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Date: February 14, 2023

To: Honorable Mayor and Councilmembers

From: Patrick Piatt, Community Development and Services Director  
Marti Brown, City Manager

Subject: Power Purchase Agreement and Lease Agreement for Solar Panel Project

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**Recommendation:**

Adopt the attached resolution authorizing the City Manager to execute a Power Purchase Agreement (PPA) with Trinary Energy to finance the buyout of the existing agreement currently held with Clearway, and to construct and operate a new solar energy system to replace the current solar array located adjacent to the wastewater treatment plant at 1600 South Tehama Street and fully offset the cost of the wastewater treatment plant operations, as well as execute any necessary leases or other related documents.

**Rationale for Recommendation:**

The City's current solar array at the wastewater treatment plant is underperforming. Staff recommends replacing the solar panels with a new solar system to offset the energy use (e.g., PG&E) at the wastewater treatment plant and other city locations and reduce the City's energy bill.

**Background:**

On September 1, 2010, the City entered into an agreement with SPP DG DevCo, LLC, to build and operate a new solar energy array (Array) that was built adjacent to the Willows Wastewater Treatment Plant (WWTP) located at 1600 South Tehama Street. Through this agreement, SPP DG DevCo, LLC, would construct and operate an Array and the City would purchase the energy generated by the Array at a greatly reduced rate with modest increases built into the energy sale annually. The original agreement with SPP DG DevCo, LLC, has been sold multiple times and is now owned by Clearway that owns and operates the Array under the same terms of the agreement.

The WWTP is the City's largest user of energy as it is required to operate 24 hours a day to receive, treat, and move roughly 700,000 gallons of wastewater each day. The WWTP requires roughly 1,000,000 kw of energy each year on average, with some years requiring slightly less or more than that estimated average. The Array that was installed near the WWTP used a technology that has proved to be inefficient and somewhat dysfunctional and, on average, has been producing less than half the WWTP energy needs since it was installed. The result has been city payments for energy to both Clearway and PG&E.

It appears that the intention was to replace the cost of energy to run the City's sewage treatment WWTP that would normally be paid to PG&E. However, the solar array that was installed has never fully met this goal. During the first year the Array produced the greatest amount of energy, providing 76.2% of the total energy needs of the WWTP. On average and over the life of the Array, it has only produced 47.7% of the WWTP's energy needs and since May 2022, it has produced no energy. The City experienced savings in the first year of production and paid only a small sum of money to PG&E through an annual true up bill. There has been a reduction in energy generation over time by the Array installed by SPP DG DevCo, LLC, to the point where the City is paying an energy bill to Clearway per the agreement, and paying large "true up" bills annually to PG&E. In FY 2021, the true up bill to PG&E was \$97,894, in FY 2022 the true up was \$159,373, and for FY 2023, the true up bill is anticipated to exceed \$300,000.

Unfortunately, the original agreement between the City and SPP DG DevCo, LLC, was written to be favorable to the developer, with little information regarding benefits for the City, and little to no production expectations of the Array, guarantees or warranties, remedies for lack of performance, security against costs or liability to the City, or incentives or requirements for the developer to perform maintenance, service to the Array, or to maintain any level of benefit to the City. The same agreement is now owned by Clearway. A draft sample of a Power Purchase Agreement has been submitted by Trinary Energy to demonstrate that the proposed agreement would provide benefits to the City, that will be clearly defined if the City executes a final agreement with Trinary Energy (Attachment 2).

Per the existing agreement, there is a buyout schedule that is reduced each year and the City is in talks with Clearway to determine the correct year of operation. In the worst-case scenario, the buyout of the Clearway agreement would be \$1,552,758, but the staff believes this number should be lower, and is currently in negotiations with Clearway to determine the correct amount, or perhaps an amount that more favorably reflects the additional, and unexpected costs to PG&E through past true up bills. At this time, the buyout cost and therefore the true benefit of a new system is not available until negotiations with Clearway are complete. The cost benefit analysis in the attached Term Sheet is based on the worst-case scenario, and clearly demonstrates that even in the worst-case scenario there is a substantial benefit to the City to move forward with a new agreement with Trinary Energy.

### **Discussion & Analysis:**

Ecogreen, the company that installed new LED lighting throughout the City to bring greater energy savings, recommended Trinary Energy to potentially help find a solution to the City's WWTP energy needs and the underperforming Array. Through discussions with Trinary Energy, staff learned that the potential to install a new solar array is possible and could relieve the City

from the poorly executed agreement now held by Clearway. Due to changing State of California law, any financial benefit that is available under the current law will be unavailable after April 13, 2023.

The current agreement with Clearway was entered into when the State PUC was under the original Net Energy Metering plan (NEM 1) the system owners did not have to pay Non-bypassable (NBC) charges on the electricity that they bought from a utility on a month-to-month basis. NBC charges are per-kilowatt hour charges that are built into utility electric rates. They add up to approximately 2-3 cents per kWh and go towards funding energy efficiency, low-income customer assistance, and other related programs. NEM 1 expired on December 15, 2016, for PG&E customers and any new systems after that date were enrolled in NEM 2 and under that plan, NBCs are paid by the customer.

Under NEM 2, the policy for net metering in California is very simple: for every kilowatt-hour (kWh) of solar electricity you feed into the grid, you get a bill credit for one kWh of utility-generated electricity. When your solar panels produce more than you need, you “bank” the excess that offsets the times when panels don’t produce enough to meet the monthly use. If a system is sized correctly, net metering makes it possible to cover the electricity use for the entire year. The NEM 2 plan terminates on April 13, 2023, and any new systems after this date will be enrolled in the NEM 3 plan.

Due to the termination of NEM 2 on April 13, 2023, there is an urgency to take action in terminating the agreement with Clearway and submitting an application for a new solar array before April 13, 2023, under a new PPA agreement. Net metering under NEM 3 removes most of the advantages that current PG&E solar array customers benefit from. For example, the customer may no longer “bank” credits for electricity generation exceeding the customers electrical needs. As a result, periods of low energy production (e.g., winter months) are no longer offset by periods of high energy generation that exceed energy needs resulting in annual true up bills that could be equal to, or greater than, the true up bills that the City is currently paying to PG&E.

Trinary Energy proposes to buy out the agreement with Clearway and build a new solar array using materials that have been proven to provide energy generation as promised. The proposal includes a solar array that will be sized to produce 110% of the WWTP energy needs and the company will guarantee a minimum of 90% energy efficiency. Per Trinary’s proposal, at any point if the new Array produces less than 90% of the WWTP current energy needs, the company will pay the difference in costs paid to PG&E. Through this Power Purchase Agreement, the City of Willows will purchase energy produced by the Array funded by Trinary Energy at a reduced rate as opposed to the rate currently charged by PG&E as noted in the attached Term Sheet (Attachment 1). This will provide both a savings from the current cost of energy sold by PG&E, and protection from the expected annual increases of the future energy costs provided by PG&E. In addition, Trinary Energy will also install solar panels on the fire station and city hall to offset energy use at those facilities as well.

**Fiscal Impact:**

There is no impact to the General Fund as a result of this action. Future payments for energy will result in a savings to the sewage enterprise fund related to the operating costs of the WWTP.

