

**RESOLUTION 08-2025**

**A RESOLUTION APPROVING AND AUTHORIZING  
A POWER SALES AGREEMENT BETWEEN THE  
KERRVILLE PUBLIC UTILITY BOARD AND THE  
KERRVILLE PUBLIC UTILITY BOARD PUBLIC  
FACILITY CORPORATION, THE ISSUANCE OF  
POWER SUPPLY REVENUE BONDS BY THE  
KERRVILLE PUBLIC UTILITY BOARD PUBLIC  
FACILITY CORPORATION, AND OTHER MATTERS  
IN CONNECTION THEREWITH**

**WHEREAS**, the City Council of the City of Kerrville, Texas (the “City”) authorized and approved the creation of the Kerrville Public Utility Board Public Facility Corporation (the “Corporation”) under Chapter 303, as amended, Texas Local Government Code (the “Act”), for the purpose of financing or providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of “public facilities” (as defined in the “Act”), including electric power supply facilities to be devoted to public use by the City’s electric, light and power system (the “System”), as managed by the Kerrville Public Utility Board (“KPUB”) in an orderly, planned manner and at the lowest possible costs (collectively, the “Public Purposes”); and

**WHEREAS**, the Corporation’s Board of Directors (the “Board”) has determined that it is in the public interest and to the benefit of the City’s residents that it continue to finance the construction of a Gas-Fired Reciprocating Internal Combustion Engine (RICE) Facility Project (the “Project”), as further described in the Corporation Resolution (defined below), in order to effectuate the Public Purposes in a timely and cost effective manner; and

**WHEREAS**, the Corporation has developed a plan of finance for the Project under which it expects to issue in one or more series of tax-exempt and taxable revenue bonds (collectively, the “Bonds”) issued under the terms of a Trust Indenture as further described in the Corporation Resolution (the “Indenture”); and

**WHEREAS**, the Bonds will be special limited obligations of the Corporation, secured and payable by the pledge of the revenues generated under the terms of a power sales agreement (the “Power Sales Agreement”) between the Corporation and KPUB, under the terms of which KPUB will purchase a portion of the Project’s output in exchange for making the payments described under the Power Sales Agreement; and

**WHEREAS**, the Project is expected to cost approximately \$181,000,000, including certain financing costs and capitalized interest; and

**WHEREAS**, the Project is expected to provide KPUB with a financially stable and reliable source of electric power that would not otherwise be available through purchases of electricity using long term power agreements with wholesale power suppliers other than the Corporation; and

**WHEREAS**, pursuant to Senate Bill 2627 - the Powering Texas Forward Act (the “TEF Act”) - the Public Utility Commission of Texas (“PUCT”) was directed by the Texas Legislature to administer the Texas Energy Fund (“TEF”) to provide grants and loans to finance the construction, maintenance, modernization, and operation of electric facilities in Texas through four different programs, one of which is the In-ERCOT Generation Loan Program; and

**WHEREAS**, under the In-ERCOT Generation Loan Program, the PUCT, in its capacity, as Lender, is authorized to provide low-interest loans to qualifying companies for the construction of new dispatchable electric generating facilities in the ERCOT power region; and

**WHEREAS**, PUCT adopted 16 Texas Administrative Code §25.510 to establish the application process, project eligibility requirements, evaluation criteria, and loan terms for the In-ERCOT Generation Loan Program; and

**WHEREAS**, the Corporation constitutes part of the City’s municipally owned utility and is authorized by law to construct, maintain, or finance the Project and may borrow money from the TEF under the Texas Administrative Code; and

**WHEREAS**, KPUB submitted on behalf of the Corporation an application to the In-ERCOT Generation Loan Program and TEF approved the application and is expected to provide under the terms of a credit agreement between PUCT and the Corporation (the “Credit Agreement”) financing for 60% of the cost of the Project at a rate of interest equal to 3% per annum; and

**WHEREAS**, under the terms of the Credit Agreement, the Corporation will issue and deliver to the PUCT from time to time certain of its Bonds issued on a taxable basis; and

**WHEREAS**, the Corporation has worked with its financial advisor to develop a plan to finance the remaining costs of the Project using Bonds sold on the open market issued on a taxable or tax-exempt basis; and

**WHEREAS**, the Board of the Corporation approved a resolution authorizing the financing of the Project through the issuance of the Bonds, the execution of the Indenture, the Power Sales Agreement, the Credit Agreement, and the transactions

contemplated thereby, in the form attached hereto as **Exhibit A** (the “Corporation Resolution”); and

**WHEREAS**, the KPUB approved a resolution authorizing the financing of the Project and the execution by KPUB of the Power Sales Agreement, and the transactions contemplated thereby, in the form attached hereto as **Exhibit B** (the “KPUB Resolution”); and

**WHEREAS**, prior to the issuance of Bonds, the Corporation’s Bond Resolution and the transactions contemplate therein must be approved by the City Council of the City;

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

**SECTION ONE. Authorization of Contracts.** The Indenture, the Credit Agreement, and the Power Sales Agreement to be executed by the Corporation, and the Power Sales Agreement to be executed by KPUB, and any continuing disclosure agreement to be executed by KPUB in connection with the marketing and sale of the Corporation’s Bonds, are hereby approved, with such changes as approved and authorized by the resolution of the Corporation and the resolution of KPUB, not contrary to the general intent thereof as such officer shall deem necessary or appropriate.

**SECTION TWO. Approval of Bonds.** Issuance of the Bonds by the Corporation is hereby approved for purposes of the Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended, *provided* that the City shall be in no way obligated on the Bonds or to provide any money to the Corporation to pay the Bonds.

**SECTION THREE. Management of the System.** In accordance with Ordinance No. 91-11, the City Council hereby confirms and agrees that for so long as Bonds secured by the Power Sales Agreement remain outstanding, the complete management and control of the System shall remain vested in KPUB.

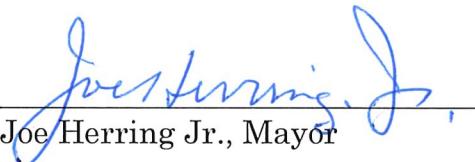
**SECTION FOUR. Other Action.** The Mayor, the Secretary, and the City Manager of the City, or any of them, are authorized to take any and all action necessary or convenient to give effect to the actions authorized hereby and to observe and perform the obligations of the City to facilitate the transactions authorized by this Resolution.

**SECTION FIVE. Findings.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

**SECTION SIX. Applicable Law.** This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION SEVEN. Effective Date.** This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND ADOPTED ON** this the 11<sup>th</sup> day of MARCH,  
A.D., 2025.



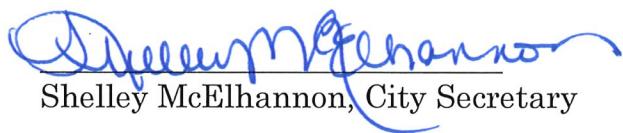
Joe Herring Jr.,  
Joe Herring Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:



Shelley McElhannon, City Secretary

EXHIBIT A - CORPORATE RESOLUTION

RESOLUTION NO. 25-01

A RESOLUTION AUTORIZING THE ISSUANCE OF POWER SUPPLY REVENUE BONDS TO FINANCE POWER GENERATION FACILITY FOR THE BENEFIT OF THE KERRVILLE PUBLIC UTILITY SYSTEM; ESTABLISHING CERTAIN SPECIFIED PRICING PARAMETERS; APPROVING THE FORM OF THE INDENTURE, THE POWER SALES AGREEMENT, AND THE CREDIT AGREEMENT, AND OTHER AGREEMENTS RELATED THERETO; AUTHORIZING THE PREPARATION AND APPROVAL OF THE PRELIMINARY OFFICIAL STATEMENT AND DISTRIBUTION THEREOF; APPROVING PREPARATION AND DISTRIBUTION OF A FINAL OFFICIAL STATEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION WITH, AND THE TAKING OF OTHER ACTION TO EFFECT, THE ISSUANCE, SALE AND DELIVERY OF THE POWER SUPPLY REVENUE BONDS; AND RESOLVING RELATED MATTERS

WHEREAS, the City Council of the City of Kerrville, Texas (the "City") authorized and approved the creation of the Kerrville Public Utility Board Public Facility Corporation (the "Corporation") under Chapter 303, as amended, Texas Local Government Code (the "Act"), for the purpose of financing or providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of "public facilities" (as defined in the "Act"), including electric power supply facilities to be devoted to public use by the City's electric, light and power system (the "System"), as managed by the Kerrville Public Utility Board ("KPUB") in an orderly, planned manner and at the lowest possible costs (collectively, the "Public Purposes"); and

WHEREAS, the Corporation's Board of Directors (the "Board") has determined that it is in the public interest and to the benefit of the City's residents that it continue to finance the construction of a Gas-Fired Reciprocating Internal Combustion Engine (RICE) Facility Project (the "Project"), as further described in Exhibit A of this Resolution, in order to effectuate the Public Purposes in a timely and cost effective manner; and

WHEREAS, the Corporation has developed a plan of finance for the Project under which it expects to issue in one or more series of tax-exempt and taxable revenue bonds (collectively, the "Bonds") issued under the terms of a Trust Indenture as further described in this Resolution (the "Indenture"); and

WHEREAS, the Bonds will be special limited obligations of the Corporation, secured and payable by the pledge of the revenues generated under the terms of a power sales agreement (the "Power Sales Agreement") between the Corporation and KPUB, under the terms of which

KPUB will purchase a portion of the Project's output in exchange for making the payments described under the Power Sales Agreement; and

**WHEREAS**, the Project is expected to cost approximately \$181,000,000, including certain financing costs and capitalized interest costs; and

**WHEREAS**, the Project is expected to provide KPUB with a financially stable and reliable source of electric power that would not otherwise be available through purchases of electricity using long term power agreements with wholesale power suppliers other than the Corporation; and

**WHEREAS**, pursuant to Senate Bill 2627 - the Powering Texas Forward Act (the "TEF Act") - the Public Utility Commission of Texas ("PUCT") was directed by the Texas Legislature to administer the Texas Energy Fund ("TEF") to provide grants and loans to finance the construction, maintenance, modernization, and operation of electric facilities in Texas through four different programs, one of which is the In-ERCOT Generation Loan Program; and

**WHEREAS**, under the In-ERCOT Generation Loan Program, the PUCT, in its capacity, as Lender, is authorized to provide low-interest loans to qualifying companies for the construction of new dispatchable electric generating facilities in the ERCOT power region; and

**WHEREAS**, PUCT adopted 16 Texas Administrative Code §25.510 to establish the application process, project eligibility requirements, evaluation criteria, and loan terms for the In-ERCOT Generation Loan Program; and

**WHEREAS**, the Corporation constitutes part of the City's municipally owned utility and is authorized by law to construct, maintain, or finance the Project and may borrow money from the TEF under the Texas Administrative Code; and

**WHEREAS**, KPUB submitted on behalf of the Corporation an application to the In-ERCOT Generation Loan Program and TEF approved the application and is expected to provide under the terms of a credit agreement between PUCT and the Corporation (the "Credit Agreement") financing for 60% of the cost of the Project at a rate of interest equal to 3% per annum; and

**WHEREAS**, under the terms of the Credit Agreement the Corporation will issue and deliver to the PUCT from time to time certain of its Bonds issued on a taxable basis; and

**WHEREAS**, the Corporation has worked with its financial advisor to develop a plan to

finance the remaining costs of the Project using Bonds sold on the open market issued on a taxable or tax-exempt basis; and

**WHEREAS**, the Board hereby finds and determines that the adoption of this Resolution is in the best interests of the System and the residents of the City; and

**WHEREAS**, prior to the issuance of Bonds, this Resolution and the transactions contemplated herein shall be approved by the KPUB and the City Council of the City; now therefore,

**BE IT RESOLVED BY BOARD OF DIRECTORS OF KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION:**

**Section 1. Incorporation of Preamble.** The statements and findings in the preamble and recitals of this Resolution are hereby adopted and made a part of this Resolution.

**Section 2. Authorization of Bonds, Pricing Certificates, Execution and Delivery of the Indenture, the Power Sales Agreement, the Credit Agreement, and the Bonds.**

- a) Pursuant to the Act, there is hereby authorized to be issued, in one or more series, the Bonds in the aggregate principal amount not to exceed the par amount specified in Section 3 below. The title of each series of Bonds shall be designated as the "Kerrville Public Utility Board Public Facility Corporation Power Supply Revenue Bonds, Series 2025" with such additional or different designations as set forth in the Pricing Certificate pertaining to such series of Bonds.
- b) The Pricing Certificate for any series of Bonds shall set forth the price at which each series of Bonds will be sold, the scheduled maturity date of each series of Bonds, the aggregate principal amount of each series of Bonds, the rate of interest to be borne by each series of Bonds, the Payment Dates on which interest of each series of Bonds will be scheduled to be paid, the Payment Date on which principal of each series of Bonds will become legally due and payable, the dates, price or method for determining the price, and the terms upon and at which the Bonds shall be subject to redemption, if any, prior to the scheduled principal Payment Dates at the option of the Corporation, as well as any mandatory sinking fund redemption provisions, provisions with respect to the use of bond proceeds to pay capitalized interest, and any other matters specified herein or otherwise necessary or desirable in connection with the issuance and sale of the Bonds.

c) Pursuant to the Chapter 22 of the Texas Business and Commerce Code, as amended, the Board hereby authorizes and directs the President/Chair, the Executive Director or other authorized officer (each an "Authorized Officer), on behalf of the Corporation, to:

- i) execute and deliver the Indenture, substantially in the form attached hereto as Exhibit B, along with any series supplements for the Bonds, and with such modifications thereto as the Authorized Officer executing the same, in his or her sole discretion, shall approve, such execution to be conclusive evidence of the approval of the Indenture by the Board;
- ii) execute and deliver the Power Sales Agreement, substantially in the form attached hereto as Exhibit C with such modifications thereto as the Authorized Officer executing the same, in his or her sole discretion, shall approve, such execution to be conclusive evidence of the approval of the Power Sales Agreement by the Board;
- iii) execute and deliver the Credit Agreement, substantially in the form attached hereto as Exhibit D with such modifications thereto as the Authorized Officer executing the same, in his or her sole discretion, shall approve, such execution to be conclusive evidence of the approval of the Credit Agreement by the Board;
- iv) execute and deliver the escrow deposit agreement described in the Credit Agreement, and any other credit support agreement necessary or convenient to facilitate the financing of the Project on terms and conditions beneficial to the Corporation, as determined by the Authorized Officer in a pricing certificate; and
- v) execute and deliver the Bonds, substantially in the form set forth in the executed series supplements to the Indenture, provided that the terms of the Bonds shall conform to the terms set forth in the Pricing Certificate; provided, however, that the final series of Bonds hereunder issued shall be sold on or before March 7, 2026.

d) Each Authorized Officer is hereby authorized and directed, upon the execution of the Bonds in the form and manner set forth in the Indenture, as supplemented by one or

more series supplements to such Indenture, and herein, to deliver the Bonds in the amount authorized to be issued hereunder to:

- i) the PUCT under the terms of the Credit Agreement; and
- ii) to or upon order of underwriters for the bonds pursuant to a bond purchase agreement, upon payment of the purchase price and upon compliance by the Underwriters with the terms of such bond purchase agreement.

- e) The Bonds will be limited obligations of the Corporation, payable solely from amounts paid under the Power Sales Agreement pledged to the Trust Estate pursuant to the Indenture.
- f) The Board hereby confirms the appointment of U.S. Bank Trust Company, National Association to serve as Indenture Trustee and Bond Registrar under the terms of the Indenture.

**Section 3. Pricing Parameters.** The Board hereby determines that the Bond sale shall proceed on the basis of the following parameters:

- a) the interest rate of the Bonds delivered to the PUCT under the terms of the Credit Agreement shall not exceed three percent per annum (3%); provided, however, such Bonds may accrue interest at a higher interest rate, which shall not exceed the maximum rate allowed by law, after and during the continuation of an event of default under the Indenture;
- b) the interest rate of any Bonds issued under the terms of this Resolution shall not exceed six and one half percent per annum (6.5%);
- c) the aggregate par amount of the Bonds shall not exceed \$181,000,000;
- d) the final maturity of each series of Bonds shall not exceed twenty-five (25) years from their respective date of issuance;
- e) the Bonds may subject to redemption, in accordance with the terms set forth in the Pricing Certificate for a series of Bonds;

and

- f) any series of Bonds may be supported and secured by the purchase of bond insurance and/or debt service reserve fund surety provider, if any, based on the guidance of the Corporation's financial advisor.

**Section 4. Pricing Certificate.** In the Pricing Certificate for any series of Bonds, the Authorized Officers shall determine and approve the final terms of the Bonds delivered under the terms of the Credit Agreement and any bond purchase agreement with underwriters; provided, however, such final terms shall be in accordance with the pricing parameters described in Section 3 of this Resolution.

**Section 5. Underwriters; Authorization of Marketing and Sale of Bonds.**

- a) With respect to any series of Bonds not delivered to the PUCT pursuant to the Credit Agreement, the Authorized Officers, on behalf of the Corporation and based on the recommendation of the Corporation's financial advisor, will select an investment banking firm (the "Underwriters") as the initial purchasers of any series of Bonds; provided, however, that each of the President/Chair or Executive Director of the Corporation is authorized to issue an applicable series of Bonds pursuant to a private placement, competitive sale, or negotiated sale and, if through a negotiated sale, to select the underwriters, all based on guidance from the Corporation's financial advisor, and such Authorized Officers are hereby authorized to determine whether or not to issue a series of Bonds on a taxable or tax-exempt basis subject to market conditions at the time of the pricing and sale of such series of Bonds and based on the guidance of the Corporation's financial advisors.
- b) With respect to any series of Bonds not delivered to the PUCT pursuant to the Credit Agreement, the Corporation hereby authorizes the sale of each series of Bonds to the underwriters on the terms prescribed in a bond purchase agreement approved by an Authorized Officer in the applicable Pricing Certificate for such series of Bonds. Each Authorized Officer, acting on behalf of the Corporation, is authorized to approve the bond purchase agreement and to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of such Bonds. Upon the completion of the terms of the bond purchase agreement in accordance with the terms of this Resolution, the Executive Director of the Corporation or other Authorized Officer is authorized and directed to enter into and execute the bond purchase agreement on behalf of the Corporation, such execution to be conclusive evidence of the approval thereof by the Board. The final form of the bond purchase agreement shall be attached to the Pricing Certificate.

**Section 6. Authorization of Preliminary and Final Official Statements and Continuing Disclosure Agreement.**

- a) The Board hereby authorizes the preparation and distribution and use of a Preliminary Official Statement for any series of the Bonds in the form approved by an Authorized Officer, in his or her sole discretion, in accordance with the other terms and conditions contained herein. The Board further authorizes each Authorized Officer to deem the Preliminary Official Statement to be "final" within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"), and in furtherance thereof to execute a certificate evidencing same.
- b) The Board hereby authorizes and directs the execution and delivery of a final Official Statement by any Authorized Officer, such final Official Statement being substantially in the form of the Preliminary Official Statement with any such changes, insertions or deletions as the Authorized Officer executing the same, in his or her sole discretion, may approve, such execution to constitute conclusive evidence of the approval thereof by the Board. The use and distribution of the final Official Statement in connection with the offering and sale of any series of Bonds is hereby authorized.
- c) The Board hereby authorizes and directs the execution and delivery of a continuing disclosure agreement by any Authorized Officer on behalf of the Corporation (the "Issuer Continuing Disclosure Agreement") in accordance with the requirements of the Rule. The final form of the Issuer Continuing Disclosure Agreement shall be attached to the applicable Pricing Certificate.

**Section 7. Prior Action.** All acts heretofore performed on behalf of the Corporation by KPUB staff or directors, officers, consultants, or agents of the Corporation which are in conformity with the purposes and intent of this Resolution, and in furtherance of the issuance of the Bonds and the execution, delivery and performance of the transactions approved herein and as contemplated by the preliminary and final Official Statements shall be, and the same hereby are in all respects, ratified, approved and confirmed.

**Section 8. Governmental Action.** The Board hereby directs that the Bonds, this Resolution, any of the transaction documents and other appropriate proceedings and documents relating to the Bonds be submitted to any governmental entity, agency, commission or office to which any such material must be submitted to effect the lawful issuance of the Bonds.

**Section 9. No Personal Liability.** No obligation imposed under this Resolution, the Bonds, the transaction documents, or any other document or agreement executed by the Corporation in connection with the issuance of the Bonds shall be deemed to be the obligation, in an individual capacity, of any director, officer, commissioner, employee, or agent of the Corporation, and no such director, officer, commissioner, employee, or agent or any individual executing the Bonds, the transaction documents or any such other document or agreement on behalf of the Corporation, shall be subject to any personal liability with respect thereto.

**Section 10. Miscellaneous Provisions.**

- a) The Authorized Officers are each designated as agents of the Board and the Corporation in connection with the issuance and delivery of the Bonds and are authorized and empowered, collectively or individually, to take all actions and steps and to execute all instruments, documents and contracts on behalf of the Board and the Corporation that are necessary, convenient or desirable in connection with the execution and delivery of the Bonds and the transaction documents and for carrying out the transactions and other matters contemplated by this Resolution, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.
- b) The Authorized Officers are each hereby authorized to do all things, to take all actions, and to execute and deliver all agreements, certificates, instruments and other documents necessary, convenient or desirable in connection with the issuance of the Bonds, including but not limited to a verification agent agreement, any dissemination agent agreement, agreements related to the investment of the proceeds of the Bonds, any depository trust agreement, if necessary or desirable, municipal bond insurance, if necessary or desirable, and tax certificates with respect to the Bonds, if any, and the performance of all agreements and covenants on the part of the Corporation contained therein without the need for further action by the Board. Prior to the issuance of the Bonds and if requested by the Attorney General of Texas or his representative, the Executive Director of the Corporation may authorize such changes in the written text of this Resolution, as well as all documents and agreements approved hereby, as are necessary to obtain the opinion of the Attorney General approving the Bonds and as such officer determines are consistent with the intent and purposes of this Resolution, which determination shall be final.
- c) The Board hereby authorizes any Authorized Officer to retain on behalf of the Corporation such accountants, financial consultants, structuring agents,

dissemination agents and other professional advisors as may, from time to time, be necessary, convenient or desirable in connection with the issuance of the Bonds.

- d) Whenever the Board or an Authorized Officer is required to exercise its judgment under the terms of any transaction document executed in connection with the issuance of the Bonds, the Board or an Authorized Officer will be deemed to have satisfied their respective obligation to exercise their judgment whenever they exercise reasonable business judgment in making their decisions. A decision or action by the Board or an Authorized Officer will be deemed to be the result of reasonable business judgment, even if other reasonable or even arguably preferable alternatives are available, if such decision or action is intended, in whole or significant part, to carry out the responsibilities of the Corporation authorized in this Resolution with respect to the issuance of the Bonds.

**Section 11. Effective Date.** This Resolution shall take effect immediately upon its adoption by the Board.

**PASSED, APPROVED AND ADOPTED** on this 7<sup>th</sup> day of March, 2025

**KERRVILLE PUBLIC UTILITY BOARD  
PUBLIC FACILITY CORPORATION**

---

**President, Board of Directors**

**ATTEST:**

---

**Secretary, Board of Directors**

(CORPORATION SEAL)

## Exhibit A

### Project Description

The generation project contemplated is a new simple cycle natural gas peaking facility with a nominal generating capacity of 122 M to be located outside of Kerr County. The facility will utilize fast start natural gas-fired reciprocating internal combustion engines capable of reaching full load in less than 10 minutes. The facility is projected to reach commercial operation on or around June 1, 2027.

**Exhibit B**

**Form of Indenture**

**TRUST INDENTURE**

THIS TRUST INDENTURE, dated as of [ ] 1, 2025 (the "Indenture"), is made by and between KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION, a public facility corporation created pursuant to Chapter 303 of the Texas Local Government Code (together with any successor or assign, the "Corporation"), and [U.S. Bank Trust Company, National Association] a national banking association having an office for payment in Texas (together with any successor Indenture Trustee hereunder, the "Indenture Trustee").

**WITNESSETH:**

WHEREAS, pursuant to the authority contained in Chapter 1502, as amended, Texas Government Code, certain ordinances previously passed by the City Council (the "City Council") of the City of Kerrville, Texas (the "City"), authorizing the issuance of the currently outstanding revenue bonds, the complete management and control of the City's electric light and power system (the "System") of the City is vested in a Board of Indenture Trustees known as the Kerrville Public Utility Board ("Utility Board");

WHEREAS, the Corporation has heretofore entered into a Power Sales Agreement (as defined herein) with the Utility Board, pursuant to which the Corporation has agreed to construct or acquire an electric generating plant and transmission lines for the purpose of supplying Power and Energy to the Utility Board's System and others;

WHEREAS, the Corporation is authorized to issue Parity Debt (as defined herein) for the purpose of financing the costs of the Facility (as defined herein) and for the purpose of refunding any Outstanding Obligations of the Corporation (as defined herein);

WHEREAS, the Corporation may issue or incur such Parity Debt from time to time pursuant to the terms of a Series Supplement (as defined herein) approved by the City Council and the Utility Board; and

WHEREAS, in order to secure the Parity Debt, the Corporation has determined to enter into this Indenture with the Indenture Trustee for the purpose of assigning and pledging to the Indenture Trustee the Trust Estate (as defined herein) to be held by the Indenture Trustee to secure the payment of principal of and interest on all Parity Debt from time to time issued under the Series Supplements.

NOW, THEREFORE, in consideration of the premises, the acceptance by the Indenture Trustee of the trusts hereby created, the purchase and acceptance of the Parity Debt by the Owners (as defined herein) thereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Corporation and the Indenture Trustee do hereby mutually

covenant and agree, for the equal and proportionate benefit of the respective Owners from time to time of the Parity Debt, as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. Unless otherwise expressly provided or unless the context clearly requires otherwise, the following terms shall have the respective meanings specified below for all purposes of this Indenture. Any term not otherwise defined herein have the meaning given in the Power Sales Agreement or in the Series Supplements.

“Advance Request” means a request by the Corporation for moneys on deposit in the Construction Fund in the form attached hereto as Exhibit A.

“Additional Bonds” means the bonds, notes or other obligations (other than the Series 2025A Bonds and Series 2025B Bonds) issued under this Indenture and secured by a first lien and pledge of the Trust Estate.

“Annual Facility Budget” has the meaning assigned to such term in the Power Sales Agreement.

“Business Day” means any day other than (1) a Saturday or a Sunday, (2) a legal holiday or the equivalent on which banking institutions generally are authorized or required to close in the corporate trust office of the Indenture Trustee, a Custodian, and (3) a day on which the New York Stock Exchange is closed.

“City” has the meaning assigned to such term in the preamble to this Indenture.

“Completion Date” has the meaning given to that term in Section 4.07.

“Construction Fund” means the Fund so designated pursuant to Article IV of this Indenture.

“Corporation” has the meaning assigned to such term in the preamble to this Indenture.

“Credit Agreement” means, collectively, a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, surety agreement, commitments to purchase Parity Debt, purchase or sale agreements, interest rate swap agreements, or commitments or other contracts or agreements authorized, recognized, and approved in a Series Supplement as a Credit Agreement in connection with the authorization, issuance, security, or payment of Parity Debt.

“Debt Service Fund” means the Fund so designated and created pursuant to Article IV of this Indenture.

“Defeasance Securities” means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are

unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the Board of Supervisors adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Obligations are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the Board of Supervisors adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Obligations, are rated as to investment quality by a nationally recognized investment rating firm no less than “AAA” or its equivalent.

“Eligible Investments” means any investments which the Corporation is permitted to make under the laws of the State of Texas, including the Public Funds Investment Act, Chapter 2256, Texas Government Code and Eligible Investments which are affiliated with or managed by the Indenture Trustee.

“Event of Default” means any “Event of Default” described in Section 7.01 of this Indenture.

“Exchange Obligations” means Obligations registered, authenticated, and delivered by the Registrar, as provided in Section 11.01 of this Indenture.

“Facility” has the meaning assigned to that term in the Power Sales Agreement.

“Facility Fund” means the Fund so designated pursuant to Article IV of this Indenture.

“Federal Securities” means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America.

“Funds” means, collectively, the funds established and maintained under this Indenture and created pursuant to Section 4.01.

“Obligations” shall mean bonds, notes or other obligations issued under this Indenture.

“Operation and Maintenance Expense” shall mean all direct and indirect costs of operation, maintenance, and repair of the Facility and the reasonable administrative expenses of the Corporation related solely to the Facility.

“Operation and Maintenance Fund” shall mean the Fund so designated and created pursuant to Article IV of this Indenture.

“Outstanding” when used with reference to Parity Debt, means, as of a particular date, all Parity Debt theretofore and thereupon delivered except: (a) any Parity Debt canceled by or on behalf of the Corporation at or before said date; (b) any Parity Debt defeased or no longer considered Outstanding pursuant to the provisions of this Indenture or the related Series Supplement or otherwise defeased as permitted by applicable law; and (c) any such Parity Debt in lieu of or in substitution for which another Obligation shall have been delivered pursuant to this Indenture.

“Owner” shall mean the registered owner or owners of any of the Parity Debt.

“Parity Debt” means the Series 2025A Bonds, the Series 2025B Bonds and any Additional Bonds all which shall be secured by a first lien and pledge of the Trust Estate.

“Payment Date” means, with respect to any Obligations issued under the terms hereof, each Payment Date identified in the applicable Series Supplement for such Obligations.

“Pledged Contract Payments” shall mean the payments required to be made by the Utility Board to the Corporation pursuant to the Power Sales Agreement.

“Power Sales Agreement” means the Power Sales Agreement dated as of the date hereof, between the Corporation and the Utility Board, and any amendments thereto.

“Project” has the meaning assigned to such term in the Power Sales Agreement.

“Registered Owner” or “Owner” means any person or entity in whose name an Obligation is registered.

“Registrar” or “Paying Agent/Registrar” means the Indenture Trustee under this Indenture, or any successor thereto.

“Regulations” means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Internal Revenue Code of 1986, as amended, or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Reserve Fund” means the Fund so designated and created pursuant to Article IV of this Indenture.

