Authorizing the Execution of an Agreement to Amend Power Contract TV-75110A, and to become a participant in TVA's Green Invest Program.	<u>Page(s)</u> 9847 – 9881
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Knoxville Utilities Board

Knoxville Utilities Board
445 S. Gay Street
Knoxville, Tennessee 37902-1109

Commissioners:

As you will recall, in August 2019, TVA presented a long-term partnership agreement to KUB that would extend KUB's current five-year evergreen contract to 20 years and provide benefits for KUB and its electric customers.

The rationale for TVA's proposal was to better align its debt obligations with its customers' commitments for electric power purchases by extending its contracts with local power companies (LPCs) to a twenty-year term, with ongoing annual extensions. With the improvements TVA has made to its financial condition over the past several years, it has the flexibility to offer attractive terms to LPCs in exchange for the longer contract period. Those provisions include:

- A credit of 3.1 percent on wholesale base rates, currently equivalent to \$9.5 million per year for KUB;
- Power supply flexibility for up to 5 percent of power to come from local sources;
- Limitations on TVA rate increases to no more than five percent in the first five years of the agreement, and no more than 10 percent in any five-year period;
- Deeper engagement on long-term financial and resource planning; and
- Protections for LPCs in the event TVA were sold.

KUB staff have spent the last six months assessing the proposed agreement and conducting our due diligence on its terms. We identified several issues with the original proposal, which we were able to address through joint negotiations with the Chattanooga Electric Power Board, Huntsville Utilities and TVA. As a result of these efforts, TVA made the following improvements:

- Removed language that would have prevented KUB's promotion of its natural gas system, to the extent that any promotion resulted in a displacement of load currently served by TVA;
- Removed language that would have limited KUB's ability to support local customers' pursuit of self-generation;
- Extended the rate protection provisions beyond the initial term of 20 years to extend the full life of the agreement;
- Agreed that if TVA were sold without KUB's consent, KUB's contract term would revert to five years;

- Agreed that if the 20-year agreement were terminated, the cost for ongoing transmission improvements would be determined on a reasonable cost basis

Following these amendments, both Chattanooga and Huntsville have signed the agreement. Among the other major Tennessee cities, Nashville signed the agreement almost immediately after it was offered by TVA; Memphis is currently conducting a power supply planning process and has not yet made a decision. To date, 137 of the 154 local power companies in the Valley have signed the agreement.

KUB has taken seriously the concerns raised by members of the public regarding this proposal, including concerns about the length of the new contract. However, because TVA is not compelled to provide us access to its transmission system, our geographical location within the Valley gives us virtually no alternative to TVA service. We cannot access power through TVA's system unless there is a fundamental change in federal law, which history tells us is extremely unlikely. Building our own parallel transmission system would be cost prohibitive and poor public policy. Given these factors, we do not believe that the 20-year term is a significant risk for KUB.

We have also taken seriously the concerns raised about our ability to access sufficient renewable generation for our customers under the five percent flexibility provision in the new agreement. Toward that end, we have engaged with TVA to develop a separate agreement under its Green Invest program to apply a portion of our annual partnership credit (\$1.1 million) toward approximately 212 MW of solar power. This new solar investment would generate an anticipated 465 million kilowatt-hours (kWh) of solar output per year. This would serve up to 8 percent of our total electric load, the equivalent of approximately 35,000 average homes. Because this agreement requires a long-term (twenty-year) commitment, it would not be available to us under the terms of our existing contract. We believe that this agreement, coupled with the additional five percent flexibility provision embedded in the partnership agreement, provides ample opportunity for KUB to support efforts by the City and others to reduce emissions from power generation.

Lastly, we believe that the financial benefit of the 3.1 percent partnership credit can provide significant value to KUB's electric customers in the form of reliability improvements, additional renewables, reduced or deferred rate increases, and new programs to support low income energy efficiency efforts, among other initiatives. Should you approve this amendment, staff will be reviewing all of these options for your consideration.

Taking all these factors into consideration, I believe it is in the long-term best interest of KUB and its customers to sign TVA's partnership agreement.

Resolution 1410 authorizes the President and CEO to take any and all actions necessary to execute the partnership agreement with TVA, as well as agreements related to the Green Invest program. I recommend the adoption of Resolution 1410 on first and final reading.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gabriel Bolas". The signature is written in a cursive, flowing style.

Gabriel J. Bolas II
President and CEO

Enclosures

RESOLUTION NO. 1410

A Resolution Authorizing the Execution of an Agreement to Amend Power Contract TV-75110A, and to become a Participant in TVA's Green Invest Program

Whereas, TVA and KUB have a longstanding relationship as seller and buyer of electric power, under which KUB purchases its electric power requirements from TVA pursuant to Power Contract TV-75110A, effective July 1, 1988, as amended (the "Power Contract").

Whereas, TVA has offered a Long Term Partnership Agreement ("the Agreement") as an amendment to the Power Contract that extends the term of the contract to 20 years, with annual extensions, in exchange for new benefits to KUB, including a credit of 3.1% on wholesale base rates; power supply flexibility for up to 5% of KUB's power requirements to come from local sources; limitations on TVA rate increases to no more than 5% in the first five years, and no more than 10% in any five-year period; deeper engagement on long-term financial and resource planning; and protections for KUB in the event TVA is ever sold; and

Whereas, KUB staff have thoroughly reviewed the terms and conditions of the Agreement and, after concluding negotiations with TVA regarding provisions that were unacceptable to KUB, have determined that signing the Agreement is in the best interests of KUB and its customers; and

Whereas, in response to input from the public, the staff has also engaged with TVA to become a participant in TVA's Green Invest program to apply a portion of the credit received under the Agreement toward the purchase of approximately 212 MW of renewable energy to serve KUB's customers;

Now, Therefore, Be it Hereby Resolved by the Board of Commissioners of the Knoxville Utilities Board:

Section 1. The proposed Agreement in substantially the form attached hereto and incorporated herein as Exhibit "A" is hereby approved by the adoption of this Resolution.

Section 2. The President and Chief Executive Officer is hereby authorized to execute the Agreement and any related documents necessary to amend the Power Contract as approved by this Resolution and is further authorized to approve any minor changes or revisions to said documents as are in the best interest of KUB.

Section 3. The proposed Green Invest agreement in substantially the form attached hereto and incorporated herein as Exhibit "B" is hereby approved by the adoption of this resolution.

Section 4. The President and Chief Executive Officer is hereby authorized to execute the Green Invest Agreement as well as related documents necessary for KUB to participate in the TVA Green Invest Program or any similar program offerings by TVA in pursuit of renewable energy for KUB customers, and is further authorized to approve any minor changes or revisions to said documents as are in the best interest of KUB.

Section 5. The President and Chief Executive Officer is further authorized and empowered generally to take such action and to authorize such other persons to take such actions as may be necessary, proper or convenient to carry into effect this Resolution and to carry out the terms of the Agreement.

Section 6. This Resolution shall take effect from and after its passage.

Kathy Hamilton/s
Kathy Hamilton, Chair

Mark Walker/s
Mark Walker, Board Secretary

APPROVED ON 1st
& FINAL READING: 3-12-20
EFFECTIVE DATE: 3-12-20
MINUTE BOOK 42 PAGE 9850-9881

LONG-TERM AGREEMENT

TV-75110A, Supp. No. ____

This Agreement is between KNOXVILLE UTILITIES BOARD (Acting for and on behalf of City of Knoxville, Tennessee) ("Distributor"), a Tennessee municipal corporation, and TENNESSEE VALLEY AUTHORITY ("TVA"), a corporate agency and instrumentality of the United States of America, created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended.

Distributor purchases all of its power requirements from TVA for resale under contract number TV-75110A, effective July 1, 1988, as amended ("**Power Contract**").

The parties hereby agree to amend the Power Contract to increase the length of and strengthen the contractual relationship to help ensure the long-term success of the public power model, as follows:

SECTION 1 - NOTICE OF POWER CONTRACT TERMINATION

The section of the Power Contract entitled "Term of Contract" is hereby replaced, in its entirety, with the following:

This contract is effective as of July 1, 1988, and will continue in effect for an initial term of 20 years from July 1, 1988, provided, however, that beginning on the first anniversary of said effective date, and on each subsequent anniversary thereof (whether falling during said initial term or any renewal term as provided for herein), this contract shall be extended automatically without further action of the parties for an additional 1-year renewal term beyond its then-existing time of expiration. Notwithstanding any other provision of this section, Municipality may terminate this contract at any time upon not less than 20 years' prior written notice, and TVA may terminate this contract upon not less than 20 years' prior written notice. If Municipality delivers a notice of termination to TVA, as stated above, then from and after its date of receipt of such notice, TVA will have no obligation to make or complete any additions to or changes in any transformation or transmission facilities for service to Municipality, unless (by means of a fully-executed amendment to this contract) Municipality agrees to reimburse TVA for its non-recoverable costs in connection with the making or completion of such additions or changes.

SECTION 2 - BENEFITS

Under the section of the Power Contract entitled "Power Supply," and according to the Power Contract, as amended, TVA commits to produce and deliver, and Distributor agrees to take and distribute, all of the power supplied to consumers in the Distributor's service area. Recognizing the 20-year initial term and the 20-years' termination notice provision established in section 1 of this Agreement, and the other mutual commitments stated in this Agreement, the parties agree to the following:

- (a) For purposes of this Agreement, "**Applicable Rates**" means base rates that are subject to adjustment and are supplied by TVA in accordance with: the "Standard Service" section of the Wholesale Power Rate--Schedule WSA (currently on-peak demand, maximum demand, grid access, and non-fuel energy charges), and Schedule TDGSA and Schedule TDMSA only (currently on-peak demand, maximum demand, and all non-fuel energy charges), of the "TOU Service" section of the Wholesale Power Rate--Schedule WSA.

