

RESOLUTION NO. _____

A resolution approving the Green Invest Agreement between the Tennessee Valley Authority, Nashville Electric Service, and the Metropolitan Government of Nashville and Davidson County for the purchase of renewable energy.

WHEREAS, renewable energy sources are inexhaustible, and free of climate-warming pollution that is harmful to human and environmental health; and,

WHEREAS, the Metropolitan Code of Laws Section 2.32.080 sets forth renewable energy portfolio standards to power Metro General Government operations, with the Metropolitan Government required to utilize 35% tier-one renewable energy sources by 2025, 2.45% of which must be derived from solar, and by 2041 to utilize 100% tier-one renewable energy, 10% of which must be from solar; and,

WHEREAS, in TVA territory considerable successful precedent exists for utility-scale solar projects executed under the “Green Invest” framework, including plans for a 212-megawatt solar farm for the Knoxville Utilities Board, a 35-megawatt solar farm for Vanderbilt University, two solar farms totaling 377-megawatts to support Facebook’s Alabama data center, and a 150-megawatt solar farm for Google’s Tennessee data center; and,

WHEREAS, the Metropolitan Government (“Metro”), the Tennessee Valley Authority (“TVA”), and Nashville Electric Service (“NES”) wish to enter into the Green Invest Agreement, an agreement which does not obligate Metro to purchase renewable energy, but acts as a vehicle for the parties to investigate the option for entering into one or more future Tranche Amendments, a copy of which Tranche Amendment is attached hereto as Exhibit B, to purchase renewable energy from new renewable generation resources, or to construct such resources at the request of Metro; and,

WHEREAS, in leu of providing performance assurance for each Tranche Amendment for the purchase of renewable energy, TVA has agreed to provide Metro with a Collateral Threshold of \$25 million dollars, as further described in the Performance Assurance Agreement, attached hereto as Exhibit C; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that the Green Invest Agreement be approved, and in order for Metro to pursue timely compliance with its near and long-term Renewable Portfolio Standard benchmarks laid out in the Metropolitan Code of Law Section 2.32.080.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Green Invest Agreement between the Tennessee Valley Authority, Nashville Electric Service, and the Metropolitan Government of Nashville and Davidson County,

for the potential purchase of renewable energy, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Metropolitan Mayor is authorized to execute the same.

Section 2. That the Finance Director is authorized to execute Tranche Amendments for the purchase of renewable energy, in substantially similar form as the attached Exhibit B.

Section 3. That the Performance Assurance Agreement between the Tennessee Valley Authority and the Metropolitan Government of Nashville and Davidson County, a copy of which is attached hereto and incorporated herein as Exhibit C, is hereby approved, and the Metropolitan Mayor is authorized to execute the same.

Section 4. Any amendments, renewals, or extension of the terms of the agreement may be approved by resolution of the Metropolitan Council.

Section 5. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY



Kevin Crumbo, Director
Department of Finance

INTRODUCED BY:



Member(s) of Council



APPROVED AS TO FORM AND
LEGALITY:



Assistant Metropolitan Attorney

GREEN INVEST AGREEMENT

Contract No. 99818372

This Agreement is between THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY (“**Company**”), a nonprofit corporation; THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ACTING BY AND THROUGH THE ELECTRIC POWER BOARD OF SAID GOVERNMENT (“**Distributor**”), created and existing under and by virtue of the laws of the State of Tennessee; 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. Company, 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 No. TV-48267A, effective December 19, 1977, as amended (“**Power Contract**”).

Company and Distributor have previously entered into power supply contract(s) (referred to individually as “**Company Contract**”) under which Company purchases the power made available by TVA to Distributor for the operation of Company’s facility(ies) (“**Facilities**”).

Company desires that new renewable generation resources be constructed for the benefit of Company’s Facilities, and Company 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 Company under the Company Contracts.

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 Company or an Affiliate Facility each such agreement a “**Tranche Amendment**”) pursuant to the terms hereof.

Therefore, the Parties agree as follows:

SECTION 1 - DEFINITIONS

“**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.

“**Affiliate Facility**” means any facility designated by Company through written notice to TVA as an Affiliate Facility and for which the facility’s owner (a) purchases all of its power from TVA or a distributor of TVA power; (b) has signed an Affiliate Agreement; and (c) directly or indirectly, through one or more intermediaries, is controlled by the same legal entity that controls Company, where the term “control” means the ability or power to, directly or indirectly, direct, or cause the direction of, the management, policies, or decision-making of such facility’s owner, whether through ownership of voting rights or securities, by contract or otherwise. Company may, by notice to TVA, terminate the Affiliate Facility status of any Affiliate Facility. For purposes of determining Excess Product and evaluating a request for additional Product, the total portfolio of Company and Affiliate Facility(ies) contracts shall be aggregated.