“Reserve Requirement” means, with respect to each subaccount in the Reserve Fund established pursuant to a Series Supplement, the amount required to be on deposit in the Reserve Fund pursuant to the terms of such Series Supplements.

“Responsible Officer” when used with respect to the Indenture Trustee, means any account manager or any officer within the corporate trust trustee administration group of the Indenture Trustee, including any Vice President, any Assistant Vice President, any trust officer or any other officer of the Indenture Trustee performing functions similar to those performed by the persons who at the time shall be such officers, and any other officer of the Indenture Trustee to whom corporate trust matters are referred because of his knowledge of and familiarity with the particular subject.

“Revenue Fund” shall mean the Fund so designated and created pursuant to Article IV of this Indenture.

“Series 2025A Bonds” means the Kerrville Public Utility Board Public Facility Corporation [Power Revenue Bonds], Series 2025A.

“Series 2025B Bonds” means the Kerrville Public Utility Board Public Facility Corporation [Power Revenue Bonds], Series 2025B.

“Series Supplement” shall mean any supplement to this Indenture from time to time adopted by the Corporation authorizing a series of Parity Debt.

“Subordinate Obligations” means Obligations issued by the Corporation that expressly provide that all payments thereon shall be subordinated to the timely payment of all Parity Debt then Outstanding or subsequently issued under the terms of this Indenture.

“Supplemental Security” means the moneys or subaccounts, if any, pledged to the repayment of a specific series of Obligations as more particularly specified in the applicable Series Supplement.

“System” shall have the meaning set forth in the Power Sales Agreement.

“Indenture Trustee” has the meaning assigned to such term in the preamble to this Indenture.

“Trust Estate” shall have the meaning assigned to such term in Section 2.01 of this Indenture.

“Utility Board” means the Kerrville Public Utility Board.

**Section 1.02 Recitals, Titles and Headings.** The terms and phrases used in the recitals of this Indenture have been included for convenience of reference only and the meaning, construction and interpretation of such words and phrases for purposes of this Indenture shall be determined solely by reference to Section 1.01 hereof. The titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

**Section 1.03 Interpretation.** Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Indenture, and all the terms and provisions hereof shall be literally construed to effectuate the purposes set forth herein and to sustain the validity of this Indenture and the Parity Debt.

## ARTICLE II

### **SECURITY FOR ALL PARITY DEBT**

**Section 2.01 Granting Clauses.** To secure the payment of the principal of, redemption premium, if any, and interest on all Parity Debt as the same are issued from time to time and become due and payable, whether at maturity or by prior redemption, and the performance and observance of all of the covenants and conditions herein contained, and in consideration of the

premises, the acceptance by the Indenture Trustee of the trusts hereby created, the purchase and acceptance of the Parity Debt by the Owners thereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Corporation does hereby GRANT, BARGAIN, CONVEY, ASSIGN and PLEDGE to the Indenture Trustee and its successors in trust hereunder, subject to the provisions of this Indenture, all of the Corporation's right, title and interest in and to the following described properties and interest direct or indirect, whether now owned or hereafter acquired (collectively, the "Trust Estate"):

(a) The Pledged Contract Payments and all of the Corporation's right, title and interest thereto under the Power Sales Agreement;

(b) All moneys deposited or required to be deposited in the Debt Service Fund, the Reserve Fund (provided, however, that any Supplemental Security held in a subaccount of the Debt Service Fund or the Reserve Fund established pursuant to a Series Supplement shall only be used in accordance with the terms of such Series Supplement), and the Construction Fund held by the Indenture Trustee pursuant to the provisions of this Indenture and all interest earnings and investment income therefrom; and

(c) Any and all property of every kind and nature (including without limitation, cash, obligations or securities) which may from time to time hereafter be conveyed, assigned, hypothecated, endorsed, pledged, mortgaged, granted, or delivered to or deposited with, the Indenture Trustee as additional security hereunder by the Corporation, or anyone on behalf of the Corporation, or which pursuant to any of the provisions hereof may come into the possession or control of the Indenture Trustee as security hereunder, or of a receiver lawfully appointed hereunder, all of which property the Indenture Trustee is authorized to receive, hold and apply according to the terms hereof.

TO HAVE AND TO HOLD all the same, with all rights and privileges appurtenant thereto, unto the Indenture Trustee and its successors in trust forever.

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit and security of the Owners from time to time of the Parity Debt secured and to be secured hereunder, or any of them, without preference, priority or distinctions as to lien or otherwise of any Parity Debt over any other Parity Debt, except as otherwise expressly provided in this Indenture.

PROVIDED, HOWEVER, that if the Corporation, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Parity Debt and the interest and redemption premium, if any, due or to become due thereon, at the times and in the manner provided in the Parity Debt, and in the Series Supplements according to the true intent and meaning thereof, and shall cause the payments to be made into the Funds maintained hereunder in the amounts required by this Indenture and the Series Supplements, or shall provide, as permitted hereby, for the payment thereof by depositing with the Indenture Trustee the entire amount due or to become due thereon, or an amount sufficient to provide for the payment thereof, and shall pay or cause to be paid to the Indenture Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights and liens hereby granted shall cease and be void; otherwise this Indenture is to be and shall remain in full force and effect.

Section 2.02 Declaration. It is hereby expressly declared that all revenues, receipts, moneys and other properties hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, covenants, agreements, uses and purposes set forth in this Indenture.

## ARTICLE III

### AUTHORIZATION OF ADDITIONAL DEBT

#### Section 3.01 Authorization of Parity Debt.

(a) The Corporation may issue Parity Debt for any lawful purpose, including the refunding of any Obligations, from time to time pursuant to separate Series Supplements duly adopted by the Corporation, which Series Supplements shall specify the dates, denominations, principal amounts, interest rates, maturities, redemption provisions, the form of bonds, notes or other obligations, manner of payment, provision for execution and authentication, application of proceeds and all other terms and provisions of the Obligations not otherwise provided herein, including without limitation, the terms of any Credit Agreement, to be executed by the Corporation in connection with the issuance of such Obligations.

(b) Concurrently with the execution and delivery of this Indenture, the Corporation is issuing Parity Debt in the form of its Series 2025A Bonds and Series 2025B Bonds pursuant to their respective Series Supplements.

(c) At or prior to the issuance of Additional Bonds pursuant to any Series Supplement, the Corporation shall provide to the Indenture Trustee the following:

(i) a certified copy of the Series Supplement associated with such Additional Bonds;

(ii) the opinion of the Corporation's bond counsel, with respect to such Additional Bonds;

(iii) a certificate of the Utility Board that (1) states there has been no default under the Power Sales Agreement, (2) states the Utility Board has approved the issuance of the Additional Bonds pursuant to the terms of the Series Supplement associated with such Additional Bonds, (3) states the Utility Board and the Corporation have agreed to an amendment to the Power Sales Agreement providing for the Utility Board to pay such additional amounts necessary to pay the debt service payments on the Additional Bonds; and (4) states the Utility Board has approved rates and charges sufficient to pay the debt service payments on the Additional Bonds and shows projected revenues of the Utility Board for each fiscal year that the Additional Bonds will be Outstanding sufficient to pay debt service on all Obligations expected to be Outstanding during such period;

(iv) if such series of Additional Bonds are being issued to refund any previously issued Additional Bonds, the identity, redemption date and the redemption price of the Additional Bonds to be refunded;

(v) a debt service schedule with regard to such series of Additional Bonds and all Parity Debt that will then be Outstanding after the issuance of such series of Additional Bonds and the refunding of any Additional Bonds being refunded thereby;

(vi) a resolution of the Corporation approving the issuance of such Additional Bonds;

(vii) a resolution of the City Council approving the issuance of such Additional Bonds; and

(viii) a written order from the Corporation to the Indenture Trustee to authenticate and deliver the Additional Bonds to the original purchasers of such Additional Bonds upon the receipt by the Indenture Trustee, for the account of the Corporation, of the purchase price of the Additional Bonds.

## ARTICLE IV

### **FUNDS AND INVESTMENTS**

Section 4.01 Creation of Funds. There are hereby created the following funds:

- (a) Revenue Fund;
- (b) Debt Service Fund;
- (c) Reserve Fund;
- (d) Operation and Maintenance Fund;
- (e) Facility Fund; and
- (f) Construction Fund.

Each fund shall be maintained by the Indenture Trustee separate and apart from all other funds of the Corporation. The Debt Service Fund shall constitute a trust fund which shall be held in trust by the Indenture Trustee solely for the benefit of the Owners of the Parity Debt. The Construction Fund shall constitute a trust fund which shall be held in trust by the Indenture Trustee solely for the Owners of the related series of Parity Debt.

Section 4.02 Flow of Funds; Deficiency.

(a) Promptly upon receipt of each Pledged Contract Payment from the Utility Board and any other moneys paid by the Corporation to the Indenture Trustee, the Indenture Trustee shall deposit or cause to be deposited such payment into the Revenue Fund.

(b) The Indenture Trustee shall transfer such amounts from the Revenue Fund by the fifth Business Day of each month in the order set forth below:

(i) First: To each subaccount of the Debt Service Fund established pursuant to a Series Supplement for any Outstanding Parity Debt for which interest shall be due and payable on the next succeeding Payment Date, on a pro rata basis, the sum of 1/6 of the amount required to pay interest coming due on such Outstanding Parity Debt on the next succeeding Payment Date

(ii) Second: To each subaccount of the Debt Service Fund established pursuant to a Series Supplement for any Outstanding Parity Debt for which principal shall be due and payable on the next succeeding Payment Date, on a pro rata basis, the sum of 1/12 of the amount required to pay principal coming due on such Outstanding Parity Debt on the next succeeding Payment Date;

(iii) Third: To the Operation and Maintenance Fund, the amount equal to 1/12 of the amount of annual expenses for Operation and Maintenance Expenses pursuant to the current Annual Facility Budget;

(iv) Fourth: To each subaccount of the Reserve Fund established pursuant to a Series Supplement, if any, on a pro rata basis, the amount necessary to make the amount on deposit in each such subaccount equal to the Reserve Requirement for such subaccount of the Reserve Fund established pursuant to the applicable Series Supplement; and

(v) Fifth: Any remaining moneys shall be deposited into the Facility Fund.

(c) On the first Business Day following the payments described above, the Indenture Trustee shall notify both the Corporation and the Utility Board whether the payments from the Utility Board are sufficient to fund the amounts required in subsection (a)(i), (ii), (iii), (iv), and (v) above. If there is a deficiency, the Utility Board shall within two (2) Business Days make additional payments to the Indenture Trustee from lawfully available funds to cure such deficiency including from the Facility Fund as described in Section 4.06 hereof.

**Section 4.03 Debt Service Fund.** The Indenture Trustee shall apply money in each subaccount of the Debt Service Fund established pursuant to a Series Supplement to pay principal and interest on the Parity Debt for which such subaccount was established under applicable Series Supplement, except as provided in Section 4.07(c) below.

**Section 4.04 Reserve Fund.** The Indenture Trustee shall apply moneys held in each subaccount of the Reserve Fund established pursuant to a Series Supplement, if any, to pay principal and interest on the Parity Debt for which such subaccount of the Reserve Fund was established, pursuant to the applicable Series Supplement, in the event there are insufficient funds

on deposit in the applicable subaccount of the Debt Service Fund to pay principal and interest on such Parity Debt when such principal and interest shall become due and payable by transferring amounts on deposit in such Reserve Fund subaccount to the such applicable subaccount of the Debt Service Fund.

Section 4.05 Operation and Maintenance Fund. The Indenture Trustee shall apply moneys held in the Operation and Maintenance Fund, at the direction of the Corporation, to pay Operation and Maintenance Expenses of the Facility identified in the Annual Facility Budget for each fiscal year of the Corporation.

Section 4.06 Facility Fund. Money in the Facility Fund shall be used, at the direction of the Corporation, with the approval of the Utility Board, for the benefit of the System or the Facility and may be used to cure the deficiency described in Section 4.02 (c) hereof.

Section 4.07 Construction Fund. (a) Moneys shall be deposited in the Construction Fund pursuant to the terms of a Series Supplement and shall be disbursed or withdrawn to pay the eligible costs of the Project for which the Obligations were issued in accordance with the Series Supplement and solely upon written authorization pursuant to an Advance Request in the form attached hereto as Exhibit A signed by an authorized officer of the Corporation.

(b) Moneys in the Construction Fund shall be held in trust by the Indenture Trustee solely for the Owners of the related series of Parity Debt.

(c) If required under a Series Supplement, the Indenture Trustee shall establish a Capitalized Interest Subaccount as a subaccount under the Construction Account and such account shall be funded pursuant to the related Series Supplement and the moneys therein used in accordance with the terms of such Series Supplement.

(d) As soon as practicable after the construction of the Project is completed, the Corporation shall evidence the completion thereof and date of such completion ("Completion Date") by providing a certificate to the Indenture Trustee (upon which the Indenture Trustee may conclusively rely) stating that the construction of the Project has been completed substantially in accordance with the plans, specifications and work orders therefor, and all labor, services, materials and supplies used in the construction have been paid or provided for. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Corporation against third parties for any claims or for the payment of any amount not then due and payable which exists at the date of such certificate or which may subsequently exist.

(e) If authorized by the Series Supplement pursuant to which Parity Debt was issued in exchange for such funds, any moneys in the Construction Fund may be used to pay Operation and Maintenance Expenses for up to one year after completion of the Project for which such moneys were deposited in the Construction Fund.

(f) Any money remaining in the Construction Fund after the completion of the Project for which such moneys were deposited in the Construction Fund and satisfaction of any other payments to be made with such funds, as set forth in the applicable Series Supplement, shall be transferred to the Debt Service Fund.

Section 4.08 Other Funds. The Indenture Trustee shall be permitted to create such accounts and subaccounts within the Funds as the Indenture Trustee deems necessary to manage the deposits described herein and as shall be required by any Series Supplement.

Section 4.09 Investments: Earnings. Moneys deposited into the Funds shall be invested and reinvested in Eligible Investments as directed in writing to the Indenture Trustee by the Corporation; provided that all such Eligible Investments shall be directed by the Corporation in such manner that the money required to be expended from any Fund will be available at the proper time or times. In the absence of such direction, the Indenture Trustee shall invest such funds in a cash management fund which constitutes an Eligible Investment that invests in Federal Securities until written directions regarding investments are received; provided, however, that moneys held in any subaccount of the Reserve Fund may be held in Eligible Investments or as otherwise provided in the Series Supplement creating such subaccount of the Reserve Fund. The Indenture Trustee may make any investments permitted by the provisions of this Section 4.10 through its own bond department or short-term investment department and may pool money for investment purposes. To assure that cash on hand is invested, the Indenture Trustee is authorized to implement its automated cash management system and to charge its normal management fees in respect thereto which may be deducted from earnings. In computing the amount in any Fund, Eligible Investments shall be valued at the market value of such obligations, exclusive of accrued interest. All investments and any profits realized from or interest accruing on such investments shall belong to the Fund from which the moneys for such investments were taken (except as otherwise expressly provided in this Indenture). The Indenture Trustee shall have the right to have sold in the open market a sufficient amount of any such investments at any time that a Fund does not have sufficient uninvested amounts on hand to meet the obligations payable out of such Fund. The Indenture Trustee shall not be liable or responsible for any loss resulting from any such investment or resulting from the sale of any such investment as herein authorized or for the Parity Debt being deemed "Arbitrage Bonds" as such term is defined in the Internal Revenue Code of 1986, as amended. At the written direction of the Corporation, a portion of the investment income from any Fund may be paid directly to the United States of America in order to maintain the tax-exempt status of any Parity Debt.

Section 4.10 Security of Funds. Any cash balance in any Fund, to the extent not insured by the Federal Deposit Insurance Corporation or its successor, shall be continuously secured in the manner provided by law for the security of funds of political subdivisions of the State of Texas.

## ARTICLE V

### COVENANTS OF THE CORPORATION CONCERNING THE PARITY DEBT

Section 5.01 Payment of Parity Debt and Performance of Obligations. The Corporation covenants to promptly pay or cause to be paid the principal of, redemption premium, if any, and interest on the Parity Debt as the same become due and payable, whether at maturity or by prior redemption, in accordance with the terms of the Parity Debt, this Indenture and the Series Supplements; to pay when due all fees, charges and other amounts due to the Indenture Trustee and the Registrar for the discharge of its duties hereunder; and to faithfully keep and perform all of its covenants, undertakings and agreements contained in this Indenture, the Power Sales

Agreement, the Series Supplements, the Parity Debt, and any Credit Agreement entered into by the Corporation in connection with the issuance of Parity Debt.

Section 5.02 Recordation and Execution of Security Instruments. The Corporation covenants to cause this Indenture, any supplemental indentures, and all other security instruments, financing statements and supplements thereto that may be necessary, to be filed, recorded, refiled and rerecorded, in such manner, at such times and in such places as may be required by law in order to fully preserve and protect the rights and security of the Owners of the Parity Debt and to perfect and preserve the lien of this Indenture. Without limiting the generality of the foregoing, the Corporation shall execute and deliver such additional instruments and perform such additional acts as may be necessary and proper after the execution of this Indenture and to transfer to any successor Indenture Trustee or Indenture Trustees the assets, powers, instruments and funds held in trust hereunder and to confirm the lien of this Indenture with respect to any Obligation or Parity Debt, and shall take all action that may at any time be necessary to secure the interests of the Owners of the Parity Debt.

Section 5.03 Title: Encumbrance of Trust Estate. The Corporation covenants that it has good and indefeasible title to the Trust Estate, subject to the assignments and pledges contained herein. So long as any Parity Debt remains Outstanding, the Corporation covenants not to sell, transfer, assign, pledge, encumber, mortgage or otherwise dispose of, directly or indirectly, by merger or otherwise, or cause or suffer same, or create or allow to accrue or exist any lien upon, all or any part of its interest in the Trust Estate or any portion thereof, except for the lien of this Indenture and except as further provided in the Series Supplements.

Section 5.04 Trust Estate Not Encumbered. The Trust Estate is not in any manner pledged to the payment of any debt or obligation of the Corporation other than the Parity Debt. The Corporation covenants that it will not in any manner pledge or further encumber the Trust Estate unless such pledged or encumbrance is junior and subordinate to the lien and pledge hereunder securing the Parity Debt and the Utility Board shall have consented to such lien and pledge.

## ARTICLE VI

### COVENANTS OF THE CORPORATION RELATED TO THE FACILITY

Section 6.01 Maintenance of Facility – Insurance. The Corporation covenants, agrees and affirms that while the Parity Debt remains Outstanding it will maintain and operate the Facility with all possible efficiency and maintain casualty and other insurance on the properties of the Facility and its operations of a kind and in such amounts customarily carried by political subdivisions in the State of Texas engaged in a similar type of business (which may include an adequate program of self insurance); and that it will faithfully and punctually perform all duties with reference to the Facility required by the laws of the State of Texas. All money received from losses under such insurance policies, other than public liability policies, shall be retained for the benefit of the Owners of the Parity Debt until and unless the proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, either by replacing the property

destroyed or repairing the property damaged, and adequate provision for making good such loss or damage must be made within ninety (90) days after the date of loss. The payment of premiums for all insurance policies required under the provisions hereof shall be considered Operating and Maintenance Expenses.

**Section 6.02 Records and Accounts - Annual Audit.** The Corporation covenants, agrees, and affirms its covenants that so long as any of the Parity Debt remains Outstanding, it will keep and maintain separate and complete records and accounts pertaining to the operations of the Facility in which complete and correct entries shall be made of all transactions relating thereto as provided by applicable law. The Owners of the Parity Debt or any duly authorized agent or agents of such Owners shall have the right to inspect the Corporation and all properties comprising the same. The Corporation further agrees that following (and in no event later than 150 days after) the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Expenses incurred in making the annual audit of the operations of the Corporation are to be regarded as Operating and Maintenance Expenses.

**Section 6.03 Sale or Encumbrance of Facility.** While any Parity Debt remains Outstanding, the Corporation will not sell, dispose of or, further encumber the Facility or any substantial part thereof except as provided in the Power Sales Agreement.

**Section 6.04 SPECIAL COVENANTS.** The Corporation further covenants and agrees that:

**A. Title.** The Corporation lawfully owns or will own and is or will be lawfully possessed of the lands or easements upon which its Facility is and will be located, and has or will purchase good and indefeasible estate in such lands in fee simple, or has or will lawfully obtain any necessary easements to operate the Facility, and it warrants that it has or will obtain and will defend, the title to all the aforesaid lands and easements for the benefit of the Owners of the Parity Debt against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Trust Estate, including the Pledged Contract Payments, to the payment of the Parity Debt, in the manner prescribed herein, and that it has lawfully exercised such rights.

**B. Liens.** The Corporation will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it, or its Facility and it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge upon its Facility provided, however, that no such tax, assessment, or charge, and that no such claims which might be or other lien or charge, shall be required to be paid while the validity of the same shall be contested in good faith by the Corporation.

**C. Budget.** The Corporation will prepare, adopt, and place into effect an Annual Facility Budget, in accordance with the terms of the Power Sales Agreement, for operation and maintenance of the Facility for each fiscal year, including in each Annual Facility Budget such items as are customarily and reasonably contained in a utility system budget under generally accepted accounting procedures; provided, however, each such

Annual Facility Budget shall be required to be approved by the Utility Board in accordance with the terms of the Power Sales Agreement.

D. Permits. The Corporation will comply with all of the terms and conditions of any and all franchises, permits, and authorizations applicable to or necessary with respect to the Facility and which have been obtained from any governmental agency; and the Corporation has or will obtain and keep in full force and effect all franchises, permits, authorizations, and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation, and maintenance of the Facility.

## ARTICLE VII

### DEFAULT AND REMEDIES

Section 7.01 Events of Default. An Event of Default hereunder shall consist of any of the following acts or occurrences:

- (a) failure to pay when due the principal, redemption price, or interest on any Parity Debt;
- (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Indenture and such default is not cured within 30 days after the Corporation has receive notice of such default from the Indenture Trustee;
- (c) default by the Corporation or the Utility Board under the terms of the Power Sales Agreement that are not cured within the period allowed under the terms of the Power Sales Agreement;
- (d) defaults in the observance or performance of any covenants, conditions, or obligations set forth in any Series Supplement or Credit Agreement for which any Parity Debt is Outstanding and such default is not cured in accordance with the provisions of such Series Supplement or Credit Agreement.

Section 7.02 Notices. In order to provide the Corporation with information with respect to its obligations under this Indenture, the Indenture Trustee shall provide the Corporation the following notices; provided, however, the Indenture Trustee shall incur no liability for the failure to provide such notices or to do so at the time or times specified herein:

- (a) On or before the second Business Day of each month, a notice that Pledged Contract Payments were not received by the first Business Day of such month.
- (b) On or before the 10th Business Day after the end of each month, furnish to the Corporation an accounting statement on the status of each of the Funds created under Section 4.01.
- (c) At least 90 days prior to each Payment Date, the Indenture Trustee will provide a statement providing the total amount of interest and principal due on the Parity Debt on

such date, except that the statement for mandatory redemptions or other redemptions will be provided to the Corporation as soon as practicable prior to such redemption dates.

**Section 7.03 Notice of Default.** The Indenture Trustee shall also be required to give prompt notice to the Corporation of its failure to pay principal and interest on the Bonds as provided herein; provided, however neither failure of the Indenture Trustee to give such notice nor the time such notice is given shall affect the obligations of the Corporation to perform its covenants hereunder and under any Series Supplement. Upon the written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Debt then Outstanding, the Indenture Trustee shall give notice to the Corporation of a default described in Section 7.01(b).

**Section 7.04 Remedies in General.** If an Event of Default hereunder shall occur and be continuing, then, in addition to all of the other rights and remedies granted to the Indenture Trustee hereunder and under the Power Sales Agreement, the Indenture Trustee in its discretion, subject to the provisions of this Indenture may proceed to protect and enforce its rights and the rights of the Owners of Parity Debt by suit, action or proceeding in equity or at law or otherwise, whether for the specific performance of any covenant or agreement contained in this Indenture, the Series Supplements or the Parity Debt or in aid of the execution of any power granted in this Indenture or for the enforcement of any other legal, equitable or other remedy, as the Indenture Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights of the Indenture Trustee or such Owners of the Parity Debt, including, without limitation, the right to seek a writ of mandamus issued by a court of competent jurisdiction compelling the directors or other officers of the Corporation to make any payments on the Parity Debt (but only from and to the extent of the sources provided in this Indenture and the Power Sales Agreement) or to observe and perform such covenants, obligations or conditions of this Indenture, any Series Supplement, the Power Sales Agreement, or any Credit Agreement.

**Section 7.05 Appointment of Receivers.** If an Event of Default hereunder shall occur and be continuing, and upon filing of a bill in equity or commencement of other judicial proceedings to enforce the rights of the Indenture Trustee and the Owners hereunder, the Indenture Trustee shall be entitled as a matter of right, and to the extent permitted by law, to the appointment of a receiver or receivers of the Pledged Contract Payments and the income, rents, profits and use thereof pending such proceedings, with such powers as the court making such appointment shall confer in accordance with Texas law.

**Section 7.06 Indenture Trustee May Act Without Possession of Parity Debt.** All rights of action under this Indenture or under any Parity Debt may be enforced by the Indenture Trustee without possession of any of the Parity Debt or the production thereof on any trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Indenture Trustee shall be brought in its name, as Indenture Trustee for the ratable benefit of the Owners of the Parity Debt, subject to the provisions of this Indenture.

**Section 7.07 Indenture Trustee as Attorney in Fact.** The Indenture Trustee is hereby appointed (and the Owners of the Parity Debt, by taking and owning same from time to time, shall be deemed to have so appointed the Indenture Trustee) the true and lawful attorney in fact of the Owners of the Parity Debt, to make or file, in the names of the Owners of the Parity Debt, or on behalf of all Owners of the Parity Debt as a class, any proof of debt, amendment to proof of debt,

petition or other document, and to do and perform any and all acts and things for and in the name of the Owners of the Parity Debt as a class as may be necessary or advisable, in the judgment of the Indenture Trustee, in order to have the claims of the Owners of the Parity Debt against the Corporation approved in any equity receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings to which the Corporation shall be a party and to receive payment of or on account of such claims. Any such receiver, assignee, liquidator or Indenture Trustee is hereby authorized by each of the Owners to make such payments to the Indenture Trustee, and, in the event that the Indenture Trustee shall consent to the making of such payments directly to the Owners, to pay to the Indenture Trustee any amount due for compensation and the expenses of the Indenture Trustee, including counsel fees, incurred up to the date of such distribution, and the Indenture Trustee shall have full power of substitution and delegation in respect of any such powers.

**Section 7.08 Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Indenture Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Parity Debt, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.09 Limitation on Suits.** All rights of action in respect of this Indenture shall be exercised only by the Indenture Trustee, and no Owner of any Parity Debt secured hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the appointment of a receiver or for any other remedy hereunder or by reason hereto, unless and until the Indenture Trustee shall have received either: (i) written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Debt then outstanding and shall have been furnished reasonable indemnity satisfactory to it and shall have refused or neglected for ten (10) days thereafter to institute such suit, action or proceedings; or (ii) the written request of an Owner authorized under the terms of a Credit Agreement to direct the Indenture Trustee to pursue one or more remedies on behalf of Owners and shall have been furnished reasonable indemnity satisfactory to it and shall have refused or neglected for ten (10) days thereafter to institute such suit, action or proceedings. The making of such request and the furnishing of such indemnity shall in each and every case be conditions precedent to the execution and enforcement by any Owner of any Parity Debt of the powers and remedies given to the Indenture Trustee hereunder and to the institution and maintenance by any such Owner of any action or cause of action for the appointment of a receiver or for any other remedy hereunder, but the Indenture Trustee may, in its discretion, and when thereunto duly requested in writing by the Owner of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Debt then Outstanding or an Owner authorized to make such request under the terms of a Credit Agreement and when furnished indemnity satisfactory to it to protect it against expenses, charges and liability shall, forthwith, take such appropriate action by judicial proceedings or otherwise in respect of any existing default on the part of the Corporation as the Indenture Trustee may deem expedient in the interest of the Owners of the Parity Debt.

Nothing contained in this Article, however, shall affect or impair the right of any Owner, which shall be absolute and unconditional, to enforce the payment of the principal of, premium, if any, and interest on the Parity Debt of such Owner, but only out of the moneys for such payment as herein provided, or the obligation of the Corporation, which shall also be absolute and unconditional, to make payment of the principal of, premium, if any, and interest on the Parity Debt issued hereunder, but only out of the Funds provided herein for such payment, to the respective Owners thereof at the time and place stated in said Parity Debt.

**Section 7.10 Right of Owners of the Parity Debt to Direct Proceedings.** Notwithstanding any provision of this Indenture to the contrary, the Owners of more than fifty percent (50%) in aggregate principal amount of the Parity Debt then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Indenture Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or for any remedy available to the Indenture Trustee or exercising any trust or power conferred on the Indenture Trustee or any other proceedings hereunder; provided, however, that such direction shall not be contrary to law or the provisions of this Indenture, and the Indenture Trustee shall have the right to decline to follow any such direction if the Indenture Trustee in good faith shall determine that the proceeding so directed would involve it in personal liability or would be unjustly prejudicial to the Owners of the Parity Debt not consenting.

**Section 7.11 Restoration of Rights and Remedies.** If the Indenture Trustee or any Owner of an Obligation has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Indenture Trustee or to such Owner of an Obligation, then and in every such case the Corporation, the Indenture Trustee and the Owners of the Parity Debt shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Owners of the Parity Debt shall continue as though no such proceeding had been instituted.

**Section 7.12 Waiver of Stay or Extension Laws.** To the extent that it may lawfully do so, the Corporation covenants that it will not at any time insist upon, plead or in any manner whatsoever, claim or take the benefit or advantage of any stay or extension law whenever or wherever enacted, which may affect the covenants or the performance of this Indenture. The Corporation also covenants that it will not otherwise hinder, delay or impede the execution of any power herein granted to the Indenture Trustee.