Beginning with the first full billing month following the Effective Date, TVA will apply a credit to the Distributor's monthly power invoice equal to 3.1% of the amount that Distributor pays TVA through the Applicable Rates ("**Wholesale Credit**").

Beginning in the TVA fiscal year during which TVA first pays the Wholesale Credit to Distributor, if both of the following conditions occur:

- 1) TVA increases the Applicable Rates: (i) by more than 10% (calculated based on the adjustment to Applicable Rates that is applied across all power distributors served by TVA) during any consecutive five-fiscal-year period that begins after the Effective Date, compared to the Applicable Rates that are applied as of the end of the TVA fiscal year immediately preceding that consecutive five-year period, or (ii) by more than 5% (calculated based on the adjustment to Applicable Rates that is applied

across all power distributors served by TVA), compared to the Applicable Rates that are applied as of the end of TVA fiscal year 2019, prior to September 30, 2024; and

- 2) the parties, after good faith negotiations for up to 180 days after the date that either condition described in subsection 2(a)(1) of this Agreement is met, fail to re-negotiate the terms of this Agreement;

then, if Distributor notifies TVA in writing within 60 days from the end of the 180-day period established in subsection 2(a)(2) of this Agreement, the termination notice period in subsection (a) of the "Term of Contract" section of the Power Contract will be reduced to 10 years, as confirmed in a written amendment executed by the parties, and this Agreement will terminate.

- (b) No calculation or determination of Applicable Rates, or any increases or adjustments to Applicable Rates, described in or occurring pursuant to subsection 2(a)(1) of this Agreement, will include or account for rate changes designed to be revenue-neutral to TVA in the aggregate, or changes in the fuel cost adjustment, which apply to or impact Distributor during the term of the Power Contract.
- (c) If Distributor delivers a notice of termination to TVA under the "Term of Contract" section of the Power Contract, then, as of the first full billing month following TVA's receipt of said notice, section 2 of this Agreement will terminate, except that the then-effective Wholesale Credit will be reduced and phased out in equal percentages over each of the following 10 years, with the first equal percentage reduction beginning on the first day of the billing month immediately after Distributor delivers a notice of termination to TVA and reducing to 0% on the first day of the billing month that is 121 months after Distributor delivers such notice.
- (d) During the term of this Agreement, TVA will notify Distributor in writing of additional benefits that TVA elects, in its sole discretion (for example but without limitation, adjustment of the Wholesale Credit percentage above 3.1%), to offer to other distributors of TVA power because they have executed a long-term agreement under substantially the same terms as this Agreement. Distributor will receive the additional benefits, unless Distributor declines by written response to TVA within 90 days of Distributor's receipt of TVA's notice. In addition, TVA will establish a process of engagement with Distributor for strategic resource and financial planning decisions.
- (e) TVA commits to collaborating with Distributor (and other distributors of TVA power who have executed a similar long-term agreement) to develop and provide enhanced power supply flexibility, with mutually agreed-upon pricing structures, for 3-5% of Distributor's energy, by no later than October 1, 2021. If in either of the following cases: (i) TVA does not fulfill its commitment to propose a power supply flexibility solution by the date stated above; or (ii) Distributor does not agree to the TVA-proposed power supply flexibility solution, then Distributor may elect, by written notice to TVA not later than 90 days from the TVA Board-approved implementation date, to terminate this Agreement. Upon Distributor's payment to TVA of an amount equal to 50% of the sum of all Wholesale Credit amounts received by Distributor pursuant to subsection 2(a), this Agreement terminates, and the term of the Power Contract, as it existed immediately prior to the Effective Date, and as amended by the section(s) referenced in section 4(b) of this Agreement, below, is reinstated. The payment amount due from Distributor to TVA under this subsection 2(e) will be calculated as of the date TVA receives said notice.

SECTION 3 - EVENTS OF DEFAULT AND REMEDIES

- (a) **Assignment.** "Assign" or "Assignment" means a party's transfer or disposal of this Agreement, in whole or in part, or any interest in it, to any person or entity that is not a party, including use of this Agreement or any payment or performance obligations under it as collateral.
- (b) **Applicable Laws.** "Applicable Laws" means those U.S. federal and state laws, regulations, and judicial or administrative decisions, orders (including, without limitation, administrative authority or commission consent orders and confirmatory orders) or injunctions, or any other legal pronouncements of a U.S. federal governmental authority that have the force or effect of law as of the Effective Date; provided, however, that in no event shall this provision be interpreted as subjecting TVA to any state or federal laws, including any remedies available under such laws, that otherwise do not apply to TVA.

- (c) **Distributor Events of Default.** An Event of Default, with respect to Distributor, means one or more of the following:
- 1) A sale or transfer of all, or substantially all, of Distributor's tangible or intangible assets that results in a reduction in load served by TVA;
 - 2) Distributor's sale or supply of power not supplied by TVA; or
 - 3) Distributor's Assignment of the Power Contract without TVA's prior written consent.
- (d) **TVA Events of Default.** An Event of Default, with respect to TVA, means one or more of the following:
- 1) TVA's breach of its obligations or commitments in subsection 5(a) of this Agreement; or
 - 2) TVA's Assignment of the Power Contract without Distributor's prior written consent.
- (e) **Notice.** If an Event of Default occurs, the non-defaulting party must notify the defaulting party in writing, and the defaulting party may cure its Event(s) of Default within 60 days of its receipt of such written notice from the non-defaulting party.
- (f) **Remedies.** Upon expiration of the cure period established in subsection 3(e), above, the non-defaulting party (as applicable) may exercise the remedies stated below for an Event of Default, provided that it also must mitigate its losses in a commercially reasonable manner:
- 1) Distributor must pay TVA an amount equal to TVA's actual or estimated net losses of revenue and load served, and for all actual or estimated expenses incurred by TVA and resulting from Distributor Event(s) of Default (subsection 3(c) of this Agreement), including attorneys' fees and other regulatory or administrative costs, measured from the date that any Event of Default first occurs, and over the remaining term of the Power Contract.
 - 2) TVA must pay Distributor an amount equal to the increase in Distributor's actual or estimated costs paid for electric power production and transmission (including wheeling, if applicable), resulting from TVA Event(s) of Default (subsection 3(d) of this Agreement), including attorneys' fees and other regulatory or administrative costs, measured from the date that any Event of Default first occurs, and over the remaining term of the Power Contract, provided that Distributor's claims to payment of any such amounts upon a TVA Event of Default are subordinate to TVA's prior satisfaction of any and all obligations it has to the holder of any bonds or other financing obligations issued or entered into by TVA, either before or after the Effective Date.
 - 3) The non-defaulting party may, by separate written notice to the defaulting party, terminate this Agreement if one or more of the defaulting party's Event(s) of Default occurs, in which case, the termination notice period in subsection (a) of the "Term of Contract" section of the Power Contract will be reduced to 5 years, as confirmed in a written amendment executed by the parties.
- (g) **Mutual Waiver.** Neither party's waiver of the other party's breach of the Power Contract, or failure to claim or enforce its remedies upon an Event of Default, will be construed to waive any other or subsequent breach or right to claim or enforce an Event of Default. Neither party's acceptance nor consideration of any untimely notice or information from the other party waives any time limits or schedule deadlines stated in, or issued, or agreed upon pursuant to the Power Contract.
- (h) **Rights and Remedies Cumulative.** Either party has the right to pursue any and all rights available at law or in equity, or under the Power Contract, in the event the other party fails to perform or otherwise breaches any term of the Power Contract not specifically referenced above. Except for the remedies upon Event(s) of Default, established in subsection 3(f) of this Agreement, all rights and remedies afforded either party under this Agreement are cumulative, in addition to every other right and remedy provided under the Power Contract, by law or in equity.

SECTION 4 - SUPERSEDING AND VOIDING OF PRIOR AGREEMENTS

As of the Effective Date:

- (a) In the event that the terms of this Agreement conflict with existing agreements between Distributor and TVA, the terms of this Agreement control; and
- (b) the following are of no further force and effect:
 - 1) TV-75110A, Supp. No. 6, dated February 1, 1990; and
 - 2) Section 2 of TV-75110A, Supp. No. 48, effective May 13, 2002.

SECTION 5 - CHANGE IN LAW

- (a) During the term of the Power Contract, TVA commits that, in the case of a disposal of any substantial portion of TVA's power generation or transmission properties, Distributor will not be charged rates for energy or transmission that are not established in accordance with the Tennessee Valley Authority Act, 16 U.S.C. § 831, *et seq.*, as amended and in effect on the Effective Date (specifically, but without limitation, Section 15d(f) of that statute) ("**TVA Act**").
- (b) Nothing in this Agreement will be construed to limit the sovereign authority of the United States Congress, amend the TVA Act, or impair TVA's obligations under its bonds or other financing obligations, including its obligations under the Basic Tennessee Valley Authority Power Bond Resolution, as amended ("**Basic Bond Resolution**"). The charges for electric service under the Power Contract are currently established to recover the costs and financial obligations associated with investment to provide wholesale power service as required by the TVA Act, and the Basic Bond Resolution. In the event that a change in Applicable Laws impairs any contractual right, benefit, or interest of either party, or imposes any material increase in cost, or reduction in allocation of capacity or energy, or otherwise materially changes an obligation on either party under the Power Contract, the parties shall promptly meet and discuss in good faith regarding possible changes to the Power Contract to mitigate the impact of the change in Applicable Laws. The rights and remedies under this section of the Agreement are cumulative and in addition to, not exclusive of nor in substitution for, any other rights and remedies available at law or in equity.