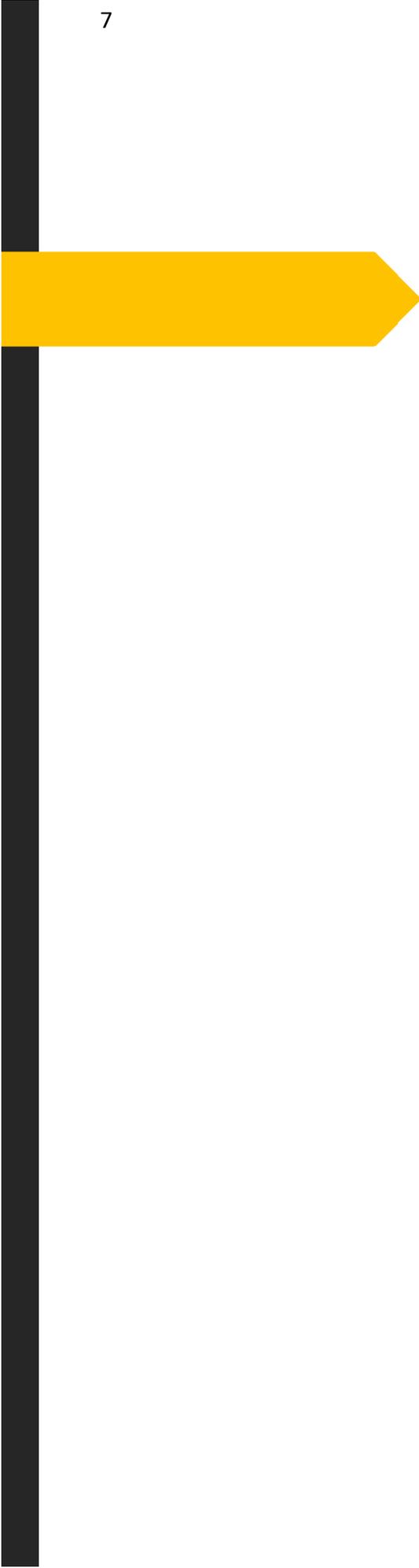
**Attachments:**

- Attachment 1: Trinary Energy Term Sheet
- Attachment 2: Trinary PPA Proposal
- Attachment 3: Sample Draft Trinary Power Purchase Agreement
- Attachment 4: Resolution XX-2023

### Trinary Capital - Term Sheet

- Trinary Capital will fund a buyout of the existing agreement from Clearway.
- Trinary Capital will fund the design and installation of a new solar array (Array) sized to produce 110% of the energy needed to operate the City of Willows Wastewater Treatment Plant (WWTP).
- Trinary Capital and their partner Turnkey Construction will install the new system, verify the energy production meets the value that has been promised.
- Trinary Capital and their partner Turnkey Construction will maintain at their sole cost, the entire Array and will ensure the Array will operate at the fullest capacity possible at all times.
- Trinary Capital will guarantee that the new Array will provide a minimum of 90% of the energy needs of the WWTP for a 25-year period. During the finance period, the City of Willows will pay to Trinary Capital for the energy consumed for a period of 2 years. The cost of energy in the first year will be at \$0.179 per KWH, which is a savings of \$0.095 per kWh. This is anticipated to generate a savings in the first year of approximately \$120,000.
- This agreement requires no money down, and no payments to Trinary Capital, other than the cost of energy per KWH as per the agreement.
- Costs to the WWTP Enterprise fund will only occur if PG&E requires upgrades (after the first year) to the electrical infrastructure or transformer, or if the City requests different panels, inverters, or other equipment to be used.
- The City has the option to request the use of different panels, inverters, or other, equipment subject to the acknowledgment that the “locked in” PPA rate may require and adjustment to accommodate the request.
- The PPA term is for a 25-year period. The City is eligible to purchase the PV system from Trinary Capital after year six.

	<b>Total kWh</b>	<b>1,258,587</b>	<b>← Total Production</b>		<b>11yr buyout</b>	
	<b>Year 1 Savings</b>	<b>\$0.274</b>	<b>← Current kwh rate</b>			
	<b>32.8%</b>	<b>\$0.184</b>	<b>← Solar PPA kwh rate</b>			
	<b>Utility annual Increase</b>	<b>City of Willows</b>	<b>PPA rate increase</b>	<b>Annual Production</b>	<b>PPA Annual Cost</b>	
	<b>6.00%</b>	<b>Current Cost</b>	<b>2.99%</b>	<b>.05% Degradation</b>	<b>New Cost</b>	
<b>Yr.</b>					<b>PPA Annual Savings</b>	
1	\$0.274	\$344,853	\$0.184	1,258,587	\$231,580	\$113,273
2	\$0.290	\$365,544	\$0.190	1,255,441	\$238,504	\$127,040
3	\$0.308	\$387,477	\$0.195	1,252,302	\$245,636	\$141,841
4	\$0.326	\$410,725	\$0.201	1,249,171	\$252,980	\$157,745
5	\$0.346	\$435,369	\$0.207	1,246,048	\$260,544	\$174,825
6	\$0.367	\$461,491	\$0.213	1,242,933	\$268,334	\$193,156
7	\$0.389	\$489,180	\$0.220	1,239,826	\$276,358	\$212,823
8	\$0.412	\$518,531	\$0.226	1,236,726	\$284,621	\$233,910
9	\$0.437	\$549,643	\$0.233	1,233,634	\$293,131	\$256,512
10	\$0.463	\$582,622	\$0.240	1,230,550	\$301,895	\$280,726
11	\$0.491	\$617,579	\$0.247	1,227,474	\$310,922	\$306,657
12	\$0.520	\$654,634	\$0.254	1,224,405	\$320,219	\$334,415
13	\$0.551	\$693,912	\$0.262	1,221,344	\$329,793	\$364,118
14	\$0.584	\$735,546	\$0.270	1,218,291	\$339,654	\$395,892
15	\$0.619	\$779,679	\$0.278	1,215,245	\$349,810	\$429,869
16	\$0.657	\$826,460	\$0.286	1,212,207	\$360,269	\$466,191
17	\$0.696	\$876,047	\$0.295	1,209,177	\$371,041	\$505,006
18	\$0.738	\$928,610	\$0.304	1,206,154	\$382,135	\$546,475
19	\$0.782	\$984,327	\$0.313	1,203,138	\$393,561	\$590,766
20	\$0.829	\$1,043,387	\$0.322	1,200,130	\$405,329	\$638,058
21	\$0.879	\$1,105,990	\$0.332	1,197,130	\$417,448	\$688,542
22	\$0.931	\$1,172,349	\$0.342	1,194,137	\$429,930	\$742,420
23	\$0.987	\$1,242,690	\$0.352	1,191,152	\$442,784	\$799,906
24	\$1.047	\$1,317,252	\$0.362	1,188,174	\$456,024	\$861,228
25	\$1.109	\$1,396,287	\$0.373	1,185,204	\$469,659	\$926,628
	<b>\$0.601</b>	<b>\$18,920,183</b>	<b>\$0.268</b>	<b>30,538,581</b>	<b>\$8,432,160</b>	<b>\$10,488,023</b>
				<b>25 year Utility Savings:</b>		<b>\$10,488,023</b>
				<b>Avoided Project Cost:</b>		<b>\$3,391,928</b>
				<b>Total Project Savings:</b>		<b>\$13,879,950</b>



# Solar PV Power Purchase Agreement Proposal

**City of Willows**  
201 North Lassen St  
Willows, CA 95988

Submitted By:  
**Trinary Capital, LLC**  
6510 E Spring St Suite 437  
Long Beach, CA 90815

**Jeremy Horton**  
714.768.3903



## Solar Power Purchase Agreement (PPA)

### PPA Financial Summary

<b>Project/Customer Name</b>	City of Willows
<b>Project Address</b>	201 North Lassen St Willows, CA 95988
<b>PPA Rate (\$/kWh) Year 1</b>	<b>\$0.185</b>
<b>Annual Escalation Rate</b>	2.99%
<b>PPA Term</b>	25 Years
<b>Upfront Cost</b>	<b>\$0</b>
<b>Estimated 25-Year Savings w/ Solar PPA*</b>	<b>\$14,783,117</b>

### Installed Solar PV System Parameters

<b>System Size (kW dc)</b>	785.97
<b>Solar Modules</b>	Tier 1
<b>Installation Type</b>	Municipality
<b>Annual System Production Year 1 (kWh)</b>	1,258,587
<b>Solar EPC</b>	Turnkey Solar

\* The Estimated Solar Utility Bill Savings and the Annual System Production is based on information provided by Turnkey Solar. Trinary Capital uses this assumption in order to quote a PPA rate and provide estimated yearly PPA savings. Actual PPA Savings may differ if Solar Utility Bill Savings or System Production differs.