**Section 7.13 Delay or Omission, Not Waiver.** No delay or omission of the Indenture Trustee or of any Owner of any Parity Debt to exercise any right or remedy accruing upon any Event of Default hereunder shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Indenture Trustee or to the Owners may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Owners of the Parity Debt, as the case may be.

## ARTICLE VIII

### DISCHARGE

Section 8.01 Defeasance of Obligations. (a) Any Obligation and the interest thereon shall be deemed to be paid, retired and no longer Outstanding (a "Defeased Obligation") within the meaning of this Indenture, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Obligation, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or a commercial bank or trust company for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the Corporation with the Paying Agent/Registrar or a commercial bank or trust company for the payment of its services until all Defeased Obligations shall have become due and payable or (3) any combination of (1) and (2). At such time as an Obligation shall be deemed to be a Defeased Obligation hereunder, as aforesaid, such Obligation and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the Trust Estate, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) Any money so deposited with the Paying Agent/Registrar or a commercial bank or trust company as provided in this Section may at the discretion of the Board also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or a commercial bank or trust company pursuant to this Section which is not required for the payment of such Obligation, if any, and interest thereon with respect to which such money has been so deposited, shall be turned over to the Board.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Obligations and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Obligations and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Obligations shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Obligations the same as if they had not been defeased, and the Corporation shall make proper arrangements to provide and pay for such services as required by this Indenture.

(d) Notwithstanding anything elsewhere in this Indenture, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or a commercial bank or trust company pursuant to this Section for the payment of Obligations and such Obligations shall not have in fact been actually paid in full, no amendment of the provisions

of this Section shall be made without the consent of the registered owner of each Obligation affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Obligation to be paid at its maturity, the Corporation retains the right under Texas law to later call that Defeased Obligation for redemption in accordance with the provisions of the resolution authorizing its issuance, the Corporation may call such Defeased Obligation for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Obligation as though it was being defeased at the time of the exercise of the option to redeem the Defeased Obligation and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Obligation.

(f) Upon defeasance of the Obligations as described in (a)-(e) above, then the Indenture Trustee shall, upon receipt of a letter or instructions from the Corporation requesting the same, discharge and release the lien of this Indenture and execute and deliver to the Corporation such releases or other instruments as shall be requisite to release the lien hereof.

## ARTICLE IX

### THE INDENTURE TRUSTEE

Section 9.01 The Indenture Trustee accepts and agrees to execute the trusts imposed upon it by this Indenture, but only upon the following terms and conditions:

(a) Except during the continuance of an Event of Default:

(i) the Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee; and

(ii) in the absence of bad faith, negligence or willful misconduct on its part, the Indenture Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) If an Event of Default has occurred and is continuing, the Indenture Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) the Indenture Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture;

(iv) no provision of this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee shall be subject to the provisions of this Section.

(e) Except as otherwise expressly provided herein, the Indenture Trustee shall not be obligated and may not be required to give or furnish any notice, demand, report, request, reply, statement, advice or opinion to any Owner of any Parity Debt or to the Corporation or any other person, and the Indenture Trustee shall not incur any liability for its failure or refusal to give or furnish same unless obligated or required to do so by express provision or by fair implication of the provisions hereof.

(f) Except for information provided by the Indenture Trustee concerning the Indenture Trustee, the Indenture Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distribution with respect to the Parity Debt, and the Indenture Trustee shall have no responsibility for compliance with securities laws in connection with the issuance and sale of the Parity Debt or in connection with the Corporation's continuing disclosure obligations.

(g) In the event the Indenture Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Owners, each representing less than a majority of the aggregate principal amount of the Parity Debt then Outstanding, the Indenture Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(h) Except as otherwise especially provided by the provisions of this Indenture, the Indenture Trustee shall not be obligated and shall not be required to give or furnish any notice,

demand, report, request, reply, statement, advice or opinion to any Owner of any Parity Debt or to the Corporation or any other person, and the Indenture Trustee shall not incur any liability for its failure or refusal to give or furnish same unless obligated or required to do so by express provisions hereof.

(i) The Indenture Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture.

(j) The Indenture Trustee may consult with counsel, and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Indenture Trustee hereunder in good faith and in reliance thereon.

(k) The Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and shall not be liable for the negligence or misconduct of such agents or attorneys appointed with due care.

(l) The Indenture Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owner pursuant to this Indenture, unless such Owner shall have offered to the Indenture Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(m) The Indenture Trustee shall have no duty to inquire as to the performance of covenants of the Corporation under this Indenture or any Series Supplement.

(n) The Indenture Trustee shall not be deemed to have knowledge of any Event of Default except (1) any Event of Default occurring pursuant to Section 7.01(a) hereof; or (2) any or Event of Default of which a Responsible Officer of the Indenture Trustee shall have received written notification.

**Section 9.02 Reliance by Indenture Trustee.** To the extent not prohibited by this Article, the Indenture Trustee may rely, and shall be protected in acting upon, any letters of instruction, statements, certificates, certified resolutions, opinions, notices, consents, orders, appraisals, reports, policies, bonds or other papers or documents believed by it to be genuine and to have been signed or may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Indenture Trustee hereunder in good faith and in conformity with the opinion of such counsel.

**Section 9.03 Certificate of Corporation as Proof.** Whenever in the administration of the trusts of this Indenture, the Indenture Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any actions hereunder, then, in the absence of bad faith on the part of the Indenture Trustee, and unless other evidence in respect thereof be herein specifically prescribed, and unless an Event of Default hereunder, to the knowledge of the Indenture Trustee, shall have occurred and be continuing, such matter may be deemed to be conclusively proved and established by a certificate of the Corporation, executed by the President of the Corporation and delivered to the Indenture Trustee, and such certificate shall be full warranty

to the Indenture Trustee for any action taken or suffered by it under the provisions of this Indenture in reliance thereon.

**Section 9.04 Indenture Trustee May Own Parity Debt.** The Indenture Trustee, in its individual or any other capacity, may become the owner or pledgee of Parity Debt or other certificates or evidences of ownership or pledge thereof issued hereunder, with the same rights it would have if it were not the Indenture Trustee.

**Section 9.05 Compensation of Indenture Trustee.** The Corporation shall pay to the Indenture Trustee all reasonable fees, charges and expenses of the Indenture Trustee (including the reasonable fees, charges and expenses of its agents and counsel) for the administration and execution of the trusts hereby created and the performance of its powers and duties hereunder as it relates to each Series Supplement. To the extent permitted by law, the Corporation agrees to indemnify the Indenture Trustee for, and to hold it harmless against (but only from and to the extent of the sources provided in this Indenture and the Power Sales Agreement), any loss, liability or expenses, including legal fees and expenses, incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim.

**Section 9.06 Removal of Indenture Trustee.** The Indenture Trustee may be removed at any time by an instrument or concurrent instruments in writing, signed by the Owners of a majority in principal amount of the Parity Debt then Outstanding and delivered to Indenture Trustee, with notice thereof given to the Corporation and the Utility Board. In addition, if no Event of Default exists under this Indenture and the Corporation is not in default under the Series Supplement, the Corporation may, upon 60 days written notice to the Indenture Trustee, the Utility Board and the Owners of the Parity Debt Outstanding, discharge and remove the Indenture Trustee. The removal of the Indenture Trustee shall not take effect unless and until a successor to the Indenture Trustee shall have been appointed. Any successor Indenture Trustee shall be qualified as set forth in Section 9.08 below.

**Section 9.07 Resignation of Indenture Trustee.** The Indenture Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice to the Corporation and by providing written notice to the Owners of its intended resignation at least sixty (60) days in advance thereof. Such notice shall specify the date on which such resignation shall take effect and shall be sent by first-class mail, postage prepaid to each registered Owner of Parity Debt. Resignation by the Indenture Trustee shall not take effect unless and until a successor to such Indenture Trustee shall have been appointed as hereinafter provided.

**Section 9.08 Appointment of Successor Indenture Trustee.** In case the Indenture Trustee hereunder shall resign, or shall be removed or dissolved, or shall be in the course of dissolution or liquidation, or shall otherwise become incapable of acting hereunder, or in case the Indenture Trustee shall be taken under control of any public officer or officers or a receiver appointed by a court, a successor may be appointed by the Owners of a majority in principal amount of the Parity Debt then Outstanding, by an instrument or concurrent instruments in writing, signed by such Owners or their duly authorized representatives and delivered to the Indenture Trustee, with notice thereof given to the Corporation; provided, however, that upon the occurrence of any of the events above mentioned, the Corporation may nevertheless appoint a temporary Indenture Trustee to fill

such vacancy until a successor shall be appointed by the Owners in the manner above provided, and any such temporary Indenture Trustee so appointed by the Corporation shall immediately and without further act be automatically succeeded by the successor to the Indenture Trustee, whether temporary or permanent, in the manner provided in the preceding Section of this Indenture for providing notice of the resignation of the Indenture Trustee. Any successor Indenture Trustee or temporary Indenture Trustee shall be a trust company or bank in good standing located in or incorporated under the laws of the State of Texas duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$50,000,000.

In the event that no appointment of a successor Indenture Trustee is made by the Owners or by the Corporation for a period of 90 days from the receipt of notice of such resignation or removal pursuant to the foregoing provisions of this Section, the Owner of any Parity Debt issued hereunder or the retiring Indenture Trustee may apply to any court of competent jurisdiction for appointment of a successor Indenture Trustee, and such court may thereupon, after such notice as it shall deem proper, if any, appoint a successor Indenture Trustee.

**Section 9.09 Powers of Successor Indenture Trustee.** Each successor Indenture Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Corporation, an instrument in writing accepting such appointment hereunder, and thereupon such successor Indenture Trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor, but such predecessor Indenture Trustee shall, nevertheless, on the written request of the Corporation, execute and deliver an instrument transferring to such successor Indenture Trustee all the estates, properties, rights, powers, trusts, duties and obligations of such predecessor hereunder. Each predecessor Indenture Trustee shall immediately deliver all properties, securities and moneys held by it to its successor; provided, however, that before any such delivery is required or made, all proper fees, advances and expenses of the predecessor Indenture Trustee shall be paid in full. Should any deed, conveyance or instrument in writing be required from the Corporation by any successor Indenture Trustee for properties, rights, powers, trusts, duties and obligations hereby vested or intended to be vested in the predecessor Indenture Trustee, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Corporation. The resignation of any Indenture Trustee, appointing a successor Indenture Trustee hereunder, together with all deed, conveyances and other instruments provided for in this Article shall, at the expense of the Corporation, be properly filed or recorded and a copy thereof shall be filed with such successor Indenture Trustee, together with a statement showing such filing or recordation.

**Section 9.10 Merger, Conversion or Consolidation of Indenture Trustee.** Notwithstanding any provision hereof to the contrary, any corporation or association into which the corporate trust business of the Indenture Trustee may be merged or converted, or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, shall be the successor Indenture Trustee under this Indenture without the execution or filing of any instrument or any other act on the part of any of the parties hereto.

## ARTICLE X

### THE PAYING AGENT/REGISTRAR

Section 10.01 Registrar. The Indenture Trustee is hereby appointed as the Registrar for the Obligations. The Corporation shall at all times while any Obligation is Outstanding maintain a Registrar for the Obligations. The Corporation reserves the right to change the Registrar on not less than 30 days written notice to the Registrar, so long as any such notice is effective at such time as to not disrupt payment of the Obligations. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Registered Owner, by United States mail, first-class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

Section 10.02 Special Record Date. If interest on any Obligation is not paid on any Payment Date and continues unpaid for 30 days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the Corporation. Such Special Record Date shall be 15 days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first-class, postage prepaid, not later than 5 days prior to the Special Record Date, to each affected Registered Owner of record as of the close of business on the day prior to the mailing of such notice.

Section 10.03 Registered Owners. The Corporation, the Registrar and any other person may treat the person in whose name any Obligation is registered as the absolute Registered Owner of such Obligation for the purpose of making payment of principal or interest on such Obligation, and for all other purposes, whether or not such Obligation is overdue, and neither the Corporation, nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Registered Owner of any Obligation in accordance with this Section 10.03 shall be valid and effectual and shall discharge the liability of the Corporation and the Registrar upon such Obligation to the extent of the sums paid.

## ARTICLE XI

### REGISTRATION TRANSFER, AND EXCHANGE

Section 11.01 Register, Transfer and Exchange. So long as any Obligations remain Outstanding, the Registrar shall keep at its designated office for payment the Register, in which, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Obligations in accordance with the terms of this Indenture.

An Obligation shall be transferable only upon the presentation and surrender thereof at a designated office for payment of the Registrar, duly endorsed for transfer, or accompanied by an assignment duly executed by the Registered Owner or an authorized representative in form satisfactory to the Registrar. Upon due presentation of any Obligation for transfer, the Registrar shall authenticate and deliver in exchange therefor, within 72 hours after such presentation, a new

Obligation or Obligations of the same type, registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount, and bearing interest at the same rate as the Obligation or Obligations so presented.

All Obligations shall be exchangeable upon presentation and surrender thereof at the designated office for payment of the Registrar for an Obligation of the same maturity and interest rate and in any authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of the Obligation presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver Exchange Obligations in accordance with the provisions of this Section 11.01. Each Obligation delivered in accordance with this Section 11.01 shall be entitled to the benefits and security of this Indenture to the same extent as the Obligation or Obligations in lieu of which such Obligation is delivered.

The Corporation or the Registrar may require the Registered Owner of any Obligation to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Obligation. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the Corporation.

Section 11.02 Mutilated, Lost, Or Stolen Obligations. Upon the presentation and surrender to the Registrar of a mutilated Obligation, the Registrar shall authenticate and deliver in exchange therefor a replacement Obligation of like maturity, interest rate, principal amount or maturity amount, bearing a number not contemporaneously Outstanding. If any Obligation is lost, apparently destroyed, or wrongfully taken, the Corporation, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Obligation has been acquired by a bona fide purchaser, shall execute and the Registrar shall authenticate and deliver a replacement Obligation of like amount, bearing a number not contemporaneously Outstanding.

The Corporation or the Registrar may require the Registered Owner of a mutilated Obligation to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The Corporation or the Registrar may require the Registered Owner of a lost, apparently destroyed or wrongfully taken Obligation, before any replacement Obligation is issued, to:

- (a) furnish to the Corporation and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Obligation;
- (b) furnish such security or indemnity as may be required by the Registrar and the Corporation to save them harmless;
- (c) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (d) meet any other reasonable requirements of the Corporation and the Registrar.

If, after the delivery of such replacement Obligation, a bona fide purchaser of the original Obligation for which such replacement Obligation was issued presents for payment such original Obligation, the Corporation and the Registrar shall be entitled to recover such replacement Obligation from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Corporation or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Obligation has become or is about to become due and payable, the Corporation in its discretion may, instead of issuing a replacement Obligation, authorize the Registrar to pay such Obligation.

Each replacement Obligation delivered in accordance with this Section 11.02 shall be entitled to the benefits and security of this Indenture to the same extent as the Obligation or Obligations in lieu of which such replacement is delivered.

Section 11.03 Cancellation of Obligations. All Obligations paid in accordance with this Indenture and the respective Series Supplement, and all Obligations in lieu of which Exchange Obligations or replacement Obligations are authenticated, registered, and delivered in accordance herewith, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange, or replacement. The Registrar shall furnish the Corporation with appropriate certificates of destruction of such Obligations.

Section 11.04 Book-Entry-Only System. (a) Book-Entry-Only System. The Obligations may be book-entry-only Obligations through the Depository Trust Company of New York ("DTC"). If the Obligations are in book-entry-only form the Initial Obligations (as set forth in the Series Supplement) shall be exchange for Obligations issued in the form of a separate single fully registered Obligation for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC.

With respect to Obligations registered in the name of Cede & Co., as nominee of DTC, the Corporation and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC participants (the "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Obligations. Without limiting the immediately preceding sentence, the Corporation and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Obligations, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner, as shown on the Registration Books, of any notice with respect to the Obligations, or (iii) the payment to any DTC Participant or any person, other than a Registered Owner, as shown in the Registration Books of any amount with respect to principal of or interest on, or the maturity amount of the Obligations. Notwithstanding any other provision of this Indenture to the contrary, but to the extent permitted by law, the Corporation and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Obligation is registered in the Registration Books as the absolute owner of such Obligation for the purpose of payment of principal of and interest or maturity

amount, with respect to such Obligation, for the purposes of registering transfers with respect to such Obligation, and for all other purposes of registering transfers with respect to such Obligations, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest or maturity amount on the Obligations only to or upon the order of the respective Registered Owners, as shown in the Registration Books as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Corporation's obligations with respect to payment of principal of and interest or maturity amount on the Obligations to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive an Obligation evidencing the obligation of the Corporation to make payments of principal, and interest or maturity amount pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks being mailed to the registered owner at the close of business on the Record Date the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(b) Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the Corporation determines to discontinue the book-entry system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Obligations, the Corporation shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and the Registered Owners of the appointment of such successor securities depository and transfer one or more separate Obligations to such successor securities depository or (ii) notify DTC and the Registered Owners of the availability through DTC of Obligations and transfer one or more separate Obligations to DTC Participants having Obligations credited to their DTC accounts. In such event, the Obligations shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the Registered Owner transferring or exchanging Obligations shall designate, in accordance with the provisions of this Indenture.

(c) Payments to Cede & Co. Notwithstanding any other provision of this Indenture to the contrary, so long as any Obligation is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, and interest or maturity amount on such Obligation and all notices with respect to such Obligation shall be made and given, respectively, in the manner provided in the Letter of Representations of the Corporation to DTC.

## ARTICLE XII

### MODIFICATION OF INDENTURE

Section 12.01 Supplemental Indentures Not Requiring Consent of Owners of the Parity Debt. The Corporation and the Indenture Trustee may, without the consent of the Owners of any of the Parity Debt, enter into one or more supplemental indentures, which shall form a part hereof, for any one or more of the following purposes:

- (a) to cure any ambiguity, inconsistency or formal defect or omission in this Indenture;
- (b) to grant to or confer upon the Indenture Trustee for the benefit of the Owners of the Parity Debt any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners of the Parity Debt or the Indenture Trustee or either of them;
- (c) to subject to the lien of this Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement this Indenture or any supplemental indenture in such manner as to provide further assurances that interest on the Parity Debt will, to the greatest extent legally possible, be excludable from gross income for federal income tax purposes;
- (e) to obtain bond insurance or a rating for any Parity Debt;
- (f) to permit the assumption of the Corporation's obligations hereunder by any entity that may become the legal successor to the Corporation; and
- (g) to allow for the issuance of Subordinate Obligations.

provided, however, that no provision in such supplemental indenture shall be inconsistent with this Indenture or shall impair in any manner the rights of the Owners of the Parity Debt.

**Section 12.02 Supplemental Indentures Requiring Consent of Owners of the Parity Debt.** Except as otherwise provided in the preceding Section, any modification, change or amendment of this Indenture may be made only by a supplemental indenture adopted by the Corporation and executed by the Corporation and the Indenture Trustee with the consent of the Owners of not less than a majority of the aggregate principal amount of the Parity Debt then outstanding.

Notwithstanding the preceding paragraph of this Section, no modification, change or amendment to this Indenture shall, without the consent of the Owner of each Obligation so affected, extend the time of payment of the principal thereof or interest thereon, or reduce the principal amount thereof or premium, if any, or interest thereon payable in any coin or currency other than that hereinbefore provided, or deprive such Owner of the lien thereon on the revenues pledged hereunder. Moreover, without the consent of the Owner of each Obligation then Outstanding, no modification, change or amendment to this Indenture shall permit the creation of any lien on the revenues pledged hereunder prior to the lien hereof, or reduce the aggregate principal amount of Parity Debt, the Owners of which are required to approve any such modification, change or amendment of this Indenture.

**Section 12.03 Consents.** Consents required pursuant to this Article shall be valid only if given following the giving of notice by or on behalf of the Corporation requesting such consent, setting forth the substance of the supplemental indenture in respect of which such consent is sought and stating that copies thereof are available at the office of the Indenture Trustee for inspection, to the Owners of Parity Debt whose consent is required in accordance with the provisions of this

Article. Such notice shall be given by sending such notice by first-class mail, postage prepaid, to the registered Owners of such Parity Debt. Any consent or other action by an Owner of any Obligation in accordance with this Article shall bind every future owner of the same Obligation and the Owner of any Obligation issued in exchange therefore or in lieu thereof.

Section 12.04 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Indenture Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Indenture Trustee and the Corporation stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture. The Indenture Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

## ARTICLE XIII

### GENERAL PROVISIONS

Section 13.01 Proof of Execution of Writings and Ownership. Any instrument provided in this Indenture to be signed or executed by the Owners of all or any portion of the Parity Debt may be in any number of writings of similar tenor and may be signed or executed by such Owners in person or by their duly authorized representatives. Proof of the execution of any such instrument, or any of the writing appointing any such agent, or of the ownership of any Obligation, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Corporation and Indenture Trustee with respect to any actions taken by either under such instruments if:

(a) the fact and the date of the execution by any person of any such instrument is proved by

(i) a certificate of any officer of any jurisdiction who by law has power to take acknowledgments of deeds within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or

(ii) an affidavit of witness of such execution; and

(b) the ownership of any Obligation registered as to both principal and interest is proved by the registration books kept by the Paying Agent/Registrar.

Section 13.02 Benefits of Indenture. The covenants, stipulations and agreements contained in this Indenture are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and the Owners of the Parity Debt, and nothing in this Indenture expressed or implied shall be construed to confer upon or give to any other person any right, remedy or claim under or by reason of this Indenture.

Section 13.03 No Individual Liability. No covenant or agreement contained in the Parity Debt, the Series Supplements or in this Indenture shall be deemed to be the covenant or agreement of any member of the Board of Supervisors of the Corporation or any officer, agent, employee or

representative of the Corporation nor any person executing the Parity Debt shall be personally liable thereon or be subject to any personal liability or accountability by reason of the issuance thereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of an in consideration for the execution of the Parity Debt.

Section 13.04 Notice. Any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Indenture Trustee or the Corporation shall be deemed to be effective for all purposes of this Indenture if and when sent by registered or certified mail, postage prepaid, to the address specified below or at such other address as may be designated in writing by the parties.

Indenture Trustee: [U.S. Bank Trust Company, National Association]

Corporation: Kerrville Public Utility Board Public Facility Corporation  
[ ]

Utility Board Kerrville Public Utility Board  
[ ]

Section 13.05 Governing Law. This Indenture shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the State of Texas.

Section 13.06 Severability. If any provision of this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Parity Debt, the Series Supplements or in this Indenture shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Corporation to the full extent permitted by law.

Section 13.07 Successors and Assigns. This Agreement shall be binding upon the Corporation and the Indenture Trustee and their successors and assigns.

Section 13.08 Execution in Several Counterparts. This Indenture may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

IN WITNESS WHEREOF, the Corporation and the Indenture Trustee have caused this Indenture to be signed and attested on their behalf by their duly authorized representatives, all as of the date first hereinabove written.

**KERRVILLE PUBLIC UTILITY BOARD  
PUBLIC FACILITY CORPORATION**

By: \_\_\_\_\_  
[Chairman]

ATTEST:

RETURN:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(SEAL)

**[U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION], AS INDENTURE TRUSTEE**

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

THE STATE OF TEXAS  
COUNTY OF KERR

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the day of

---

**Notary Public, State of Texas**

(SEAL.)

---

My commission expires:

THE STATE OF TEXAS §  
COUNTY OF KERR §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said bank.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the day of

---

Notary Public, State of Texas

(SEAL)

---

My commission expires:

**EXHIBIT A**

**ADVANCE REQUEST**

Pursuant to the terms of the Indenture (the "Indenture") dated \_\_\_\_\_, 2025, between KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION (the "Corporation") and [U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION] (the "Indenture Trustee"), the Corporation hereby requests an advance on \_\_\_\_\_, 20\_\_\_\_, in the amount of \$ \_\_\_\_\_ from the Construction Fund. Attached to this Advance Request is a summary of amounts to be spent or already spent for which this advance is based (collectively, the "Expenses"). Capitalized terms used herein put undefined shall have the meaning given such term in the Indenture.

Date: \_\_\_\_\_, 20\_\_\_\_

KERRVILLE PUBLIC UTILITY BOARD  
PUBLIC FACILITY CORPORATION

By:  
Name:  
Title:

Exhibit C

Form of Power Sales Agreement

**POWER SALES AGREEMENT**  
**BETWEEN**  
**KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION**  
**AND**  
**KERRVILLE PUBLIC UTILITY BOARD**

Dated: [\_\_\_\_\_] , 2025

## TABLE OF CONTENTS

	<b>PAGE</b>
Section 1: Term of Contract.....	1
Section 2: Definitions .....	2
Section 3: Sale and Purchase of Energy and Ancillary Services .....	4
Section 4: Performance of Certain Services .....	5
Section 5: Delivery of Energy and Ancillary Services .....	5
Section 6: Annual Facility Budget.....	6
Section 7: Power Cost Charges:.....	7
Section 8: Meter Readings and Payment of Bills .....	7
Section 9: Reserved.....	7
Section 10: Payments to Constitute Operating Expenses of the System .....	7
Section 11: Utility Board Rate and Liquidity Covenant.....	7
Section 12: Covenants of the Corporation.....	7
Section 13: Project Approval .....	8
Section 14: Debt Service Support Payments .....	9
Section 15: Remedies in Event of Default.....	10
Section 16: Reserved.....	11
Section 17: Payment Due Dates and Delinquency .....	11
Section 18: Power Sales Contracts .....	11
Section 19: Continuation of Services.....	11
Section 20: Utility Board Not to Sell the System .....	11
Section 21: Assignment of Rights of the Utility Board .....	12
Section 22: Tax Matters; Securities Disclosure .....	12
Section 23: Force Majeure .....	13
Section 24: Insurance .....	14
Section 25: Reports .....	14
Section 26: Records and Accounts .....	14
Section 27: Access .....	14
Section 28: Governmental Rates, Regulations and Laws .....	15
Section 29: Third-Party Beneficiaries.....	15
Section 30: Reserved.....	15
Section 31: Notices .....	15
Section 32: Severability .....	15

Exhibits and Schedules

Exhibit A – Points of Delivery

Exhibit B – Required Operating Procedures

Exhibit C – Rates and Charges

Schedule 1 – Project Description

**POWER SALES AGREEMENT**  
**BETWEEN**  
**KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION**  
**AND**  
**KERRVILLE PUBLIC UTILITY BOARD**

This Power Sales Agreement, is made and entered into as of the [\_\_\_\_], 2025, by and between the Kerrville Public Utility Board Public Facility Corporation, a public facility corporation created by the City of Kerrville, Texas pursuant to Chapter 303 of the Local Government Code, and the Kerrville Public Utility Board, a [\_\_\_\_] (the "Utility Board").

**WITNESSETH:**

WHEREAS, pursuant to the authority contained in Chapter 1502, as amended, Texas Government Code, certain ordinances previously passed by the City Council of the City of Kerrville, Texas (the ("City")), authorizing the issuance of the currently outstanding revenue bonds, the complete management and control of the City's electric light and power system (the "System") of the City is vested in a Board of Trustees known as the Kerrville Public Utility Board;

WHEREAS, pursuant to the provisions of the Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the "Act"), the Corporation was created by the City to finance, refinance, or provide the costs of public facilities, as defined in the Act, including electric power supply facilities to be used for the benefit of the System;

WHEREAS, the Utility Board has need for an economical, reliable source of Energy and Ancillary Services to meet the growing demands of customers of the System and has determined to purchase such Energy and Ancillary Services from the Corporation;

WHEREAS, the Corporation proposes to construct or acquire an electric generating plant and transmission lines for the purpose of supplying Energy and Ancillary Services to the Utility Board's System and others; and

WHEREAS, the Utility Board desires to purchase, and the Corporation desires to sell Energy and Ancillary Services on the terms and conditions herein set forth;

Now, THEREFORE, in consideration of the mutual undertakings herein contained, the Corporation and the Utility Board agree as follows:

**Section 1: Term of Contract.** This Power Sales Agreement shall become effective upon the first delivery to the Corporation of the proceeds of Obligations issued under the Indenture. Subject to the provisions of Sections 16 and 19 hereof, this Power Sales Agreement shall remain in effect for a period of thirty-five (35) years from the date hereof or until such time as all of the Obligations issued under the Indenture and any other Debts of the Corporation shall have been

paid (or provision for such payment shall have been made in accordance with the terms hereof), whichever is later.

**Section 2: Definitions.** Unless otherwise expressly provided or unless the context clearly requires otherwise, the following terms shall have the respective meanings specified below for all purposes of this Power Purchase Agreement. Any term not otherwise defined herein have the meaning given in the Indenture:

(a) “Act” shall mean Chapter 303 of the Texas Local Government Code, and all laws amendatory thereof or supplemental thereto.

(b) “Ancillary Services” shall mean all Capacity-related and other services the facility can provide beyond Energy, as defined in ERCOT protocols, as amended from time to time, including, without limitation, responsive reserve, regulation, non-spinning reserve, black start service, and any future services that are defined in ERCOT protocols from time to time.

(c) “Annual Facility Costs” shall mean, with respect to a Contract Year, and to the extent not paid or to be paid from the proceeds of Obligations or other funds legally available to the Corporation, all costs and expenses of the Corporation that are paid or incurred during such Contract Year and are allocable to the Facility, including, but not limited to Debt Service, the payment of the Operating and Maintenance Expenses of the Facility, any Project Development and Reliability Expenditures, all costs, charges, and expenses of repair, replacements and renewals of the Facility and all taxes, assessments or other governmental charges lawfully imposed on the Corporation or on the revenues of the Facility or payment, in lieu thereof, and the deposit or payment of any and all amounts which the Corporation may now and hereafter become obligated to deposit into any fund or pay from revenues of the Facility, by law, contract, or the Indenture.

(d) “Annual Facility Budget” shall mean, with respect to a Contract Year, the budget of the Corporation prepared in accordance with Section 6 hereof for such Contract Year or, in the case of an amended Annual Facility Budget, for the remainder of such Contract Year.

(e) “Approved Project” shall mean a Project which has been approved pursuant to Section 13 of this Power Sales Agreement.