SECTION 6 - NOTICES

The parties will deem any notice required by this Agreement to be properly given if the required notice is delivered in writing to the address specified below: personally, by recognized overnight courier service, by United States Mail, postage prepaid, or by electronic mail.

To Distributor:	President and Chief Executive Officer Knoxville Utilities Board 445 South Gay Street Knoxville, Tennessee 37902 Email: execdept@kub.org
To TVA:	Director, Power Customer Contracts, WT 9D-K Tennessee Valley Authority 400 West Summit Hill Drive Knoxville, Tennessee 37902-1401 Email: contractnotices@tva.gov

Any party may change either the designation of any person or the address of any such person at any time and from time to time by similar notice.

SECTION 7 - SEVERABILITY

In the event that any provision of this Agreement is found to be legally unenforceable, such provision will be replaced with a substitute provision that most nearly reflects the original intentions of the parties and is legally enforceable, and the remainder of this Agreement will continue in full force and effect.

SECTION 8 - RELATIONSHIP OF THE PARTIES

No provision of this Agreement or the Power Contract creates or will be deemed to create an agency, partnership, or joint venture between Distributor and TVA, or any business relationship between the parties other than that specifically stated in the Power Contract. Neither party has the power or authority to legally bind the other party, or to assume or create any express or implied obligation or responsibility on behalf of the other party.

SECTION 9 - RATIFICATION OF POWER CONTRACT

The parties hereby ratify and confirm that the Power Contract, as amended by this Agreement, is their continuing obligation.

The parties are signing this Agreement to be effective on the date of TVA's signature ("**Effective Date**").

KNOXVILLE UTILITIES BOARD

(Acting for and on behalf
of the City of Knoxville)

By _____

Title: _____

Date: _____

TENNESSEE VALLEY AUTHORITY

By _____
President & Chief Executive Officer

Date: _____

GREEN INVEST AGREEMENT

TV-75110A, Supp. No. ____

This Green Invest Agreement, including all Tranche Amendment(s) entered into hereunder and incorporated by reference (collectively, the "**Agreement**"), is between KNOXVILLE UTILITIES BOARD (Acting for and on behalf of City of Knoxville, Tennessee) ("**Distributor**"), a Tennessee municipal corporation, and TENNESSEE VALLEY AUTHORITY ("**TVA**"), a corporate agency and instrumentality of the United States of America created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended. Distributor and TVA are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**."

Distributor purchases all of its power requirements from TVA for resale under a rolling term contract number TV-75110A, effective May 11, 1988, as amended ("**Power Contract**").

Distributor desires that new renewable generation resources be constructed for the benefit of Distributor and has agreed to compensate TVA for the additional cost of obtaining energy from such new renewable generation resources, as set forth in detail in each Tranche Amendment.

TVA is committed to developing new renewable generation resources and to utilize the resources as TVA system resources to deliver renewable energy, including the Renewable Energy Certificates from those resources, to Distributor under the Power Contract.

The Parties anticipate entering into one or more agreements to purchase renewable energy from new renewable generation resources or to construct such resources at the request of Distributor (each such agreement a "**Tranche Amendment**") pursuant to the terms hereof.

In consideration of the premises and the agreements below, the Parties agree:

SECTION 1 - DEFINITIONS

Unless otherwise defined herein, capitalized terms are defined in the Power Contract.

"**Affected Party**" means a Party having a right to terminate this Agreement and/or Tranche Amendments and recover the amounts calculated pursuant to Sections 7.2 and 7.3 on account of a Termination Event from the Defaulting Party or Non-Affected Party.

"**Emissions Reduction Credit**" means any credit, allowance, or instrument issued or issuable by a governmental authority under regulations of the Environmental Protection Agency under the Clean Air Act.

"**Energy Consumption**" means the annual actual or projected metered energy (kWh) consumption of Distributor that is generated by a PPA or other generation asset owned or controlled by TVA.

"**Environmental Attribute**" means, other than the electric power and energy produced by a Renewable Energy Facility, any aspect, claim, characteristic, or benefit, however named, associated with the generation of a quantity of electric energy by a Renewable Energy Facility, and that is capable of being measured, verified, or calculated. Environmental Attributes include any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the environment. Environmental Attributes include: (a) any avoided emissions of pollutants to the environment; (b) all Emissions Reduction Credits; and (c) any avoided emissions of GHGs. Environmental Attributes do not include: (a) federal, state, and local tax credits or other similar incentives; or (b) any adverse wildlife or environmental impacts.

"**Environmental Attribute Reporting Rights**" means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if

applicable, and to federal or state agencies or other parties at such purchaser's discretion, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions or environmental commodity trading program.

"Excess Product" means the amount by which the total Product generated by all Renewable Energy Facilities under Tranche Amendment(s) entered into for Distributor over a specified period of time, less Product already retained pursuant to Section 5.2 for that same period of time, exceeds the cumulative electricity consumption of Distributor for the specified period of time by more than 10%; provided that if such amount is less than zero (0), then there shall be no Excess Product for such specified period of time.

"GHGs" means any emissions of carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

"Non-Affected Party" means the Party that is not the Affected Party.

"PPA" means either (a) a power purchase agreement between TVA and a third-party owner of a Renewable Energy Facility, pursuant to which TVA shall purchase the electricity output and all Environmental Attributes associated therewith; or (b) a construction agreement, terms of which are agreeable to the Parties, for a Renewable Energy Facility to be owned by TVA.

"Product" means RECs that are associated with electrical energy generated within the TVA service territory available on an as-generated basis by a Renewable Energy Facility and contingent upon the availability of the new renewable generation resources obtained by TVA pursuant to a Tranche Amendment, the quantity of which shall be identified on such Tranche Amendment. Product may be retired on behalf of, held on behalf of, or transferred to Distributor at Distributor's election. By default, Product does not have third-party certification. If Distributor elects for the Product to have third-party certification, then Distributor will be responsible for covering all third-party costs incurred by TVA for such certification.

"REC Fee" means a component of the Product price meant to recover TVA's internal cost for, among other things, activities associated with asset management and REC management, but excludes third-party costs for certification, registration or transfer of RECs. The REC Fee as of January 1, 2020, is one dollar and twenty-five cents per megawatt-hour (\$1.25/MWh) for each unit of Product, but may be changed by TVA upon thirty (30) days written notice to Distributor. Any changes to the REC Fee will not apply to or otherwise affect any effective Tranche Amendment(s).

"Registry" means the North American Renewables Registry (NAR) administered by APX, Inc., or such other nationally accredited Environmental Attribute tracking registry for the retirement or transfer of RECs mutually agreed upon by the Parties.

"Renewable Energy Certificates" or "RECs" means (a) all the Environmental Attributes associated with the energy generated from a Renewable Energy Facility pursuant to a Tranche Amendment, together with (b) the Environmental Attribute Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any of these or other product names, such as "Renewable Energy Credits," "Renewable Energy Certificates," "Green Tags," or otherwise. Each REC represents the Environmental Attributes of one megawatt-hour (1 MWh) of such energy, and the REC itself does not include the associated null energy.

"Renewable Energy Facility" means an electric generating facility powered by solar, wind, hydro, biomass, geothermal, waste-to-energy resources, or other renewable facilities agreed to by the Parties.

SECTION 2 - TERM AND TERMINATION

Section 2.1 Term. This Agreement shall remain in effect for an initial term of twenty (20) years from the Effective Date; provided, however, that beginning on the first anniversary of the Effective Date, and on each subsequent anniversary thereafter (whether falling during said initial term or any renewal term as provided for herein), this Agreement will be extended automatically without further action of the Parties for an additional one (1) year renewal term beyond its then- existing date of expiration.

Section 2.2 Termination. Except in connection with the exercise of early termination pursuant to Section 7.2 hereof, this Agreement will not be terminated while any Tranche Amendment is in effect or any obligations under any Tranche Amendment or this Agreement are unfulfilled, but this Agreement may be terminated by either Party upon ninety (90) days' written notice at any time that no Tranche Amendment is in effect and no obligations under any Tranche Amendment or this Agreement are unfulfilled.

SECTION 3 - OBTAINING RENEWABLE ENERGY

Section 3.1 Notification. Distributor shall have the right, at its sole discretion, to request the purchase of Product from TVA under the terms of a Tranche Amendment in an amount not to exceed Distributor's projected Energy Consumption (each such request, a "**Notification**"). The Notification to TVA shall include the projected dates and any increases in Energy Consumption and desired dates and quantities for the Product.