## PPA General Overview

### HOW IT WORKS:

- City of Willows (or its affiliate) enters into a Solar Power Purchase Agreement (PPA) with Trinary Capital (or its affiliate, Trinary Energy)
- Trinary Capital pays for and arranges to have the solar system installed by Turnkey Solar on City of Willows's property, at no cost.
- Trinary Capital sells all of the solar electricity produced by the solar PV system to City of Willows at a cost that is lower than City of Willows's current utility cost.
- City of Willows remains connected to utility grid and will always have electricity should solar not be available – for example, during the night.
- Overall City of Willows still uses same amount of electricity except City of Willows now buys low-cost electricity from Trinary Capital and supplements any additional electricity needs with electricity from the utility.
- Net result is significant overall savings as Trinary Capital provides electricity at a lower cost than what City of Willows is currently paying the utility.

### PPA Highlights

- No Money Down - Requires zero cash out-of-pocket and results in immediate electricity and cash savings. A PPA provides positive cash flow almost immediately.
- Trinary Capital pays for the installation of the solar PV system and receives all available solar incentives and tax benefits while retaining ownership of the system.
- PPA rate "locked in" at a beginning rate of \$0.185 for Year 1, contingent that it can only change upward if the utility company requires electrical and/or transformer upgrades or if City of Willows requests different panels, inverters or other equipment be used.
- City of Willows has the option to request the use of different panels, inverters, or other equipment, subject to acknowledgment that the "locked in" PPA rate may require adjustment to accommodate the customer request.
- The PPA term is 25 years. City of Willows is eligible to purchase the PV system from Trinary Capital after year 6. Purchase request must be received in writing from City of Willows by Trinary Capital no later than 60 days before the end of desired Buyout Year.
- This PPA agreement includes an allocated buyout of their current solar contract of up to \$1,500,000. Final amount TBD based on verified payoff document from current solar provider.

## PPA General Overview (continued)

- A PPA is often used by organizations without the ability to take advantage of the available tax benefits and solar incentives or entities without sufficient access to funds for capital improvements or with a preference to invest their capital back into their business or for other needs.
- **A PPA is an Off Balance Sheet Transaction<sup>1</sup>**, meaning that it doesn't show up as a liability or commitment that might normally be required to account for on a Balance Sheet
- A Solar PPA includes the following:
  - Turn-key PV System Installation
  - 25-year, Worry-Free Operations and Maintenance Package
  - Online System Monitoring and Reporting
  - Locked in Electricity Costs

<sup>1</sup> Many Companies use various Operating Leases for Copiers, Automobiles, Equipment, etc and most companies are not required to report an Operating Lease on their Balance Sheet. Trinary Capital does not offer tax or accounting advice as part of this PPA and any specific questions relating to Operating Lease regulations should be discussed with your Accountant.

## System Benefits

### Environmental Benefits

#### **REDUCED OIL CONSUMPTION**

Through the installation of solar power, your property will require less fossil-fuel based energy in order to operate. In the aggregate, these savings are significant.

#### **REDUCED GREENHOUSE GASES**

By utilizing renewable energy, you will eliminate thousands of pounds of greenhouse gasses per year that would normally be released into the atmosphere through the burning of fossil fuels. This has a substantial effect on our air quality and will contribute to the fight against climate change.

#### **SAVED FORESTS**

The purchase of the proposed solar system would have the equivalent environmental impact of planting 906 acres of trees per year for the next 25 years.

### Additional Features

#### **LEED CERTIFICATION**

Leadership in Energy and Environmental Design (LEED) is an internationally recognized certification program sponsored by the U.S. Green Building Council that measures how well a building performs across energy savings, water efficiency, CO2 emissions reductions, improved indoor environmental quality and stewardship. By obtaining LEED certification, properties are able to increase occupancy/rental rates as well as qualify for more attractive financing. Solar systems qualify for LEED points which contribute towards LEED Certification.

#### **INCREASED PR & PUBLIC GOODWILL**

The public is pushing Companies they do business with and organizations they are associated with to practice social & environmental responsibility, including the implementation of environmentally friendly practices such as solar. By installing a solar (PV) system, your entity will demonstrate its commitment to clean energy & social responsibility and appeal to a broader following.

## System Benefits, continued

### PROPERTY VALUE INCREASE

By applying a modest cap rate to utility savings produced by Solar, your property should realize significant increases in value, which will positively impact your ability to refinance or sell your property should you choose to do so in the future.

### Maintenance, Warranty and Monitoring

#### ***ALL INCLUDED AT NO ADDITIONAL COST FOR 25-YEARS***

### OPERATIONS AND MAINTENANCE

Trinary Capital (or its affiliate), as the owner of the system, is responsible for maintaining the system for the entire term of the PPA. Additionally, City of Willows only pays for the electricity that is generated by the solar system, which gives Trinary Capital further incentive to ensure the system produces as much electricity as possible.

### WARRANTIES

The solar panels, inverters, and racking system come with warranties from the manufacturers.

### MONITORING

Trinary Capital provides online monitoring so you can track the solar system's production.

## Billing

(a) During the Initial Term, you will pay Trinary Capital (Or Its Affiliates) a price for each kWh delivered by the Solar Facility on a monthly basis as specified in the cover sheet to this Agreement, or as modified pursuant to Section 4. Trinary Capital (or its affiliates) will invoice you monthly and you agree to pay those invoices in full, without deduction or setoff, within 10 days following receipt. You agree to (i) establish an autopay/ACH to pay the applicable invoices, and (ii) complete the forms required to implement the same.

(b) During the Term, Trinary Capital (or its affiliates) will, within one month following each anniversary of the Facility Start Date, prepare and send to you an annual statement detailing the kWh of electric energy produced by the Solar Facility during that year. If in any year (measured from the Facility Start Date) the Solar Facility has produced less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, (other than for reasons of force majeure), Trinary Capital (or its affiliates) will pay you a true-up payment equal to the number of kWh by which the actual output of the Solar Facility was less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, multiplied by Price/kWh, as set out on the cover page to this Agreement.

(c) During any Renewal Term, the price will equal the greater of (i) 50% of the then-applicable Utility rate and (ii) \$0.1850 /kWh.

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Initials

## Assumptions and Clarifications

### Qualifications, Due Diligence and Financial Eligibility

The PPA rate is contingent on verification of City of Willows's qualifications, including due diligence and financial underwriting. Additionally, the PPA rate assumes that City of Willows meets minimum credit requirements, which will be validated prior to executing the PPA agreement.

### System Design and Performance

This PPA proposal and quoted PPA rates are derived using solar PV project installation details provided by Turnkey Solar as identified in the proposal. It is assumed that Turnkey Solar has correctly determined project feasibility and properly designed the system. PPA rates are contingent on verification of installed solar PV parameters such as system size, configuration, equipment, and estimated system production.