(f) “Capacity” shall mean the capability to produce Energy and Ancillary Services in accordance with the performance capabilities of the Facility, on demand, and all inherent attributes of this capacity, as may be present upon completion of the Facility and throughout the life of this Power Sales Agreement.

(g) “Contract Year” shall mean the fiscal year of the Corporation as from time to time determined by the Corporation; provided, however, the first Contract Year of the Corporation shall begin on the effective date of this Power Sales Agreement and shall end on the last day of the fiscal year of the Corporation within which this Power Sales Agreement becomes effective.

(h) “Days Cash on Hand” means the sum of (i) Unrestricted Cash and Investments held by the Utility Board, divided by (ii) fiscal year-to-date operating expenses of the Utility Board (not including depreciation and amortization), multiplied by (iii) the number of days elapsed in the current fiscal year.

(i) "Debts" shall mean (i) Obligations and (ii) any other liabilities of the Corporation included in an Annual Facility Budget.

(j) "Debt Service" shall mean, with respect to any period, the net aggregate of the amounts required to be paid during said period on any Obligations outstanding as the same shall become due.

(k) "Development Project" shall mean any one or more of the following: (i) repairs, replacements, or modifications to an existing generating facility owned in whole or in part by the Corporation, and which are designed to increase or maintain an operating efficiency of the facility or (ii) preliminary and developmental work to determine whether any work should be undertaken as a Project, or engineering, legal, and financial studies in connection with the planning, development or utilization of power resources, or (iii) any purpose for which proceeds of Obligations may be expended by the Corporation under the Act, except a Project.

(l) "Energy" shall mean kilowatt-hours (kwh).

(m) "ERCOT" shall mean the Electric Reliability Council of Texas.

(n) "Facility" shall mean collectively (i) the power generation facility described in Schedule 1 of this Power Sales Agreement, and (ii) any other Project authorized under the terms hereof.

(o) "Indenture" shall mean that certain Trust Indenture, dated as of [\_\_\_\_], 2025, by and between the Corporation and [U.S. Bank Trust Company, National Association], as Trustee [ ], as supplemented from time to time in accordance with its terms and the terms hereof].

(p) "Obligations" shall mean all Obligations issued by the Corporation pursuant to the Indenture.

(q) "Operating and Maintenance Expenses" shall mean all expenses incurred in the operation and maintenance of the Facility and the Corporation which are properly accounted for such purpose under generally accepted accounting principles. Such term does not include depreciation or obsolescence charges or reserves therefor, interest charges and charges for the payment of principal, or amortization, of Obligations or other liabilities or indebtedness of the Corporation.

(r) "Point of Delivery" and "Points of Delivery" shall mean the point or points on the Facility of, or available to the Corporation, as set forth in Exhibit A, as amended from time to time by the Corporation and the Utility Board, at which Energy and Ancillary Services are made available to the System, or others, pursuant to this Power Sales Agreement.

(s) "Project" shall mean one or more of the following: (i) any Facility (or interest therein) to be constructed or acquired by the Corporation as well as fuel therefor and any transmission facility required to connect or interconnect such Facility with the System or others, or (ii) any addition or improvement to a Facility which is then owned, in whole or in part, by the Corporation.

(t) "Project Development and Reliability Expenditures" means those expenditures which the Corporation determines, under prudent utility practices, should be expended over a given period of time for (i) transmission and related facilities to increase the reliability of the delivery of Energy and Ancillary Services by the Corporation or (ii) the exploration for, development of or the acquisition of a fuel supply or supplies in order to provide fuel for generating facilities which are not then owned or in the process of construction for and on behalf of the Corporation, or (iii) repairs, replacements, or modifications to an existing generating facility (owned in whole or in part by the Corporation or under construction by it) which are designed to increase the Rated Capacity of such generating facility.

(u) "Rated Capacity" shall mean the maximum load expressed in net kilowatts (kw) that a generating source (as identified in the definition of Project) is capable of supplying under good operating conditions.

(v) "Required Operating Procedures" shall mean the operating procedures set forth in Exhibit B attached to this Power Sales Agreement.

(w) "Series 2025A Supplement" shall mean the Series Supplement to the Indenture under which the Series 2025A Bond are issued.

(x) "Series 2025B Supplement" shall mean the Series Supplement to the Indenture under which the Series 2025B Bond are issued.

(y) "System" shall mean the electric distribution system of the City of Kerrville, Texas, as described in the Purchase Agreement between the City and the Lower Colorado River Authority, dated April 16, 1987, together with all future extensions, improvements, enlargements and additions thereto, and replacements thereof.

(z) "Unrestricted Cash and Investments" means (a) the sum of all cash, cash equivalents and marketable securities and other appropriable funds, whether classified as unrestricted or temporarily restricted, including, without limitation, such amounts that are on deposit in a funded depreciation fund or account and amounts constituting board designated funds, whether classified as current or noncurrent assets, as described in the financial statements of the Utility Board, for any of corporate purposes, but excluding trustee-held funds (including, without limitation, debt service funds and construction funds), litigation reserves, less (b) the sum of the outstanding principal amount of any indebtedness of the Utility Board maturing within one year for the date Unrestricted Cash and Investments is calculated.

### **Section 3: Sale and Purchase of Energy and Ancillary Services.**

The Utility Board during the time this Section is applicable shall:

(1) Purchase and receive from the Corporation [REDACTED] Energy and Ancillary Services generated by the Facility; and

(2) Binds itself to pay for all Energy and Ancillary Services purchased or otherwise acquired by it from the Corporation pursuant to this Section 3, said payment to

be made at the rates and charges established pursuant to Section 7 of this Power Sales Agreement.

#### **Section 4: Performance of Certain Services.**

(a) In addition to the delivery of Energy and Ancillary Services hereunder and the performance of all acts and actions incident thereto, the Corporation agrees that, to the extent not performed pursuant to or as a consequence of any other Section of this Power Sales Agreement, it will either perform or cause to be performed, in a prudent and economical manner, the following services concerning the interrelated activities of the Corporation, the Utility Board and others, as well as various combinations of such parties:

(1) comprehensive planning for Energy and Ancillary Services and the transmission thereof to mutually agreed upon load centers;

(2) undertake or coordinate and monitor the design, construction, operation and maintenance of Projects;

(3) plan for and undertake or coordinate and monitor the economic dispatching of Energy and Ancillary Services of the Facility and the systems to the Facility is interconnected;

(4) provide accounting services; and

(5) such other services as the Corporation and the Utility Board, from time to time, shall determine to be appropriate and necessary.

(b) the Utility Board hereby binds itself to pay for the cost of the services that are to be provided by the Corporation pursuant to Subsection (a) of this Section 4, such payment to be made at the rates and charges established pursuant to Section 7 of this Power Sales Agreement.

#### **Section 5: Delivery of Energy and Ancillary Services.**

(a) The Energy and Ancillary Services to be furnished under this Power Sales Agreement shall be alternating current, sixty (60) hertz, three-phase, subject to conditions of delivery and measurement as hereinafter provided. The Energy and Ancillary Services shall be performed in accordance with the Required Operating Procedures.

(b) The Points of Delivery, delivery voltage and other conditions of service shall be in accordance with the service specifications set forth in Exhibit A attached to this Power Sales Agreement, as amended by the Corporation and Utility Board from time to time.

(c) The Utility Board shall be responsible for managing congestion on the ERCOT system between Points of Delivery and loads being served by the Energy and Ancillary Services.

(d) At the direction of the Utility Board, the Corporation shall make and pay for all connections between the Facility and the Points of Delivery and shall install, own and maintain any necessary substation equipment at the Points of Delivery, including switching and protective

equipment of adequate design and sufficient capacity to enable the Utility Board to take and use the Energy and Ancillary Services supplied under this Power Sales Agreement.

(e) The Corporation measure and track the Energy and Ancillary Services produced and delivered pursuant to this Power Sales Agreement in accordance with customary and reasonable utility practices. The Utility Board agrees to cooperate with the Corporation as necessary to enable the Corporation to meet its obligations pursuant to the immediately preceding sentence.

#### **Section 6: Annual Facility Budget**

(a) The Corporation shall prepare, in consultation with the Utility Board staff, or cause to be prepared an Annual Facility Budget at least ninety (90) days prior to the beginning of each Contract Year which shall itemize estimates of Annual Facility Costs and all revenues, income or other funds to be applied to such Annual Facility Costs for and applicable to such Contract Year. Such Annual Facility Budget shall also utilize and take into account forecasts, which shall be furnished by the Utility Board to the Corporation at least one hundred twenty (120) days prior to the beginning of such Contract Year, of the monthly peak Energy and Ancillary Services requirements estimated to be obtained from the Corporation during such Contract year.

(b) After consideration of any comments of the Utility Board, the Corporation, not less than thirty (30) days prior to the beginning of such Contract Year, shall adopt an Annual Facility Budget for such Contract Year and the rates and charges for Energy and Ancillary Services to be furnished and the services to be performed during such Contract Year and shall cause copies of such Annual Facility Budget and rates and charges to be delivered to the Utility Board. Provided, however, the Annual Facility Budget for the first Contract Year shall be prepared, considered, adopted and delivered in the manner which the Corporation deems best.

(c) If, at any time or from time to time after the adoption of the Annual Facility Budget in accordance with Subsection (b) of this Section 6, the Corporation estimates that the Annual Facility Costs or revenues for the Contract Year or any part thereof for which such Annual Facility Budget applies will be greater or less than the Annual Facility Costs or revenues set forth in the Annual Facility Budget, or that the amount of Energy and Ancillary Services which the Corporation expects to deliver during such Contract Year or any part thereof is greater or less than the amount of Energy and Ancillary Services which the Corporation estimated at the time of adoption of the Annual Facility Budget would have been delivered during such Contract Year, then the Corporation may prepare an amended Annual Facility Budget. The amended Annual Facility Budget shall be timely adopted by the Corporation and transmitted to the Utility Board.

(d) In the event a budget for the ensuing Contract Year has not been adopted on or before the first day of the Contract Year, the total amount budgeted for the preceding Contract Year shall be the total amount of the temporary budget for such purposes for the ensuing Contract Year. The temporary budget shall be effective only until such time as a permanent budget has been finally adopted and approved.

**Section 7: Power Cost Charges:**

(a) The rates and charges of the Corporation to the Utility Board for Energy and Ancillary Services and for services supplied shall be:

(1) fair and reasonable, and be based upon the cost of providing the Energy and Ancillary Services in accordance with the Annual Facility Budget;

(2) adequate (after taking into consideration other moneys received or anticipated to be received) to pay or make provision for paying Annual Facility Costs when they become due and payable; and

(3) determined and billed in accordance with the requirements set forth in Exhibit C.

**Section 8: Meter Readings and Payment of Bills.** The Corporation shall bill the Utility Board for Energy and Ancillary Services furnished under this Power Sales Agreement at monthly intervals. It shall also bill the Utility Board monthly for services rendered pursuant to Section 4 of this Power Sales Agreement.

**Section 9: Reserved.**

**Section 10: Payments to Constitute Operating Expenses of the System.** The Utility Board's obligation to make the payments under this Power Sales Agreement shall constitute an operating expense of the System payable solely from the revenues and receipts of the System. The Utility Board shall be bound and obligated to make such payments and the obligation to make the payments under Section 14 of this contract shall be unconditional.

**Section 11: Utility Board Rate and Liquidity Covenant.** The Utility Board shall establish, maintain and collect rates and charges for the electric service of the System which shall produce revenues at least sufficient, together with other revenues available to the System and available reserves of the System, to enable it to pay to the Corporation, when due, all amounts payable by the Utility Board under this Power Sales Agreement. The Utility Board shall at all times maintain a minimum of 120 Days Cash on Hand while this Power Sales Agreement is in effect. The Utility Board shall deliver to the Corporation and the Indenture Trustee on the first Business Day of each June and September a certificate of a Responsible Officer of the Utility Board confirming compliance with the covenants set forth in this section.

**Section 12: Covenants of the Corporation.**

(a) After first satisfying the Energy and Ancillary Services requirements of the Utility Board, as such requirements are established by the Utility Board from time to time, the Corporation shall use its best efforts to cooperate with the Utility Board to allow the Utility Board to market and dispose of any and all surplus Energy and Ancillary Services available from the Facility to the Utility Board under the terms hereof, to the extent that it may legally do so.

(b) The Corporation shall use prudent utility practices to operate the Facility in order to provide Energy and Ancillary Services to the Utility Board in accordance with the Required

Operating Procedures. If the supply of Energy and Ancillary Services shall fail, or be interrupted, or become defective by reason of force majeure as hereinafter provided, the Corporation shall not be liable therefor or for damages caused thereby.

(c) The Corporation shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of any power sales contracts. The Corporation shall not amend this Power Sales Agreement without first having secured the prior written consent of the Utility Board, but no amendment shall be made in any section of this Power Sales Agreement if such amendment could have an adverse effect on the security for payment of Obligations provided by this Power Sales Agreement without the prior written consent of the Indenture Trustee.

(d) The Corporation covenants and agrees that it will operate, maintain and manage the Facility or cause the same to be operated, maintained and managed in an efficient and economical manner, consistent with sound utility practice and in accordance with standards normally used by utilities owning like properties. The Corporation covenants and agrees that it will not sell, convey, mortgage, encumber, lease or in any manner transfer title to, or otherwise dispose of any significant or substantial part of the Facility such that the ability of the Corporation to provide the Energy and Ancillary Services to the Utility Board could be impaired without obtaining the prior written consent of the Utility Board.

(e) The Corporation covenants that it will not make a change in any Indenture so as to issue additional Obligations other than those authorized in the Series 2025A Supplement and Series 2025B Supplement without the approval of such changes by the Utility Board, nor shall any change be made in the amounts required to be paid into, accumulated in or maintained in any fund or account established under the Indenture, except as provided in the Indenture and the Series 2025A Supplement and Series 2025B Supplement, without such approval.

### **Section 13: Project Approval**

(a) Except with respect to the Obligations authorized in the Series 2025A Supplement and Series 2025B Supplement prior to the issuance of Obligations to provide money for any Project, the Corporation shall submit a written notice to the Utility Board as required by the provisions of paragraph (b) of this Section. If a Project has been approved pursuant to paragraph (c) of this Section, the Corporation may thereafter issue, sell and deliver Obligations in order to fully provide funds for such Project, including the design, construction, and the placing of same in commercial operation, or to meet any requirement of law, including those of a regulatory agency having jurisdiction, or to pay judgments or casualty losses not covered by insurance, or to meet a safety or overriding public necessity.

(b) A written notice of the Corporation's intention to provide funds (through the issuance of Obligations) for a Project shall contain a general description of the Project, the projected sources and uses of funds for all aspects of the construction and testing of the Project, and a statement to the effect that, in the opinion of the Corporation, the Project is necessary for the Corporation to meet its commitments under power sales contracts and is economically feasible, together with an explanation of the Corporation's basis for this opinion. Within 60 days after receipt of such notice, the Utility Board shall give the Corporation written notice of its approval

or disapproval of the Project. If the Utility Board fails to give the Corporation such written notice within such 60-day period, then the Utility Board shall be deemed to have approved the Project.

(c) If the Utility Board approves a Project then the Corporation may proceed with the issuance of Obligations to provide moneys for such Project.

#### **Section 14: Debt Service Support Payments**

(a) In any instance where the amount of money on deposit in the Debt Service Fund (created by the Indenture) is not the full amount then required to be on deposit therein, the Utility Board shall be obligated to make a payment the aggregate amount of which shall be the amounts that are necessary to establish or reestablish the amount then required, under the terms of the Indenture, to be on deposit in the Debt Service Fund and the Reserve Fund. The payments required to be made to pursuant to the preceding sentence shall be paid by the Utility Board directly to the Indenture Trustee for deposit in the Revenue Fund. The Utility Board unconditionally covenants the payment will be made, if required in the amount and in the manner prescribed. The provisions of this covenant are for the benefit and protection of the Utility Board, the System and the Owners of Obligations, it being recognized that the Owners of such Obligations shall be third-party beneficiaries of this covenant, and it is understood by the contracting parties that the purchaser of Obligations has and will agree to the purchase of Obligations conditioned upon this covenant.

(b) In the event the Corporation is held to be in default under the provisions of the Indenture (by reason of the inadequacy of payments required to be made by the Utility Board under the provisions of this Power Sales Agreement), the Utility Board shall cure default by making payments in the same proportion as provided in paragraph (a) of this Section.

(c) For and in consideration of the payments to be made by the Utility Board under this Power Sales Agreement (including those under this Section) the Corporation agrees to use its best efforts to deliver Energy and Ancillary Services from the Facility to the System, under the terms of this Power Sales Agreement, and such payments by the Utility Board shall be in consideration for the Corporation's agreement to deliver such Energy and Ancillary Services; but the failure of the Corporation to comply with such agreement shall not relieve the Utility Board of its obligations under this Section, which obligations shall be unconditional and absolute.

(d) The Utility Board represents and covenants that all payments to be made by it under this Power Sales Agreement shall constitute reasonable and necessary operating expenses of the System. The Utility Board shall not be obligated to make payments under this Power Sales Agreement from any source other than the gross revenues of the System. The Utility Board further represents that its governing body has determined that the services to be provided by the Corporation are current expenses of the System to purchase electric power and are in the best interest of the System.

(e) No ad valorem tax revenues of any of the Utility Board (or the City of Kerrville, Texas) shall be pledged to the payment of any amounts to be paid by the Utility Board to the Corporation under this Power Sales Agreement, nor shall the Corporation have the right to demand payment of any amounts to be paid by the Utility Board under this Power Sales Agreement from funds raised or to be raised from ad valorem taxation. The obligations under this Power Sales

Agreement shall never be construed to be a debt or pecuniary obligation of the City of Kerrville, Texas of such kind as to require the City of Kerrville, Texas to levy and collect an ad valorem tax to discharge any obligations of the Utility Board.

### **Section 15: Remedies in Event of Default**

(a) (1) If the Utility Board fails or defaults in meeting the terms, conditions and covenants of this contract (other than a default in payment for which provision is made in subsection (b) of this Section), the Corporation shall give notice (in the manner contemplated by Section 31 of this Power Sales Agreement) to the Utility Board. The Utility Board shall from the date of the mailing of such notice, have a period of 30 days to cure the default.

(2) If the Utility Board fails to make any payment (hereinafter called a default in payment) to the Corporation that is required to be made under the provisions of this Power Sales Agreement, and such default in payment continues for a period of fifteen (15) days, the Corporation shall give notice (in the manner contemplated by Section 31 of this Power Sales Agreement) to the Utility Board. The Utility Board shall, from the date of the delivery of such notice, have a period of thirty (30) days to pay the full amount then due to the Corporation, together with interest thereon, as hereinafter provided.

(3) If the Utility Board does not cure its default within such period of thirty (30) days, then, so long as the Utility Board remains in default and in addition to any other rights which the Corporation has under this Power Sales Agreement and at law and in equity, the Corporation may terminate all service to the Utility Board. Additionally, in the event of default in payment, the Corporation may charge to and collect from the Utility each calendar month the amount which the Corporation determines to be the difference between what the Corporation would have received from the Utility Board under this Power Sales Agreement for Energy and Ancillary Services and services furnished and delivered to the Utility Board, had the Utility Board not been in default, and the amount, if any, which the Corporation receives from sales of such Energy and Ancillary Services and services to the others persons in accordance with the terms of the Indenture. Termination of service hereunder shall not reduce or change the obligation of the Utility Board under the other provisions of this Power Sales Agreement.

(b) If the Corporation fails or defaults in meeting the terms, conditions and covenants of this Power Sales Agreement, except its covenant to use reasonable diligence to provide a constant and uninterrupted supply of Energy and Ancillary Services contained in Section 12(b), and such default continues for a period of 15 days after the Utility Board has given the Corporation notice of such default in the manner contemplated in Section 31 of this Power Sales Agreement, then the Utility Board shall have all of the rights and remedies provided at law and in equity, except that in no event shall the Utility Board be relieved of its obligation specified in Section 14. The delivery of available Energy and Ancillary Services as provided in this Power Sales Agreement shall be a ministerial duty of the Corporation.

**Section 16: Reserved.**

**Section 17: Payment Due Dates and Delinquency.**

(a) In the event that the Utility Board fails to make any payment at the time herein specified, interest on such delinquent amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full and the Corporation may institute a proceeding for a mandatory injunction requiring the payment of the amount due and interest thereon, such action to be instituted in a court of competent jurisdiction.

(b) All payments required to be made by the Utility Board under the terms of this Power Sales Agreement shall be due and payable within two Business Days following the date the Corporation renders the bill. If the Utility Board at any time disputes the amount to be paid to the Corporation, the Utility Board shall nevertheless timely make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Utility Board should have been less, or more, the Corporation shall promptly revise the next invoice amount in a manner that the Utility Board or the Corporation will recover such amount due; provided, however, the Utility Board shall have no right of setoff, recoupment or counterclaim against any payment under Section 14(a) or that part of the Annual Facility Costs which are attributable to payments to be made into the Debt Service Fund and the Reserve Fund, which are unconditional.

(c) Should a dispute as between the Utility Board and the Corporation arise as to whether the Corporation is in compliance with its covenants as contained herein, the Utility Board shall nevertheless be obligated (1) to make the payments provided by paragraph (a) of Section 14 hereof and (2) to pay such amount of the Annual Facility Costs.

**Section 18: Power Sales Contracts.** The Corporation may provide Energy and Ancillary Services and services pursuant to a power sales contract, upon such terms as may be approved by the governing body of the Corporation and, except as provided by Section 12(a), the Utility Board.

**Section 19: Continuation of Services.** The Utility Board shall have the right to the continued performance of services provided under the provisions of this Power Sales Agreement for the useful life of the Facility by giving written notice to the Corporation at least 5 years prior to the scheduled termination of this Power Sales Agreement (as specified in Section 1) provided that if such termination is occasioned by making provision for the payment of the Debts of the Corporation, the notice may be given within 90 days of such provision being made. The Utility Board shall be obligated to continue paying the Annual Facility Costs until this Power Sales Agreement is terminated in accordance with its terms.

**Section 20: Utility Board Not to Sell the System.** The Utility Board covenants that during the term of this Power Sales Agreement (or the extensions thereof) it will (i) remain in control of the System; and (ii) not sell or otherwise dispose of the System in whole or substantially as a whole to any entity other than an assignee under Section 21 of this Power Sales Agreement

and, in the case of such an assignee, only with the written consent of the Corporation and the Indenture Trustee.

**Section 21: Assignment of Rights of the Utility Board.** The Utility Board may assign any its rights under this Power Sales Agreement to another entity, if permitted by applicable law, but no sale or other disposition shall relieve the Utility Board of its obligations under this Power Sales Agreement so long as any Obligations are outstanding.

**Section 22: Tax Matters; Securities Disclosure.**

(a) The Utility Board acknowledges that it is the intention of (i) the Corporation to utilize, to the maximum extent possible, the proceeds of Obligations the interest on which is excluded from gross income for Federal income tax purposes ("Tax-Exempt Obligations") under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), to finance the costs of the Facility, and (ii) the Utility Board to enable the Corporation to issue Obligations that are Tax-Exempt Obligations. Alternatively, and to the extent provided for under federal legislation and available with respect to the Facility, the Corporation may issue other tax-advantaged obligations to finance the costs of any Project, such as, but not limited to, qualified tax credit bonds under Section 54A or similar successor provisions of the Code and/or Build America Bonds under Section 54AA or similar successor provisions of the Code (collectively with Tax-Exempt Obligations, "Tax-Advantaged Obligations"). The Utility Board acknowledges that at any time that the Corporation issues Tax-Advantaged Obligations, the Utility Board must expect to own and not expect to sell or otherwise dispose of or change the use of its rights to output of the Facility prior to the final maturity date of the respective Tax-Advantaged Obligations.

(b) The Utility Board acknowledges that output contracts with nongovernmental persons for the purchase of electricity produced by a generating facility financed with Tax-Advantaged Obligations may result in private business use of such generating facilities, that contracts with nongovernmental persons for transmission and distribution services financed with Tax-Advantaged Obligations may result in private business use of such transmission and distribution facilities and that only a limited amount of private business use is permitted under the Federal income tax laws addressing Tax-Exempt Obligations and certain other Tax-Advantaged Obligations.

(c) The Utility Board hereby represents, warrants and covenants that, notwithstanding any other provisions of this Power Sales Agreement, it will take all actions necessary to enable the Corporation to issue Obligations as Tax-Advantaged Obligations to finance the Projects for the Facility in accordance with the terms hereof.

(d) The Utility Board represents, warrants and covenants that it will not take any action (including but not limited to entering into output contracts), or fail to take any action, that would adversely affect the tax advantaged status of any Tax-Advantaged Obligations. The Utility Board represents, warrants and covenants that its interest in the Facility will be used for the governmental purpose of the Utility Board. In addition, the Utility Board represents, warrants and covenants that, to the extent applicable, it will take no action or fail to take any action which action or failure would cause the Tax-Advantaged Obligations issued by the Corporation to become private activity bonds, including qualified 501(c)(3) bonds, and it will not dispose of or change the use of its

System unless an opinion of nationally recognized bond counsel acceptable to the Corporation is received stating that such action will not have an adverse effect on the tax advantaged status of Obligations issued as Tax-Advantaged Obligations.

(e) The Utility Board represents, warrants and covenants that it will establish reasonable procedures to ensure that no action is taken by it that would cause any Obligations issued as Tax-Advantaged Obligations to meet, to the extent applicable, the private business use test or the private loan test of Section 141 of the Code and to ensure continued qualification of the Obligations issued as Tax-Advantaged Obligations.

(f) The Utility Board agrees to assist and to cooperate with the Corporation regarding any matters to the extent needed to maintain the tax status of Obligations issued as Tax-Advantaged Obligations, including but not limited to (i) delivering, prior to issuance of any Tax-Advantaged Obligations, executed certificates relating to the tax requirements applicable to Tax-Advantaged Obligations, and (ii) providing to the Corporation periodic reports after the issuance of any Tax-Exempt Obligations confirming compliance with the requirements necessary to maintain the tax status of Obligations issued as Tax-Advantaged Obligations.

(g) (i) In order to facilitate the marketing of Obligations secured by this Power Sales Agreement and to assist the underwriter(s) thereof in complying with their obligations under Rule 15c2-12 of the Securities Exchange Act of 1934, as amended from time to time (the "Rule"), the Corporation shall designate the Utility Board to be an "obligated person" within the meaning of the Rule and the Utility Board, annually, no later than October 1 of each year and to the extent required for the Corporation to comply with its undertakings made pursuant to such Rule, (i) information updating the financial and operating data respecting the Utility Board and the System, which data was presented or included by specific reference in an official statement or other comparable document of the Corporation prepared in connection with the offering of its Obligations, and (ii) the Utility Board's audited financial statements relating to the System, when they become publicly available, and prepared in accordance with generally accepted governmental accounting standards or otherwise as required by law.

(h) In addition, the Utility Board agrees to take such actions and sign such certificates as are deemed necessary by the Corporation to successfully market any Obligations secured by this Power Sales Agreement.

### **Section 23: Force Majeure.**

(a) If for any reason of "force majeure" any of the parties hereto shall be rendered unable wholly or in part, to carry out its obligations under this Power Sales Agreement, other than the obligation of the Utility Board to make the payments required under the terms of this Power Sales Agreement, then if such party shall give notice and the full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on; the obligation of the party giving such notice so far as it is affected by such "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders or actions of any kind of the Government

of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any "force majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(b) No damage shall be recoverable from the Corporation or the Utility Board by reason of the causes above mentioned.

**Section 24: Insurance.**

(a) The Corporation shall maintain, or cause to be maintained in force for the benefit of the Corporation, such insurance with respect to the Facility as shall be reasonably available and as is usually carried by municipal electric utilities constructing and operating generating and transmission facilities but, in the case of nuclear generating facilities, not less than will satisfy the requirements of federal and state law and such other insurance as is usually carried by municipal electric utilities owning like properties. Provided, however, in any event, the Corporation shall maintain, or cause to be maintained, in force, insurance in such amounts and against such risks as required by the Indenture.

(b) The Corporation will secure and maintain adequate fidelity insurance or bonds on all officers and employees handling or responsible for funds of the Corporation.

**Section 25: Reports.** The Corporation will prepare and issue to the Utility Board the following reports for each fiscal year: (i) financial and operating statement relating to the Facility; (ii) status of construction for each facility constituting the Facility during construction; and (iii) analysis of operations relating to the Facility.

**Section 26: Records and Accounts.** The Corporation will keep accurate records and accounts of the Facility and of the transactions relating to each facility constituting the Facility as well as of the operations of the Corporation in accordance with the requirements of the Indenture. Within one hundred eighty (180) days after close of each Contract Year, the Corporation shall cause such records and accounts and all transactions of the Corporation relating to the Facility with respect to such Contract Year to be subject to an annual audit by an independent certified public accountant. A copy of each such annual audit shall be sent by the Corporation to the Utility Board.

**Section 27: Access.** The Utility Board shall at all times have reasonable access to examine any and all books and records of the Corporation and to examine any part of the Facility. The Corporation and the Utility Board will give the other the right to enter the premises of the other at all reasonable times for the purpose of repairing or removing facilities, reading meters and

performing work incidental to delivery and receipt of Energy and Ancillary Services furnished hereunder.

**Section 28: Governmental Rates, Regulations and Laws.** The Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Texas, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

**Section 29: Third-Party Beneficiaries.** Each of the Indenture Trustee, and the Owners of Obligations issued under the Indenture are third party beneficiaries of this Power Sales Agreement and shall be entitled to seek enforcement of the terms of this Power Sales Agreement, in accordance with the terms of the Indenture, upon the occurrence and during an Event of Default under the Indenture.

**Section 30: Reserved.**

**Section 31: Notices.** Any notice, request, demand, statement, invoice or bill provided for in this Power Sales Agreement shall be in writing and shall be considered to have been duly delivered when sent by registered or certified mail, addressed as follows, unless another address has been designated, in writing, by the party entitled to receive same:

Corporation: [\_\_\_\_\_]

Utility Board:

Attention: Executive Director

[\_\_\_\_\_]

**Section 32: Severability.** The parties hereto agree that if any of the provisions of this Power Sales Agreement should contravene or be held invalid under the laws of the State of Texas, such contravention or invalidity shall not invalidate the whole Contract but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and in force accordingly.