Section 3.2 Process. After receiving a Notification from Distributor under Section 3.1, if TVA finds Distributor's projected Energy Consumption to be reasonable, including consideration of the remaining term of the Power Contract, TVA will proceed with obtaining or developing proposals for supplying the requested Tranche Amendment(s) (each such proposal, a "**Project**"). TVA shall give due consideration to any Project submitted or recommended by Distributor; provided, however, the selection for the shortlist will be by mutual agreement of the Parties. Distributor and TVA will review Projects and cooperate to develop a shortlist of qualified Projects. Distributor may either (a) concur with the shortlist of qualified proposals by notifying TVA ("**Concurrence**"), or (b) notify TVA that Distributor will not concur and will not proceed with obtaining the renewable energy at that time based on those proposals. The Parties may use any mutually agreed upon process to identify Projects suitable for Tranche Amendment(s).

Section 3.3 Development. Within one hundred eighty (180) days of Distributor's delivery of a Concurrence, TVA will select a Project(s) from the shortlist and negotiate a PPA consistent with the Notification and Concurrence and will notify Distributor of the terms of the Tranche Amendment based on such PPA, including the Product price (expressed in U.S. dollars on a per MWh basis) ("**TVA's Offer**"), by submitting a proposed Tranche Amendment in the form attached to this Agreement as Exhibit A. If TVA and the Project proponent are unable to reach agreement on a PPA, TVA will notify Distributor accordingly, and Distributor will have the option of restarting the development process provided for in this Section 3.3 based on the previously provided shortlist.

Section 3.4 Pricing. The Product price TVA will provide to Distributor will be determined by subtracting TVA's avoided cost from the cost of the renewable energy obtained pursuant to the PPA, with such difference not less than zero (0), and adding to that amount the REC Fee in effect at the time of the Notification. TVA's avoided cost will be based on TVA's then- current economic modeling approach utilized for planning TVA's existing and incremental generation resources, and will take into account the specific combination of features of the power to be generated by TVA or to be sold under the specific proposal for the PPA, which considerations will include, without limitation, capacity, real-time energy delivery amounts ("shaping"), dispatch ability, intermittency, generation source diversity, maintenance scheduling, administrative and billing requirements, variations in line losses, curtailment rights, reliability, and other risk factors. The Product price will be determined and agreed to by the Parties through execution of Tranche Amendments and is not subject to change following execution of such Tranche Amendment(s), unless otherwise agreed to in the applicable Tranche

Amendment(s).

SECTION 4 - RENEWABLE ENERGY TRANCHE COMMITMENTS

Section 4.1 Distributor's Commitment Decision. Within thirty (30) days after receiving TVA's Offer, either (a) Distributor will accept TVA's Offer by executing a Tranche Amendment, as specified in this Section 4, or (b) TVA's Offer will expire, and TVA will not be obligated to take any further actions. Distributor may submit additional Notifications pursuant to Section 3.1 for purchases of Product from time to time in a reasonable manner.

Section 4.2 Distributor's Sufficient Energy Consumption. The expected annual energy output associated with Tranche Amendment(s) is not intended to materially exceed Distributor's annual Energy Consumption, but may do so from time to time, given the variability of Renewable Energy Facility output and Distributor's load. In response to a request by Distributor as set forth in Section 3.1, TVA's obligation to secure Tranche Amendments will be contingent upon (i) sufficient projected Energy Consumption of Distributor, as reasonably determined by TVA, as of the anticipated first delivery date for Product under the requested Tranche Amendment, based on Distributor's historical load factors and projected load factors provided by Distributor, to consume the Product projected to be delivered under existing and additional Tranche Amendments for the term of the existing and additional Tranche Amendments, and (ii) the remaining fixed term of the Power Contract being of sufficient length to cover the term of existing and additional Tranche Amendments.

Section 4.3 Parties Execute Tranche Amendment. If Distributor accepts TVA's Offer, the Parties will execute a Tranche Amendment in substantially the form of TVA's Offer, with such modifications as may be mutually agreed to by the Parties. The Tranche Amendment will incorporate material terms from the PPA, including (a) financial remedies to which TVA is entitled in the event of construction delays or underperformance relative to supply guarantees, as provided in Section 5.4, proportionate to Distributor's cost contribution for the supply commitment; (b) any conditions precedent to the effectiveness of the Tranche Amendment which will be based on conditions precedent to the effectiveness of the associated PPA; and (c) the specific commercial terms, including, but not limited to, performance guarantees and delay payments.

Section 4.4 TVA Executes PPA. Following execution of the Tranche Amendment, TVA will execute the associated PPA, as necessary. TVA will administer such PPA in a manner consistent with generally accepted industry practices and consistent with how TVA administers such contracts or facilities in its normal course of business; provided, however, that neither this Agreement nor any Tranche Amendment contains any guarantee or commitment to a specific minimum or fixed volume of Product.

SECTION 5 - IMPLEMENTATION OF RENEWABLE ENERGY TRANCHES

Section 5.1 Invoicing. TVA will invoice Distributor monthly for Product generated under each Tranche Amendment, and third-party costs for certifying, registering and transferring RECs ("**Third-Party Costs**"), if any. Distributor shall pay for such Product and Third-Party Costs on Distributor's monthly bill for firm power, which Distributor shall pay to TVA in accordance with the terms and conditions in the Power Contract and each applicable Tranche Amendment, and shall be netted against any credit due to Distributor in accordance with Section 5.2 or added to all other amounts payable on Distributor's monthly bill for firm power.

Section 5.2 TVA REC Retention. After each calendar year, TVA may retain up to 100% of the Excess Product from the preceding calendar-year period by providing written notice to Distributor of its election to do so on or before March 31 of the succeeding year. Product retained by TVA from each Tranche Amendment will be in proportion to the Product generated under each Tranche Amendment and the Product price for all retained Product will be credited to Distributor in accordance with Section 5.1. RECs retained by TVA, pursuant to this Section 5.2, may be retired by TVA, transferred, or sold to an entity that consumes TVA electricity.

Section 5.3 Retirement or Transfer of RECs. On or before April 30 of each year during the term of this Agreement (each, a "**Settlement Date**"), TVA will retire on Distributor's behalf or transfer to Distributor all Product sold to Distributor for the prior calendar year (less any Product retained by TVA per Section 5.2). If Distributor provides Notice to TVA that it elects to have the RECs registered and transferred, then TVA will register the RECs on behalf of Distributor in a Registry and Distributor shall reimburse TVA for the Third-Party Costs. Distributor may only resell or transfer RECs to Distributor's customers. Except as provided for in Section 5.2, TVA shall not allow any PPA seller or TVA customer to claim ownership of or title to RECs or any other Environmental Attributes, or make claims regarding "renewable energy," "clean energy," "green energy," or similar attributes, arising from or related to a Tranche Amendment which are inconsistent with the requirements of the Federal Trade Commission's "Green Guides," currently published and codified in 77 Federal Register 62122, 16 Code of Federal Regulations, Part 260, respectively. If a renewable portfolio standard ("**RPS**") exists in the state where the Project or Distributor is located, then RECs retired on behalf of Distributor could be utilized to meet the RPS requirements for Distributor's energy use.

Section 5.4 Renewable Facility Underperformance. If the Renewable Energy Facility under any Tranche Amendment fails to meet performance requirements as set forth in the PPA and/or the applicable Tranche Amendment(s), TVA will credit to Distributor any such damages owed to and received by TVA under the applicable PPA, proportionate to Distributor's PPA cost contribution as set forth in detail in the Tranche Amendment. Proportionate damages will be based on the percentage that the Product price represents of the underlying PPA cost, and will be set out in each Tranche Amendment (e.g., if PPA cost is \$40/MWh and Product price is \$4/MWh, damages will be apportioned at 10%, representing Distributor's contribution to overall costs). If the Parties agree that, in lieu of monetary damages, TVA will receive replacement RECs under the PPA for such underperformance, TVA shall retire on Distributor's behalf or transfer to Distributor such replacement RECs in the same manner as Product purchased by and delivered to Distributor in accordance with this Section 5.

A Tranche Amendment will terminate if its underlying PPA is terminated; provided that any payment and performance obligations under a Tranche Amendment incurred prior to termination of its underlying PPA shall survive any such termination. Distributor may elect to execute a replacement Tranche Amendment, which shall be requested through a Notification submitted in accordance with Section 3.1.

Section 5.5 Reduced Distributors Demand. If any time after the third annual Settlement Date there is Excess Product for the previous three (3) calendar-year period, TVA may declare that a "**Termination Event**" has occurred, and TVA may exercise its rights as an Affected Party under Section 7.2. Pursuant to subsection 7.2(a), the applicable Tranche Amendment(s) will be terminated individually in a last-in-first-out order, unless otherwise mutually agreed by the Parties, until the amount of Product still committed to Distributor by TVA under Tranche Amendment(s) would not have resulted in Excess Product in the three (3) most recent consecutive calendar years.

SECTION 6 - PERFORMANCE ASSURANCE

Section 6.1 Additional Definitions. In addition to the terms defined in Section 1, the following additional defined terms are applicable for the provisions of this Section 6.

"**Cash Deposit**" means money denominated in United States Dollars held by TVA as collateral.

"**Letter of Credit**" means an irrevocable standby letter of credit from a Qualified Bank in substantially the form of which is attached to this Agreement ("**Form Letter of Credit**"), naming TVA as the beneficiary.

"**Moody's**" means Moody's Investors Service, Inc. or its successor.

"**Performance Assurance**" means collateral, in the amounts indicated in Section 6.2, which shall secure Distributor's payment obligations to TVA under this Agreement, in the form of one or more of the following: (a) Cash Deposit; (b) Letter of Credit; or (c) other security acceptable to TVA and agreed to in

writing by the Parties, without limitation, in form and substance acceptable to TVA.