“**Affiliate Agreement**” means an agreement including TVA and the owner of an Affiliate Facility substantially similar to this Agreement.

“**Distributor Administrative Cost**” is \$1,000 per month, to compensate Distributor for the cost incurred by Distributor for administering the payments and credits, if any, due under this Agreement and the Tranche Amendment(s), and providing to TVA the metering data required for Facilities under Section 5.6.

The Distributor Administrative Cost will be increased by 3% on January 1 of each year, commencing January 2021.

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 at the Facility(ies) and/or Affiliate Facility(ies) 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 lesser of (a) the amount by which the total Product generated by all Renewable Energy Facilities under Tranche Amendment(s) entered into for the Facilities and all Affiliate Facilities over a specified period of time, less Product already retained pursuant to Section 5.2 and the analogous section(s) of all Affiliate Agreements for that same period of time, exceeds the cumulative electricity consumption at the Facilities and all Affiliate Facilities for the specified period of time by more than 10%; or (b) the amount by which the total Product generated by all Renewable Energy Facilities under Tranche Amendment(s) entered into for the Facilities 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 at the Facilities 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 Company at Company's election. By default, Product does not have third-party certification. If Company elects for the Product to have third-party

certification, then Company 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 Company. 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, or waste-to-energy resources.

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 for Company is in effect or any obligations under any Tranche Amendment or this Agreement are unfulfilled, but this Agreement may be terminated by any Party upon ninety (90) days’ written notice at any time that no Tranche Amendment for Company is in effect and no obligations under any Tranche Amendment or this Agreement are unfulfilled.

SECTION 3 - OBTAINING RENEWABLE ENERGY

Section 3.1 Notification. Company 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 Company’s projected Energy Consumption at the Facilities (each such request, a “**Notification**”). The Notification to TVA shall include the projected dates and any increases in Energy Consumption, projected dates and any increases in the Company’s contract demand, and desired dates and quantities for the Product.

Section 3.2 Process. After receiving a Notification from Company under Section 3.1, if TVA finds Company’s projected Energy Consumption at the Facilities 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 Company; provided, however, the selection for the shortlist will be by mutual agreement of the Company and TVA. Company and TVA will review Projects and cooperate to develop a shortlist of qualified Projects. Company may either (a)

concur with the shortlist of qualified proposals by notifying TVA and Distributor (“**Concurrence**”), or (b) notify TVA and Distributor that Company will not concur and will not proceed with obtaining the renewable energy at that time based on those proposals. Company and TVA 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 Company’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 Company and 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. Upon request and with agreement from the counterparties to the PPA, TVA will provide a draft copy of the PPA to Company, redacting any information deemed confidential, proprietary, or sensitive by the counterparties to the PPA or TVA. If TVA and the Project proponent are unable to reach agreement on a PPA, TVA will notify Company and Distributor accordingly, and Company 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 Company 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, 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 Amendment(s) 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 Company’s Commitment Decision. Within thirty (30) days after receiving TVA’s Offer, either (a) Company 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. Company may submit additional Notifications pursuant to Section 3.1 for purchases of Product from time to time in a reasonable manner.

Section 4.2 Facilities’ Sufficient Energy Consumption.

- (a) Facilities are listed in Exhibit C. Company may update Exhibit C at any time upon written notice to TVA and Distributor and acceptance by TVA, such acceptance or denial to occur no later than sixty (60) days after the receipt by TVA of Company’s notice. TVA’s acceptance of Company’s request to add a new facility to Exhibit C will be based on TVA’s assessment of the facility meeting the definition of eligibility requirements listed in Exhibit C. Any Party may remove a facility from Exhibit C if it no longer meets the eligibility requirements listed in Exhibit C, after thirty (30) days’ written notice to the other Parties. Company may remove a Facility from Exhibit C for any reason after thirty (30) days’ written notice to TVA and Distributor. Any addition or deletion to Exhibit C will become effective for the next available billing cycle after the thirty (30) day notice period.
- (b) The expected annual energy output associated with Tranche Amendment(s) is not intended to materially exceed the Company’s annual Energy Consumption at its Facilities, but may do so from time to time, given the variability of Renewable Energy Facility output and Facilities’ load. In response to a request by the Company as set forth in Section 3.1, TVA’s obligation to secure

Tranche Amendments will be contingent upon:

- (i) sufficient projected Energy Consumption for the Facilities, as reasonably determined by TVA, as of the anticipated first delivery date for Product under the requested Tranche Amendment, including consideration of Energy Consumption at Affiliate Facilities, based on historical load factors and projected load factors provided by Company, to consume the Product projected to be delivered under existing and additional Tranche Amendments for the Facility and any Affiliate Facilities for the term of the existing and additional Tranche Amendments at the Facility and any Affiliate Facilities, 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 Company 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 Company'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 provide a final copy of the PPA to Company, redacting any information deemed confidential, proprietary, or sensitive by the counterparties to the PPA or TVA. 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 Company in accordance Section 5.2 or added to all other amounts payable on Distributor's monthly bill for firm power. In the event Company fails to make any payments when due under the terms of this Agreement or any Tranche Amendment, Distributor will provide TVA with notice of such failure within ten (10) days.

Distributor will invoice Company monthly for Distributor Administrative Cost, Product generated under each Tranche Amendment, and any Third-Party Costs. Company shall pay for such Distributor Administrative Cost, Product, and Third-Party Costs on Company's monthly bill for firm power, which Company shall pay to Distributor in accordance with the terms and conditions in the Company Contract(s) and each applicable Tranche Amendment, and shall be netted against any credit due to Company in accordance with Section 5.2 or added to all other amounts payable on Company's monthly bill for firm power.

If TVA is unable to collect the Product charges and Third-Party Costs from Distributor, TVA will invoice Company directly by submitting an invoice monthly to Company, and Company shall, consistent with the attached Billing and Payment Terms, pay TVA for the monthly Product charges and Third-Party Costs, which will be netted against any credit due to Company in accordance Section 5.2.

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 Company of its election to do so on or before March 31 of the succeeding year. Product retained by TVA from each Tranche Amendment (including any Tranche Amendment to an Affiliate Agreement, if applicable) will be in proportion to the Product generated under each Tranche Amendment and the Product price for all retained Product will be credited to Company 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 Company's behalf or transfer to Company all Product sold to Company for the prior calendar year (less any Excess Product retained by TVA per Section 5.2). If Company provides Notice to TVA that it elects to have the RECs registered, certified, and/or transferred, then TVA will register, certify, and/or transfer the RECs on behalf of Company in a Registry and Company shall reimburse TVA for the Third-Party Costs. Company will not resell or transfer RECs. Company may retire RECs for the benefit of the Company, Affiliate Facilities, or other entities owned and operated by Company. Alternatively, Company may elect for TVA to retire all Product sold to Company for the prior calendar year on Company's behalf in lieu of transferring such Product in accordance with this Section, in which event TVA will retire the RECs on behalf of the Company through TVA's Company REC Attestation Form, attached to this Agreement as Exhibit B. 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 Project or Affiliate Facility is located, then RECs retired on behalf of the Company could be utilized to meet the RPS requirements for the Company'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 Company any such damages owed to and received by TVA under the applicable PPA, proportionate to Company'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 Company'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 Company's behalf or transfer to Company such replacement RECs in the same manner as Product purchased by and delivered to Company 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. Company 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 Facilities 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(i)(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 Company by TVA under Tranche Amendment(s) would not have resulted in Excess Product in the three (3) most recent consecutive calendar years. Any such remedy taken under an Affiliate Agreement shall not be deemed an exercise of remedies under this Agreement, but

shall be taken into account for the purposes of determining whether TVA would be justified in terminating any Tranche Amendment(s) under this Agreement. If the status of an Affiliate Facility is terminated, the amount of Excess Product for the previous three years will be calculated by removing the Product attributable to the terminated Affiliate Facility.

Section 5.6 Facilities' Metered Data. For purposes of determining the Facilities' annual MWh consumption under Section 4.2 and invoicing under Section 5.1, Distributor will, in addition to any monthly MWh reporting requirements of the Power Contract, provide to TVA by the twentieth (20th) day following the last day of each calendar month, any and all information needed for determining the monthly MWh consumption of the Facilities, unless TVA has remote access at all times to Facilities' metering data.

If TVA is unable to obtain the information required for determining the monthly MWh consumption of the Facilities as provided herein, Company shall provide to TVA direct access to real-time or near real-time hourly, or more granular, load information for determining the Facilities' monthly MWh consumption.

SECTION 6 - PERFORMANCE ASSURANCE

Section 6.1 Additional Definitions. In addition to the terms defined in Section 1, the following 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.

"Performance Assurance" means collateral, in the amounts indicated in Section 6.2, which shall secure Company's payment obligations under this Agreement, in the form of one or more of the following: (a) Cash Deposit; or (b) other security acceptable to TVA and agreed to in writing by the Parties, without limitation, in form and substance acceptable to TVA.

Section 6.2 Performance Assurance.