### Estimated Savings

The utility bill savings that the City of Willows will realize by installing solar is based on data provided by Turnkey Solar. Trinary Capital has not verified the solar utility bill savings and makes no representation as to its accuracy. Actual PPA savings may differ if utility bill usage differs and/or utility rates differ or fluctuate.

### Utility Rate Increases

We assume that your electric utility costs will increase by an average of 6% per year.

### System Production and Utilization

This proposal assumes City of Willows will use all electricity produced by the solar PV system to offset either all or a portion of City of Willows's electricity usage. Under a PPA, City of Willows pays for all electricity produced by the solar PV system, whether utilized by City of Willows or not.

### Tax Incentives and Other Assumptions

This proposal has made reasonable assumptions regarding applicable solar tax incentives and eligibility as well as assumptions regarding system performance, degradation, inflation rates, etc. in calculating the quoted PPA rate. Any change in applicable solar tax incentives or other changes to the assumptions used by Trinary Capital may result in a change to the final PPA rate.

### Upgrades

Trinary Capital assumes that no additional upgrades are needed at City of Willows's property in order to effectively install a solar PV System. If the Utility Company or a Governmental Agency requires any upgrades, they are not included in the proposed PPA rate and may result in a change to the final PPA rate.

## City of Willows Acceptance

### Statement of Intent to Move Forward

By signing below, City of Willows accepts this PPA proposal and agrees to move forward with the signing of a definitive PPA agreement. Trinary Capital, LLC or its affiliate shall draft the definitive PPA Agreement for City of Willows to review and execute. City of Willows acknowledges it has reviewed this PPA proposal and understands its contents including the assumptions and clarifications stated within.

City of Willows shall cooperate in providing requested financial and other information in order for Trinary Capital to perform its required due diligence.

City of Willows agrees not to solicit, pursue or engage any other solar PV proposals unless City of Willows and Trinary Capital mutually agree to terminate their understanding and intention to execute a formal definitive agreement. A Termination Fee of 25% of the entire first year of PPA charges may be applicable. Any offers of alternative financing of this project proposed by City of Willows must be presented to and approved by Trinary Capital and may be renegotiated or rejected by Trinary Capital for any reason.

City of Willows agrees to keep and treat the specific terms and conditions contained in this proposal on a confidential basis and to timely execute the definitive PPA Agreement.

**Deadline for Grandfathering.** With respect to improvements from the construction funded by Trinary Capital (or its affiliates); and with respect to the filing deadline requirements set forth by the California Public Utility Commission under NEM 3.0, customer agrees to have signed and submitted underwriting documents required by Trinary Capital (or its affiliates) by **February 28, 2023**. This is done to ensure that there would be ample time to do all necessary drafting, filing, engineering, site visits, and disclosures required.

Applications with all required documentation to qualify for grandfathering under NEM 2.0 must be submitted by April 14, 2023. A qualified interconnection application must meet the requirements insofar as, "the interconnection application date is defined as the submission date of an application that is free of major deficiencies and includes a complete application, a signed contract, a single-line diagram, a complete California Contractors License Board Solar Energy System Disclosure Document, a signed California Solar Consumer Protection Guide, and an oversizing attestation (if applicable)."

To qualify for Grandfathering, customer agrees and understands that this will require, as per state requirements for grandfathering under NEM 2.0, a signed contract among other necessary submission materials. For this, customer understands they must meet underwriting requirements with Trinary Capital (or its affiliates) in order to have a signed contract with Trinary for funding of their project. They agree to provide these documents to Trinary Capital (or its affiliates) prior to the **March 15, 2023**.

While this PPA LOI is written for a period of 25 years, should the NEM 3.0 guidelines be adopted, this agreement is subject to amendment to reflect the maximum Grandfathering lifetime of 20 years and the terms of the agreement are subject to change.

**Underwriting documents include a copy of:**

1. Articles of Incorporation
2. 3 Previous Years and YTD Financial Statements
3. Government ID from signatory of entity or owner
4. Proof of high-speed internet
5. Proof of insurance
6. Property Deed
7. Property Title
8. Property tax bill
9. Secretary of State documents stating business is in Good Standing.

*Authorized City of Willows Representative:*

\_\_\_\_\_  
Print Name

Customer: City of Willows  
 Address 201 North Lassen St  
 Willows, CA 95988

\_\_\_\_\_  
Signature

**System Parameters**

System Size: 785.97 kW (dc)  
 Estimated Year 1 Production: 1,258,587 kWh  
 PPA Rate Year 1: \$0.185/kWh  
 Annual Escalation: 2.99%  
 PPA Term: 25 Years  
 EPC Contractor: Turnkey Solar

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## Solar Power Purchase Agreement (Commercial)

Between:

On Behalf of

And

Trinary Solar Group II, LLC  
6510 E Spring St. Ste. 437  
Long Beach, CA 90815

### KEY COMMERCIAL TERMS:

Description of Solar Facility	Carport Photovoltaic panels, inverter, racking materials, production meter for monitoring
Solar Facility Size	22.575 kW
Estimated Solar Energy Output in Year 1	53,923 kWh
Annual Degradation Factor	0.5%
Length of Initial Term (the Initial Term)	25 Years
Estimated Solar Energy Output over Initial Term	1,270,207 kWh
Price/kWh	\$0.18/kWh
Monthly Payment in Year 1	\$808.84
Annual Payment Escalator	2.99%
Utility	PG&E

**Other Important Terms:** You should refer to this Agreement for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and security interests.

Your initials indicate that you have read, understand, and accept the explanation of estimated energy output, energy sources, payment terms and your rights regarding the purchase of the Solar Facility. You understand that Trinary Energy (together with its successors and Assignees, referred to in this Agreement as "TE") and you agree that TE will make a final determination of customer eligibility.

Accepted by (Initial): \_\_\_\_\_

Date: \_\_\_\_\_

CUSTOMER ACKNOWLEDGES THAT THE SOLAR FACILITY IS OWNED BY TE AND/OR ITS AFFILIATES, SUCCESSORS OR ASSIGNS.

THIS DOCUMENT DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT OF AND PAYMENT FOR ELECTRIC ENERGY TO BE SUPPLIED BY A SOLAR PHOTOVOLTAIC SYSTEM THAT WILL BE INSTALLED AT YOUR PROPERTY AND OWNED AND MAINTAINED BY TE. YOU WILL RECEIVE A FINAL, FULLY SIGNED COPY OF THIS AGREEMENT BEFORE WORK BEGINS.

### 1. Introduction

(a) You are entering into this Solar Power Purchase Agreement (this “**Agreement**”) with TE, together with its successors and Assigns. You represent that you are the owner and/or have the legal right to enter into this Agreement for the property located at 1800 Sierra St, Kingsburg, CA 93631 (the “**Property**”), and that your current electrical service is provided by the Utility PG&E. You further represent that every person or entity with an ownership interest in the Property has agreed to be bound by this Agreement and is listed on the signature page of this Agreement.

**Accepted by (Initial):** \_\_\_\_\_

(b) You may contact TE by mail at 6510 E Spring St Ste 437, Long Beach, CA 90815. TE will arrange for licensed individuals or entities to perform the design, permitting, construction, installation, testing, and activation (referred to in this agreement as “**TE Contractors**”) of a solar photovoltaic system as described on the cover page to this Agreement (the “**Solar Facility**”) to be located on the roof and/or grounds of the Property.