"**Qualified Bank**" means a U.S. commercial bank or a U.S. branch of a foreign bank, with such bank having a credit rating on its senior unsecured debt of (a)(1) "A3" or higher from Moody's or (a)(2) "A-" or higher from S&P, or (b) if rated by both Moody's and S&P, both (a)(1) and (a)(2).

"**S&P**" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

Section 6.2 Performance Assurance. As long as the notice period to terminate the Power Contract remains at the currently established twenty (20) year period and Distributor has not provided notice to terminate the Power Contract, Distributor will not be required to provide any Performance Assurance to TVA under this Section 6. To the extent that the termination notice period applicable to the Power Contract is reestablished to be less than twenty (20) years or if Distributor has provided notice to terminate the Power Contract, and TVA has determined in its reasonable discretion, applying its then existing credit evaluation criteria, that Performance Assurance is necessary, then, to the extent such Performance Assurance is necessary, this Section 6 will apply in its entirety, and Distributor will be required to provide the necessary Performance Assurance pursuant to the following terms:

- (a) Prior to TVA signing each Tranche Amendment, Distributor will provide Performance Assurance to TVA, and thereafter maintain such Performance Assurance throughout the term of the Tranche Amendment. The amount and form of Performance Assurance will be listed under each Tranche Amendment and will be determined solely by TVA. The amount of Performance Assurance will be based on TVA's projected Product price for the term of the Tranche Amendment plus a percentage of TVA's projected cost to terminate the PPA.
- (b) TVA may adjust the amount or form of Performance Assurance required by subsection 6.2(a) or 6.3(c) under any Tranche Amendment in its sole discretion, in which event Distributor must provide Performance Assurance in the adjusted amount and form within twenty (20) days after receiving written notice from TVA.
- (c) Without limiting TVA's rights under subsections 6.2(a) or 6.2(b), if Distributor provides notice to terminate the Power Contract ("**Termination Notice**"), Distributor will provide to TVA Performance Assurance to cover the remaining term of the Tranche Amendment(s) within forty-five (45) days from the Termination Notice to ensure that TVA has Performance Assurance from Distributor to cover the total projected Net Settlement Amount, if any, as determined by TVA at the time it receives the Termination Notice and in a manner consistent with TVA's avoided cost methodology as provided in Section 3.4, associated with all Tranche Amendments entered into under this Agreement.

If Distributor rescinds the Termination Notice, TVA will return to Distributor any additional Performance Assurance provided pursuant to this subsection 6.2(c), and retain Performance Assurance in the amounts required by subsections 6.2(a) and (b).

- (d) Upon expiration or termination of a Tranche Amendment and mutual agreement between the Parties that Distributor has no further obligations to TVA under said Tranche Amendment, TVA will return, release, or surrender the unused Performance Assurance, if any, to Distributor.

Section 6.3 Letter of Credit as Performance Assurance. If Performance Assurance consists of a Letter of Credit, such Letter of Credit shall:

- (a) be issued by a Qualified Bank;
- (b) permit TVA to draw up to the then current dollar amount provided in the Letter of Credit(s) ("**Available Amount**"), for the purpose of paying any and all amounts owing to TVA under this Agreement or any and all Tranche Amendment(s) entered into under this Agreement following the occurrence and during the continuation of an Event of Default as provided for under Sections 7.1

and 7.2; and

- (c) permit TVA to draw the entire Available Amount thereunder to hold as Cash Deposit for any and all amounts owing to TVA under this Agreement and any and all Tranche Amendments entered into under this Agreement, if (i) the Letter of Credit will expire in fewer than forty-five (45) calendar days and (ii) Distributor has not provided TVA with alternative Performance Assurance.

Section 6.4 Cash Deposit as Performance Assurance. If Performance Assurance consists of Cash Deposit, such Cash Deposit shall accrue simple interest at TVA's short term cost of borrowing and any accrued interest will be held by TVA until the Performance Assurance is returned to Distributor in accordance with Section 6.2.

Section 6.5 Election to Change Form of Performance Assurance. Distributor will have the right, at any time and from time to time, to request replacement of any or all of the Performance Assurance provided by Distributor under this Agreement (the "**Outstanding Performance Assurance**") with one or more alternative forms of Performance Assurance. If TVA determines, in its sole discretion, to grant Distributor's request, TVA will cooperate with Distributor in obtaining the concurrent release, termination, or return (as many as may be applicable) of the Outstanding Performance Assurance after TVA has received the approved alternative form of Performance Assurance.

Section 6.6 Cross-Collateralization. Distributor hereby agrees that the Performance Assurance it provides for any Tranche Amendment secures the obligations now or hereafter outstanding for all Tranche Amendments entered into under this Agreement and all other payment obligations of Distributor under the Agreement, unless otherwise agreed to in writing by the parties.

Section 6.7 Distributor's Financial Statements. Distributor will continue to provide to TVA annual reports containing audited and unaudited consolidated financial statements in accordance with the Power Contract. If the Power Contract terminates, and TVA chooses not to terminate this Agreement, Distributor shall deliver (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for Distributor, and (b) within sixty (60) days after the end of each of Distributor's first three fiscal quarters of each fiscal year, a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter for Distributor. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be a breach of this Agreement so long as Distributor diligently pursues the preparation, certification, and delivery of the statements.

Section 6.8 Contemporaneous Exchange of New Value. Distributor's issuance to TVA of Performance Assurance in any form is a contemporaneous exchange for new value given and, among other things, is necessary to allow Distributor to continue receiving Product under the terms of this Agreement.

Section 6.9 Security Interest. To the extent Distributor provides any Performance Assurance under Section 6.2, Distributor grants to TVA a first-priority present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of TVA, and Distributor agrees to take such action as TVA may reasonably require in order to perfect TVA's first-priority security interest in, and lien on (and right of setoff against), and assignment of, such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Section 6.10 Default and Remedies. If Distributor:

- (a) fails to pay any amounts arising under this Agreement or any Tranche Amendment, except for the Net Settlement Amount referenced in Section 7.3, within forty-five (45) days of the due date;

- (b) fails to provide and maintain Performance Assurance for a Tranche Amendment under subsection 6.2(a) ("**Performance Assurance Deficiency**") and fails to remedy fully the Performance Assurance Deficiency, within ten (10) days of receiving written notice of such Performance Assurance Deficiency;
- (c) fails to provide the adjusted amount of Performance Assurance in the time required by Section 6.2(b);
- (d) fails to pay the Net Settlement Amount in the time required by Section 7.3; or
- (e) commits an Event of Default or is a Defaulting Party as defined in Section 7.1,

then TVA may do any one or more of the following without providing further notice to Distributor:

- (a) exercise any of its rights and remedies with respect to such failure to pay, and any of its rights and remedies with respect to Performance Assurance, including any such rights and remedies under law then in effect;
- (b) exercise its rights of setoff against any and all Cash Deposits or other property of Distributor in the possession of TVA;
- (c) draw on any and all outstanding Letter of Credit(s) issued for its benefit;
- (d) liquidate all Performance Assurance then held by or for the benefit of TVA, free from any claim or right of any nature whatsoever of Distributor or other pledgor of Performance Assurance, including any equity or right of purchase or redemption by Distributor or any such pledgor; and
- (e) treat such failure as an Event of Default in accordance with Section 7.1, in which case TVA may exercise its rights as an Affected Party under Section 7.2 and Section 7.3. Such termination by TVA shall be without waiver of any amounts that may be due or of any rights, including the right to damages for such breach, which may have accrued up to and including the date of termination.

SECTION 7 - EARLY TERMINATION

Section 7.1 Events of Default. For purposes of this Agreement or any Tranche Amendment(s), a Party (the "**Defaulting Party**") is in default (each of the following being an "**Event of Default**"): .

- (a) if that Party materially breaches any or all of its obligations under any Tranche Amendment and such breach is not cured within five (5) business days of receipt of written notice of such breach from the other Party (the "Non-Defaulting Party");
- (b) if any representation or warranty made by a Party pursuant to any Tranche Amendment proves to have been misleading or false in any material respect when made and such Party does not correct the underlying situation so as to make such representation and warranty correct and not misleading within five (5) business days of written notice from the other Party;
- (c) if a Party makes an assignment or any general arrangement for the benefit of its creditors; files a petition, or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors; has a petition filed against it, and such petition is not dismissed within thirty (30) days; or otherwise becomes bankrupt or insolvent (however evidenced);
- (d) if Distributor, whether by its breach, default, or otherwise, causes the termination or expiration without renewal of the Power Contract;

- (e) if Distributor does not fully remedy the Performance Assurance Deficiency, as defined in Section 6;
- (f) if Distributor fails to perform its obligations under Section 5.1 or any other obligations under the Agreement; or
- (g) if any other event of default explicitly provided for within this Agreement occurs.