- (a) Prior to TVA signing each Tranche Amendment, Company 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 under any Tranche Amendment in its sole discretion, in which event Company must provide Performance Assurance in the adjusted amount and form within ten (10) days after receiving written notice from TVA.
- (c) Without limiting TVA's rights under subsections 6.2(a) or (b), if Distributor provides notice to terminate the Power Contract ("**Termination Notice**"), Company will provide to TVA additional Performance Assurance within 45 days from the Termination Notice to ensure that TVA has Performance Assurance from Company to cover the total projected Net Settlement Amount, 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 Company 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 Company has no further obligations to TVA under said Tranche Amendment and that

Performance Assurance provided by Company under other Tranche Amendments is sufficient to cover Company and any Affiliate Facility's continuing performance and payment obligations to TVA, TVA will return, release, or surrender the unused Performance Assurance, if any, to Company.

Section 6.3 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 Company in accordance with Section 6.2.

Section 6.4 Election to Change Form of Performance Assurance. Company 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 Company 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 Company's request, TVA will cooperate with Company in obtaining the concurrent release, termination, or return (as many as maybe applicable) of the Outstanding Performance Assurance after TVA has received the approved alternative form of Performance Assurance.

Section 6.5 Cross-Collateralization. Company hereby agrees that the Performance Assurance provided under this Agreement secures all obligations now or hereafter outstanding under this Agreement and any Affiliate Agreements, and all other payment obligations of Distributor under this Agreement, unless otherwise agreed to in writing by the parties.

Section 6.6 Company's Financial Statements. For TVA's use in evaluating Company's financial condition, Company will provide to TVA (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 Company, and (b) within sixty (60) days after the end of each of Company'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 Company. 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 Company diligently pursues the preparation, certification, and delivery of the statements.

Section 6.7 Contemporaneous Exchange of New Value. Company'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 Company to continue receiving Product under the terms of this Agreement.

Section 6.8 Security Interest. To the extent Company provides any Performance Assurance under Section 6.2, Company 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 Company 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 6.9 Default and Remedies. If Company:

- (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 Section 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) Company or Distributor commit an Event of Default or are 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 Company:

- (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 Company in the possession of TVA;
- (c) liquidate all Performance Assurance then held by or for the benefit of TVA, free from any claim or right of any nature whatsoever of Company or other pledgor of Performance Assurance, including any equity or right of purchase or redemption by Company or any such pledgor; and
- (d) 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), only Company or TVA will be either a “**Defaulting Party**” or a “**Non-Defaulting Party**,” an “**Event of Default**” includes any of the following:

- (a) if a 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 Company, whether by its breach, default, or otherwise, causes the termination or expiration without renewal of the Company Contract(s) with Distributor;
- (e) if Company does not fully remedy a Performance Assurance Deficiency, as defined in Section 6;

- (f) if Company, for any reason, including, but not limited to, Distributor's termination of its Power Contract with TVA, ceases to consume the power generated or purchased by TVA, for the operation of its Facilities, without TVA's prior written consent; 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, Company 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 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 Company is the Non-Defaulting Party, TVA shall pay to Company 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.
- (c) In the event that Distributor terminates the Power Contract with TVA, which causes Company to cease consumption of the power generated or purchased by TVA, Company shall pay to TVA the Net Settlement Amount with respect to all Tranche Amendments and any other payments due to TVA as an Event of Default under subsection 7.1(a). Distributor shall:
- (i) indemnify and hold harmless TVA from any and all claims of Company that may arise against TVA as a result of Distributor's breach of default of the Power Contract, and
 - (ii) Reimburse Company for any payments Company is required to make to TVA under this subsection 7.3(c).

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 Company: Mary Elizabeth Ikard, APR
Office of Mayor John Coper
One Public Square
Nashville, Tennessee 37201
MaryBeth.Ikard@Nashville.gov

To Distributor: Tony Richman, Energy Services Engineering Manager
Nashville Electric Service
1214 Church Street
Nashville, Tennessee 37246
trichman@nespower.com

To TVA: Director, Power Customer Contracts, WT 9D-K
Tennessee Valley Authority
400 West Summit Hill Drive Knoxville, Tennessee 37902-1401
contractnotices@tva.gov

With copies to: Vice President, 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 such 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 Parties. 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 Parties with reasonable promptness so that the Parties may pursue a confidentiality agreement with the requester, work with the requester to revise the information in a manner consistent with the Parties' interests and the interests of the requester, or take any other action the Parties deem 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 Company 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 Parties 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 Amendments. This Agreement may be amended only by a written instrument executed by the Parties.

Section 9.12 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 9.13 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 Parties, such consent not to be unreasonably withheld.