IN WITNESS WHEREOF, the parties hereto have caused this Power Sales Agreement to be executed in their corporate names and their corporate seals affixed, all by the proper officer duly authorized thereunto, as of the day and year first hereinabove written.

**KERRVILLE PUBLIC UTILITY BOARD**

By: \_\_\_\_\_  
Name:  
Title:

**KERRVILLE PUBLIC UTILITY BOARD  
PUBLIC FACILITY CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**POINTS OF DELIVERY**

“Point of Delivery” shall be the Resource Node assigned to the Facility by ERCOT [REDACTED] through its protocols and other binding documents for pricing purposes in the ERCOT market. For avoidance of doubt, this is the high side of the generator step-up transformer.

**EXHIBIT B**  
**OPERATING PROCEDURES<sup>1</sup>**

---

<sup>1</sup> NTD - To be added.

## **EXHIBIT C**

### **RATES AND CHARGES**

[The rates to be charged by the Corporation for Energy and Ancillary Services furnished to the Utility Board shall be invoiced on the first Business Day of each calendar month and shall consist of the following line items:

- Fixed Annual Facility Costs consisting of Annual Facility Costs identified in the Annual Facility Budget for such calendar month;
- Variable Fuel Expenses consisting of operating expenses of the Corporation for fuel necessary to operate the Facility in accordance with the Required Operating Procedures.
- Other Variable Expenses consisting of operating expenses of the Corporation other than fuel necessary to operate the Facility in accordance with the Required Operating Procedures.]

## SCHEDULE 1

**Project Description:** The generation project contemplated is a new simple cycle natural gas peaking facility with a nominal generating capacity of 122 MW to be located at [REDACTED] [REDACTED]. The facility will utilize fast start natural gas-fired reciprocating internal combustion engines capable of reaching full load in less than 10 minutes. The facility is projected to reach commercial operation on or around June 1, 2027.

**Approved Obligations to be issued in connection with Facility:**

[Insert Series 2025A Supplement and Series 2025B Supplement terms for Bonds and TEF Loan Agreement.]

Exhibit D  
Form of Credit Agreement

**CREDIT AGREEMENT**

dated as of [●], 2025

among

**KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION**  
as Borrower,

**PUBLIC UTILITY COMMISSION OF TEXAS,**  
as Lender

\$[●] Loan Facility

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 DEFINITIONS.....</b>	<b>2</b>
1.1    DEFINITIONS .....	2
1.2    RULES OF INTERPRETATION .....	2
<b>ARTICLE 2 THE CREDIT FACILITY.....</b>	<b>2</b>
2.1    FACILITY.....	2
2.2    COMMITMENT .....	4
2.3    OTHER PAYMENT TERMS .....	5
2.4    NO LIABILITY .....	6
2.5    NO APPROVAL OF WORK .....	6
2.6    DETERMINATION OF LOAN AMOUNT .....	6
<b>ARTICLE 3 CONDITIONS PRECEDENT.....</b>	<b>7</b>
3.1    CONDITIONS PRECEDENT TO THE CLOSING DATE .....	7
3.2    CONDITIONS PRECEDENT TO EACH LOAN AFTER THE FIRST LOAN .....	11
3.3    CONDITION PRECEDENT TO COMMERCIAL OPERATION .....	12
3.4    CONDITIONS PRECEDENT TO PROJECT COMPLETION.....	13
<b>ARTICLE 4 .....</b>	<b>15</b>
<b>REPRESENTATIONS AND WARRANTIES.....</b>	<b>15</b>
4.1    ORGANIZATION; OWNERSHIP OF SECURITIES.....	15
4.2    AUTHORIZATION; NO CONFLICT .....	16
4.3    ENFORCEABILITY .....	16
4.4    COMPLIANCE WITH LAW .....	16
4.5    BUSINESS, CONTRACTS, JOINT VENTURES, ETC.....	16
4.6    NO MATERIAL ADVERSE EFFECT.....	17
4.7    INVESTMENT COMPANY ACT .....	17
4.8    EMPLOYEE MATTERS.....	17
4.9    PERMITS.....	17
4.10    ENVIRONMENTAL LAWS .....	18
4.11    LITIGATION .....	19
4.12    LABOR DISPUTES AND ACTS OF GOD .....	20
4.13    PROJECT DOCUMENTS.....	20
4.14    DISCLOSURE .....	20
4.15    GOVERNMENTAL REGULATION .....	20
4.16    PROJECT SCHEDULE AND CONSTRUCTION BUDGET; OPERATING FORECASTS AND BASE CASE FINANCIAL MODEL.....	21
4.17    FINANCIAL STATEMENTS .....	22
4.18    NO DEFAULT.....	22
4.19    COLLATERAL .....	22
4.20    TITLE .....	22
4.21    INTELLECTUAL PROPERTY; DATA SECURITY .....	23

4.22	SUFFICIENCY OF PROJECT DOCUMENTS .....	25
4.23	FLOOD ZONE DISCLOSURE.....	25
4.24	ANTI-TERRORISM LAWS .....	26
4.25	SOLVENCY .....	26
4.26	AML LAWS; ANTI-CORRUPTION LAWS AND SANCTIONS .....	26
4.27	INSURANCE .....	28
4.28	INDEBTEDNESS.....	28
4.29	SINGLE-PURPOSE ENTITY .....	28
<b>ARTICLE 5 AFFIRMATIVE COVENANTS .....</b>		<b>28</b>
5.1	USE OF PROCEEDS.....	28
5.2	PAYMENT.....	28
5.3	WARRANTY OF TITLE.....	28
5.4	NOTICES.....	29
5.5	FINANCIAL STATEMENTS .....	31
5.6	BOOKS, RECORDS, ACCESS .....	33
5.7	COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC .....	33
5.8	REPORTS; TITLE AND SURVEY MATTERS .....	34
5.9	EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.....	34
5.10	LENDER MEETINGS .....	34
5.11	OPERATION AND MAINTENANCE OF PROJECT; ANNUAL FACILITY BUDGET .....	35
5.12	PRESERVATION OF RIGHTS; FURTHER ASSURANCES .....	36
5.13	ADDITIONAL CONSENTS.....	36
5.14	MAINTENANCE OF INSURANCE.....	36
5.15	EVENT OF EMINENT DOMAIN .....	36
5.16	SPECIAL PURPOSE ENTITY .....	37
5.17	THE PATRIOT ACT.....	37
5.18	PUHCA EXEMPTION AND GOVERNMENT APPROVAL .....	37
5.19	CONSTRUCTION OF THE PROJECT; FINAL COMPLETION.....	37
5.20	INDEPENDENT ENGINEER; PERFORMANCE TESTS.....	38
5.21	RISK MANAGEMENT POLICY.....	38
5.22	TAX STATUS .....	38
5.23	ERCOT MARKET.....	39
5.24	SECURITY.....	39
5.25	PERFORMANCE COVENANT .....	39
5.26	FINANCIAL COVENANTS .....	39
<b>ARTICLE 6 NEGATIVE COVENANTS.....</b>		<b>39</b>
6.1	CONTINGENT LIABILITIES .....	40
6.2	LIMITATIONS ON LIENS .....	40
6.3	INDEBTEDNESS.....	40
6.4	SALE, LEASE OR TRANSFER OF ASSETS.....	40
6.5	CHANGES .....	40
6.6	DISTRIBUTIONS .....	41
6.7	INVESTMENTS .....	42
6.8	PARTNERSHIPS, ETC. .....	42
6.9	DISSOLUTION; MERGER .....	42

6.10	AMENDMENTS TO AND TERMINATION OF CERTAIN DOCUMENTS.....	42
6.11	NAME AND LOCATION; FISCAL YEAR .....	44
6.12	ASSIGNMENT.....	44
6.13	HAZARDOUS SUBSTANCES .....	44
6.14	ADDITIONAL PROJECT DOCUMENTS.....	44
6.15	ASSIGNMENT BY THIRD PARTIES .....	44
6.16	ACQUISITION OF REAL PROPERTY.....	44
6.17	USE OF SITE .....	45
6.18	HEDGING AGREEMENTS.....	45
6.19	LEASE TRANSACTIONS.....	45
6.20	CAPITAL EXPENDITURES.....	45
6.21	CONSTRUCTION BUDGET CONTINGENCY; CHANGE ORDERS.....	45
6.22	PERFORMANCE TESTS AND SUBSTANTIAL COMPLETION.....	46
6.23	ANTI-TERRORISM; AML LAWS; ANTI-CORRUPTION; SANCTIONS .....	47
6.24	AUDITORS AND ACCOUNTING .....	47
6.25	AUDITORS AND ACCOUNTING .....	47
<b>ARTICLE 7 EVENTS OF DEFAULT; REMEDIES.....</b>		<b>47</b>
7.1	EVENTS OF DEFAULT .....	47
7.2	REMEDIES .....	49
7.3	PERFORMANCE COVENANT REMEDY .....	49
<b>ARTICLE 8 SCOPE OF LIABILITY .....</b>		<b>49</b>
<b>ARTICLE 9 AGENTS; SUBSTITUTION.....</b>		<b>50</b>
9.1	RELIANCE .....	50
9.2	DEFAULTS; MATERIAL ADVERSE EFFECT .....	51
9.3	NON-RELIANCE.....	51
9.4	DEFAULTS; MATERIAL ADVERSE EFFECT .....	51
9.5	SUCCESSOR AGENT.....	52
9.6	AUTHORIZATION.....	52
9.7	AGENT PROVISIONS. ....	52
<b>ARTICLE 10 CONSULTANTS .....</b>		<b>53</b>
10.1	REMOVAL AND FEES .....	53
10.2	CERTIFICATION OF DATES.....	53
<b>ARTICLE 11 MISCELLANEOUS .....</b>		<b>53</b>
11.1	ADDRESSES.....	53
11.2	AMENDMENTS; WAIVERS .....	55
11.3	LAWS .....	55
11.4	DELAY AND WAIVER .....	55
11.5	COSTS, EXPENSES AND ATTORNEYS' FEES .....	56
11.6	ENTIRE AGREEMENT.....	56
11.7	GOVERNING LAW.....	56
11.8	SEVERABILITY .....	56
11.9	HEADINGS.....	57

11.10	ACCOUNTING TERMS .....	57
11.11	NO PARTNERSHIP, ETC.....	57
11.12	LIMITATION ON LIABILITY .....	57
11.13	WAIVER OF JURY TRIAL.....	58
11.14	CONSENT TO JURISDICTION.....	58
11.15	SUCCESSORS AND ASSIGNS.....	59
11.16	COUNTERPARTS .....	59
11.17	USURY 59	
11.18	SURVIVAL .....	59
11.19	[PATRIOT ACT NOTICE.....	60
11.20	COMMUNICATIONS.....	60
11.21	IMMUNITY.....	60
11.22	INDEPENDENCE OF THE BORROWER. THE BORROWER CONFIRMS THAT: .....	60
11.23	ROLE OF LENDER.....	61

Index of Exhibits

<b>Exhibit A</b>	Definitions and Rules of Interpretation <b>Loan Disbursement and Interest Procedures</b>
Exhibit B-1	Form of Notice of Borrowing
Exhibit B-2	Reserved
Exhibit B-3	Form of Borrower Commercial Operation Certificate
Exhibit B-4	Form of Independent Engineer Commercial Operation Certificate
Exhibit B-5	Form of Notice of Project Completion
	<b>Credit and Security-Related Documents</b>
Exhibit C-1	Reserved
Exhibit C-2	Reserved
	<b>Consents</b>
Exhibit D	Form of Consent for Contracting Party
	<b>Project Description Exhibits</b>
Exhibit E-1(a)	Schedule of Closing Date Applicable Permits
Exhibit E-1(b)	Schedule of Post-Closing Date Applicable Permits
Exhibit E-2	Hazardous Substances Disclosure
Exhibit E-3	Reserved
Exhibit E-4	Project Litigation
	<b>Other</b>
Exhibit F	Mandatory Amortization Schedule
Exhibit G	Insurance Requirements
Exhibit H	Form of Restricted Payment Certificate
Exhibit I	Reserved
Exhibit J-1	Form of Summary Construction Report
Exhibit J-2	Form of Summary Operating Report
Exhibit K	Form of Insurance Consultant's Certificate
Exhibit L	Closing Date Organizational Diagram
Exhibit M	List of Closing Date Legal Opinions
Exhibit N	Payment Certificate
Exhibit O	Use Restrictive Covenant

This CREDIT AGREEMENT, dated as of [●], 2025 (this “Agreement”), is entered into among **KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION**, a public facility corporation created pursuant to Chapter 303 of the Texas Local Government Code, by the City of Kerrville, Texas (the “Borrower”), [●], and the **PUBLIC UTILITY COMMISSION OF TEXAS** (the “Lender” and together with the Borrower the “Parties”).

A. Pursuant to Senate Bill 2627 - the Powering Texas Forward Act (the “TEF Act”)- the PUCT was directed by the Texas Legislature to administer the Texas Energy Fund (“TEF”) to provide grants and loans to finance the construction, maintenance, modernization, and operation of electric facilities in Texas through four different programs, one of which is In-ERCOT Generation Loan Program.

B. Under the In-ERCOT Generation Loan Program, the PUCT, in its capacity, as Lender, is authorized to provide low-interest loans to qualifying companies for [the construction of new dispatchable electric generating facilities in the ERCOT power region] /[the expansion of existing facilities providing power to the ERCOT power region].

C. PUCT adopted 16 Texas Administrative Code §25.510 (the “Rules”) to establish the application process, project eligibility requirements, evaluation criteria, and loan terms for the In-ERCOT Generation Loan Program.

D. The Borrower is developing a new simple cycle natural gas peaking facility with a nominal generating capacity of 122 MW in [ ] (the “Project”) for the benefit of the City of Kerrville, Texas’s electric distribution system (the “System”).

E. The Borrower is a municipally owned utility and is authorized by law to construct, maintain, or finance the Project and may borrow money from the TEF under the Texas Administrative Code.

F. The Borrower will repay the loan with funds obtained from revenues of the System obtained by the Borrower in consideration for electric output of the Facility pursuant to the terms of that certain Power Sales Agreement, dated as of the date hereof (the “Power Sales Agreement”), by and between the Borrower and the Kerrville Public Utility Board (the “Utility Board”), the Board of Trustees established by the City to manage and operate its System pursuant to Chapter 552 of the Texas Local Government Code.

E. The Utility Board submitted on behalf of the Borrower an application to the In-ERCOT Generation Loan Program on July 26, 2024, and TEF approved Borrower’s application on [●], 2025.

F. In order to finance a portion of the Eligible Project Costs of the Project, Borrower has requested Lender to extend, and Lender has agreed to extend, on the terms and conditions set forth in this Agreement and the other Credit Documents, a term loan credit facility to Borrower funded through the In-ERCOT Generation Loan Program, as more fully described herein.

## AGREEMENT

In consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

**1.1 Definitions.** Except as otherwise expressly provided herein, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

**1.2 RULES OF INTERPRETATION.** Except as otherwise expressly provided herein or therein, the rules of interpretation set forth in Exhibit A shall apply to this Agreement.

## ARTICLE 2 THE CREDIT FACILITY

### 2.1 FACILITY.

#### 2.1.1 *Availability.*

(a) Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower set forth herein, Lender agrees to advance to Borrower from time to time during the Availability Period such loans as Borrower may request pursuant to this Section 2.1.1(a) (individually, a “Loan” and, collectively, the “Loans”) in an aggregate principal amount which, when added to the aggregate principal amount of all prior Loans made by Lender under this Agreement, does not exceed the Commitment.

(b) Amounts prepaid or repaid in respect of Loans may not be reborrowed.

#### 2.1.2 *Notice of Borrowing.*

(a) Borrower shall request Loans by delivering to Administrative Agent and the Lender, through the Lender’s “GovConnect” online portal, a Notice of Borrowing, which contains or specifies, among other things:

(i) the aggregate principal amount of the requested Loan, which shall be in the minimum amount of \$[100,000], or, if the remaining Commitment is less than \$[100,000], such remaining amount;

(ii) the Requested Loan Date (which shall be a Business Day);

(iii) the deliverables required pursuant to Section 3.2; and

(iv) a certification by Borrower that, as of the date such requested Loan is proposed to be made, the Loan proposed to be made on such date, when added together with all other Loans made under this Agreement, does not exceed the then undisbursed Commitment.

(b) Borrower shall request no more than two Loan per month. Borrower shall give each Notice of Borrowing to Administrative Agent so as to provide not less than the Minimum Notice Period. Any Notice of Borrowing may be modified or revoked by Borrower through the Business Day prior to the Minimum Notice Period, and shall thereafter be irrevocable.

(c) The proceeds of all Loans shall be deposited into the Construction Fund established under the Indenture; provided, however, that the proceeds of any Loans made on the Closing Date shall be applied in accordance with the Flow of Funds Memorandum.

#### **2.1.3 *Interest.***

(a) Interest Rate. Borrower shall pay interest on the unpaid principal amount of each Loan from the date of Borrowing of such Loan until the maturity or prepayment thereof at a rate per annum equal to three percent (3%) (the "Interest Rate").

(b) Payment Dates.

(i) Interest on each Loan shall accrue from the date of each Loan and shall be payable, without duplication:

(A) on the Final Maturity Date;

(B) on the date of any payment or prepayment, in whole or in part, of principal outstanding on any Loan, on the principal amount so paid or prepaid; and

(C) on each Payment Date beginning with the first Payment Date occurring after the Closing Date on [ ], 2027;

(ii) All interest shall be calculated in accordance with the terms of the Bonds delivered in connection with each Loan on each Requested Loan Date, as set forth in the Series 2025B Supplement.

**2.1.4 *Scheduled Principal Amortization.*** On each Principal Repayment Date, Borrower shall repay to Lender, the aggregate unpaid principal amount of the Loan made by Lender in installments in accordance with the Mandatory Amortization Schedule for the Bonds delivered in connection with each Loan on each Requested Loan Date.

#### **2.1.5 *Loan Funding.***

(a) Notice. Each Notice of Borrowing, shall be delivered to Administrative Agent in accordance with Section 2.1.2.

(b) Account. No later than [3:00 p.m. Austin, Texas time] on the date specified in each Notice of Borrowing, if the applicable conditions precedent listed in Section 3.2 have been satisfied or waived by Lender in accordance with the terms thereof, Lender shall make available the Loan requested in such Notice of Borrowing in Dollars and in immediately available funds, and shall deposit or cause to be deposited the proceeds of any such Loans into the Construction Fund (other than with respect to Loans made on the Closing Date, the proceeds of

which shall be applied in accordance with the Flow of Funds Memorandum, and as otherwise permitted under this Agreement).

**2.1.6 *Prepayments.***

(a) *Terms of All Prepayments.*

(i) Upon the prepayment of any Loan, Borrower shall pay to Lender (A) all accrued interest to the date of such prepayment on the amount of such Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the amount of such Loan being prepaid.

(ii) All Optional Prepayments shall be applied, to prepay outstanding Loans or to reduce the remaining payments of Loans required under Section 2.1.4 to scheduled principal payments, as selected at the discretion of the Borrower, together with (x) accrued but unpaid interest payable in connection with such prepayment.

(b) *Optional Prepayments.*

(i) Borrower may, at its option and without premium or penalty, upon [five] Business Days' notice to Administrative Agent (which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Borrower by providing written notice to Administrative Agent at least the Minimum Notice Period prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay any Loans in whole or from time to time in part in minimum amounts of \$[1,000,000] or an incremental multiple of \$[100,000] in excess thereof (each, an "Optional Prepayment").

(ii) Optional Prepayments of the Facility may not be re-borrowed.

**2.1.7 *Re-Borrowing.*** Borrower may not re-borrow the principal amount of any Loan repaid or prepaid pursuant hereto.

**2.2 *Commitment.***

**2.2.1 *Commitment Amount.*** Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Loans made by the Lender shall not exceed, in each case as such amount may be reduced by Borrower pursuant to Section 2.2.2, \$[•] (such amount, as it may be reduced from time to time, the "Commitment"), as such amount may be reduced by Borrower pursuant to Section 2.2.2.

**2.2.2 *Reductions and Cancellations.***

(a) Borrower may at any time and from time to time by providing notice to Administrative Agent not less than the Minimum Notice Period permanently reduce (without premium or penalty) the Commitment by a minimum amount of \$[1,000,000] (or, if less, the

remaining Commitment) or cancel (without premium or penalty) in its entirety the Commitment, subject to the provisions of Section 2.2.2(c). Borrower may not reduce or cancel the Commitment if:

(i) with respect to the Commitment, after giving effect to such reduction or cancellation, the aggregate principal amount of all Loans then outstanding would exceed the Commitment;

(ii) with respect to the Commitment, after giving effect to such reduction or cancellation, the Available Construction Funds would not equal or exceed the aggregate unpaid amount required to cause the Commercial Operation Date to occur by the Commercial Operation Longstop Date and to cause the Project Completion Date to occur by the Project Completion Longstop Date and to pay the Remaining Costs along with a reasonable contingency (as reasonably determined by Lender), as certified by an authorized officer of Borrower in a certificate delivered to Administrative Agent and verified by the Independent Engineer;

(iii) such reduction or cancellation could reasonably be expected to cause a Default or Event of Default; or

(b) Once reduced or canceled, the Commitment may not be increased or reinstated.

(c) Borrower shall notify Administrative Agent and Lender in writing of any election to terminate or reduce Commitments at least [three] Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by Borrower pursuant to this clause (c) shall be irrevocable; provided that a notice of termination of Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

## 2.3 OTHER PAYMENT TERMS.

### 2.3.1 Place and Manner.

(a) Borrower shall make all payments on the Loan due to Lender in accordance with the terms of the Borrower's Bonds delivered on each Requested Loan Date. Any other payments due to the Lender under the terms of this Agreement shall be paid free and clear without setoff or counterclaim of any kind to the account denominated:

Bank Name: [●]

ABA/Swift/Routing No.: [●]

Account No.: [●]

Attention: [●]

Reference: [●]

or such other account as Lender shall notify Borrower from time to time, in Dollars and in

immediately available funds not later than [11:00 a.m. Austin, Texas time] on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Business Day after such payment is received.

(b) Whenever any payment due hereunder shall fall due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day (unless such Business Day falls in the next succeeding calendar month, in which case such payment shall be made on the immediately preceding Business Day)(other than the Final Maturity Date, on which date all outstanding Obligations shall be due and payable) and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

**2.3.2 Default Interest.** Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the overdue outstanding principal amount of all Loans and, to the extent permitted by applicable Legal Requirements, any accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest at the Default Rate (as defined in the Series 2025B Supplement).

#### **2.4 NO LIABILITY.**

**2.4.1** Lender shall have no liability for any action taken or omitted to be taken or for any loss or injury resulting from its actions or inaction or its performance or lack of performance of any of its other obligations hereunder unless and solely to the extent such liability arises from the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction in a final, Non-Appealable judgment. In no event shall Lender, and Lender shall be exempt from liability in accordance with Section 11.12, in each case: (a) for acting in accordance with, or relying upon, any entitlement order, instruction, notice, demand, certificate or document from Borrower or any entity acting on behalf of Borrower or (b) for any indirect, consequential, punitive or special damages, regardless of the form of action and whether or not any such damages were foreseeable or contemplated.

**2.4.2** Notwithstanding anything contained in this Agreement to the contrary, Lender shall not incur any liability to Borrower, any Affiliate thereof or to any other Person for not performing any act or fulfilling any duty, obligation or responsibility hereunder or under any other Credit Document by reason of any Lender Force Majeure Event; it being understood that Lender, shall resume performance hereunder as soon as reasonably practicable as the effects of such Lender Force Majeure Event cease to prevent or otherwise hinder Lender, from performing hereunder or thereunder.

**2.5 NO APPROVAL OF WORK.** The making of any Loan shall not be deemed an approval or acceptance by any Person of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Project.

**2.6 DETERMINATION OF LOAN AMOUNT.** As of any date of any requested Loan, after giving effect to the request Loan, based on the aggregate outstanding principal amount of all Loans made to (including, for the avoidance of doubt, the principal amount of the requested Loan), the Loan-to-Project Cost Ratio shall not exceed the Maximum Loan-to-Project Cost Ratio.

## ARTICLE 3 CONDITIONS PRECEDENT

**3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE.** The effectiveness of this Agreement and the occurrence of the Closing Date are subject to the receipt by Administrative Agent of each of the following documents and/or the satisfaction of the conditions precedent set forth below (as the context requires), each of which shall be satisfactory in form and substance to Lender (unless waived by Lender):

**3.1.1 *Resolutions.*** Delivery of a copy of the Authorizing Resolutions certified by a Responsible Officer of Borrower pursuant to Section 3.1.6(b), as being in full force and effect on the Closing Date.

**3.1.2 *Incumbency.*** Delivery of a certificate from the Borrower and the Utility Board signed by the appropriate authorized officer or manager of Borrower, as applicable, and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver the Credit Documents to which Borrower entered into on or prior to the Closing Date and any instruments or agreements required thereunder, certified by a Responsible Officer of Borrower pursuant to Section 3.1.6(b).

**3.1.3 *Formation Documents.*** Delivery of (a) a copy of the articles of incorporation, certificate of incorporation, certificate of formation, charter or other state certified constituent documents of the Borrower, certified by the Secretary of State of Texas, and (b) a copy of the bylaws of the Borrower, certified by a Responsible Officer of the Borrower as being true, correct and complete on the Closing Date pursuant to Section 3.1.6(b).

**3.1.4 *Good Standing Certificate.*** Delivery of a good standing certificate in a form customarily issued by the Texas Secretary of State, dated a date reasonably recent prior to the Closing Date, certified by a Responsible Officer of such Borrower as being true, correct and complete on the Closing Date pursuant to Section 3.1.6(b).

**3.1.5 *Credit Documents and Project Documents.*** Delivery of (a) executed counterparts to this Agreement and each other Credit Document to be executed by Borrower on or prior to the Closing Date, (b) at or prior to the Closing Date, a true, correct and complete copy of each Major Project Document (together with any supplements or amendments thereto) and each Consent in respect of each Major Project Document (other than the Interconnection Agreements) (other than Major Project Documents or Consents expressly contemplated herein to be executed and delivered after closing), and (c) a certificate from a Responsible Officer of Borrower certifying that each such Major Project Document and each such Consent previously delivered to the Administrative Agent is true, complete and correct and, to the knowledge of such person, is in full force and effect on the Closing Date (which certificate shall be delivered pursuant to Section 3.1.6(a)).

### **3.1.6 *Certificates.***

(a) Delivery of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, certifying as to the matters set forth in Sections 3.1.5, 3.1.12, 3.1.14, and 3.1.15 as specified therein.

(b) Delivery of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower certifying as to the matters set forth in Sections 3.1.1, 3.1.2, 3.1.3, and 3.1.4 as specified therein.

**3.1.7 Legal Opinions.** Delivery to Lender of legal opinions of counsel listed on Exhibit M.

**3.1.8 Certificate of Insurance Consultant.** Delivery of a certificate of the Insurance Consultant dated as of the Closing Date, with the Insurance Consultant Report attached thereto.

**3.1.9 Insurance.** Insurance complying with terms and conditions set forth in Exhibit G shall be in full force and effect and Administrative Agent shall have received (a) a certificate from Borrower's insurance broker(s), dated as of the Closing Date, (i) identifying underwriters, type of insurance, insurance limits and policy terms, (ii) listing the endorsements required as set forth in Exhibit G, (iii) describing the insurance obtained and (iv) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and/or confirming that such premiums are included in the Flow of Funds Memorandum and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit G, and (b) copies of all policies evidencing such insurance, if available on the Closing Date, or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer.

**3.1.10 Reports of the Consultants.** Delivery of (a) the Independent Engineer Report, together with use of work product agreements permitting Lender to rely on such Independent Engineer Report and (b) the Insurance Consultant Report.

**3.1.11 Environmental Assessment.** Delivery to Administrative Agent of an Environmental Assessment (dated no earlier than 240 days prior to the Closing Date), along with a corresponding reliance letter from the consultant issuing such Environmental Assessment, in a form and substance reasonably satisfactory to Administrative Agent, permitting the Lender to rely on such Environmental Assessment.

**3.1.12 Financial Statements.** [Delivery of an accurate and complete copy of (a) the audited annual financial statements of the Utility Board for the year ended [December 31, 2024] and (b) the unaudited quarterly financial statements of Utility Board for the quarter ended March 31, 2025, together with a certificate from a Responsible Officer thereof, dated as of the Closing Date, pursuant to Section 3.1.6(a).]

**3.1.13 Compliance with Flood Laws.** [With respect to the Site and the Easements, the following:

(a) A completed "lifc of loan" Federal Emergency Management Agency Standard Flood Hazard Determination;

(b) If any improvement to the Site is located in a special flood hazard area, a notification thereof to Borrower from Administrative Agent (the "Borrower Flood Notice"), and (if applicable) the Borrower Flood Notice shall contain a notification to Borrower that flood

insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community does not participate in the NFIP;

(c) Documentation evidencing Borrower's receipt of the Borrower Flood Notice (e.g., countersigned Borrower Flood Notice, return receipt of certified U.S. Mail, or overnight delivery); and

If the Borrower Flood Notice is required to be given and flood insurance is available in the community in which the Site is located, a copy of one of the following: the flood insurance policy, Borrower's application for a flood insurance policy *plus* proof of premium payment or inclusion of such premium payment in the Flow of Funds Memorandum, a declaration page confirming that flood insurance has been provided as a separate policy or within the property insurance program for the Project, or such other evidence of flood insurance satisfactory to Lender. To the extent that any improvement to the Site is located in a special flood hazard area, such flood insurance arranged by Borrower shall be in an amount at least equivalent to the amount available under the NFIP.]