(c) You agree to allow TE Contractors to install and maintain the Solar Facility on the grounds and/or roof of the Property at a specific location to be identified and approved by TE. During the Initial Term and any Renewal Terms, TE agrees to provide you electric energy from the Solar Facility under the terms and conditions contained in this Agreement.

### 2. Solar Facility

(a) TE will arrange for the design, permitting, construction, installation and testing of the Solar Facility on the roof or grounds, as applicable, of the Property materially based on a system design that you will have approved. Once installed, TE will operate, maintain and monitor the Solar Facility so as to generate electric energy in accordance with prudent utility practices for use at the Property (“**TE's Obligations**”) during the Term of this Agreement. The Solar Facility will be an Eligible renewable energy resource under the California Renewables Portfolio Standard Program.

(b) You acknowledge and agree that:

(i) Unless the Solar Facility is purchased pursuant to Section 7 hereof, TE will own the Solar Facility and you will have no ownership interest in the Solar Facility; it shall remain the personal property of TE and shall not be considered for any purposes to be a fixture or otherwise a part of your Property.

(ii) The Solar Facility will not be subject to any lien, security interest, claim, mortgage, or deed of trust that may be imposed on or assessed against your interest in the Property,

or any other property belonging to you. You will have no right to sell, give away, transfer, pledge, remove, relocate, alter, disconnect, or tamper with the Solar Facility at any time as long as this Agreement remains in effect, even if TE is in default of its obligations under this Agreement. Notwithstanding the foregoing, in the event that the Solar Facility were to be deemed your property for any reason, you hereby grant to TE (and to any party to whom it may have sold its interest in the Solar Facility) a lien and security interest in and to the Solar Facility. TE or any TE affiliate may file (A) a UCC-1 or other notice of such lien and security interest with the California secretary of State,

(B) a fixture disclaimer filing in with the registrar/recorder (or its equivalent) of the county in which the Solar Facility is located and (C) any Notice of an Independent Solar Energy Producer Contract required by California law. You agree to cooperate with TE in connection with such filings.

(iii) The Solar Facility will be used primarily for standard business purposes but may not be used to heat a swimming pool.

(c) TE will be responsible for all costs and expenses related to performing TE's Obligations. You agree that TE has the authority and discretion to use and/or arrange for contractors or agents to perform or assist TE in performing TE's Obligations.

(d) You agree that TE, at its own expense, will arrange for the installation of, maintain, and periodically test a meter at the Property that will measure all electric energy delivered to you from the Solar Facility. You agree not to tamper with, damage or modify the meter in any way. You will be responsible for any damage or inaccuracies in the meter that are caused by you or any other person unrelated to TE who may come onto the Property.

### 3. Design and Installation

(a) The primary equipment used for the Solar Facility will typically include a series of interconnected photovoltaic panels, an inverter, racking materials, and a production meter. Other materials generally used as “balance of system” include disconnects, breakers, load centers, wires, and conduit. The design for the Solar Facility will be presented to you prior to installation. You will have five (5) business days following this presentation to request a change pursuant to Section 4(b). Otherwise, you will be deemed to have approved the Solar Facility design. With your written, deemed, or oral approval, the Solar Facility installation may begin at any time.

(b) If you wish to change the design or installation process, TE will use commercially reasonable efforts to accommodate your request. (See Section 4 regarding Extra Work and Change Orders.)

(c) If an obligation excluded from this Agreement must be performed in order to properly effect the installation of the Solar Facility, you agree to contract separately, and at your own expense, with a contractor who has been designated or approved by TE to perform such obligation. In this instance, TE will not unreasonably withhold such approval.

(d) TE will arrange for or obtain any permits needed for installation of the Solar Facility. You agree to cooperate with TE and TE Contractors and assist TE and TE Contractors in obtaining any permits needed, including the NEM Service application described in Section 5(a). You agree to complete and return to TE and/or its representatives, as appropriate, all applicable rebate documentation and, where applicable, Renewable Energy Credit documentation, upon request and following the date on which the Utility grants permission to operate the Solar Facility (the "**Facility Start Date**"). If you do not return the rebate or Renewable Energy Credit documentation, TE may invoice you for the Final Rebate amount (as defined in Section 4(a)(iii)).

(e) For the Initial Term and any Renewal Terms you agree to maintain the Property, at your expense, such that the Solar Facility retains shading conditions no less beneficial for solar energy production than those present at the time of Installation.

(f) TE will ensure that TE Contractors shall at the end of each business day keep the Property reasonably free from waste materials or rubbish caused by their operations. Prior to the Facility Start Date, TE Contractors shall remove all of their tools, construction/installation equipment, machinery, waste materials and rubbish from and around the Property.

(g) Subject to the exclusions set forth in Section 17, TE will ensure that TE Contractors return your Property to a condition similar to its original condition prior to the installation of the Facility, provided that you notify TE in writing or by e-mail of any deficiencies in restoration within five (5) business days of the municipal building inspector approval of the Solar Facility.

#### 4. Changes to the Agreement

(a) The following conditions may change the expected costs and benefits of this Solar Facility to both you and TE, which may include a change in the per kWh price:

- (i) change to the design of your Solar Facility;
- (ii) change in the system's annual energy production estimate, expressed in kWh, provided by the National Renewable Energy Laboratory PVWatts Calculator ("**PVWatts calculator**") (Final Year One Production Estimate);
- (iii) change in the final rebate amount associated with installing the Solar Facility ("**Final Rebate**") or any change in your applicable tariff (including any changes to net metering); and/or
- (iv) the availability of cellular service at the Property.

(b) If any of these conditions occur, TE may choose to modify the terms of this Agreement (including, without limitation the price per kWh) or cancel the Agreement. If TE chooses to modify the terms, TE will notify you in writing (referred to in this Agreement as a "**Change Order**") and you will have five (5) business days to accept the Change Order or cancel this Agreement. If you do not respond to TE within five (5) business days, TE may deem you to have cancelled the Agreement. Extra work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of work covered by the Change Order. In order to be enforceable, the Change Order must describe the scope of the extra work or change and the cost to be added or subtracted from the contract. A TE Contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation by the TE Contractor for work performed, based upon legal or equitable remedies designed to prevent unjust enrichment.

(c) You may choose to accept changes under this Section 4 in writing or by electronic mail.

#### 5. Purchase and Sale of Electricity

(a) As of the Facility Start Date, you must be taking service from the Standard Net Energy Metering Service or its equivalent ("**NEM Service**") from the Utility. You agree that you will continue to take NEM Service for as long as this Agreement is in effect. You agree to use the NEM Service currently in effect for this Utility or, in the event that the NEM Service is no longer in effect, you agree to use a substitute metering program as chosen by TE. You agree to execute all documentation associated with NEM Service, or any substitute metering service, and any refund, credit, or rebate program promptly at the request of TE, its affiliates, and/or the Utility.

(b) TE agrees to sell to you, and you agree to purchase from TE, all electric energy produced by the Solar Facility. All electric energy produced by the Solar Facility will be made available to you (or any subsequent owner of the Property) for use at the Property.

(c) If at any time you need more electric energy than is being produced by the Solar Facility ("**Supplemental Energy**"), you will be solely responsible for purchasing that electric energy from another supplier, such as the Utility. During the term of this Agreement, you should expect to purchase Supplemental Energy from your Utility. Depending on the terms of your NEM Service, the Utility will bill you either annually or monthly. TE will not be in default of this Agreement and will not be responsible for any Supplemental Energy you purchase to complement the electric energy produced by the Solar Facility.

(d) You agree that title to and risk of loss for the electric energy purchased under this Agreement shall pass from TE to you at the time when the electric energy reaches the point of interconnection, i.e., at the point where the Solar Facility connects to the Property's connection to your Utility.