Section 9.14 Rules of Interpretation. In the event of any inconsistency between this Agreement and the Company Contracts, this Agreement will control. In the event of any inconsistency between this Agreement or the Company Contracts 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 9.15 Communications. In all external public marketing/promotional efforts and materials concerning the Agreement and its associated renewable energy project(s) and RECs, Company/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 Company/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. Company/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 9.16 Incorporation of Attachments. The attachments entitled “Exhibit A,” “Exhibit B,” “Exhibit C,” and the Billing and Payment Terms are made a part of this Agreement.

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

**APPROVED AS TO AND
AVAILABILITY OF FUNDS**

By 
Kevin Crumbo, Director
Department of Finance

**APPROVED AS TO FORM AND
LEGALITY**

By 
Tara Ladd
Metropolitan Attorney

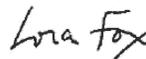
**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

By _____
John Cooper
Metropolitan County Mayor

ATTEST, this the _____ day of
_____, 20 _____.

By _____
Metropolitan Clerk

**APPROVED AS TO RISK AND
INSURANCE**

By 
Lara Fox
Director of Insurance

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**
Acting by and through the Electric Power
Board of said Government

Attest:

Secretary

By _____
Chairman of the Board

Approved:

By _____ Date _____
President and Chief
Executive Officer

Approved as to Form and Legality:

_____ Date _____
General Counsel

TENNESSEE VALLEY AUTHORITY

By _____
Chief Financial Officer

Date: _____

Exhibit B: TRANCHE AMENDMENT

This Green Invest Agreement Tranche Amendment (“**Amendment**”) is among _____ (“**Company**”), _____ (“**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. _____. This Amendment is effective as set out in Conditions Precedent below.

Applicable Renewable Energy Facility	<p>Company will purchase from TVA <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 Renewable Energy Facility].</p> <p>Contract Output (MWac): _____ Coordinate Location: _____ Expected Delivery Point: _____ Expected Initial Delivery Date: _____ Delivery Period (years): [15 or 20] _____</p>
Term	The term of this Amendment runs through the expiration of the term of the PPA or the earlier termination thereof.
Product Price	The <u>Product</u> price for generation from the applicable Renewable Energy Facility is \$ _____ per <u>REC</u> .
Renewable Energy Facility Underperformance	<p>TVA will pay Company _____% of the total damages owed and received by TVA from the PPA, specifically 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, Company shall have the right to receive replacement <u>RECs</u> 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 Company will be as set out in Section 5.4 of the Agreement.</p>
Early Termination	Section 7.3 of the Agreement will establish the early termination amount.
Conditions Precedent	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 Renewable Energy Facility 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.
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 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. No Party may transfer or assign this Amendment, in whole or in part, without the other Parties’ prior written consent.</p> <p><u>Amendment</u>. This Amendment may be amended only by a written agreement signed by all 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. In accordance with Section 6 of the Agreement, Company will provide and maintain <u>Performance Assurance</u> with TVA throughout the term of this Amendment in the amount of \$_____, unless adjusted by TVA per Section 6.2(b), and has elected to provide such Performance Assurance in the form of one or more of the following:</p> <ul style="list-style-type: none"> ┆ <u>Cash Deposit</u> ┆ Other security acceptable to TVA and agreed to in writing by Distributor and TVA. <p>Any and all Performance Assurance provided by Company under this Amendment shall also secure any and all obligations under other Tranche Amendments entered under the Agreement or any <u>Affiliate Agreements</u> and all other payment obligations of Company under the Agreement, unless otherwise agreed to in writing by the parties.</p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

Company	
<i>Signature:</i>	<i>Title:</i>
<i>Printed Name:</i>	<i>Date:</i>

Distributor	
<i>Signature:</i>	<i>Title:</i>
<i>Printed Name:</i>	<i>Date:</i>

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

PERFORMANCE ASSURANCE AGREEMENT FOR GREEN INVEST AGREEMENT

Contract No. 99818372, Supp. No. 1

This Agreement is between THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY ("**Company**"), a Tennessee nonprofit corporation; THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ACTING BY AND THROUGH THE ELECTRIC POWER BOARD OF SAID GOVERNMENT ("**Distributor**"), created and existing under and by virtue of the laws of the State of Tennessee; 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.

The parties have entered into a Green Invest Agreement, Contract No. 99818372, effective _____ ("**Green Invest Agreement**"), for the purchase of renewable energy and renewable energy credits.

The parties want to amend Section 6 of the Green Invest Agreement to provide for the terms and conditions under which Company will provide Performance Assurance to TVA under the Green Invest Agreement.