**3.1.14 Representations and Warranties.** Each representation and warranty of the Borrower, under the Credit Documents to which it is a party shall be true and correct in all material respects as of the Closing Date (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects), except to the extent that such representations and warranties are stated to be as of a specific date, in which case they shall be true and correct as of such date, as certified by a Responsible Officer of Borrower pursuant to Section 3.1.6(a).

**3.1.15 No Default.** No Event of Default or Default shall have occurred and be continuing as of the Closing Date, as certified by a Responsible Officer of Borrower pursuant to Section 3.1.6(a).

**3.1.16 Applicable Permits.**

(a) Delivery of a copy of each Applicable Permit set forth on Exhibit E-1(a).

(b) The Applicable Permits set forth on Exhibit E-1(a) (i) have been duly and timely obtained, (ii) are in full force and effect, (iii) are Non-Appealable, (iv) are held in the name of Borrower or the Project, and (v) are not subject to any Unsatisfied Condition. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to result in the Project being constructed or operated in a manner inconsistent with the Base Case Financial Model other than any inconsistency that could reasonably be expected to result (x) in gains to Borrower or (y) in losses, costs or expenses to Borrower that are not material. There are no facts, conditions, or circumstances that could reasonably be expected to prevent, materially delay, or cause materially adverse or restrictive conditions to be included in the issuance of the Future Permits set forth on Exhibit E-1(b) that are not required to be obtained by the Closing Date.

**3.1.17 Construction Budget and Project Schedule; Sources and Uses.** Delivery of (a) the Construction Budget, (b) the Project Schedule, and (c) a sources and uses of funds

demonstrating that the Facility, together with the Open Market Bond Funding required to be available prior to the delivery of the second Notice of Borrowing under the terms of this Agreement, equal or exceed the anticipated total Project Costs as set forth in the Base Case Financial Model.

**3.1.18 *Base Case Financial Model.*** Delivery of:

(a) a certificate from a Responsible Officer of the Borrower, in form and substance satisfactory to Lender, to the effect that (i) there are no changes to the Original Base Case Financial Model and (ii) there are no changes to the assumptions therein; or

(b) an updated Base Case Financial Model (the "Closing Date Base Case Financial Model"), accompanied by (i) certificate from a Responsible Officer of the Borrower that includes a written explanation from the Borrower of all variances from the Original Base Case Financial Model, (ii) a report from the Financial Advisor confirming (A) the mathematical accuracy of the computations therein; (B) the consistency in all material respects of the Closing Date Base Case Financial Model with the Project Plans, (iii) that the underlying assumptions are reasonable and are consistent in all material respects with the applicable provisions of the Credit Documents and Legal Requirements, and (iv) that the Original Base Case Financial Model demonstrates, on a projected basis, consistency with the financial covenant.

**3.1.19 *Absence of Litigation.*** Other than as disclosed on Exhibit E-4, there shall not exist any legal action, suit, investigation, litigation or proceeding (including any Environmental Claim) pending or threatened in writing in any court or before any arbitrator or Governmental Authority against or related to the Project or Borrower or seeking to enjoin or impair the consummation of the transactions consummated by the Operative Documents.

**3.1.20 *Contractor Payment and Performance Bonds.*** Borrower shall deliver to the Lender evidence of the Payment and Performance Bonds required under the Construction Contract.

**3.1.21 *Flow of Funds Memorandum.*** Administrative Agent and Lender shall have received a copy of the Flow of Funds Memorandum and the Lender shall have approved the Flow of Funds Memorandum.

**3.1.1 *Pre-Closing Project Costs.*** At least five (5) Business Days prior to the Closing Date, Lender shall have received an executed certificate or other written verification reasonable satisfactory to the Lender from the Independent Engineer verifying that \$[\_\_\_\_] has been applied to the payment of Eligible Project Costs included in the Construction Budget prior to the Closing Date.

**3.1.3 *Escrow Account Deposit.*** [Borrower shall have made or shall have caused to be made on its behalf a deposit of the Escrow Funds in the Escrow Account.]

**3.1.4 *Delivery of Revenue Bonds.*** [Borrower shall have delivered on the Closing Date the Borrower's Bonds, authorized under the terms of the Series 2025B Supplement, in a principal amount equal to the amount of the Loan required to fund the amounts set forth in the Flow of Funds Memorandum. The Bonds delivered pursuant to the Series 2025B Supplement shall be secured by a subaccount of the Reserve Fund funded by a surety policy issued by a surety

reasonably acceptable to the Lender in an amount equal to the average annual debt service payments due on such Bonds determined based on the Amortization Schedule.]

**3.2 CONDITIONS PRECEDENT TO EACH LOAN AFTER THE FIRST LOAN.** The obligation of Lender to make each Loan (each, a “Borrowing”) other than the first Loan, which shall be made on the Closing Date to pay amounts set forth in the Flow of Funds Memorandum approved by the Lender on the Closing Date, is subject to the satisfaction of each of the following conditions (unless waived in accordance with Section 11.2):

**3.2.1 *Construction Requisition.***

(a) At least [ten (10)] Business Days prior to such date, Borrower shall have provided to Lender, and Independent Engineer a Construction Requisition certified by a Responsible Officer of Borrower, dated the date of delivery of such certificate, setting forth the date of the proposed Borrowing (the “Borrowing Date”) and completed to the reasonable satisfaction of Lender, together with, (i) in the case of payments to be made under the Construction and Equipment Contracts, copies of all documentation related to such payments required to be provided by the relevant contractor to Borrower under the Construction and Equipment Contracts, (ii) in the case of payments to be made to any other vendors or contractors, copies of all documentation related to such payments required to be provided by such Person to Borrower under the relevant contract, and (iii) in the case of payments to be made to the counterparties pursuant to the Interconnection Agreements, a schedule of payments or copies of other appropriate documentation or materials reasonably requested by Lender to enable it to substantiate the withdrawals and transfers specified in such Construction Requisition and the other matters described therein.

(b) At least four (4) Business Days prior to the applicable Borrowing Date, Administrative Agent shall have received Construction Requisition (including the attached monthly progress report for the period in respect of which payments are being requested in the applicable Construction Requisition), dated the date of delivery of such certificate.

**3.2.2 *Application of Prior Loans.*** Other than in respect of any Loans made on the Closing Date, Borrower shall have delivered to Administrative Agent and the Independent Engineer reasonably satisfactory evidence that amounts withdrawn from the Construction Fund prior to the applicable Borrowing have been or will be applied to pay Eligible Project Costs.

**3.2.3 *Available Construction Funds.*** Borrower shall have certified through delivery of a Construction Requisition, acknowledged and confirmed by the Independent Engineer, that the Available Construction Funds shall not be less than the aggregate unpaid amount required to cause the Commercial Operation Date to occur in accordance with all Legal Requirements and the Construction and Equipment Contracts prior to the Commercial Operation Longstop Date and to cause the Project Completion Date to occur in accordance with all Legal Requirements and the Construction and Equipment Contracts prior to the Project Completion Longstop Date.

**3.2.4 *Applicable Permits.*** All Applicable Permits set forth on Exhibit E-1(b) required to have been obtained by Borrower by the date of such Borrowing (a) have been duly obtained, (b) are in full force and effect, (c) are Non-Applicable, (d) are held in the name of

Borrower or the Project (as applicable) and (e) are not subject to any Unsatisfied Condition. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to result in the Project being constructed or operated in a manner inconsistent with the Base Case Financial Model other than any inconsistency that could reasonably be expected to result in (i) gains to Borrower or (ii) losses, costs or expenses to Borrower that are not material. There are currently no facts, conditions, or circumstances that could reasonably be expected to prevent, materially delay, or cause materially adverse or restrictive conditions to be included in the issuance of the Future Permits set forth on Exhibit E-1(b) that are not required to have been obtained by the date of such Borrowing.

**3.2.5 Notice of Borrowing.** Administrative Agent shall have received a duly completed Notice of Borrowing in accordance with Section 2.1.2.

**3.2.6 Representations and Warranties.** Each representation and warranty made by Borrower in any of the Credit Documents shall be true and correct in all material respects (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects) as if made on such Borrowing Date, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects) as of such earlier date).

**3.2.7 No Default.** At the time of and immediately after giving effect to such Borrowing, no Event of Default or Default shall have occurred and be continuing or will result from such Borrowing.

**3.2.8 No Material Adverse Effect.** Since [●], no event or circumstance which has had, or which could reasonably be expected to have, a Material Adverse Effect shall have occurred and be continuing.

**3.2.9 Open Market Bond Funding.** Borrower shall have contributed to the Construction Fund the funding necessary to achieve the Maximum Loan-to-Project Cost Ratio as of the date of Borrowing.

**3.2.10 Delivery of Revenue Bonds.** Borrower shall have delivered on the applicable Requested Loan Date one of the Borrower's Bonds, authorized under the terms of the Series 2025B Supplement, in a principal amount equal to the amount of the Loan.

**3.3 CONDITION PRECEDENT TO COMMERCIAL OPERATION.** The occurrence of the Commercial Operation Date shall be subject to the satisfaction of the following condition (unless waived in writing by the Lender and in accordance with Section 11.2): The Project shall have achieved Commercial Operation, as certified in writing by a Responsible Officer of Borrower in a certificate in the form of Exhibit B-3 attached hereto and confirmed in a certificate from the Independent Engineer in the form of Exhibit B-4. Administrative Agent shall have received a copy of the "[●]" delivered by Borrower under the Construction Contract and "[●]" delivered by Borrower under the Equipment Contracts.

### **3.4 CONDITIONS PRECEDENT TO PROJECT COMPLETION.**

The occurrence of the Project Completion Date shall be subject to the satisfaction of the following conditions (unless waived in writing by Lender) and in accordance with Section 11.2):

**3.4.1 Notice of Project Completion.** Borrower shall have delivered a duly executed Notice of Project Completion to Administrative Agent at least [10] Business Days prior to the proposed Project Completion Date which specifies such proposed date (which shall be a Business Day on or before the Project Completion Longstop Date).

**3.4.2 Commercial Operation.** The Commercial Operation Date shall have occurred.

#### **3.4.3 Acceptable Work; Project Costs.**

(a) All work on the Project has been completed other than work that has been taken into consideration in establishing the Remaining Costs. All work previously done on the Project funded with the proceeds of the Loans has been done in all material respects in accordance with the applicable Major Project Documents.

(b) All Project Costs other than Remaining Costs shall have been paid for or, in the case of the Remaining Costs, reserved for in the Construction Fund.

**3.4.4 Insurance.** All of the insurance required to be in place in respect of the Project under the Operative Documents (including with respect to the operational phase of the Project) shall be in full force and effect in accordance with the terms of this Agreement, and Lender shall have received a certificate from Insurance Consultant, in substantially the form of Exhibit K.

**3.4.5 Required Documentation.** Administrative Agent shall have received on or prior to the Project Completion Date a copy of each Major Project Document executed after the Closing Date (certified by a Responsible Officer of Borrower that such Major Project Documents previously delivered to Administrative Agent by Borrower are true, correct and in full force and effect) and any related Consent to the extent required pursuant to Section 5.13, in each case if and to the extent that a copy thereof has not previously been delivered to Administrative Agent.

**3.4.6 Regulatory Status.** Lender shall have received satisfactory evidence of Borrower's exemption from PUHCA pursuant to 42 U.S.C. § 16456 (2), (4) as an agency, authority, or instrumentality of a political subdivision of the State of Texas, all in compliance with Section 5.19(d).

#### **3.4.7 Project Completion Date Withdrawals.**

(a) Administrative Agent shall have received, at least [10] Business Days prior to the proposed Project Completion Date, Borrower's reasonably detailed calculations of the amount of the Final Drawing and the payments and transfers to be applied pursuant to the Eligible Project Costs, in each case, in form and substance reasonably satisfactory to Lender.

(b) On the Project Completion Date immediately prior to and as a condition to the occurrence of Project Completion, Borrower shall (x) draw Loans, up to the remaining Commitment (such drawing, the "Final Drawing") and/or (y) cause Open Market Bond Funding, up to the remaining unused Open Market Bond Funding, in an aggregate amount equal to the sum of:

(i) the amount necessary to fund all of the withdrawals and transfers necessary to pay any amounts owed to any Agent under the terms of this Agreement, payment of which, for the avoidance of doubt, shall be a condition to Project Completion;

(ii) *less* any funds remaining on deposit in the Construction Fund.

After giving effect to the Final Drawing, any unused Commitment shall be cancelled.

#### **3.4.8 *Applicable Permits.***

(a) A copy of each Applicable Permit not previously delivered pursuant to Section 3.1.16 on the Closing Date and any modification of or reissuance of such Applicable Permits previously delivered pursuant to Section 3.1.16 on the Closing Date (together, the "New Permits") having been delivered to the Administrative Agent.

(b) All Applicable Permits set forth on Exhibit E-1(a) required to have been obtained by Borrower by the Project Completion Date (i) have been duly and timely obtained, (ii) are in full force and effect, (iii) are Non-Applicable, (iv) are held in the name of Borrower or the Project, and (v) are not subject to any Unsatisfied Condition the compliance with which could reasonably be expected to result in a Material Adverse Effect. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to result in the Project being constructed or operated in a manner inconsistent with the Base Case Financial Model other than any inconsistency that could reasonably be expected to result in (x) gains to Borrower or (y) losses, costs or expenses to Borrower that are not material. There are no facts, conditions, or circumstances that could reasonably be expected to prevent, materially delay, or cause materially adverse or restrictive conditions to be included in the issuance of the Future Permits set forth on Exhibit E-1(b) that are not required to have been obtained by the Project Completion Date.

**3.4.9 *ERCOT.*** Borrower shall have no due and unpaid material payment obligations to ERCOT.

**3.4.10 *Casualty Event and Event of Eminent Domain.*** No Casualty Event, Event of Eminent Domain or Title Event shall have occurred and not been resolved or corrected to the extent that such Casualty Event, Event of Eminent Domain or Title Event could reasonably be expected to have an impact on the Project of more than \$[20,000,000] or prevent the Project from operating in all material respects in a safe and reliable manner or in accordance in all material respects with the requirements of the Project Documents.

**3.5.1 *Funds Management Agreement.*** The Escrow Funds shall be maintained in

accordance with the terms and conditions of the Funds Management Agreement. Pursuant to the Funds Management Agreement, the Trust Company shall (i) not invest the Escrow Funds, (ii) have no obligation with respect to the Escrow Account and the Escrow Funds deposited therein other than as provided in Section 2.14 of the Funds Management Agreement, and (c) disburse the Escrow Funds only upon receipt of a Letter of Instruction from the Lender in accordance with the requirements of the Funds Management Agreement. Borrower shall deliver to the Lender, with copy to the Administrative Agent, a Notice of Satisfaction signed by a Responsible Officer of the Borrower within [five] Business Days of the Resource Commissioning Date, and such Notice of Satisfaction shall specify the following:

(a) the Resource Commissioning Date;

(b) the Closing Date;

(c) if the Resource Commission Date occurs before the fourth anniversary of the Closing Date, evidence demonstrating the Project achieved the Resource Commissioning Date on or before the fourth anniversary of the Closing Date;

(d) if the Resource Commissioning Date occurs after the fourth anniversary, but before the fifth anniversary of the Closing Date, (A) evidence demonstrating the Project achieved the Resource Commissioning Date on or before the fifth anniversary of the Closing Date, and (B) a detailed statement of the extenuating circumstances that caused the delay in the Resource Commissioning Date from occurring by the fourth anniversary of the Closing Date.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to and in favor of each Agent and Lender as of the Closing Date (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such date) and, as of the date of each Borrowing (both immediately before and immediately after giving effect to the Loans, if any, being made on such date) (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such date):

#### 4.1 ORGANIZATION; OWNERSHIP OF SECURITIES.

**4.1.1** Borrower is (a) duly organized or formed, validly existing and in good standing under the laws of the State of Texas, and (b) duly qualified as a public facility corporation, and is qualified to do business, in the State of Texas and each other jurisdiction in which such qualification is required by law, except where the failure to so qualify or be in good standing could not reasonably be expected to have a Material Adverse Effect. Borrower has all requisite power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Project, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder.

**4.1.2** (a) Borrower's funds and assets are not, and will not be, commingled with those of any other entity; (b) the Governing Documents of Borrower require it to maintain proper books of account and minutes of meetings and other proceedings of its directors; and (c) Borrower has not entered into any transactions or conducted any business unrelated to the transactions contemplated by the Operative Documents and Section 4.29.

**4.2 AUTHORIZATION; NO CONFLICT.**

**4.2.1** Borrower has duly authorized, executed and delivered each Operative Document to which Borrower is a party (or such Operative Documents have been duly and validly assigned to Borrower and Borrower has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither Borrower's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene in any material respect any of its Governing Documents, (b) does or will contravene in any material respect the Major Project Documents, (c) does or will contravene in any material respect any Legal Requirement applicable to or binding on Borrower or any of its properties, (d) does or will contravene in any material respect or result in any material breach of or constitute any material default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any material agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (e) does or will require any material consent or approval of any Person, and with respect to any Governmental Authority, does or will require any material registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) such as are required by securities, regulatory or any other Legal Requirement in connection with an exercise of remedies, (iii) as set forth on Exhibit E-1(a) or Exhibit E-1(b) and the filing of any applicable renewal, extension or reissuance documentation in respect thereof or (iv) otherwise provided in Section 4.9).

**4.3 ENFORCEABILITY.** Each of the Operative Documents to which Borrower is a party is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) or (c) implied covenants of good faith and fair dealing.

**4.4 COMPLIANCE WITH LAW.** (a) There are no material violations by Borrower of any currently applicable Legal Requirement, and (b) no notices of any material violation of any currently applicable Legal Requirement relating to the Project or the Site have been issued, entered into or received by Borrower.

**4.5 BUSINESS, CONTRACTS, JOINT VENTURES, ETC.**

**4.5.1** Borrower is not a party to or bound by any material contract other than the Operative Documents to which it is a party.

**4.5.2** Borrower is not a general partner or a limited partner in any general or limited partnership or a joint venturer in any Joint Venture.

**4.5.3** Borrower does not have any Subsidiaries.

**4.5.4** Borrower maintains separate books of account from the Utility Board and all other Persons.

**4.5.5** Borrower conducts its business solely in its own name in a manner not misleading to other Persons as to its identity.

**4.6 NO MATERIAL ADVERSE EFFECT.** As of the date of each Borrowing made after the Closing Date, since the Closing Date, no event or circumstance has occurred and is continuing which could reasonably be expected to have a Material Adverse Effect.

**4.7 INVESTMENT COMPANY ACT.** Borrower is not an "investment company" or a company "controlled" by an "investment company" or an "investment adviser," in each case, within the meaning of the Investment Company Act of 1940, as amended.

#### **4.8 EMPLOYEE MATTERS.**

**4.8.1** The Borrower currently does not have nor has ever had any employees, and Borrower, nor any ERISA Affiliate, has any current or contingent liability under Title IV of ERISA, including on account of an ERISA Affiliate.

**4.8.2** To the Borrower's Knowledge, there is no strike, work stoppage or labor dispute in existence or threatened involving labor at the Site and relating to the Project that could reasonably be expected to have a Material Adverse Effect.

**4.8.3** The Borrower has not established any plans, funds or programs within the meaning of the terms "employee welfare benefit plan," "welfare plan," "employee pension benefit plan," or "pension plan" as defined in the Code and Sections 3(1) and 3(2) of ERISA. In the event that the Borrower were to establish any such plans, those plan would be "governmental plans" as defined in the Code and Section 3(32) of ERISA, and would be specifically excluded from coverage under ERISA by Section 4(b)(1) of ERISA.

#### **4.9 PERMITS.**

**4.9.1** There are no material Applicable Permits or Future Permits other than the Permits listed in Exhibits E-1(a) and E-1(b), respectively.

**4.9.2** All Applicable Permits required under Legal Requirements as of the Closing Date or the Borrowing Date, as applicable, are set forth on Exhibit E-1(a) (as such Exhibit may be supplemented by Borrower to reflect any Change of Law or the issuance of any Applicable Permit after the Closing Date or the Borrowing Date, as applicable) and the Applicable Permits set forth on Exhibit E-1(a) (i) have been duly and timely obtained, (ii) are in full force and effect, (iii) are Non-Appealable, (iv) are held in the name of Borrower or the Project and (v) are not subject to any Unsatisfied Condition the compliance with which could reasonably be expected to

result in a Material Adverse Effect. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to result in the Project being constructed or operated in a manner inconsistent with the Base Case Financial Model other than any inconsistency that could reasonably be expected to result in (x) gains to Borrower or (y) losses, costs or expenses to Borrower that are not material.

**4.9.3** All Future Permits are listed in Exhibit E-1(b). Each Future Permit listed in Exhibit E-1(b) (as such Exhibit may be supplemented by Borrower to reflect any Change of Law or change in status of any Future Permit after the Closing Date or the Borrowing Date, as applicable) is of a type that is usually granted in the normal course upon submission of a timely application and demonstration that the Project complies with applicable Legal Requirements. No Future Permit listed in Exhibit E-1(b) is required under applicable Legal Requirements (including Environmental Laws) or Project Documents to be obtained as of the Closing Date or as of the Borrowing Event Date, as applicable, in order to develop, site, construct, operate and maintain the Project. Each Future Permit identified in Exhibit E-1(b) (i) shall be obtainable by Borrower not later than required without any difficulty, expense or delay that could be material and adverse to the Project and (ii) there are no facts, circumstances, or conditions that could reasonably be expected to result in such Future Permit including any restriction, condition, limitation, or other provision or requirement that could reasonably be expected to cause the Project to be constructed or operated in a manner inconsistent with the Base Case Financial Model other than any inconsistency that could reasonably be expected to result in (i) gains to Borrower or (ii) losses, costs or expenses to Borrower that are not material.

**4.9.4** Borrower is in compliance in all material respects with all Applicable Permits.

#### **4.10 ENVIRONMENTAL LAWS.**

**4.10.1** Except as set forth in Exhibit E-2:

(a) Borrower has not received any written notice from any Governmental Authority that, with respect to the Project, the Site, that it is or has in the past been in violation of any Environmental Law which violation has resulted or could reasonably be expected to give rise to a material liability to Borrower, its properties and assets or the Project under any Environmental Law;

(b) Other than as disclosed by the Borrower to the Lender as set forth in Schedule [ ], neither Borrower nor, to Borrower's knowledge, any other Person has treated, stored, disposed of, arranged for or permitted the transport or disposal of, used, Released, generated, manufactured, produced or stored in, on, or under the Site, the Real Property, the property subject to the Improvements, transported thereto or therefrom, or exposed any Person to, any Hazardous Substances in such a manner that has subjected or could reasonably be expected to subject Lender or Borrower to material liability under any Environmental Law;

(c) there are no underground storage tanks or waste management units, as defined and regulated under Environmental Laws, whether operative or temporarily or

permanently closed, located on the Site, that has subjected or would subject Lender or Borrower to material liability under any Environmental Laws;

(d) Borrower has no knowledge of any fact, condition, or circumstance, including the presence of any Hazardous Substances, on or relating to the Site, the Real Property, the property subject to the Improvements that could reasonably be expected to give rise to a material liability, including any material remediation obligation, to Lender or Borrower under any Environmental Laws;

(e) Borrower is not conducting or funding, nor does Borrower have a current obligation to conduct or fund, any material investigation, remediation, remedial action or cleanup of any Hazardous Substances or any material corrective action under Environmental Law at the Site, the Real Property, the property subject to the Improvements, or with respect to the Project.

**4.10.2** Except as set forth on Exhibit E-2, there is no pending or to Borrower's knowledge threatened Environmental Claim against Borrower or relating to the Project, including any action or proceeding in writing by any Governmental Authority (including the Texas Commission on Environmental Quality, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, from or to the Site, the Improvements, or any alleged noncompliance with or Unsatisfied Condition under Environmental Laws, in each case that could reasonably be expected to give rise to a material liability under any Environmental Law.

**4.10.3** The activities of Borrower and the operations of the Project are and have been in compliance with Environmental Laws (including any Permits issued pursuant thereto) in all material respects.

**4.10.4** Borrower has not assumed, undertaken, provided an indemnity with respect to, or otherwise agreed to satisfy or become subject to any material liability of any other Person under Environmental Laws relating to the Project.

**4.10.5** Borrower has provided or made available to Administrative Agent all material environmental, health, or safety records, reports, assessments, investigations, and correspondence with Governmental Authorities or other third parties relating to, involving, or concerning the Project and the Site.

#### **4.11 LITIGATION.**

(a) As of the Closing Date, other than as listed on Exhibit E-4, no action, suit, proceeding or investigation is pending or, to Borrower's Knowledge, threatened against Borrower.

(b) As of the date of each Borrowing occurring after the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower's Knowledge, threatened in writing against Borrower, which could reasonably be expected to have a Material Adverse Effect.

**4.12 LABOR DISPUTES AND ACTS OF GOD.** Neither the business nor the properties of Borrower are currently affected by any strike, lockout or other labor dispute, fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of a public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect.

**4.13 PROJECT DOCUMENTS.** As of the Closing Date, (a) a copy of each Major Project Document executed on or prior to such date has been delivered to Administrative Agent, (b) the Major Project Documents delivered to Administrative Agent constitute all the material contracts to which Borrower is a party on or prior to the Closing Date, (c) each of the Major Project Documents is in full force and effect, there are no unsatisfied conditions precedent to a party's obligation or to full performance of a party thereunder, and Borrower is not in material default of any term or provision thereof and, to Borrower's Knowledge, no other party is in material default thereunder, and (d) except as has been previously disclosed in writing to Administrative Agent, none of the Major Project Documents as delivered to Administrative Agent has been further amended, modified or terminated.

**4.14 DISCLOSURE.**

(a) As of the Closing Date, all information (other than the Construction Budget, Project Schedule, Annual Facility Budget, Base Case Financial Model and other projections provided in connection with the transactions contemplated by this Agreement) furnished or made available by or on behalf of Borrower to the Agents, or Lender, or to any Consultant in connection with the transactions contemplated by this Agreement or the other Credit Documents when taken as a whole (at the time of delivery or verification thereof), is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements were made (other than any information that was corrected or updated in writing to the Administrative Agent on or prior to the Closing Date). As of the Closing Date, Borrower is not aware of any material event or circumstance not previously disclosed to the Lender, which could reasonably be expected to have a Material Adverse Effect.

**4.15 GOVERNMENTAL REGULATION.**

**4.15.1** None of the Agents or Lender, nor any Affiliate of any of them will, solely as a result of the ownership, leasing or operation of the Project by Borrower, the sale of electricity, capacity (to the extent applicable in ERCOT) or ancillary services therefrom by Borrower or the entering into any Operative Document in respect of the Project or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities or natural gas utilities.

**4.15.2** Neither Borrower nor any of its Affiliates is subject to, or not exempt from, regulation as (i) a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of PUHCA or the implementing regulations of FERC, other than with respect to the compliance requirements of an Exempt Wholesale

Generator or the compliance requirements of a holding company that is a “holding company” within the meaning of PUHCA solely by virtue of its ownership interests in any one or more entities that is exempt from PUHCA, except for those provisions of PUHCA governing exemption, or (ii) subject to financial, organizational or rate regulation under the regulations of the “state commission” (as that term is defined under 18 C.F.R. § 1.101(k)) that itself has jurisdiction over Borrower and the Project.

**4.15.3** Except as set forth on Exhibit E-1(a) or E-1(b), no consent, notice or approval necessary for the operation of the Project, as such Project is currently designed, is required from FERC or any “state commission” (as that term is defined under 18 C.F.R. § 1.101(k)) in connection with any of the transactions contemplated hereby or by any other Operative Document.

**4.15.4** As of the date of each Borrowing occurring after the Closing Date, to Borrower’s Knowledge, there is no order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the ownership, development, construction, operation or maintenance of the Project by Borrower, the sale of electricity therefrom by Borrower or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem Lender, the Agents or any Affiliate of any of them or Borrower to be subject to, or not exempted from, regulation under PUHCA or the FPA or subject to regulation by the PUCT as an “electric utility,” “transmission and distribution utility,” “retail electric provider” or “public utility” as defined in PURA.

**4.16 PROJECT SCHEDULE AND CONSTRUCTION BUDGET; OPERATING FORECASTS AND BASE CASE FINANCIAL MODEL.**

(a) The Construction Budget, the Project Schedule and the Base Case Financial Model:

- (i) are complete and based on reasonable assumptions;
- (ii) are consistent with the provisions of the Project Documents;
- (iii) have been prepared in good faith and with due care; and
- (iv) fairly represent the Borrower’s expectation as to the matters covered thereby as of any date on which this representation is made or deemed made.

(b) The Project Schedule accurately specifies in summary form the work that each contractor or supplier under the Construction Contract and any other Project Document for Project Construction proposes to complete on or before the deadlines specified therein.

(c) The Construction Budget represents the Borrower’s best estimate of Project Costs anticipated to be incurred to achieve the Project Completion Date by no later than the Project Completion Longstop Date. The Construction Budget has not been amended or changed in any material respect other than to reflect changes resulting from [Approved Construction Changes].

(d) The Borrower's good faith estimate and belief is that the Project Completion Date will occur no later than the Project Completion Longstop Date.

(c) The Borrower believes that it is technically feasible for the Project to be constructed, completed, operated and maintained so as to fulfill in all material respects the design specifications and requirements contained in the Major Project Documents.

(f) No material changes, including the assumptions and projections set forth therein, have been made to the Base Case Financial Model most recently approved by the Guarantor.

**4.17 FINANCIAL STATEMENTS.** [The financial statements and accompanying information delivered by Borrower under Section 3.1.12 and Section 5.5 have been prepared in conformity with GAAP, consistently applied, and fairly present, in all material respects, the financial position of Borrower for the applicable period then ended, subject, if applicable, in the case of any such unaudited unconsolidated financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. Except for (a) obligations under the Operative Documents to which it is a party and (b) liabilities that have been disclosed in writing to Administrative Agent prior to the Closing Date (including in Exhibits to this Agreement and in the contracts entered into by Borrower and delivered or made available to Administrative Agent prior to the Closing Date), Borrower does not have any contingent obligations, unmatured liabilities, contingent liability or liability for taxes, long-term lease or forward or long-term commitments required to be shown under GAAP or Debt for Borrowed Money that is not reflected in the foregoing financial statements and which in any such case is material in relation to the business, results of operations, properties, financial condition or prospects of Borrower or the Project.]