Section 7.2 Early Termination. If an Event of Default under Section 7.1 has occurred and is continuing or if a Termination Event has occurred under Section 5.5, the Non-Defaulting Party or the Affected Party, as applicable, has the right, in its sole discretion, to take any one or more of the following actions upon written notice ("**Notice**"):

- (a) designate a day, no earlier than thirty (30) days after the date of such Notice and no later than sixty (60) days after such Notice, as an early termination date (the "**Early Termination Date**") to accelerate all amounts owing between the Parties and terminate (i) solely the applicable Tranche Amendment(s), if and to the extent the Event of Default or Termination Event under Section 5.5 has occurred solely with respect to one or more Tranche Amendment(s), or (ii) this Agreement and all Tranche Amendments between the Parties, if and to the extent the Event of Default has occurred with respect to the Agreement as a whole;
- (b) withhold any payments due to the Defaulting Party or Non-Affected Party under this Agreement, except to the extent that such amount due exceeds amounts owed by Defaulting Party to the Non-Defaulting Party, or the Non-Affected Party to the Affected Party, as applicable; and/or
- (c) otherwise suspend its performance (i) solely with respect to any affected Tranche Amendment(s), if and to the extent, the Event of Default or Termination Event under Section 5.5 has occurred solely with respect to one or more Tranche Amendment(s) or (ii) with respect to this Agreement and all Tranche Amendments between the Parties, if and to the extent the Event of Default has occurred with respect to the Agreement as a whole.

Any of the foregoing actions undertaken by the Non-Defaulting Party is without prejudice to any other rights or remedies which the Non-Defaulting Party may have against the Defaulting Party on account of an Event of Default or Termination Event under Section 5.5, including without limitation, specific performance.

Section 7.3 Net Settlement Amount. If the Non-Defaulting Party or Affected Party establishes an Early Termination Date for one or more Tranche Amendments, the Defaulting Party or Non-Affected Party shall pay the Non-Defaulting Party or Affected Party liquidated damages calculated in accordance with this Section 7.3 (the "**Net Settlement Amount**"), as adjusted by any applicable limitation(s) established in each applicable Tranche Amendment. In no event shall the Net Settlement Amount be less than zero (0) dollars.

- (a) In the event TVA is the Non-Defaulting Party or the Affected Party, Distributor shall pay to TVA the following Net Settlement Amount, which must be an amount of U.S. dollars equal to the present value (calculated using a discount rate equal to TVA's then-current incremental borrowing rate for the remaining term of the Tranche Amendment) of the following:
 - (i) projected PPA payments associated with Tranche Amendment(s) over the remaining term of the Tranche Amendment(s); less,
 - (ii) the avoided cost of the Tranche Amendment associated PPAs, including the PPA's Renewable Energy Facilities' Environmental Attributes (or if there is no avoided cost associated with such Environmental Attributes, the reasonable cost determined by TVA of such Environmental Attributes), over the remaining term of the Tranche Amendment(s), as determined by TVA at the time of termination and in a manner consistent with TVA's avoided cost methodology as provided in Section 3.4;

- (iii) net of any payment obligations incurred by each Party prior to the Early Termination Date.
- (b) In the event that Distributor is the Non-Defaulting Party, TVA shall pay Distributor the following Net Settlement Amount, which must be an amount of U.S. dollars equal to the present value of the following:
 - (i) the reasonable cost of replacement RECs for the period of time equivalent to Distributor's then-current termination notice period provided in the Power Contract, not to exceed the remaining term of the applicable Tranche Amendment(s), less
 - (ii) projected Tranche Amendment Product payments over the same period of time;
 - (iii) net of any payment obligations incurred by each Party prior to the Early Termination Date.

Payment of the Net Settlement Amount is due within ten (10) business days after the later of the Early Termination Date or the Defaulting Party's or Non-Affected Party's, as applicable, receipt of notice of the Net Settlement Amount. The Parties acknowledge that actual damages associated with early termination under this Section 7.3 are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the Net Settlement Amount constitutes a reasonable approximation of the harm or loss to the Non- Defaulting Party or Affected Party, as applicable, and does not constitute a penalty.

SECTION 8 - NOTICE

Any notice required by this Agreement or any Tranche Amendment(s) will be deemed properly given, upon receipt, if delivered in writing to the address specified below: (a) personally, (b) by recognized overnight courier service, (c) by United States Mail, postage prepaid, or (d) by electronic mail.

To Distributor: President and Chief Executive Officer
Knoxville Utilities Board
445 S. Gay Street
Knoxville, Tennessee 37902
execdept@kub.org

To TVA: Director, Power Customer Contracts, WT 9D-K
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
contractnotices@tva.gov

With copies to: Director, Origination & Renewables, MR 2A-C
Tennessee Valley Authority
1101 Market Street
Chattanooga, Tennessee 37402
PowerOrigination@tva.gov
AssetManagement@tva.gov

The designation of any person or the address of any such person may be changed at any time and from time to time by similar notice.

SECTION 9 - GENERAL TERMS & CONDITIONS

Section 9.1 Proprietary Information. No Party will disclose the terms or conditions of this Agreement and any Tranche Amendments ("**Confidential Information**") to a third-party (other than the Party's employees, guarantor, lenders, counsel, accountants, agents, or advisors who have a need to know such information and have agreed to keep such terms confidential) without the prior

written consent of the other Parties except in order to comply with any applicable law or regulation, or the request of any regulatory agency having colorable jurisdiction over such Party and requesting the Confidential Information in the ordinary course of business.

Except as provided in the preceding paragraph, each Party will not divulge Confidential Information to third-parties without the prior written consent of the other Party. Each Party will safeguard such Confidential Information as it would its own. If a Party receives a request or claim for disclosure of Confidential Information as required by law, such Party will endeavor to first notify the other Party with reasonable promptness so that Party may pursue a confidentiality agreement with the requester, work with the requester to revise the information in a manner consistent with the Party's interests and the interests of the requester, or take any other action the Party deems appropriate.

Section 9.2 Severability. If any provision or portion of this Agreement is held to be unenforceable, the remainder will be enforced as fully as possible, and the unenforceable provision will be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

Section 9.3 Governing Law. This Agreement will be construed in accordance with and governed by the Federal law of the United States of America, except to the extent there is no applicable Federal law, in which case it will be construed in accordance with and governed by the law of the State of Tennessee, excluding any choice of law or conflict of laws rules or principles that would result in application of the law of a different jurisdiction.

Section 9.4 Legal Compliance. The Parties will conduct all activities under this Agreement, Tranche Amendment(s), and PPAs in compliance with prevailing TVA power acquisition practices and applicable law, including, without limitation, least cost planning requirements, the TVA Act, and the National Environmental Policy Act.

Section 9.5 Representations and Warranties. TVA represents and warrants to Distributor that as of and at the time of each REC transfer or retirement under any Tranche Amendment:

- (a) each REC meets the specifications set forth in this Agreement and the applicable Tranche Amendment;
- (b) TVA has good and marketable title to the RECs;
- (c) all right, title, and interest in and to the RECs are free and clear of any liens, taxes, claims, security interests, or other encumbrances;
- and (d) TVA has not made and will not make any duplicative claims that the energy associated with the RECs is renewable energy.

Each Party represents and warrants to the other Parties that, prior to signing this Agreement, it has read and understands this Agreement's terms and conditions, was given the opportunity to consult counsel, and has voluntarily signed the Agreement. Each Party represents and warrants to the other Party that this Agreement (a) has been validly executed and delivered by such Party, (b) has been duly authorized by all necessary actions by such Party, (c) constitutes a binding obligation of such Party, enforceable in accordance with its terms, and (d) does not conflict with any other agreement binding on such Party.

Section 9.6 Survival of Obligations. Except as specifically provided in this Agreement, cancellation, expiration, or termination of this Agreement will not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including, without limitation, obligations arising from Tranche Amendment(s), warranties, remedies, and promises of indemnity.

Section 9.7 Waiver. No waiver of any provision under this Agreement, Tranche Amendment(s), or any subsequent agreements will be effective unless such waiver is memorialized in writing and signed by the Parties' authorized representatives. The Parties agree that any failure to enforce any provision of this Agreement or Tranche Amendment(s) is not a waiver and does not prevent future enforcement of such provision. No failure or delay by a Party in exercising any right, power, or privilege hereunder will operate as a waiver, nor will any single or partial exercise or waiver of a right, power, or privilege preclude any other or further exercise thereof. A waiver of any breach or default of

this Agreement or any Tranche Amendment does not constitute a waiver of any subsequent breach or default.

Section 9.8 Punitive and Consequential Damages. In no event shall any Party be liable to the other Parties for any punitive or consequential damages for any alleged breach hereof.

Section 9.9 Forward Contract. This Agreement constitutes a "forward contract," and each Party represents and warrants that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

Section 9.10 Eligible Contract Participant. Each Party represents and warrants that it is an "eligible contract participant" within the meaning of the United States Commodity Exchange Act.

Section 9.11 Waiver of Right to Jury Trial. To the extent enforceable at such time, each party waives its respective right to a jury trial, if any, with respect to any litigation arising under or in connection with this agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. Each party hereby waives any right to consolidate any action, proceeding, or counterclaim arising out of or in connection with this agreement or any matter arising hereunder, with an action in which a jury trial has not been or cannot be waived.

Section 9.12 Amendments. This Agreement may be amended only by a written instrument executed by the Parties.

Section 9.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which together will be considered an original and all of which will constitute but one and the same instrument. Facsimile or PDF transmissions of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

Section 9.14 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be transferred or assigned, in whole or in part, without the prior written consent of the other Party, such consent not to be unreasonably withheld.