Therefore, the parties agree as follows:

SECTION 1 - DEFINITIONS

Unless otherwise stated, capitalized and underlined terms used in this Agreement have the same meaning as defined in the Green Invest Agreement.

SECTION 2 - TERM

This Agreement continues in effect for the remaining term of the Green Invest Agreement.

SECTION 3 - REPLACEMENT OF SECTION 6 OF GREEN INVEST AGREEMENT

The Green Invest Agreement is amended by replacing Section 6 with the Section 6 attached hereto as Exhibit A and made a part of this Agreement.

SECTION 4 - PERFORMANCE ASSURANCE

In accordance with the provisions of Section 6 of the Green Invest Agreement, TVA has determined that Company presently has an ICR that is equal to an ICR 3, and Company's Collateral Threshold is \$25,000,000. If at any time during the term of the Green Invest Agreement, the then-applicable Credit Risk exceeds the Collateral Threshold, Company will be required to provide Performance Assurance in accordance with Section 6 of Green Invest Agreement. If TVA determines that any adjustment is necessary, TVA will calculate the Performance Assurance Deficiency and provide Company with written notice of such Performance Assurance Deficiency. Within ten days after such notice is given, Company will provide TVA with additional Performance Assurance in the amount equal to the Performance Assurance Deficiency.

Failure to comply with any of the provisions of this Agreement will constitute an immediate Event of Default under the Green Invest Agreement. Upon such default, TVA will have the right to immediately exercise any and all rights under the Green Invest Agreement, including, but not limited to, its rights under Section 7 of the Green Invest Agreement.

SECTION 5 - CONTEMPORANEOUS EXCHANGE

The parties acknowledge and understand that Company's issuance of Performance Assurance in any form is a contemporaneous exchange for new value given, and among other things, is necessary to allow Company to receive renewable energy and RECs under the terms of the Green Invest Agreement.

SECTION 6 - CONFLICTS

In the event of any conflict between the body of this Agreement and the Green Invest Agreement, the former controls.

SECTION 7 - RATIFICATION OF GREEN INVEST AGREEMENT

Except as otherwise provided herein, all terms of the Green Invest Agreement remain unchanged and in full force and effect. The parties hereby ratify and confirm that the Green Invest Agreement, as supplemented and amended by this Agreement, is their continuing obligation.

This Agreement is effective on the date of TVA's signature.

**APPROVED AS TO AND
AVAILABILITY OF FUNDS**

By 
Kevin Crumbo, Director
Department of Finance

**APPROVED AS TO FORM AND
LEGALITY**

By Tara Ladd
Metropolitan Attorney

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

By _____
John Cooper
Metropolitan County Mayor

ATTEST, this the _____ day of
_____, 20 _____.

By _____
Metropolitan Clerk

**APPROVED AS TO RISK AND
INSURANCE**

By Lora Fox
Director of Insurance

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**
Acting by and through the Electric Power
Board of said Government

Attest:

Secretary

By _____
Chairman of the Board

Approved:

By _____ Date _____
President and Chief
Executive Officer

Approved as to Form and Legality:

_____ Date _____
General Counsel

TENNESSEE VALLEY AUTHORITY

By _____
Chief Financial Officer

Date: _____

EXHIBIT A

**SECTION 6
PERFORMANCE ASSURANCE**

[ATTACHED]

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.

6.1.1 “**Commercial Credit Rating**” means a publicly available credit rating assigned by Standard and Poor’s (“**S&P**”), Moody’s Investors Service, Inc. (“**Moody’s**”), or Fitch Ratings (“**Fitch**”) (each such agency is hereafter referred to as a “**Rating Agency**” or collectively referred to as “**Rating Agencies**”) to a rated entity’s unsecured, senior, long-term debt obligations (not supported by third-party credit enhancements). If an entity does not have a publicly available rating for its senior unsecured long-term debt obligations, then Commercial Credit Rating means the rating assigned to such entity as an issuer rating by a Rating Agency.

6.1.2 “**ICR**” means the internal credit rating assigned by TVA for its internal use, under TVA’s then-existing credit policy for the purpose of classifying customers, suppliers, and vendors according to the level of risk deemed by TVA to be associated with such customers’, suppliers’, and vendors’ financial condition. Such ratings are assigned by TVA and are updated from time to time as a result of quantitative financial analysis, as well as consideration of subjective judgments about both the entity being rated and market conditions. In the event of any change in Company’s ICR that will cause a change in the amount of Performance Assurance, if any, that Company is obligated to provide to TVA under section 6.5 below, TVA will promptly give Company written notice of the revised ICR and, for purposes of the Green Invest Agreement, such revised ICR will be deemed to be effective:

- (a) as of the date of such notice, if the revised ICR is a higher rating than Company’s previously-effective ICR, or
- (b) five business days after the date of such notice, if the revised ICR is a lower rating than Company’s previously-effective ICR.