**4.18 NO DEFAULT.** No Event of Default or Default has occurred and is continuing.

**4.19 COLLATERAL.**

**4.19.1** The Bonds delivered by the Borrower in connection with each Loan conform in all respects to the terms for the Bonds set forth in the Series 2025B Supplement. Chapter 1208, Texas Government Code, applies to the execution and delivery of the Bonds and the pledge of the Trust Estate (as defined in the Indenture) under the Indenture securing the Bonds delivered by the Borrower in connection with each of the Loans, and such pledge is therefore valid, effective, and perfected.

**4.20 TITLE.**

**4.20.1** Borrower has (a) good and indefeasible title to, or a good and indefeasible fee, leasehold, easement or other interest, as applicable, in, the Real Property, free and clear of all Liens except, Permitted Liens; and (b) good and indefeasible title to, or a good and indefeasible fee, leasehold, easement or other interest, as applicable, in, all other material collateral, free and clear of all Liens except, Permitted Liens. As of the Closing Date, Borrower has not received any written notice of, nor has any knowledge of, any pending or threatened condemnation proceeding affecting the Real Property or any sale or disposition thereof in lieu of condemnation.

**4.20.2** Borrower is not obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Real Property or any interest therein.

**4.20.3** Borrower has not suffered, permitted or initiated the joint assessment of any Real Property owned by it with any other real property constituting a separate tax lot. Each parcel of Real Property owned by Borrower is composed of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot; provided that, for the avoidance of doubt, it is noted that any easement rights are not separate tax lots.

#### **4.21 INTELLECTUAL Property; DATA SECURITY.**

**4.21.1** Borrower owns, possesses, or is licensed to use or otherwise has the right to use, all Intellectual Property that is necessary for the ownership and operation of the Project in accordance with the Credit Documents and Major Project Documents. All Intellectual Property existing as of the date hereof that is owned by Borrower and issued, registered, or pending are set forth on Schedule [X]. Borrower is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each such registered Intellectual Property (or application thereof) purported to be owned by Borrower, free and clear of any Liens (other than Permitted Liens) or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of Borrower is duly and properly registered, filed, or issued in the appropriate office and jurisdictions for such registrations, filing, or issuances. Borrower is not party to, or bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

**4.21.2** No product of Borrower infringes in any respect any Intellectual Property right or other right owned by any other Person.

**4.21.3** There is no violation by any Person of any right of Borrower with respect to any Intellectual Property right or other right owned or used by Borrower.

**4.21.4** The operational technology systems ("OT Systems") and information technology systems ("IT Systems"), including servers, software, computer firmware, computer hardware, electronic data processing, information, record keeping, website, databases, circuits, networks, network equipment, interfaces, platforms, peripherals computer systems, industrial control systems (including SCADA systems), automation systems, manufacturing systems, quality control systems, and other computer, communications and telecommunications assets and equipment, and information contained therein or transmitted thereby, including any cloud or other outsourced systems, in the possession or control of Borrower and used, or to be used, by Borrower in the operation of the Project: (a) operate in all material respects in accordance with their relevant functional specifications; (b) are reasonably sufficient in all material respects to support the Project; (c) are in good working condition, ordinary wear and tear excepted, to perform all operational and information technology and data processing operations necessary for the Project as currently operated and contemplated to be operated and (d) are free of any material viruses, defects, bugs and errors, or programming, design or documentation error or corruptant or other software routines or hardware components designed to permit unauthorized access or the unauthorized disablement or erasure of data. Borrower has all taken reasonable and appropriate

steps, consistent with industry best practices, to protect the confidentiality, integrity, and availability of the OT Systems and the IT Systems against unauthorized use, access, interruption, corruption, or exercise of control, including the implementation and maintenance of commercially reasonable (i) security controls, (ii) regularly tested and fully encrypted backup systems, (iii) disaster avoidance and recovery procedures, and (iv) regularly tested disaster recovery and business continuity plans and procedures. No material component of the OT Systems or the IT Systems has been prone to malfunction or error, and in the past four (4) years there has been no material disruption, interruption, breakdown, failure, continued substandard performance, unplanned outage, or other adverse event affecting the OT Systems or the IT Systems. In addition, in the past four years, there have been no material breaches, unauthorized intrusions, or other compromises of any of the OT Systems or the IT Systems used, or contemplated to be used, by Borrower in the operation of the Project.

**4.21.5** In relation to the Project, Borrower has complied with and will comply with: (a) all applicable cybersecurity requirements in relation to its OT Systems and IT systems, including requirements of PUCT and ERCOT[, except as set forth in Schedule 4.23.5(a)], and (b) the NERC CIP Standards[, except as set forth in Schedule 4.23.5(b)]. Borrower is participating in and is in good standing with the PUCT's Cybersecurity Monitor Program.

**4.21.6** Borrower's practices with regards to the collection, use, disclosure, other processing, and security of Personal Information and Borrower confidential and proprietary information are and have at all times been in accordance with (a) all requirements under Governmental Rule(s) imposed by any competent Governmental Authority concerning or related to (i) the collection, use, storage, disclosure, or other processing of Personal Information; data subject rights with respect thereto; the security of Personal Information; or the geographic location where Personal Information is stored or otherwise processed; (ii) the collection or use of Personal Information for marketing and advertising purposes; and/or (iii) notification to data subjects or any Governmental Authority in connection with a Security Breach (defined below) involving Personal Information (the foregoing (i)-(iii), "Privacy and Security Laws"), (b) applicable contractual commitments of Borrower, and (c) any published privacy policies or other relevant written notices or representations of Borrower. Borrower maintains internal, written privacy and data security policies applicable to the Project (the "Data Policies"), which are enforced and address the implementation and maintenance of appropriate and risk-based administrative, physical, and technical controls to protect Personal Information and Borrower confidential and proprietary information (in paper or electronic form) in a manner that is consistent with industry best practices for the protection of valuable confidential or proprietary information, as applicable, and that meet or exceed the requirements of Privacy and Security Laws and contractual commitments of Borrower. Borrower and its personnel comply and have complied in all material respects with the Data Policies. There are no pending complaints, threats, lawsuits, or investigations by any Governmental Authority relating to any of the foregoing.

**4.21.7** Borrower has entered into a written agreement with each third party service provider and business partner operating, hosting, or having access to or possession of Borrower's OT Systems, IT Systems, Personal Information or confidential and proprietary information, which agreement includes requirements for protecting the confidentiality and security of such systems and information in a manner that is consistent with industry best practices for the protection of valuable, sensitive and/or protected systems and information, and does not diminish the

Borrower's ability to comply with Privacy and Security Laws, contractual commitments of Borrower, and any Data Policies or other relevant written notices and representations of Borrower. Borrower has not experienced a known or reasonably suspected loss, theft, damage, or alteration, corruption, or unauthorized modification, use, deletion, disclosure, exercise of control, or other processing activity involving Personal Information, of any of Borrower's confidential or proprietary information, of any third-party's information maintained by or for Borrower that is subject to confidentiality obligations, or of any component of its OT Systems or IT Systems (any of the foregoing, a "Security Breach"). Borrower has not received any notification of a Security Breach from a third party service provider or business partner operating, hosting, or having access to or possession of Borrower's OT Systems, IT Systems, Personal Information or confidential or proprietary information. Borrower has not been required to or voluntarily elected to give notice to any customer, supplier, Governmental Authority, employee, or other person or entity of any actual or alleged Security Breach or data security failure or noncompliance, pursuant to any applicable Governmental Rule, contract, or otherwise.

#### **4.22 SUFFICIENCY OF PROJECT DOCUMENTS.**

**4.22.1** Except to the extent that any failure to have any of the following could not reasonably be expected to have a Material Adverse Effect, Borrower's interests in the Site:

(a) comprise all of the real property interests for the ownership, construction, installation, completion, operation and maintenance of the Project in accordance in all material respects with all Legal Requirements, the Project Documents and the Construction Budget;

(b) are sufficient to enable the entire Project to be located, operated and maintained on the Site and Easements; and

(c) provide adequate ingress and egress to and from the Site for any reasonable purpose in connection with the ownership, construction, operation and maintenance of the Project for the purposes and on the terms set forth in the applicable Major Project Documents.

**4.22.2** Except to the extent that any failure to have any of the following could not reasonably be expected to have a Material Adverse Effect, there are no services, materials or rights required for the development, construction, ownership and operation and maintenance of the Project in accordance with the Major Project Documents and the assumptions that form the basis of the Base Case Financial Model, other than those to be provided under the Project Documents that have been delivered to the Administrative Agent as of the date hereof.

**4.22.3** Except to the extent that any failure to have any of the following could not reasonably be expected to have a Material Adverse Effect, Borrower possesses, or the counterparties to the Project Documents pursuant to which interconnection facilities will be constructed or operated for the benefit of the Project, possess, and are obligated to provide or make available to Borrower, all necessary easements, rights of way, licenses, agreements and other rights for the construction or interconnection and utilization (as applicable) of the interconnection facilities (including fuel, water, wastewater and electrical).

#### **4.23 FLOOD ZONE DISCLOSURE.** No portion of the Site or material portion of the Project

includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards, except to the extent flood insurance has been provided and remains in full force and effect in respect thereof.

**4.24 ANTI-TERRORISM LAWS.** The Borrower nor any of its directors or officers or employees and, to the best of the Borrower's Knowledge, any of their respective Affiliates or agents, is a Person that, or is owned or controlled by a Person that, (a) is a Sanctioned Person or described by or designated in the Anti-Terrorism Order, (b) has engaged in dealings or transactions or is engaging in dealings or transactions or will engage in dealings or transactions with any such Sanctioned Person or Person described by or designated in the Anti-Terrorism Order, (c) is in violation of the Anti-Terrorism Laws, (d) has violated or is violating any Sanctions, (e) is using or will use the proceeds of the Borrowings hereunder for the purpose of financing or making funds available directly or indirectly to any Sanctioned Person or Person described by or designated in the Anti-Terrorism Order, to the extent such financing or provision of funds would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions, (f) is contributing or will contribute or otherwise make available directly or indirectly the proceeds of the Borrowings hereunder to any other person or entity for the purpose of financing the activities of any Sanctioned Person or described by or designated in the Anti-Terrorism Order, to the extent such contribution or provision of proceeds would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions, or (g) is under investigation for an alleged breach of Sanctions by a Governmental Authority that enforces Sanctions.

**4.25 SOLVENCY.** Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each other Borrowing, (a) the fair value of the assets of Borrower, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Borrower, (b) the present fair saleable value of the property of Borrower will be greater than the amount that will be required to pay the probable liability of Borrower on its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) Borrower will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date. For purposes of this Section 4.25, (i) "able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person will be able to generate enough cash from operations, asset dispositions or refinancings, or a combination thereof, to meet its obligations as they become due, and (ii) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**4.26 AML LAWS; ANTI-CORRUPTION LAWS AND SANCTIONS.**

**4.26.1** Each of the Borrower and the Utility Board (collectively, the "Group Members") has implemented and maintains in effect policies and procedures designed to ensure compliance by each of them and Borrower's respective directors, officers, employees and agents,

as the case may be, with Anti-Corruption Laws, AML Laws and Sanctions. None of (a) any Group Member, any guarantor or any other party providing credit support in respect of any Person's obligations under the Credit Documents, any Subsidiary or any of their respective directors or officers, or employees, or, to the Knowledge of Borrower, any of their Affiliates, or (b) any agent of any Group Member, any guarantor or any other party providing credit support in respect of any Person's obligations under the Credit Documents, or any Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, (i) is a Sanctioned Person, (ii) has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or Controlled entity or of a public international organization, or any Person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage, or (iii) is in violation of AML Laws, Anti-Corruption Laws, or Sanctions. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will cause a violation of AML Laws, Anti-Corruption Laws or applicable Sanctions by any person participating in the transactions contemplated by this Agreement, whether as lender, borrower, agent, underwriter, advisor, investor, hedge provider or otherwise. Borrower represents that neither it, nor any Group Member or parent company or any guarantor or any other party providing credit support in respect of any Person's obligations under the Credit Documents or, to the Knowledge of Borrower, any other Affiliate, has engaged in or intends to engage in any dealings or transactions with, or for the benefit of, any Sanctioned Person or with or in any Sanctioned Country.

**4.26.2** The operations of the Group Members have been conducted at all times in compliance with applicable laws relating to financial record keeping and reporting, currency transfer and money laundering, including, as applicable, the USA PATRIOT Act and all "know your customer" rules and regulations.

**4.26.3** No Group Member (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of any violations of AML Laws, Anti-Corruption Laws, or Sanctions, (ii) has been assessed civil penalties under any AML Laws, Anti-Corruption Laws, or Sanctions or (iii) has had any of its funds seized or forfeited in an action under any AML Laws, Anti-Corruption Laws, or Sanctions.

**4.26.4** Each Group Member has implemented and maintains in effect policies and procedures designed to ensure compliance by it and its directors, officers, employees and agents with AML Laws, Anti-Corruption Laws, and Sanctions and the Group Members have taken reasonable measures appropriate to the circumstances (in any event as required by applicable law) to ensure that any Group Member and its respective Affiliates is and will continue to be in compliance with all applicable current and future AML Laws, Anti-Corruption Laws, or Sanctions.

**4.26.5** None of (a) the Group Members or any of their Affiliates or (b) any other Major Project Participant is or is Controlled by, a Prohibited Person.

**4.26.6** No Group Member or any of their respective members, directors, officers, employees or, to the Borrowers' Knowledge, agents is a Prohibited Person.

**4.26.7** None of the Project is owned, traded or used, directly or indirectly by a Prohibited Person.

**4.27 INSURANCE.** Borrower maintains the insurance required to be maintained by it pursuant to Exhibit G, and such insurance is in full force and effect.

**4.28 INDEBTEDNESS.** Borrower has no Debt other than the Obligations created under the Credit Documents and, at any time after the Closing Date, other than Permitted Debt.

**4.29 SINGLE-PURPOSE ENTITY.** Borrower has not conducted, and is not conducting, any business other than the development, ownership and operation of the Project and the performance of its obligations under the Credit Documents and the Project Documents to which it is a party and, in each case, activities related and incidental thereto.

## **ARTICLE 5** **AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that until the Discharge of Obligations (other than the Performance Covenant, which shall survive the Discharge of Obligations until the Scheduled Maturity Date):

### **5.1 USE OF PROCEEDS.**

**5.1.1** Borrower shall apply the proceeds of the Loans solely (a) with respect to Loans made on the Closing Date, in accordance with the Flow of Funds Memorandum, and (b) to pay Project Costs in accordance with the Construction Budget.

**5.1.2** Unless otherwise approved by Lender pursuant to the terms of this Agreement or the other Credit Documents, Borrower shall apply all Open Market Bond Funding, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, Loss Proceeds (including with respect to a Total Loss, Title Event Proceeds, any other damages payments) solely for the purpose, and in the order and manner, provided for in accordance with the terms of this Agreement.

### **5.2 PAYMENT.**

**5.2.1** *Credit Documents.* Borrower shall pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof.

**5.2.2** *Project Documents.* Borrower shall pay all of its obligations due under the Project Documents, howsoever arising, as and when due and payable, except any one or more of the following: (a) obligations contested in good faith or as to which a bona fide dispute may exist, (b) obligations constituting Borrower's trade payables which shall be paid in the ordinary course of business or (c) obligations which if not paid could not reasonably be expected to have a Material Adverse Effect.

**5.3 WARRANTY OF TITLE.** Except as permitted pursuant to Section 6.4, (a) Borrower shall maintain good and marketable fee simple interest and a valid leasehold and/or easement interest, as applicable, in the Site and (b) good, legal and valid title to or interest in all of its other

respective material properties and assets (other than properties and assets disposed of in accordance with this Agreement), in each case free and clear of all Liens other than Permitted Liens.

**5.4 NOTICES.** Borrower shall promptly (and in any event within fifteen Business Days (or such longer time periods provided herein)), upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining Knowledge thereof, give written notice (with copies of any underlying notices, papers, files, reports, financial statements or related documentation) to Administrative Agent and the Independent Engineer (as applicable) of:

**5.4.1** any litigation, suit, arbitration, action or similar proceeding, whether at law or in equity or before any Governmental Authority (including any Environmental Claim) pending or to Borrower's Knowledge, threatened in writing against Borrower or relating to the Project which involves claims against Borrower or the Project in excess of \$[3,500,000] individually or \$[9,500,000] in the aggregate per calendar year or which could reasonably be expected to have a Material Adverse Effect, such notice to include, if requested in writing by Administrative Agent, copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

**5.4.2** any investigation, enforcement action, dispute or disputes between Borrower and any Governmental Authority and which involve (a) claims against Borrower which exceed \$[3,500,000] individually or \$[9,500,000] in the aggregate per calendar year, (b) claims which could reasonably be expected to have a Material Adverse Effect, or (c) revocation, material modification, failure to renew or expiration of any Applicable Permit;

**5.4.3** any Event of Default or Default (together with a statement of a Responsible Officer of Borrower setting forth the details of such Event of Default or Default and the action which Borrower has taken and proposes to take with respect thereto other than litigation strategy and documentation subject to attorney-client privilege or similar privilege);

**5.4.4** any casualty, damage or loss to the Project, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) Borrower, or its employees, agents, contractors, consultants or representatives in excess of \$[3,500,000] for any one casualty or loss or \$[9,500,000] in the aggregate for the Project in any calendar year, or (b) to Borrower's Knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

**5.4.5** any early cancellation, suspension or material change in the terms, coverage or amounts of any insurance described in Exhibit G;

**5.4.6** any (a) early termination (other than expiration in accordance with its terms and any applicable Consent) or material breach or material default of which Borrower has Knowledge or written notice under any Major Project Document, and (b) material Project Document Modification (with copies of all such Project Document Modifications whether or not requiring approval of Lender pursuant to Section 6.10);

**5.4.7** any event of force majeure asserted in writing under any Major Project Document which persists for more than three consecutive days and, to the extent reasonably

requested in writing by Administrative Agent, copies of related invoices or statements which are reasonably available to Borrower under any Major Project Document, together with a copy of any supporting documentation, schedule, data or affidavit delivered under such Major Project Document;

**5.4.8** initiation of any condemnation proceedings involving a material portion of (a) the Project, (b) the Site or (c) other Real Property;

**5.4.9** promptly, but in no event later than [10] Business Days after Borrower has Knowledge of the execution and delivery thereof, a copy of each Additional Project Document;

**5.4.10** promptly, but in no event later than [30] days after the receipt thereof by Borrower, a copy of (a) all Applicable Permits obtained by Borrower after the Closing Date, (b) any material amendment, supplement or other material modification to any Applicable Permit received by Borrower after the Closing Date, and (c) all material notices relating to the Project received by Borrower from, or delivered by Borrower to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of owning, developing, constructing, financing, operating, maintaining or using the Project);

**5.4.11** any unscheduled or forced outage of the Project, which continues for more than 96 hours;

**5.4.12** any death of any employee, contractor or sub-contractor working at or on the Project;

**5.4.13** promptly upon receipt thereof, a copy of any schedule or recovery plans provided by the Construction Contractor under the Construction Contract or [●] under the [●], or reports regarding planned maintenance and collateral damage repairs under the Construction Management Agreement;

**5.4.14** any (a) noncompliance by Borrower with any Environmental Law or any Release of Hazardous Substances by Borrower on or from the Real Property that has resulted or would result in personal injury or material property damage or impose a material liability on the Project or could reasonably be expected to have a Material Adverse Effect, or (b) pending or, to Borrower's knowledge, threatened in writing, Environmental Claim against Borrower or, to Borrower's knowledge, any of its contractors arising from their occupying or conducting construction or operations on or at the Project, the Site or other Real Property which, if adversely determined, could reasonably be expected to impose a material liability on the Project or have a Material Adverse Effect;

**5.4.15** any pending or threatened in writing investigation, audit, enforcement action or inquiry regarding Borrower's participation in the wholesale energy, capacity (to the extent applicable in ERCOT) and ancillary services markets, including by ERCOT, ERCOT's "Independent Market Monitor", the PUCT, or FERC; any alleged non-compliance by Borrower with ERCOT Protocols or market rules; any notification of non-performance charges or similar charges being assessed against the Project and any related notifications, including any notification of a declaration by ERCOT of an "Energy Emergency Alert" due to locational or system-wide

capacity shortages that cause mandatory load management reductions or a more severe action; any ERCOT or QSE credit event, including an increase in or a call on Borrower's credit posted to enable participation in ERCOT's energy, capacity (to the extent applicable in ERCOT) and ancillary services markets; any event or circumstance that could be reasonably expected to prevent the Project's full amount of Unforced Capacity from being in service by [Commercial Operation/Project Completion Longstop Date]; any event or circumstance that could be reasonably expected to prevent or delay Borrower's participation in ERCOT's energy, capacity (to the extent applicable in ERCOT) and ancillary services markets, including Borrower's or the Project's continuing qualification and participation as a Resource Entity (as defined in ERCOT Protocols) or as an ERCOT market participant; and any other event or occurrence with respect to Borrower's or the Project's participation in the wholesale energy, capacity (to the extent applicable in ERCOT) and ancillary services markets or compliance with ERCOT and PUCT rules that could reasonably be expected to have a Material Adverse Effect;

**5.4.16** any written notice of material adverse events provided to Borrower by any energy manager pursuant to any Energy Management Agreement;

**5.4.17** any event or circumstance specific to Borrower or the Project that is not a matter of general public knowledge and that could reasonably be expected to have a Material Adverse Effect;

**5.4.18** any material adverse notifications under the Gas Supply Agreement, including any notifications related to an increase in the cost of firm transportation thereunder and any other material adverse correspondence with the counterparties thereto;

**5.4.19** all technical information letters issued by [•] or any Affiliate thereof related to the turbines to be used by the Project;

**5.4.20** any material adverse notifications under the Construction and Equipment Contracts related to the performance of the Project and to the extent not required by Section 5.20;

**5.4.21** any financial statements of a counterparty to a Permitted Commodity Hedge Agreement received by Borrower pursuant to the applicable Permitted Commodity Hedge Agreement; and

**5.4.22** any other information with respect to Borrower or the Project as is reasonably requested by Administrative Agent, the Independent Engineer or Lender.

## **5.5 FINANCIAL STATEMENTS.**

**5.5.1** Borrower shall deliver or cause to be delivered to Administrative Agent and Administrative Agent shall promptly provide a copy of the same to Lender:

(a) as soon as practicable and in any event within [120] days after the close of each applicable fiscal year (commencing from fiscal year September 30, 2025), the audited annual unconsolidated financial statements of Borrower audited by an Acceptable Accountant and the related unconsolidated statements of income, statement of cash flow, and balance sheet for such fiscal year, setting forth in each case (other than in the case of the audited annual

unconsolidated financial statements for the September 30, 2025 fiscal year) in comparative form corresponding audited figures from the preceding fiscal year, accompanied by an opinion thereon (without a “going concern” or similar qualification or material exception and without any qualification or material exception as to the scope of the audit on which such opinion is based) of an Acceptable Accountant, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of Borrower and its results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

(b) as soon as practicable and in any event within [60] days after the end of the first, second and third quarterly accounting periods of Borrower’s fiscal year, the unconsolidated unaudited quarterly financial statements of Borrower (commencing from the June 30, 2025 quarterly accounting period of fiscal year 2025). Such financial statements shall include (x) the related statements of income for such quarterly period and for the portion of the fiscal year ending with the last day of such quarterly period, and (y) the related statements of cash flow for the portion of the year ending with the last day of such quarterly period for such quarterly period and, setting forth in each case (other than in the case of the unaudited quarterly financial statements for the 2025 fiscal year and the unaudited quarterly financial statements for the third and fourth quarters of the 2025 fiscal year) in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments);

(c) to the extent not publicly available, within [60] days after the end of each of the first three quarterly accounting periods of its fiscal year through the termination of this Agreement, the unaudited quarterly financial statements of the Utility Board. Such financial statements shall include (x) the related statements of income for such quarterly period and for the portion of the fiscal year ending with the last day of such quarterly period and (y) the related statements of cash flow for the portion of the year ending with the last day of such quarterly period, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(d) to the extent not publicly available, within [120] days after the close of each fiscal year (commencing from fiscal year ended September 30, 2025) through the termination of this Agreement, the audited annual financial statements of the Utility Board and the related statements of income, statement of cash flow, balance sheet for such fiscal year, all prepared in accordance with GAAP; and

(e) along with such financial statements under (a) and (b) above, a certificate signed by a Responsible Officer of Borrower certifying that (x) to such Responsible Officer’s Knowledge, no Event of Default or Default has occurred and is continuing or, if any Event of Default or Default has occurred and is continuing, the nature thereof and the corrective actions that Borrower has taken or proposes to take with respect thereto (other than litigation strategy and documentation subject to confidentiality obligations or attorney-client privilege or similar privilege) and (y) on or after the Project Completion Date, the Debt Service Coverage Ratio for the applicable Calculation Period and associated supporting calculations thereof.

**5.6 BOOKS, RECORDS, ACCESS.** Borrower shall maintain, or cause to be maintained, adequate books, accounts and records with respect to itself and the Project. Borrower shall prepare all financial statements required hereunder in accordance with GAAP (subject, in the case of unaudited financial statements, to changes resulting from audit and normal year-end adjustments) and in compliance with the regulations of any Governmental Authority having jurisdiction thereof. Subject to requirements of Governmental Rules, safety requirements and existing confidentiality and other contractual restrictions imposed upon Borrower by any other Person, Borrower shall permit employees or agents of Administrative Agent and Independent Engineer at any reasonable times and upon reasonable prior written notice to Borrower, to inspect the Project and all of Borrower's properties, including the Site, to examine or audit the Project and all of Borrower's books, accounts and records and make copies and memoranda thereof and to communicate with Borrower's auditors.

**5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.**

**5.7.1** Borrower shall (a) promptly comply with, and cause the Project to be constructed, operated and maintained in compliance with, all applicable Legal Requirements (including Environmental Laws, Legal Requirements and Applicable Permits), subject to Borrower's right to protest, appeal or otherwise challenge application or enforcement of any such Legal Requirement where it reasonably believes that the application or enforcement of such Legal Requirement is contrary to or not supported by the underlying facts or Legal Requirement, and make, or cause to be made, such alterations to the Project and the Site as may be required for such compliance, (b) timely obtain, renew and maintain in full force and effect all Permits required under Environmental Law for its operations and properties, and (c) promptly and diligently (i) conduct any corrective action necessary to address noncompliance under applicable Environmental Law and (ii) in each case to the extent required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Substances it or any other Person has Released at the Site, the Real Property, any Improvement in accordance with Environmental Laws.

**5.7.2** Borrower will maintain in effect and enforce policies and procedures as may be required by, and in any event designed to ensure compliance by Borrower and its directors, officers, employees and agents with, Anti-Corruption Laws, applicable AML Laws and applicable Sanctions.

**5.7.3** If any Principal Person of any Group Member becomes (whether through a transfer or otherwise) a Prohibited Person, such Group Member shall remove or replace such Principal Person within [30] days from the date that such Group Member knew or should have known that such Principal Person became a Prohibited Person.

**5.7.4** If any Group Member (other than the Borrower) or any Major Project Participant or any of their respective Principal Persons becomes (whether through a transfer or otherwise) a Prohibited Person, within [five] Business Days of Knowledge that such Person has become a Prohibited Person, the Borrowers shall notify Lender and engage in good faith discussions with Lender. The Borrowers shall cause the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other

mitigation measures acceptable to Lender, in either case within [60] days of the Borrower obtaining Knowledge that such Person has become a Prohibited Person.

**5.7.5** The internal management and accounting practices and controls of each Group Member shall at all times be adequate to ensure that each Group Member and each Principal Person thereof does not become a Prohibited Person.

**5.8 REPORTS; TITLE AND SURVEY MATTERS.**

**5.8.1** Borrower shall, until the Commercial Operation Date, deliver or cause to be delivered to Administrative Agent and the Independent Engineer on or before the [30]th day following the last day of each calendar month, monthly reports describing the progress of the construction of the Project substantially in the form attached hereto as Exhibit J-1 (with copies of the most recently available monthly progress report received by Borrower under the Construction Contract, the Construction Management Agreement, the contractors any other construction contract with respect to the Project).

**5.8.2** Borrower shall deliver to Administrative Agent, within [60] days after the end of each full fiscal quarter after the Commercial Operation Date, a reasonably detailed report with respect to such fiscal quarter (and, in the case of the first such report, the period between the Commercial Operation Date and the beginning of such fiscal quarter, if any) regarding existing mark-to-market exposure under the Commodity Hedge and Power Sale Agreements.

**5.8.3** Borrower shall deliver to Administrative Agent, within [45] days after the end of each month after the Commercial Operation Date, a summary operating report with respect to such month (and, in the case of the first such report, the period between the Commercial Operation Date and the beginning of such month, if any) substantially in the form of Exhibit J-2.

**5.8.4** Borrower shall on or before the [30]th day following the last day of each calendar month provide to Administrative Agent any reports regarding monthly exposure under any Energy Management Agreement, if any.

(A) Borrower shall provide to Administrative Agent such insurance reports as are required by Exhibit G.

**5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.**

Except as otherwise expressly permitted under this Agreement, Borrower shall (a) maintain and preserve its existence as a public facility corporation in good standing in the State of Texas, and all material rights, privileges and franchises necessary in the normal conduct of its business, and (b) obtain and maintain all Applicable Permits.

**5.10 LENDER MEETINGS.** Borrower will, upon the request of Administrative Agent or Lender, participate in a meeting of Administrative Agent and Lender once during each fiscal year to be held at Borrower's corporate offices (or at such other location as may be agreed to by Borrower and Lender) at such time as may be agreed to by Borrower and Lender and all travel and other expenses related to such meeting incurred by any party shall be for such party's own account. Participants may attend such meeting by teleconference. Borrower will, upon the request of

Administrative Agent or Lender, participate in quarterly telephonic update calls with Administrative Agent and Lender during any quarter in which the annual meeting described in the preceding sentence is not held.