(e) TE or ~~20~~ designee shall retain rights to any Federal Investment Tax Credit or State Incentives or Rebates related to renewable energy projects, including but not limited to carbon credits, renewable energy certificates, green tags, tradable renewable certificates, renewable energy credits and greenhouse gas offsets (Carbon Credits) for the Term of this Agreement. Notwithstanding the foregoing, if you purchase the Solar Facility from TE, you will own, and be entitled to proceeds from the sales of, solar renewable energy credits and renewable energy credits earned after the later of the dates you purchase the solar facility from TE.

## 6. Billing and Payment

(a) During the Initial Term, you will pay TE a price for each kWh delivered by the Solar Facility on a monthly basis as specified in the cover sheet to this Agreement, or as modified pursuant to Section 4. TE will invoice you monthly and you agree to pay those invoices in full, without deduction or setoff, within 10 days following receipt. You agree to (i) establish an autopay/ACH to pay the applicable invoices, and (ii) complete the forms required to implement the same.

(b) During the Term, TE will, within one month following each anniversary of the Facility Start Date, prepare and send to you an annual statement detailing the kWh of electric energy produced by the Solar Facility during that year. If in any year (measured from the Facility Start Date) the Solar Facility has produced less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, (other than for reasons of force majeure), TE will pay you a true-up payment equal to the number of kWh by which the actual output of the Solar Facility was less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, multiplied by Price/kWh, as set out on the original letter of intent.

(c) During any Renewal Term, the price will equal the greater of (i) 50% of the then-applicable Utility rate and (ii) \$0.18 /kWh.

## 7. Purchase of the Solar Facility

(a) You have the option to purchase the Solar Facility at any time after the sixth anniversary of the Facility Start Date.

(b) To purchase the Solar Facility pursuant to Section 7(a), you must deliver a written notice to TE of your intent to purchase the Solar Facility.

(c) The purchase price will be equal to the fair market value of the Solar Facility, as determined at the time ("**FMV**"). In such case, TE will prepare a valuation of the Solar Facility to determine the FMV. The valuation will take into account the Solar Facility's age; location; size; and other market characteristics such as equipment type and equipment operating, maintenance and service costs, value of electricity in your area, and any applicable solar incentives.

(d) Upon any transfer of the Solar Facility to you, this Agreement will automatically terminate, and you will own and be fully responsible for the Solar Facility.

## 8. Sale of Property and Assignment

(a) If you sell the Property prior to the sixth anniversary of the Facility Start Date, you must assign this Agreement to the new owner and the new owner must agree in writing to be bound by all of the terms and conditions set forth herein. After the sixth anniversary of the Facility Start Date, you may either (i) assign this Agreement to the new owner, or (ii) purchase the Solar Facility pursuant to Section 7. Please contact TE to obtain an assignment agreement. Whether or not this Agreement is assigned as contemplated in this Section 8(a), the right to receive the electricity from the Solar Facility, through this Agreement shall automatically be transferred with the title to the Property whether the title is transferred by voluntary sale, judicial or nonjudicial foreclosure, or by any other means. In the event of such a transfer without an assignment of this Agreement you will exercise your best efforts to obtain an assignment of this Agreement to the new owner of the Property as soon as possible.

(b) If you sell or otherwise transfer your interest in the Property in violation of the provisions of this Agreement, then you will be deemed to have breached this Agreement, and TE may exercise its rights under Section 16(a).

(c) TE may assign, lease, sublease, or transfer the Solar Facility and this Agreement along with all rights and obligations hereunder to any third party (each, an "**Assignee**"), without first giving notice to you or obtaining your consent, for any purpose, including, without limitation, transferring to a new equity owner of the Solar Facility, financing of the Solar Facility's installation, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity. If TE or its Assignee chooses to transfer the Solar Facility or this Agreement to another party, you agree to treat this other party as your counterparty under this Agreement.

(d) TE warrants and covenants to you that no Assignee, creditor, partner or owner of the Solar Facility has, as of the date of this Agreement, the right to remove or permanently decommission the Solar Facility.

## 9. Term and Termination

(a) You agree that this Agreement will only become effective when both you and TE have signed the Agreement.

(b) This Agreement will continue in effect until Twenty-Five (25) years following the Facility Start Date. This period shall be called the "**Initial Term**".

(c) At the end of the Initial Term, this Agreement will be automatically renewed for two additional five-year terms (the "**Renewal Term**" and, together with the Initial Term, the "**Term**"), unless you have purchased the Solar Facility or unless either you or TE gives the other party to this Agreement a termination notice at least thirty (30) days prior to the expiration of the Initial Term or the first Renewal Term

(d) At the end of the Initial Term and any Renewal Terms if either you or TE do not wish to renew the Agreement and you have not purchased the Solar Facility, TE will remove the Solar Facility at no cost to you. TE agrees to leave your property in the same general condition that existed immediately prior to removal of the Solar Facility, normal wear and tear excepted.

(e) This Agreement will terminate upon the closing of your purchase of the Solar Facility pursuant to Section 7.

#### 10. Access, Maintenance and Repair

(a) You hereby grant to TE the right to have TE Contractors access to your Property for the purpose of designing, installing, operating, maintaining and testing the Solar Facility and performing TE's Obligations. TE agrees to give you reasonable notice when TE needs to access your Property for any of the foregoing purposes and will endeavor to restrict such access to normal business hours.

(b) When possible, you agree to allow TE, TE Contractors and other construction professionals (an engineer, architect, or licensed contractor or their representative) hired by TE to access your Property to inspect any buildings and, if applicable, roofs prior to the installation of the Solar Facility to ensure that your Property can accommodate the Solar Facility.

(c) TE will, at its sole cost and expense, monitor and maintain the Solar Facility for the Term of the Agreement.

(d) If you plan to move or temporarily disconnect the Solar Facility to allow for maintenance of and/or repair to the Property or the roof, you agree, at your expense, either (i) to hire TE to arrange for the performance of this work or (ii) to obtain TE's approval to have your contractor perform the work and ensure that your contractor will carry commercial general liability policy in an amount not less than one million (\$1,000,000) dollars per occurrence and name TE and its successor or Assignee as an additional insured.

(e) You agree to make best efforts to provide a safe and secure work environment at your Property during the course of the Solar Facility installation and maintenance.

#### 11. Insurance

(a) Both you and TE agree to carry throughout the Term adequate insurance coverage in favor of TE to fully insure TE's Solar Facility against loss or damage from any risk including, but not limited to, theft, earthquake, wind, fire and earth movement from reputable companies in the business of providing insurance. Your insurance will be primary and non-contributory as respects any loss or damage to TE's Solar Facility. You agree to provide TE with evidence of your insurance policy for the Solar Facility upon request. If Swedish Evangelical Lutheran Concordia Congregation of Kingsburg, Fresno CO, California does not maintain insurance that covers damage to TE's Solar Facility, it will be responsible for the consequences of not maintaining such insurance. If you do not maintain insurance that covers damage to TE's Solar Facility, you

will be responsible for the consequences of not maintaining such insurance.

(b) Commercial General Liability Insurance (CGL). TE carries commercial general liability insurance. Additionally, TE requires TE Contractors to maintain CGL and workers compensation insurance, as fully described below:

(i) TE requires TE Contractors performing the Solar Facility installation to maintain insurance coverage as follows: workers compensation, subject to statutory limits; Employers liability, with a minimum of one million (\$1,000,000) dollars each occurrence; commercial general liability, in an amount not less than one million (\$1,000,000) dollars each occurrence and two million (\$2,000,000) dollars annual aggregate; commercial automobile liability, in an amount not less than a combined bodily injury and property damage limit of one million (\$1,000,000) dollars per accident; excess liability insurance with a limit of one million (\$1,000,000) dollars per occurrence and in the annual aggregate in excess of the limits of insurance provided above; and any other insurance required by applicable laws or regulations.