6.1.3 The following ICRs referred to as, “**ICR 1**,” “**ICR 2**,” “**ICR 3**,” “**ICR 4**,” “**ICR 5**,” “**ICR 6**,” “**ICR 7**,” and “**Below Investment Grade Rating**,” shall be defined and assigned to Company under the following framework:

- (a) If a Commercial Credit Rating is not available or assigned by any Rating Agency, then TVA will determine the appropriate ICR in its sole discretion and under its then-existing credit policy.
- (b) If a Commercial Credit Rating is assigned by a Rating Agency or Rating Agencies, then the ICR will be deemed to be as is shown on the chart below, unless there are multiple Rating Agencies and their Commercial Credit Ratings are not equivalent under TVA’s ICR system, in which case subsection 6.1.3(c) will apply.
- (c) If more than one Rating Agency provides a Commercial Credit Rating and such ratings do not provide equivalent ICRs under the below chart, then the following will apply:
 - (i) if two Rating Agencies provide a Commercial Credit Rating and those ratings equate to different ICRs (according to the chart below), then the ICR equivalent to the lowest credit rating will govern;
 - (ii) if three Rating Agencies provide a Commercial Credit Rating and those ratings equate to three different ICRs (according to the chart below), then the middle ICR will govern;

- (iii) if three Rating Agencies provide a Commercial Credit Rating and those ratings equate to two different ICRs (according to the chart below), then the two equivalent ICRs will govern.

Chart Comparing TVA ICRs to the Commercial Credit Ratings of Rating Agencies			
<u>TVA ICR</u>	<u>S&P Commercial Credit Rating</u>	<u>Moody's Commercial Credit Rating</u>	<u>Fitch Commercial Credit Rating</u>
<u>ICR 1</u>	AAA	Aaa	AAA
<u>ICR 2</u>	AA+	Aa1	AA+
<u>ICR 3</u>	AA	Aa2	AA
<u>ICR 4</u>	AA-	Aa3	AA-
<u>ICR 5</u>	A+	A1	A+
<u>ICR 6</u>	A	A2	A
<u>ICR 7</u>	A-	A3	A-
<u>Below Investment Grade Rating</u>	BBB+ or lower	Baa1 or lower	BBB+ or lower

6.1.4 “**Credit Risk**” means TVA’s projected Product price for the term of each and every Tranche Amendment entered into for the use and benefit of providing Company with renewable energy and RECs under the Green Invest Agreement plus a percentage of TVA’s projected cost to terminate each and every PPA entered into by TVA for the use and benefit of providing Company with renewable energy and RECs.

6.1.5 “**Collateral Threshold**” means the dollar amount(s) specified in section 6.3 below to reflect the amount of credit that will be extended to Company without Performance Assurance being provided by Company.

6.1.6 “**Performance Assurance**” means collateral in the form of one or more of the following:

- (a) a cash deposit; or
- (b) other security acceptable to TVA and agreed to in writing by the parties to this Green Invest Agreement, including, without limitation, a corporate guaranty, in form and substance acceptable to TVA, by an entity that has and maintains at least an ICR 7, and is issued from a U.S. entity, or a foreign entity that meets TVA’s sovereign rating requirements; provided, however, that such corporate guaranty will only be acceptable to secure Performance Assurance equal to the Collateral Threshold that TVA would assign to such entity if it were the party contracting with TVA for the arrangements provided for in this Green Invest Agreement.

SECTION 6.2 - ICR AS OF AGREEMENT EXECUTION

As of the date that this Green Invest Agreement was executed, TVA determined that Company had an ICR that qualified as ICR 3.

SECTION 6.3 - COLLATERAL THRESHOLD

At all times that Company has and maintains at least an ICR 7, the amount of the Collateral Threshold will be the applicable amount set forth in the table below as corresponding to Company’s then-existing ICR.

At all other times, the amount of the Collateral Threshold shall be deemed to be zero. Company and TVA agree that, from time to time, exceptional circumstances may occur that merit either an increase or a decrease in Company's Collateral Threshold amounts. Accordingly, at any such time, TVA may, in its reasonable discretion, revise the Collateral Threshold amounts upward or downward upon 30 days' written notice to Company.