Section 9.15 Rules of Interpretation. In the event of any inconsistency between this Agreement and a Tranche Amendment, the Tranche Amendment will control. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Headings are for illustrative purposes only and do not alter the meaning of any terms. 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 or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) reference to one gender includes all genders; (g) the words "shall" and "will" mean "must", and shall and will have equal force and effect and express an obligation; (h) "including" means "including, without limitation" or "including, but not limited to"; (i) unless expressly provided otherwise, all references to a particular agreement, tariff, law or statute mean that tariff, law or statute as amended from time to time; and (j) the word "or" is not necessarily exclusive. The Parties to this Agreement acknowledge that each Party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one Party or the other based upon who drafted it. In the event of a conflict between the text of the body of this Agreement and any Exhibit or Schedule, the terms of the Exhibit or Schedule shall prevail to the extent of such conflict.

Section 9.16 Communications. In all external public marketing/promotional efforts and materials concerning the Agreement or its associated renewable energy project(s), Distributor will identify TVA (by name or through use of the TVA logo). Use of the TVA logo must follow TVA's logo use guidelines, available at <https://www.tva.gov/Newsroom/TVA-Logos>. If Distributor intends to include

language in addition to TVA's name and/or logo, such language must be approved in advance of release by TVA. Distributor will notify TVA of public events at least ten (10) days in advance to enable reasonable efforts for TVA to participate in the event.

Section 9.17 Incorporation of Attachments. The attachments entitled "Exhibit A," "Exhibit B," and "Form Letter of Credit," are made a part of this Agreement. In the event of any conflict between the body of this Agreement and any of these attachments, the former controls.

Section 9.18 Stranded Investment Costs. As stated in the opening paragraphs of this Agreement, Distributor requested that TVA acquire new renewable generation resources. TVA's investment in such new renewable generation resources is reflected in the PPA(s) executed by TVA to supply the Tranche Amendment(s). The Parties agree that in the event of an early termination of this Agreement, the PPA(s) and any costs associated with such PPA(s) shall not constitute "**Stranded Investment**" as that term is described in Section 3 of Supp. No. 48 to the Power Contract, and TVA will recover all costs associated with the PPA(s) from Distributor in accordance with Section 7.3.

The Parties are signing this Agreement to be effective ("**Effective Date**") on the date of TVA's signature.

KNOXVILLE UTILITIES BOARD
(Acting for and on behalf
of the City of Knoxville)

By _____

Title: _____

Date: _____

TENNESSEE VALLEY AUTHORITY

By _____
Chief Financial Officer

Date: _____

Exhibit A: TVA Offer

This Green Invest Agreement Tranche Amendment (“**Amendment**”) is between Knoxville Utilities Board (Acting for and on behalf of the City of Knoxville) (“**Distributor**”) and Tennessee Valley Authority (“**TVA**”) (sometimes referred to herein individually as “**Party**” and collectively as “**Parties**”) and is subject to the provisions of the Green Invest Agreement (“**Agreement**”) Contract No. TV-75110A, Supp. No.____. This Amendment is effective as set out in Conditions Precedent below.

Applicable Renewable Energy Facility	<p>Distributor will purchase from TVA the <u>Product</u> derived from new renewable generation on an as-generated basis contingent on the availability of the new renewable generation resource at _____, accounting for ___% of that facility’s total renewable generation, being obtained by TVA under a power purchase agreement (“PPA”) Contract Number _____ [placeholder future: from a TVA-owned <u>Renewable Energy Facility</u>].</p> <p>Contract Output (MWac): _____ Coordinate Location: _____ Expected Delivery Point: _____ Expected Initial Delivery Date: _____ Delivery Period (years): [15 or 20]</p>
Term	<p>The term of this Amendment runs through the expiration of the term of the PPA or the earlier termination thereof.</p>
Product Price	<p>The <u>Product</u> price for generation from the applicable <u>Renewable Energy Facility</u> is \$____ per REC.</p>
Renewable Energy Facility Underperformance	<p>TVA will pay Distributor ___% of the total damages owed and received by TVA from the PPA, specifically in Section 3.3, “Failure to Meet the Expected Initial Delivery Date,” and Article 8, “Supply Guarantee; Disconnection or Curtailment;” provided that, pursuant to Section 5.4 of the Agreement, Distributor shall have the right to receive replacement RECs in the event they are received by TVA under the PPA.</p> <p>In the event of early termination pursuant to Article 9, “Early Termination; Remedies” under the PPA, the percentage and allocation of damages paid to Distributor will be as set out in Section 5.4 of the Agreement.</p>
Early Termination	<p>Section 7.3 of the Agreement will establish the early termination amount.</p>
Conditions Precedent	<p>This Amendment will become effective on the earlier of the PPA’s Notice to Proceed Deadline or the granting of the Notice to Proceed of the underlying <u>Renewable Energy Facility</u> of the PPA; in the event that the PPA is not executed within 30 days of the execution of this Amendment, this Amendment will not become effective.</p>
Transparency of Distributor Renewable Commitments	<p>By signing this Tranche Amendment, Distributor represents and warrants that the cost and benefits associated with this Amendment were discussed at a public meeting open to Distributor’s electric system ratepayers and that ratepayers were provided with a Distributor contact to address any inquiries regarding the effects of this arrangement.</p>
General Terms and Conditions:	<p><u>Ratification of the Agreement</u>. The Agreement as amended by this Amendment, is ratified and confirmed as the continuing obligation of the Parties.</p> <p><u>Defined Terms</u>. Capitalized and underlined terms not otherwise defined in this Amendment have the same meaning as in the Agreement.</p> <p><u>Conflicts</u>. In the event of any conflict between this Amendment and the Agreement, this Amendment controls.</p> <p><u>Assignment</u>. This Amendment will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may transfer or assign this Amendment, in whole or in part, without the other Party’s prior written consent.</p> <p><u>Amendment</u>. This Amendment may be amended only by a written agreement signed by both Parties.</p>

	<p><u>Counterparts</u>. This Amendment may be executed in multiple counterparts, each of which will be considered an original and all of which together will be considered to be but one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.</p>
<p>Performance Assurance</p>	<p>Section 6 of the Agreement shall govern Distributor's <u>Performance Assurance</u> obligations with TVA throughout the term of this Amendment.</p>

By signing below, the Parties agree to be bound by the terms and conditions contained in this Amendment and the Agreement.

Distributor		Tennessee Valley Authority	
<i>Signature:</i>	<i>Title:</i>	<i>Signature:</i>	<i>Title:</i>
<i>Printed Name:</i>	<i>Date:</i>	<i>Printed Name:</i>	<i>Date:</i>

Exhibit B: TVA'S REC ATTESTATION FORM

This letter, in combination with the attached report, serves to attest that the indicated Renewable Energy Certificates (RECs) have been retired by Tennessee Valley Authority (TVA) in accordance with the Green Invest Agreement between Knoxville Utilities Board (Acting for and on behalf of the City of Knoxville) (Distributor) and TVA. The source, vintage, quantity, and date of retirement of RECs retired on behalf of Distributor are listed below and more fully described in the attached report, including unique certificate numbers.

<u>Facility Name and Location</u>	<u>Nameplate Capacity (MW) AC</u>	<u>Renewable Fuel Type</u>	<u>REC Quantity</u>	<u>Vintage (Period of Generation) mm/yy</u>	<u>Date of REC Retirement (dd/mm/yy)</u>
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For each REC and additional Environmental Attributes or its equivalent for each megawatt hour generated, TVA attests, warrants, and represents the following:

- (a) the information provided herein is true and correct;
- (b) the retirement of the RECs on behalf of Distributor is the only retirement of such RECs and additional Environmental Attributes referenced herein;
- (c) the RECs have been registered and certified, if applicable, in accordance with Section 5.3 of the Agreement;
- (d) If a renewable portfolio standard ("RPS") exists in the state where the Project or Distributor is located, then RECs retired on behalf of the Distributor could be utilized to meet the RPS requirements for the Distributor's energy use. No person has made any claim or statement in any form that any person other than TVA owns or possesses any right, title, or interest in or to any of the RECs that TVA is aware of;
- (e) the Renewable Energy Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy during the Vintage listed above; and
- (f) TVA owns, manages, and has legal rights to the RECs and additional Environmental Attributes associated with the generation of the indicated energy as delivered to the grid and is authorized to retire such RECs.

This serves as an attestation to retire on Distributor's behalf all rights, title, and interest in and to the RECs and additional Environmental Attributes associated with the generation of the energy for delivery to the grid.

As an authorized agent of TVA, I attest that the above statements are true and correct.

Signature _____ Date _____

Chattanooga, TN Place
of Execution

FORM LETTER OF CREDIT

[LETTERHEAD]

[DATE]

Irrevocable Standby Letter of Credit No.

Beneficiary:

Applicant:

Tennessee Valley Authority
400 West Summit Hill Drive, WT 4C
Knoxville, TN 37902-1401

Attn: Kirk A. Kelley
Director, Corporate Credit & Insurance

Dear Madam or Sir:

We hereby establish for the account of _____ (Seller) ("Seller's name" or

"Applicant"), our irrevocable standby letter of credit in your favor for an amount of USD _____ (_____ Dollars United States currency). Applicant has advised us that this letter of credit is issued in connection with the _____ Agreement dated as of _____, 20____, between Applicant and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified, the "____ Agreement"). This letter of credit shall; (i) become effective immediately for the term of one (1) year and shall expire on _____ (the "Expiration Date"), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized representative of Beneficiary, dated the date of presentation and (b) the original of the letter of credit (the "Accompanying Documents") and presented at our office located at _____, attention _____ (or at any other office that may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment at sight on the same day of presentation. Upon any draw of the letter of credit, unless otherwise agreed to by Tennessee Valley Authority, Applicant shall be obligated to replenish the amount of the letter of credit draw within twenty (20) days.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized representative of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is nota

Business Day, then on the succeeding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for periods of one (1) year from the present or any future expiration date, unless at least forty-five (45) days prior to any such expiration date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for any such additional period.

4. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98).

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 5.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. .

Very truly yours,

[LOC Issuer]

Authorized signature

ANNEX 1
TO LETTER OF CREDIT NO. _____

Draft under Letter of Credit No. _____

[Month, Day, Year]

On Sight

Pay to Tennessee Valley Authority U.S. \$ _____ [not to exceed amount available to
be drawn]

400 West Summit Hill Drive, WT 4C
Knoxville, TN 37902-1401

[insert any wire instructions]

For value received and charge to account of Letter of Credit No. _____ of

By: _____

ANNEX 2
TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

The undersigned, a duly authorized representative of the **Tennessee Valley Authority**, a corporate instrumentality and agency of The United States of America ("Beneficiary"), hereby certifies on behalf of Beneficiary to _____ with reference to irrevocable standby Letter of Credit No. _____ (the "Letter of Credit") issued for the account of _____, ("X"), that:

- 1) [pursuant to the _____ Agreement between Beneficiary and X , as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;]

--or--

[Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit and, as such, as of the date hereto Beneficiary is entitled to draw under the Letter of Credit;]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$ _____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the amount to which Beneficiary is entitled to draft under said _____ Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized representative as of the date and year written below.

Date: _____

By: _____
Title: _____

ANNEX 3
TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

Attention: Letter of Credit Department

Re: Letter of Credit No. _____ issued for the account of

(Seller)

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

By: _____

Title: _____

BILLING AND PAYMENT TERMS

(Payments to TVA)

(11/16/2009 version)

SECTION 1 - DEFINITION OF TERMS

"TVA" means the Tennessee Valley Authority.

"Reimbursable Contract" means the agreement or contract to which these Billing and Payment Terms are made a part as an attachment or exhibit.

"Billing Party" means the party owed any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms.

"Billed Party" means the party obligated to pay any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms. (The same party to the Reimbursable Contract may be the Billing Party or the Billed Party or both.)

"Payment Due Date" means the date by which payment is due the Billing Party as defined in Section 2 below.

"Deliverables" means the work or services performed, or property or equipment furnished, by the Billing Party under the Reimbursable Contract for the ownership benefit of the Billed Party.

SECTION 2 - INVOICING AND PAYMENT DUE DATE

The Billing Party shall submit an invoice to the Billed Party for the amount due. The invoice may be submitted in electronic form, if permitted under the Reimbursable Contract. For accounting reference purposes, the invoice shall be numbered and dated and shall include (a) the contract number assigned under Section 11 (**Assignment of Contract Number**) below and (b) reasonably sufficient detail or supporting documentation to permit the Billed Party to verify the appropriateness or accuracy of the amount owed. Unless a later due date is specified in the Reimbursable Contract, the Payment Due Date shall be 30 days from the date of the invoice.

SECTION 3 - INTEREST ON UNDERPAYMENTS OR OVERPAYMENTS

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billed Party shall pay interest on the unpaid amount based on the maximum rate under the United States Prompt Payment Act, (31 U.S.C. §§ 3901-3907) as published in the Federal Register and adjusted periodically (currently semi-annually). Interest shall accrue from the Payment Due Date until the date the Billing Party receives payment. Failure to pay within 90 days after the Payment Due Date shall constitute a material breach of the Reimbursable Contract. If the Billed Party overpays (such as, due to erroneous or inaccurate invoicing by the Billing Party or due to refund of an excess deposit payment), the Billing Party shall promptly refund the amount overpaid.

SECTION 4 - DELAY OR SUSPENSION OF WORK DUE TO PAYMENT FAILURE

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billing Party shall have the right to delay or suspend the work or services being performed until after such payment failure has been satisfactorily resolved. Nothing herein contained shall be construed as relieving the Billed Party of the obligation to pay the Billing Party for the work completed as of the date such work or services are delayed or suspended.

SECTION 5 - PAYMENT DISPUTE

The Billed Party may dispute the payment of all or a portion of the amount due in an invoice if the Billed Party has a reasonable basis to demonstrate that such amount is inappropriate or questionable. In that case, the Billed Party shall promptly advise the Billing Party in writing of the reasons for disputing all or a portion of the invoiced amount. Upon receipt of the Billed Party's written statement of reasons, the dispute resolution provisions of Section 12 below shall apply. If as a result of the dispute resolution, one party is required to pay the other for the amount overpaid or underpaid, such amount shall include interest calculated in accordance with Section 3 (**Interest on Underpayments or Overpayments**) above.

SECTION 6 - OFFSET

Each party reserves the right to offset any amount owed to the other party against any amount owed by the other party.

SECTION 7 - WARRANTIES AND LIMITATION OF LIABILITY

Unless otherwise provided in the Reimbursable Contract, the Billing Party warrants the Deliverables to be in conformance with generally accepted professional standards prevailing at the time of delivery. Any Deliverables not in accordance with such standards shall be corrected at no cost to the Billed Party as long as such nonconformance is reported in writing within one year from the date of delivery.

The Billing Party expressly disclaims any other warranties, including implied warranties of merchantability or fitness for any particular use or purpose, as to any Deliverables provided hereunder.

SECTION 8 - TIME OF COMPLETION AND FORCE MAJEURE

Any delays in or failure of performance by the Billing Party or its contractors shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Billing Party or its contractors, and Billing Party shall not be liable for any loss or damage due to or arising out of any such delays or failure of performance. Such occurrences include, but are not limited to, acts of God or the public enemy, fires, epidemics, quarantines, strikes, freight embargoes or delays in transportation, priorities or other acts or orders of Governmental authority, or unforeseeable severe weather or floods, or any causes, whether or not of the same class or kind of those specifically above named, which are not within the control of Billing Party or its contractors.

SECTION 9 - ACCESS TO BILLING RECORDS AND CONFIDENTIALITY

Upon written request by the Billed Party, the Billing Party shall provide access during normal working hours to its records as necessary to permit the Billed Party to verify the accuracy or appropriateness of the invoice. The Billed Party shall keep the information examined confidential. If a billing dispute is submitted to dispute resolution as set out in Section 12 below, the Billing Party agrees to provide the pertinent records or information to counsel and independent experts of the Billed Party and those attempting to resolve the dispute, provided such third-parties agree to keep such records or information confidential. Nothing in this Section shall be construed as in any way impairing the ability pursuant to statutory authority of the Office of the Inspector General of TVA or of any other Federal agency having auditing jurisdiction over TVA to examine the records of the Billing Party to the extent relating to any amount billed TVA by the Billing Party.

SECTION 10 - ENTIRE CONTRACT

The Reimbursable Contract and all exhibits or attachments thereto (including these Billing and Payment Terms) shall constitute the entire agreement between the parties. In the event of any conflict between the provisions of the Reimbursable Contract and these Billing and Payment Terms, the Reimbursable Contract shall prevail.

SECTION 11 - ASSIGNMENT OF CONTRACT NUMBER

The Reimbursable Contract will have a contract number assigned by TVA for all parties to use as a reference as part of the invoicing and payment processes.

SECTION 12 - DISPUTE RESOLUTION

If a billing amount dispute arises out of or relates to the Reimbursable Contract, including these Billing and Payment Terms, or the breach thereof, the parties agree to use their best efforts to resolve such a dispute informally at the lowest possible levels of decision making. Such a dispute not resolved at the working level should be referred to higher levels of management of both parties for consideration, as necessary. If said dispute cannot be so settled, the parties further agree to develop and use consensual alternative dispute resolution processes, such as facilitation and mediation to try in good faith to settle said dispute, before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may, for example, try to resolve the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

SECTION 13 - RESTRICTION OF BENEFITS

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA shall be admitted to any share or part of the Reimbursable Contract or to any benefit that may arise from it unless the agreement be made with a corporation for its general benefit. The other party to the Reimbursable Contract shall not offer or give, directly or indirectly, to any officer, employee, special Government employee, or agent of TVA any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as provided in 5 C.F.R. part 2635 (as amended, supplemented, or replaced). Breach of this provision shall constitute a material breach of the Reimbursable Contract.

SECTION 14 - CONFORMANCE WITH WORK SCOPE AND COST ESTIMATE

It is recognized that depending on the nature or extent of the work involved, the Reimbursable Contract may include a detailed work scope and a cost estimate (or cost limitation) for work subject to reimbursement based on actual costs incurred. In that case, the Billing Party shall use its best efforts to perform the work within the specified work scope and cost estimate. If at any time the Billing Party becomes aware that the actual costs will likely exceed the cost estimate by 15 percent or more, the Billing Party shall use its best efforts to obtain concurrence or resolution with the Billed Party regarding such cost estimate overrun. This shall include notification of the Billed Party in writing of the cost estimate overrun together with a revised cost estimate and an explanation for the cost estimate overrun so as to provide the Billed Party an opportunity for input and/or consultation. For work or services in excess of the work scope, unless mutually agreed by the parties in advance (such as in the form of an amendment to the Reimbursable Contract), the Billing Party shall not be obligated to perform such work or services, and the Billed Party shall not be obligated to pay for such work or services. The Billing Party may elect to suspend the work in question until it has obtained concurrence or resolution with the Billed Party regarding work in excess of the work scope and/or cost estimate.

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