(c) You agree to carry insurance that covers all damage to your Property during the term of this Agreement, including damage resulting from the Solar Facility, provided such damage was not caused by the gross negligence of TE. You agree that you are responsible for contacting your insurance carrier and inquiring as to whether the installation of the Solar Facility will impact your existing coverage. If additional insurance is required to maintain your existing coverage, you will be responsible for either (i) procuring and maintaining such insurance or (ii) the consequences of not procuring and maintaining such insurance.

Your initials indicate that you have read and understand and accept the limitations and obligations set forth in this Section 11.

Accepted by (Initial): \_\_\_\_\_

#### 12. Limitations of Liability

(a) TE WILL BE LIABLE TO YOU AND ANY OTHER PERSON FOR DAMAGES OR LOSSES DIRECTLY ATTRIBUTABLE TO ITS NEGLIGENCE OR WILLFUL MISCONDUCT. TOTAL LIABILITY FOR SUCH DIRECT DAMAGES OR LOSSES WILL IN NO EVENT EXCEED THE AMOUNTS PAID UNDER THIS AGREEMENT. THIS WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR EQUITY ARE WAIVED, EVEN IF YOU HAVE GREATER RIGHTS UNDER CALIFORNIA'S LAWS, WHICH YOU SHOULD CONSULT. TE IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES TO THE SOLAR FACILITY. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED

(b) EXCEPT AS EXPRESSLY PROVIDED HEREIN, TE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED,

REGARDING ITS OBLIGATIONS FOR THE SOLAR FACILITY. THERE IS NO WARRANTY OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED

### 13. Resolution of Disputes

(a) You agree that to expedite the resolution of and to control the costs of disputes, resolution of any dispute relating to this Agreement (Dispute), will be resolved according to the procedure set forth in this Section 13.

(b) Unless otherwise agreed in writing, TE and you agree to continue to perform each party's respective obligations under this Agreement during the course of the resolution of the Dispute.

(c) You and TE agree to first try to resolve informally and in good faith any Dispute. Accordingly, you agree to send a written notice of Dispute to the address on the first page of this Agreement, and TE will send a written notice of Dispute to your billing address. If you and TE do not reach an informal agreement to resolve the Dispute within 45 days after the notice of Dispute is received, you or TE may commence a formal proceeding as detailed below. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled for the 45 days during which the parties try to informally resolve any Dispute.

(d) If TE and you cannot resolve the Dispute informally, the Dispute will be resolved by binding arbitration. ARBITRATION MEANS YOU WAIVE YOUR RIGHT TO A JURY TRIAL AND ALL DISPUTES SHALL BE DECIDED BY AN ARBITRATOR. This agreement to arbitrate Disputes is governed by the Federal Arbitration Act (FAA). The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (JAMS Rules) and under the rules set forth in this Agreement. If there is a conflict between the JAMS Rules and this Agreement, this Agreement will govern.

(e) CLASS ACTION WAIVER. ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. AS A RESULT, NEITHER YOU NOR TE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CUSTOMERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

(f) You may, in arbitration, seek all remedies available to you under this Agreement as interpreted under California law. If you decide to initiate arbitration against TE, You will pay the costs for initiating the arbitration proceedings. If TE decides to initiate arbitration, TE will be required to pay the costs associated with initiating the arbitration proceeding. Other reasonable fees, such as attorneys' fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules. If the arbitrator finds in your favor, TE will pay your reasonable attorney's fees and expenses of travel to the arbitration. The arbitration hearing will take place in Orange County, CA, unless you and TE agree to another location in writing. In order to initiate arbitration proceedings, you or TE must take the following actions:

(i) Write a demand for arbitration. The demand must include a description of the Dispute and the amount of damages you are seeking. The form of Demand for Arbitration can be found under ADR Forms at [www.jamsadr.com](http://www.jamsadr.com).

(ii) Send three copies of the demand for arbitration to the current JAMS location in Orange County, California.

(iii) Send one copy of the demand for arbitration to the other party.

(g) In accordance with the FAA and the JAMS Rules, the arbitrator's decision will be final and binding. Any right to appeal is likewise governed by the FAA and JAMS Rules. Any arbitration award may be enforced in any court with jurisdiction.

(h) You and TE agree to receive service of process of the arbitration demand by registered or certified mail, return receipt requested, at your billing address and TE's principal executive office, as applicable.

### 14. Force Majeure

(a) Neither you nor TE will be in default of this Agreement for any delay or failure in the performance under this Agreement (including any obligation to deliver or accept the electric energy output of the Solar Facility) if the delay or failure is due to Force Majeure. Force Majeure includes acts of God such as storms, fires, floods, lightning and earthquakes, war, riot, acts of a public enemy or other civil disturbance, or a strike, walkout, lockout or other significant labor dispute. Force Majeure does not include economic hardship of either you or TE, a power grid failure (except if caused directly by a Force Majeure event), a failure or delay in the granting of permits, or insufficiency, unavailability, failure, or diminishment of solar resources, except as a result of an event that would otherwise qualify as a Force Majeure.

(b) Force Majeure cannot be attributable to fault or negligence on the part of the party claiming Force Majeure and must be caused by things beyond that party's reasonable control. Additionally, you or TE must have taken all reasonable technical and commercial precautions to prevent the event or minimize its impact. Any insurance proceeds that you receive in connection with a Force Majeure shall be payable to TE to the extent of any damage to the Solar Facility or other losses sustained by TE in connection with such Force Majeure,

(c) In order to claim Force Majeure as a reason for non-performance, you or TE must give notice to the other party of the Force Majeure within fourteen (14) days of the occurrence of the Force Majeure and estimate how long it will last and what the potential impact is on the Agreement. The party claiming Force Majeure must (i) make reasonable attempts to continue to perform under the Agreement, (ii) quickly take action to correct the problem caused by the Force Majeure, and (iii) make reasonable efforts to limit damage to the other party. Finally, the party claiming Force Majeure must notify the other party when

the Force Majeure event ends and performance will resume as contemplated in this Agreement.

#### 15. Your Remedies

In addition to any other remedies you have under this Agreement if TE (or any applicable Assignee that owns the Solar Facility) (i) makes a general assignment for the benefit of creditors, files a petition in bankruptcy, appoints a trustee or receiver, or has all or substantially all of its assets subject to attachment, execution or other judicial seizure, or (ii) fails to perform an obligation under the Agreement and such failure continues beyond a period of ninety (90) days (provided, in each case, this Agreement is otherwise in full force and effect prior to such event), you will have the option to purchase the Solar Facility as set forth in Section 7(a).

#### 16. TE's Rights and Remedies

(a) If you (i) fail to perform a material obligation under the Agreement, and you do not correct the failure within one hundred twenty (120) days, (ii) make a general assignment for the benefit of creditors, file a petition in bankruptcy, appoint a trustee or receiver or have all or substantially all of your assets subject to attachment, execution or other judicial seizure, or you become insolvent or unable to pay your debts, or (iii) vacate or abandon the Property, you shall be deemed in default of this Agreement. If you are in default of this Agreement, TE shall have all right available at law or in equity.

(b) If you (i) terminate this Agreement without also purchasing the Solar Facility or (ii) are deemed in default of this Agreement, TE shall, subject to any cure rights provided herein, have all rights granted by law or equity, including the right to remove, or restrict delivery of electricity to you from, the Solar Facility.