COMPANY'S <u>ICR</u>	COLLATERAL THRESHOLD
<u>ICR 1</u>	\$40,000,000
<u>ICR 2</u>	\$30,000,000
<u>ICR 3</u>	\$25,000,000
<u>ICR 4</u>	\$20,000,000
<u>ICR 5</u>	\$17,500,000
<u>ICR 6</u>	\$15,000,000
<u>ICR 7</u>	\$12,500,000

SECTION 6.4 - FINANCIAL INFORMATION

- (a) For TVA's use in evaluating Company's financial condition, Company will provide to TVA:
 - (i) within 150 days following the end of each Company Fiscal Year, a copy of Company's annual report containing consolidated financial statements for such Fiscal Year; provided that Company may request a 30-day extension from TVA to meet this requirement if preparation of such financial statements is delayed; and
 - (ii) such different or additional financial information as TVA may, from time to time, reasonably request for TVA's use in evaluating Company's financial condition;
- (b) In all cases, the statements to be provided under section 6.4(a) above must be for the most recent accounting period and prepared in accordance with generally-accepted accounting principles; provided, however, that should any such statement not be available on a timely basis due to a delay in preparation or certification, such delay shall not be a breach of the Green Invest Agreement so long as Company diligently pursues the preparation, certification, and delivery of the statements. Further, it is expressly recognized that TVA prefers for the financial statements provided under subsection 6.4(a)(i) above to be audited financial statements and the unavailability of audited statements may be considered by TVA to be a negative factor in evaluating Company's ICR.
 - (i) Notwithstanding the above, such information used by TVA in evaluating Company's financial condition is only valid for a period of 16 months following the end of such Fiscal Year; and
 - (ii) failure to provide valid information will result in the then-existing ICR to be Below Investment Grade Rating.

However, Company will not be required to provide TVA with such information if:

- (a) the information is publicly available and accessible by TVA, or
- (b) Company has a Commercial Credit Rating.

SECTION 6.5 - PERFORMANCE ASSURANCE OBLIGATION

- (a) If, at any time during the term of the Green Invest Agreement, the then-applicable Credit Risk exceeds the then-applicable Collateral Threshold, a Performance Assurance deficiency in the amount of the excess shall exist ("**Performance Assurance Deficiency**"). Upon written notice from TVA of such Performance Assurance Deficiency, Company shall be obligated to promptly provide Performance Assurance or additional Performance Assurance, as applicable, to TVA in an amount equal to the amount of such Performance Assurance Deficiency.
- (b) If at any time during the term of the Green Invest Agreement, Distributor provides notice that of termination of its Power Contract or breaches the Power Contract by supplying power to its customers from sources that are not owned or controlled by TVA without TVA's prior consent, TVA will require Company to post Performance Assurance in one of the forms 6.1.6(a) or 6.1.6(b) regardless of the Company's then-existing ICR.
- (c) It is acknowledged and understood that Company'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 Company to continue receiving renewable energy and RECs under the terms of this Green Invest Agreement.

SECTION 6.6 - FAILURE TO PROVIDE PERFORMANCE ASSURANCE

Any Performance Assurance Deficiency arising under section 6.5 above shall constitute an Event of Default under Section 7.1, and if Company does not fully remedy the Performance Assurance Deficiency by the date falling ten days after the date when TVA gives a notice of such Performance Assurance Deficiency under section 6.5 above (or such later date as may be agreed upon), TVA shall have the right, upon five days' notice, to exercise any and all rights under the Green Invest Agreement, including, but not limited to, its rights under Section 7 of the Green Invest Agreement and Section 6.8 of this Agreement.

SECTION 6.7 - SECURITY INTEREST

To the extent Company provides any Performance Assurance under section 6.5 above, Company grants to TVA a 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 Company 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), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. It is expressly recognized and agreed, however, that:

- (a) any security interest provided for under this section 6.7 shall only apply to the specific collateral that is provided as Performance Assurance to meet Company's obligations under this Section 6; and
- (b) by virtue of this section 6.7, TVA will have no security interest or other preferred interest in any other property of Company or in any other property of any other entity providing the Performance Assurance. It is expressly recognized and agreed that this paragraph shall not affect any security interest that may be provided for under a separate agreement.

SECTION 6.8 - REMEDIES

Upon failure of Company to pay all charges applicable under the Green Invest Agreement within 30 days after the date of any bill, or within the applicable period for final payment or for correcting a Performance Assurance Deficiency applicable under any provision of the Green Invest Agreement or any amendment or supplement to the Green Invest Agreement, it is expressly recognized and agreed that TVA may do any one or more of the following:

- (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 property of Company in the possession of TVA; and
- (c) liquidate all Performance Assurance then held by or for the benefit of TVA, free from any claim or right of any nature whatsoever of Company or other pledgor of Performance Assurance, including any equity or right of purchase or redemption by Company or any such pledgor.