#### 17. Exclusions

This Agreement does not include an obligation by TE or any of its agents, TE Contractors, subcontractors or representatives to: remove or dispose of any hazardous substances that currently exist on the Property; improve the construction of the roof or the Property to support the Solar Facility; remove or replace existing rot, rust, or insect infested structures; provide structural framing for any part of the Property; pay for or correct construction errors, omissions and deficiencies by you or your contractors; pay for, remove or remediate mold, fungus, mildew, or organic pathogens; upgrade your existing electrical service; install any smoke detectors, sprinklers or life safety equipment required by municipal code or inspectors as a result of the Solar Facility installation; pay for the removal or re location of equipment, obstacles or vegetation in the vicinity of the Solar Facility; pay for any costs associated with municipal design or architectural review, or other specialty permits (this includes cost to attend any public hearings, notification of neighbors, or additional drawings required); paint electrical boxes or conduit at the Property; and move items unassociated with the Solar Facility around the Property.

#### 18. Miscellaneous

(a) You agree that this Agreement constitutes the entire agreement between you and TE. If any provision is declared to be invalid, that provision will be deleted or modified, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which shall include, without limitation, the obligation to make payments hereunder.

(b) This Agreement shall be interpreted in accordance with and governed by the laws of the State of California, without regard to the conflict of laws principles thereof.

(c) You agree that TE has the right to obtain photographic images of the Solar Facility and the Property, and to use such photographic images for internal and quality control purposes. TE will not use photographic images of the Solar Facility or the Property in its marketing and promotional materials without first obtaining your express written approval.

(e) This Agreement supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof.

(f) Any notice or other communication to be made hereunder, even if otherwise required to be in writing under other provisions of this Agreement or any other documents or agreements that have been provided to you in connection with this Agreement, may alternatively be made in an electronic record transmitted electronically to the electronic addresses provided by you. Any notice or communication made in electronic form will have the same legal effect and enforceability as if made in non-electronic form.

(g) This Agreement is binding upon, and inures to the benefit of, the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(h) No Amendment to this Agreement shall be effective unless it is in writing and signed by both parties.

#### 19. Mechanic's Liens

TE will only arrange for TE Contractors to design, install, operate, maintain and test the Solar Facility. TE will NOT put a mechanic's lien on your property and will indemnify, defend and hold you harmless for any mechanic's lien that is placed on your property by TE Contractors as a result of your entering into this Agreement

*(Remainder of Page Intentionally Left Blank)*

*(Signature Page Follows)*

On behalf of

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

## EXHIBIT A

## Monthly Payment Schedule

<b>Year</b>	<b>Monthly Payment</b>
1	\$808.84
2	\$828.86
3	\$849.38
4	\$870.40
5	\$891.94
6	\$914.02
7	\$936.64
8	\$959.82
9	\$983.58
10	\$1,007.93
11	\$1,032.87
12	\$1,058.44
13	\$1,084.63
14	\$1,111.48
15	\$1,138.99
16	\$1,167.18
17	\$1,196.07
18	\$1,225.67
19	\$1,256.01
20	\$1,287.09
21	\$1,318.95
22	\$1,351.59
23	\$1,385.05
24	\$1,419.33
25	\$1,454.46

## EXHIBIT B

## Estimated Annual Production Schedule

Year	Estimated Production (kWh)
1	53,923
2	53,653
3	53,385
4	53,118
5	52,853
6	52,588
7	52,325
8	52,064
9	51,803
10	51,544
11	51,287
12	51,030
13	50,775
14	50,521
15	50,269
16	50,017
17	49,767
18	49,518
19	49,271
20	49,024
21	48,779
22	48,535
23	48,293
24	48,051
25	47,811

EXHIBIT C

NOTICE OF CANCELLATION

DATE: \_\_\_\_\_

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 3 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR PROPERTY, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER TE AT 6510 E SPRING ST STE 437, LONG BEACH, CA 90815, NOT LATER THAN MIDNIGHT OF 08/06/2022

I HEREBY CANCEL THIS TRANSACTION.

DATE: \_\_\_\_\_

CUSTOMER SIGNATURE \_\_\_\_\_

**NOTICE OF CANCELLATION MAY BE SENT TO TE AT THE ADDRESS NOTED ON THE FIRST PAGE OF THIS CONTRACT**

**NOTICE OF CANCELLATION**

DATE: \_\_\_\_\_

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 3 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR PROPERTY, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER TE AT 6510 E SPRING ST STE 437, LONG BEACH, CA 90815, NOT LATER THAN MIDNIGHT OF 08/06/2022

I HEREBY CANCEL THIS TRANSACTION.

DATE: \_\_\_\_\_

CUSTOMER SIGNATURE \_\_\_\_\_

**NOTICE OF CANCELLATION MAY BE SENT TO TE AT THE ADDRESS NOTED ON THE FIRST PAGE OF THIS CONTRACT**



**City of Willows  
Resolution xx-2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLOWS, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A POWER PURCHASE AGREEMENT (PPA) WITH TRINARY CAPITAL TO FINANCE THE BUYOUT OF THE EXISTING AGREEMENT CURRENTLY HELD WITH CLEARWAY, AND TO CONSTRUCT AND OPERATE A NEW SOLAR ENERGY SYSTEM TO REPLACE THE CURRENT SOLAR ARRAY LOCATED ADJACENT TO THE WASTEWATER TREATMENT PLANT AT 1600 SOUTH TEHAMA STREET AND FULLY OFFSET THE COST OF THE WASTEWATER TREATMENT PLANT OPERATIONS, AS WELL AS EXECUTE ANY NECESSARY LEASES OR OTHER RELATED DOCUMENTS.**

**WHEREAS**, a solar array was constructed adjacent to the Willows Wastewater Treatment Plant (WWTP) through a Power Purchase Agreement executed on September 1, 2010, with SPP DG DevCo, LLC, and that agreement is currently held by Clearway; and

**WHEREAS**, the existing solar array was undersized to meet the energy needs of the WWTP and the solar array's ability to generate energy has significantly degraded each year since it was first put into service; and

**WHEREAS**, the WWTP requires a significant amount of energy to ensure 24-hour operation and the energy costs of Pacific Gas and Electric is rapidly rising; and

**WHEREAS**, the City of Willows desires to offset the cost of energy to operate the WWTP and ensure a lower rate of annual increase for the cost of energy; and

**WHEREAS**, Trinary Capital has submitted a proposal that staff has deemed fair and favorable to buyout the agreement held by Clearway, install a more efficient solar array in place of that existing adjacent to the WWTP, and install additional solar panels on Willows City Hall and the Willows Fire Station to offset the cost of energy required for those buildings;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILLOWS AS FOLLOWS:**

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council of the City of Willows.
2. The City Manager is hereby authorized and directed to execute an agreement with Trinary Capital to finance the buyout of the existing agreement currently held with Clearway, and to construct and operate a new solar energy system.
3. The City Manager is hereby authorized and directed to execute a new power purchase agreement for the purchase of power from the new solar energy system.
4. The City Manager is hereby authorized and directed to execute any documents or leases necessary that are related to the construction of a new solar energy system on the City property located at 1600 South Tehama Street, in Willows, CA.

5. This Resolution shall become effective immediately.

**PASSED, APPROVED AND ADOPTED** at the regular meeting of the City Council on this 14<sup>th</sup> day of February 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:

\_\_\_\_\_  
Richard Thomas, Mayor

\_\_\_\_\_  
Louis Osemwegie, City Clerk