#### **5.11 OPERATION AND MAINTENANCE OF PROJECT; ANNUAL FACILITY BUDGET.**

**5.11.1** Borrower shall construct, keep, operate and maintain the Project, or cause the same to be constructed, kept, maintained and operated (ordinary wear and tear excepted), in a manner consistent in all material respects with this Agreement, Prudent Industry Practices and the objective of minimizing any non-performance charges or penalties, and make or cause to be made all maintenance and repairs (structural and non-structural, preventive, extraordinary or ordinary) necessary to keep the Project in such condition.

**5.11.2** Borrower shall, as a condition precedent to the Project Completion Date and no later than [45] days before the commencement of each calendar year thereafter, submit a proposed annual operating plan and budget, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in the Indenture (an "Annual Facility Budget"), with respect to such calendar year (or, if the Project Completion Date occurs during the final [three] months of the calendar year, for the first Annual Facility Budget in respect of the period through the first full calendar year after the Project Completion Date) for the prior review and approval by Lender, such approval not to be unreasonably withheld, conditioned, or delayed. Except with respect to the initial Annual Facility Budget, in the event that, pursuant to the immediately preceding sentence, the Annual Facility Budget is not approved by Lender (which approval shall not be unreasonably withheld, conditioned, or delayed) or Borrower has not submitted a proposed Annual Facility Budget in accordance with the terms and conditions herein, an operating budget including [100]% of the relevant costs set forth in the Annual Facility Budget for the immediately preceding calendar year (excluding any variable O&M Costs such as amounts paid or payable for fuel, water, chemicals and other consumables, but including payments made under the Construction Management Agreement) shall apply until the Annual Facility Budget for the then current fiscal year is approved. Copies of each final Annual Facility Budget adopted shall be furnished to the Independent Engineer and Administrative Agent promptly upon its adoption.

**5.11.3** O&M Costs and Major Maintenance Expenses shall be made in accordance with such Annual Facility Budget, except as set forth in this Section 5.11.3. Borrower may from time to time adopt an amended Annual Facility Budget for the remainder of any calendar year to which the amended Annual Facility Budget applies, and such amended Annual Facility Budget shall be effective as the Annual Facility Budget for the remainder of such calendar year upon the consent of Lender to such amendment, such consent not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing and without necessitating any such amendment, Borrower may exceed the aggregate annual O&M Costs set forth in any Annual Facility Budget (including reasonable allowances for contingencies and working capital) by an amount not to exceed [20]% of the aggregate budgeted amount of fixed O&M Costs for the applicable fiscal year (excluding any variable O&M Costs such as amounts paid or payable for fuel, water, chemicals and other consumables, but including payments made under the Construction Management Agreement).

**5.11.4** Borrower shall deliver a forecast of anticipated Major Maintenance

Expenses together with each Annual Facility Budget, which forecast shall cover the [18] months following the start of the applicable calendar year or other period covered in such Annual Facility Budget.

#### **5.12 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.**

**5.12.1** Subject to Section 5.2.2, Borrower shall maintain in full force and effect each and every Major Project Document and perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) the obligations of Borrower under, preserve, protect and defend the material rights of Borrower under and take all reasonable action necessary to prevent early termination (except by expiration in accordance with its terms) of each and every Major Project Document, including (where Borrower in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of Borrower thereunder and enforcement of any material claims with respect thereto, in each case except where failure to do so could not reasonably be expected to have a Material Adverse Effect. Borrower shall enforce all rights to receive liquidated damages from any counterparty to any Major Project Document, prosecute all claims under the Payment and Performance Bonds under each Major Project Document, as applicable, and enforce all material rights, respectively, thereunder.

**5.12.2** Upon the reasonable request of any Agent, Borrower shall execute and deliver all documents as shall be reasonable, necessary, or that such Agent shall reasonably request in connection with the rights and remedies of such Agent and Lender under the Credit Documents, and perform such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents.

**5.13 ADDITIONAL CONSENTS.** Unless the Lender has waived such requirement in writing, Borrower shall (a) cause the applicable counterparty to any Replacement Project Document that is a Major Project Document (for which a Consent was previously delivered) as of the Closing Date and (b) use commercially reasonable efforts to cause the applicable counterparty to any Major Project Document entered into after the Closing Date (other than any Replacement Project Document that is a Major Project Document and any Major Project Document that is an easement, right of way, license or other agreement in respect of real property rights) to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit D or such other form as the applicable counterparty may have previously delivered to Administrative Agent in connection with this Agreement, in each case with such changes as are reasonably acceptable to Lender.

**5.14 MAINTENANCE OF INSURANCE.** Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit G, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to Lender.

**5.15 EVENT OF EMINENT DOMAIN.** If an Event of Eminent Domain shall occur with respect to any material portion of the Project, Borrower shall (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent

Domain, and (b) not, without the written consent of Lender (which consent shall not be unreasonably withheld, conditioned, or delayed), compromise or settle any claim against such Governmental Authority if such compromise or settlement results in payments in excess of \$[4,500,000] or could reasonably be expected to have a Material Adverse Effect.

#### **5.16 SPECIAL PURPOSE ENTITY.**

**5.16.1** Borrower shall conduct its business solely in its own name through its duly authorized directors, officers or agents so as not to mislead others as to the identity of the company with which those others are concerned, and particularly will avoid the appearance of conducting business on behalf of any other entity or that its assets or the assets of any other entity are available to pay the creditors of such other entity. Without limiting the generality of the foregoing, all oral and written communications of Borrower, including, without limitation, letters, invoices, purchase orders, contracts and statements, will be made solely in the name of Borrower.

**5.16.2** Borrower shall comply in all material respects with all organizational formalities to maintain its separate existence.

**5.16.3** Borrower shall keep its assets and its liabilities wholly separate from those of all other entities.

**5.16.4** Borrower shall maintain full and complete financial records in accordance with GAAP.

**5.17 THE PATRIOT ACT.** Borrower shall comply with the disclosure requirements pursuant to Section 11.19.

**5.18 PUHCA EXEMPTION AND GOVERNMENT APPROVAL.** Borrower shall take or cause to be taken all necessary or appropriate actions so that:

(a) Borrower and the Project are not subject to PUHCA pursuant to 42 U.S.C. § 16456 (2), (4) as an agency, authority, or instrumentality of a political subdivision of the State of Texas, and, therefore, are not subject to requirements applicable to an Eligible Facility or an Exempt Wholesale Generator; and

(b) Borrower and the Project shall in each case not be subject to, or shall be exempt from, regulation by the PUCT as an “electric utility,” “transmission and distribution utility,” “retail electric provider” or “public utility” as defined in PURA.

#### **5.19 CONSTRUCTION OF THE PROJECT; FINAL COMPLETION.<sup>1</sup>**

(a) Borrower shall construct, or cause the construction of, the Project in all material respects in accordance with the Construction and Equipment Contracts and the approved plans and specifications thereunder, Prudent Industry Practices, Applicable Permits and Legal Requirements.

---

<sup>1</sup> NTD – To be conformed to final form of Major Project Documents.

(b) Borrower shall use commercially reasonable efforts to cause Final Completion under the Construction Contract to be achieved prior to the “[Guaranteed Facility Final Completion Date]” (as defined in the Construction Contract) under the Construction Contract, as such date may be adjusted in accordance with the Construction Contract and this Agreement.

(c) Borrower shall cause the Project to complete the [Final Completion Functional Tests] (as defined in the Construction Contract) for each Unit (as defined in the Construction Contract) and to achieve under the Construction Contract: (i) the [Availability Guarantee] (as defined in the Construction Contract), (ii) the [Facility Reliability Guarantee] (as defined in the Construction Contract), (iii) the [Near Field Noise Guarantees], (iv) the [Facility Noise Guarantees] (as defined in the Construction Contract) (or otherwise to agree upon a [Facility Notice Mitigation Plan] (as defined in the Construction Contract) reasonably acceptable to the Lender and the Construction Contractor has commenced the [Work] (as defined in the Construction Contract) under the Facility Noise Mitigation Plan), and (v) the [Emissions Guarantees], in each case, by no later than the date that is [270] days after Commercial Operation (as such date may be extended with the consent of the Lender, which such consent shall not be unreasonably withheld, conditioned or delayed).

**5.20 INDEPENDENT ENGINEER; PERFORMANCE TESTS.** Borrower shall permit Lender and its designees and the Independent Engineer to witness and verify the Performance Tests to the extent reasonably requested by Lender and the Independent Engineer. Borrower shall give Lender and the Independent Engineer notice regarding any proposed Performance Test promptly following Borrower’s receipt of such notice (and, in any event, no less than [five] Business Days prior to any Performance Test). Borrower shall forward to Lender and the Independent Engineer the procedures to be used in the conduct of the Performance Test in connection with such notice. If, upon completion of any Performance Test, Borrower believes that such Performance Test has been satisfied, it shall so notify Administrative Agent and the Independent Engineer and shall deliver a copy of all test results supporting such conclusion, accompanied by reasonable supporting data.

**5.21 RISK MANAGEMENT POLICY.** On or before the [six] month anniversary of the Closing Date, Borrower shall establish a risk management policy (the “Risk Management Policy”), which shall be consistent with customary industry practice and be in form and substance reasonably acceptable to Lender. Borrower shall maintain in effect and comply in all material respects with its Risk Management Policy. Borrower shall not modify the Risk Management Policy without the express written consent of Lender (which consent shall not be unreasonably withheld, conditioned, or delayed). The Risk Management Policy shall include, *inter alia*, (a) a description of the products covered by the Risk Management Policy which may include, but shall not be limited to, the forward sale and purchase of electrical energy, heat rates, heat rate options, and financial transmission rights on a physical and/or financial basis, (b) delegation and limits of authority, (c) specification of dollar and term thresholds for risk exposure, (d) a description of the process for approval of long-term, short-term and all other structured transactions proposed to be entered into by Borrower, and (e) procedures for the approval of other risk management transactions (managing the future intrinsic and extrinsic value of the Project).

**5.22 TAX STATUS.** The Borrower shall take all reasonable steps to maintain its current classification for U.S. federal, and applicable state, local, foreign income or franchise tax purposes,

and shall not take any action contrary to such classification without prior written consent or authorization from the Lender.

**5.23 ERCOT MARKET.** Borrower shall take or cause to be taken all reasonably necessary or appropriate actions so that it is eligible to participate in the ERCOT energy, capacity (to the extent applicable in ERCOT) and ancillary services markets.

**5.24 SECURITY.** The Borrower hereby covenants and agrees to secure and repay the Loans and accrued interest thereon by delivery to the Lender upon each Loan Request Date of Bonds in a principal amount equal to the Loan funded on such Loan Request Date and the Borrower shall levy charges for electricity and ancillary services under the Power Sales Agreement for the payment of principal of and interest on the Bonds securing the Loans that the Borrower's annual budget, beginning the year in which this Agreement becomes effective, shall reflect the amount of principal and interest on, and scheduled redemption price for, the Bonds to become due in the next succeeding fiscal year of the Borrower. If Texas law is amended at any time while the Loans are outstanding and unpaid such that the pledge of revenues granted by the Borrower pursuant to this Section [5.24] is to be subject to the filing requirements of Chapter 9, Texas Business and Commerce Code, then in order to preserve to the Lender the perfection of the security interest on the Trust Estate, the Borrower agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business and Commerce Code, and enable a filing to perfect the security interest in said pledge to occur. The Borrower hereby covenants and agrees that it will perform all its obligations under the Indenture.

**5.25 PERFORMANCE COVENANT.** Borrower shall ensure that, on and after the Commercial Operation Date, the Project maintains a PAF of at least 85% and a POF no greater than 15% evaluated monthly, over a trailing 12-month period; provided that if less than 12 full calendar months have elapsed since the Project Completion Date, the calculation period shall be the actual period of up to 12 full calendar months that have occurred after the Commercial Operation Date. The obligations of Borrower under this Section 5.25 shall survive the termination of this Agreement and the repayment of Borrower's Obligations until the Scheduled Maturity Date.

#### **5.26 FINANCIAL COVENANTS.**

**5.26.1 Debt to Eligible Project Cost Ratio.** The Borrower shall, at all times during the Availability Period, maintain a Loan-to-Project Cost Ratio no greater than the Maximum Loan-to-Project Cost Ratio.

**5.26.2 Debt Service Coverage Ratios.** The Borrower shall, as of any Principal Repayment Date, maintain (i) a Historical Debt Service Coverage Ratio of no less than 1.00:1.00 for the immediately preceding 12-month period ending on such Principal Repayment Date, and (ii) a Projected Debt Service Coverage Ratio of not less than 1.00:1.00 for the next succeeding 12-month period commencing on such Principal Repayment Date.

### **ARTICLE 6 NEGATIVE COVENANTS**

Borrower covenants and agrees that until the Discharge of Obligations:

**6.1 CONTINGENT LIABILITIES.** Except as provided in this Agreement, Borrower shall not become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person; provided that this Section 6.1 shall not be deemed to prohibit or otherwise limit the incurrence of Permitted Debt.

**6.2 LIMITATIONS ON LIENS.** Borrower shall not create, assume or suffer to exist any Lien on its properties, the Project or on any of the Project, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

**6.3 INDEBTEDNESS.** Borrower shall not incur, create, assume or permit to exist any Debt except Permitted Debt.

**6.4 SALE, LEASE OR TRANSFER OF ASSETS.** Borrower shall not sell, lease, assign, transfer or otherwise dispose of assets, or grant any option or other right to purchase, lease or otherwise acquire assets, in each case, whether now owned or hereafter acquired, except that Borrower shall be entitled to:

(a) sell, lease, assign, transfer or otherwise dispose of assets in the ordinary course of its business and as contemplated by the Operative Documents (including sales in the "spot" market or merchant sales of any portion or all of the Project's capacity, energy, environmental attributes, ancillary services and other services);

(b) sell, lease, assign, transfer or otherwise dispose of assets to the extent that such asset is worn out or no longer useful or usable in connection with the operation or maintenance of the Project (including, without limitation, an interest in any construction laydown or access area or other Real Property that is no longer necessary for the construction of the Project);

(c) upon any equipment failure, replace such failed equipment with comparable equipment;

(d) grant easements or other interests in real property related to the Project to other Persons so long as such grant is in the ordinary course of business, would constitute a Permitted Lien and could not reasonably be expected to materially interfere with Borrower's ability to construct or operate the Project, sell or distribute power therefrom or perform any material obligation under any Operative Document;

(e) sell, transfer or dispose of Eligible Investments; and

(f) sell, lease, assign, transfer or otherwise dispose of assets pursuant to a sale or series of related asset sales the proceeds of which shall not exceed [\$5,000,000] in the aggregate in any calendar year and [\$10,000,000] in the aggregate during the term of this Agreement, so long as the proceeds of such sale, lease, assignment, transfer or other disposition are applied in accordance with the Indenture.

**6.5 CHANGES.** Borrower shall not change the nature of its business or expand its business beyond the business contemplated in the Operative Documents. Borrower shall not amend the Power Supply Agreement without the prior written consent of the Lender.

## 6.6 DISTRIBUTIONS.

**6.6.1** *Conditions to Distributions.* Except as provided in Section 6.6.2, Borrower shall not directly or indirectly, make any payment from the Facility Fund (as defined in the Indenture) unless the following conditions have been satisfied (such conditions, “Restricted Payment Conditions”):

- (a) the Project Completion Date shall have occurred;
- (b) no Event of Default or Default has occurred and is continuing as of the date of such applicable Restricted Payment, and such Restricted Payment would not cause an Event of Default or Default;
- (c) no Material Adverse Effect has occurred as of the date of such applicable Restricted Payment, and such Restricted Payment would not cause a Material Adverse Effect;
- (d) no Default in respect of the Performance Covenant shall have occurred within during the trailing 12-month period;
- (e) such Restricted Payment is on a date occurring within [30] days after the immediately preceding Payment Date and no other Restricted Payment shall have been made during such [30] day period;
- (f) the Projected Debt Service Coverage Ratio as of [the next scheduled Principal Repayment Date] is not less than 1.00:1.00 for the next succeeding 12-month period commencing on such Principal Repayment Date; and
- (g) in connection with such Restricted Payment, no earlier than [16] Business Days and no later than [5] Business Days prior to the making of such Restricted Payment, a Responsible Officer of the Borrower shall have delivered a certificate in the form of Exhibit H (*Form of Restricted Payment Certificate*) either: (i) certifying that: (A) there are no material changes to the Base Case Financial Model most recently approved by Lender; and (B) there are no material changes to the assumptions therein; or (ii) accompanied by a certified updated Base Case Financial Model, in form and substance satisfactory to Lender.

**6.6.2** *Certain Distributions Permitted.* Nothing in this Section 6.6 shall prohibit or otherwise limit, subject to satisfaction of any applicable conditions contained in the other provisions of this Agreement and the other Credit Documents (which conditions shall not include the Restricted Payment Conditions):

- (a) any Closing Date Distribution included in the Flow of Funds Memorandum;
- (b) the payment of all amounts due and payable to the counterparty pursuant to the Construction Management Agreement as in effect on the Closing Date.

(c) the payment of any amounts authorized under the Indenture; provided, however, any distributions from the Facility Fund under the Indenture shall only be made after the Borrower has obtained the written consent of the Lender.

**6.7 INVESTMENTS.** Borrower shall not make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Eligible Investments.

**6.8 PARTNERSHIPS, ETC.** Borrower shall not become a general or limited partner in any partnership or a joint venturer in any Joint Venture or create and hold stock in any subsidiary.

**6.9 DISSOLUTION; MERGER.** Borrower shall not liquidate or dissolve, or combine, merge or consolidate with or into any other entity, or change its legal form, or implement any material acquisition or purchase of assets consisting of a business or line of business from any Person, or change the nature of its business, or purchase or otherwise acquire all or substantially all of the assets of any Person.

#### **6.10 AMENDMENTS TO AND TERMINATION OF CERTAIN DOCUMENTS.**

**6.10.1** Borrower shall not amend or otherwise modify, give any consent, waiver or approval under (including any waiver of any default under or breach of any Major Project Document to which it is a party), or agree to termination of, in each case, any Major Project Document to which it is a party (each such amendment or modification, consent, waiver or approval being referred to herein as a “Project Document Modification”) without the prior written consent of the Lender, provided, however:

(a) subject to Section 6.10.1(b), the following Project Document Modifications shall be permitted without the consent of the Lender:

(i) any Project Document Modification for the purposes of incurring any expenditure permitted under Section 6.21.1;

(ii) any change order permitted under and in accordance with Section 6.21.2;

(iii) the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect (or on more favorable terms and conditions to Borrower);

(iv) any Project Document Modification which (x) is not, individually or in the aggregate when taken together with previously executed Project Document Modifications, adverse to Borrower, the Project or the interests of the Lender in the Trust Estate and (y) could not reasonably be expected to require the expenditure by Borrower of more than \$[5,000,000] annually or more than \$[15,000,000] for the full term of the applicable Major Project Document, in each case, as certified by Borrower and Borrower provides to Administrative Agent a true, correct and complete copy of each such Project Document Modification; or

(v) ministerial or administrative amendments, modifications,

waivers, consents and approvals that are not material in nature.

(b) The following Project Document Modifications shall require the prior written consent of Lender (not to be unreasonably withheld, conditioned or delayed):

- (i) [any extension or postponement of [“Substantial Completion”, “[Facility Substantial Completion]”, “[Facility Final Completion]”, “[Final Completion]”, “[Guaranteed Substantial Completion Date]”, “[Event of Default]” or any related concepts under the Construction and Equipment Contracts, or the guaranteed completion date referred to in Section [•] of the Construction Contract or any related concepts under the Construction Contract;]<sup>2</sup>
- (ii) any extension of any deadline for payment of any liquidated damages under the Construction and Equipment Contracts;
- (iii) any modification of any minimum performance levels or performance guarantee to reduce the level of such minimum or guaranteed performance under any Construction and Equipment Contract;
- (iv) any reduction of any liquidated damage amount under the Construction and Equipment Contract;
- (v) any changes to the definition of, procedures for, or results of the Performance Tests;
- (vi) any modification of the limitations of liability, warranty, event of default or force majeure provisions of the Construction and Equipment Contracts;
- (vii) any increase in the fees or costs payable under the Construction Management Agreement;
- (viii) any Project Document Modification of the Construction Contract (other than Project Document Modifications permitted in accordance with Section 6.21), the Gas Supply Agreement (other than ministerial or administrative amendments, modifications, waivers, consents and approvals); and
- (ix) any Project Document Modification that could reasonably be expected to have a Material Adverse Effect.

**6.10.2** Borrower shall not without the prior written consent of Lender, such consent not to be unreasonably withheld, conditioned, or delayed so long as no Event of Default has occurred and is continuing, amend, supplement, waive or otherwise modify the organizational documents of Borrower, if the result could reasonably be expected to have an adverse effect on the Lender or their rights or remedies under the Credit Documents in any material respect.

**6.10.3** Borrower shall not seek to or petition to amend, modify, supplement or take

---

<sup>2</sup> NTD: To be conformed to final form of Major Project Documents, as applicable.

any similar actions with respect to any Applicable Permit, except for such amendments, modifications, supplements or similar actions that (a) are required by Legal Requirements or (b) could not reasonably be expected to have a Material Adverse Effect.

**6.10.4** Borrower shall not amend or otherwise modify the Construction Management Agreement if such amendment or modification (a) reduces, in any material respect, the scope of services to be provided thereunder or (b) increases the aggregate amount of the fees payable annually thereunder by Borrower (other than reimbursement or indemnification obligations and amounts intended to reimburse for costs of the applicable counterparty).

**6.10.5** Borrower shall not enter into any new Project Contract that is a construction management support agreement unless such agreement is in the best interest of, and on terms fair and reasonable to, Borrower and the construction management support services provider thereunder is an Affiliate of Borrower, a Qualified Services Provider or otherwise reasonably acceptable to Lender.

**6.11 NAME AND LOCATION; FISCAL YEAR.** Borrower shall not change its name, its jurisdiction of organization, the location of its principal place of business, its organization identification number or its fiscal year without providing [30] days prior written notice to Administrative Agent.

**6.12 ASSIGNMENT.** Borrower shall not assign its rights hereunder, under the other Credit Documents or under any Major Project Document to any Person, except as set forth in this Agreement and the other Credit Documents.

**6.13 HAZARDOUS SUBSTANCES.** Borrower shall not Release into the Environment any Hazardous Substances (a) in violation of any Environmental Laws, Legal Requirements or Applicable Permits or (b) in a quantity, type or location that would lead to liability (contingent or otherwise) pursuant to Environmental Laws, Legal Requirements or Applicable Permits. Should such a Release occur, Borrower shall timely report the Release to the appropriate Governmental Authorities if required by applicable Environmental Law and promptly and diligently remediate the Release in compliance with all applicable Governmental Rules (including Environmental Law).

**6.14 ADDITIONAL PROJECT DOCUMENTS.** Borrower shall not enter into, become a party to, or become liable under any Additional Project Document without the consent of Lender to the extent entering into such Additional Project Document could reasonably be expected to have a Material Adverse Effect or require annual payments in excess of \$[15,000,000].

**6.15 ASSIGNMENT BY THIRD PARTIES.** Without prior written consent of Lender or unless provided in a Consent, Borrower shall not consent to the assignment of any obligations under any Major Project Document by any counterparty thereto other than to a Replacement Obligor.

**6.16 ACQUISITION OF REAL PROPERTY.** Borrower shall not acquire or lease any material real property or other material interest in real property (excluding the acquisition of any easements or licenses, or the acquisition (but not the exercise) of any options to acquire any such interests in real property) other than the Site and other interests in real property acquired on or

prior to the Closing Date, unless Borrower shall have delivered to Administrative Agent an Environmental Assessment with respect to such real property and, if a "Phase II" environmental site assessment is recommended by the consultant that performed the Environmental Assessment after consultation with Lender, a "Phase II" environmental site assessment with respect to such property, in each case, along with a corresponding reliance letter from the consultant issuing such site assessment(s), confirming, in form and substance reasonably satisfactory to Lender, either that (a) no Hazardous Substances were found in, on or under such real property of a nature or concentrations that has imposed or would impose on Borrower a material liability under Environmental Law or (b) the conditions and risks associated with such Hazardous Substances were otherwise being diligently addressed in accordance with the requirements of Environmental Law and the expected timing of addressing such conditions and risks.

**6.17 USE OF SITE.** Borrower shall not use, or permit to be used, the Site for any purpose other than for the construction, operation and maintenance of the Project and ancillary uses reasonably related thereto as contemplated by the Operative Documents or to provide access rights to neighboring landowners, easement holders and tenants, in each case to the extent that such access rights constitute Permitted Liens and would not jeopardize Borrower's status as an Exempt Wholesale Generator.

**6.18 HEDGING AGREEMENTS.** Borrower shall not enter into any Hedging Agreements except any Permitted Commodity Hedge Agreement.

**6.19 LEASE TRANSACTIONS.** Borrower shall not enter into any transaction after the date hereof for the lease of any assets, whether operating leases, capital leases or otherwise, other than any one or more of the following: (a) any lease constituting Permitted Debt, (b) leases of automobiles, office equipment or other real or personal property pursuant to which the annual lease payments by Borrower do not exceed \$[4,000,000] in the aggregate in any fiscal year, (c) any transactions contemplated in the then applicable Annual Facility Budget, and (d) any lease consented to by Lender (such consent not to be unreasonably withheld, conditioned, or delayed).

**6.20 CAPITAL EXPENDITURES.** After Project Completion, Borrower shall not make any Capital Expenditures other than Permitted Capital Expenditures, Capital Expenditures consistent with the Annual Facility Budget and Emergency Operating Costs to the extent such costs are Capital Expenditures and to the extent such Capital Expenditures are funded from Additional Open Market Bond Funding.

**6.21 CONSTRUCTION BUDGET CONTINGENCY; CHANGE ORDERS.**

**6.21.1 *Changes to Construction Budget.***

(a) Subject to Sections 6.21.1(b) and 6.21.1(c), Borrower may, without the consent of the Lender:

(i) amend, revise or modify the Construction Budget to reallocate the "contingency" line item specified in the Construction Budget to any other budget categories (other than any line items pertaining to a transaction with an Affiliate) up to \$[30,000,000] in the aggregate and thereafter, in respect of individual items that are less than \$[10,000,000], until the aggregate amount of such reallocations is \$[45,000,000];

(ii) reallocate any savings, to the extent confirmed by the Independent Engineer, in any line item specified in the Construction Budget to any other line item in the Construction Budget (other than any line items pertaining to a transaction with an Affiliate);

(iii) amend, revise or modify the Construction Budget so long as such amendment, revision or modification is required in connection with (i) any actions in respect of any Project Document permitted pursuant to Section 6.10 without the consent of Lender or (ii) any Additional Project Document permitted to be entered into pursuant to Section 6.14 without the consent of Lender.

(b) Subject to Section 6.21.1(c), after giving effect to all other reallocations, amendments, revisions or modifications pursuant to Section 6.21.1(a) equal to or exceeding \$[30,000,000], any reallocation, amendment, revision or modification of the "contingency" line item specified in the Construction Budget in respect of individual items equal to or exceeding \$[5,000,000] shall require the approval of the Lender (such consent not to be unreasonably withheld, conditioned, or delayed).

(c) Any reallocation, amendment, revision or modification of the Construction Budget in excess of \$[45,000,000] shall require the approval of Lender.

Borrower shall promptly deliver to Administrative Agent a copy of any revisions to the Construction Budget effected without the consent of Lender pursuant to this Section 6.21.1.

**6.21.2 Change Orders.** Borrower shall not accept, approve or otherwise enter into any change order (or similar amendment) under any Construction and Equipment Contract without the prior consent of Lender (acting in consultation with the Independent Engineer, such consent not to be unreasonably withheld, conditioned, or delayed so long as no Event of Default has occurred and is continuing), provided that no such consent shall be required if (x) such change order (or similar amendment) is contemplated in the Construction Budget or is funded solely pursuant to the contingency line item in the Construction Budget to the extent permitted under Section 6.21.1 above without the consent of Lender, (y) such change order (or similar amendment) is immaterial, is of a technical nature and is without monetary impact or the monetary impact is less than \$[10,000,000] or (z) such change order (or similar amendment) (i) is funded solely by Additional Open Market Bond Funding and (ii) would not require the consent of Lender pursuant to Section 6.10.1(b), provided, further, that notwithstanding anything to the contrary in this Section, no change order (or similar amendment) may be entered into in connection with the Construction Contract that could reasonably be expected to cause the aggregate price under the Construction Contract, to exceed the amount of the Payment and Performance Bonds by greater than \$[15,000,000], unless, promptly, but in any event within [fifteen] Business Days, following the execution of such change order (or similar amendment), Borrower has provided to Administrative Agent evidence that the amount of such Payment and Performance Bonds has been increased to equal the increased price under the Construction Contract, as amended by such change order (or similar amendment).

**6.22 PERFORMANCE TESTS AND SUBSTANTIAL COMPLETION.** Borrower shall not accept the results of any Performance Test or any notice of Substantial Completion under the Construction and Equipment Contracts without the prior consent of Lender in consultation with

the Independent Engineer.

**6.23 ANTI-TERRORISM; AML LAWS; ANTI-CORRUPTION; SANCTIONS.** Borrower shall, and shall cause each other Group Member to:

- (a) not lend, contribute or otherwise make available any proceeds of the Loans, directly or indirectly, to any Person that (i) is, or is an Affiliate of a Person that is a Sanctioned Person or Sanctioned Country, or is described by or designated in any Anti-Terrorism Order, (ii) is, or is an Affiliate of a Person that is, in violation of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws; or (iii) has, or is an Affiliate of a Person that has, been convicted of money laundering (under any AML Laws, including 18 U.S.C. Sections 1956 or 1957), which conviction has not been overturned, in each case, to the extent that such contribution or provision of such proceeds would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person to be in breach of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws;
- (b) not fund all or part of any repayment under the Loans out of proceeds derived from transactions which would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person to be in breach of any Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws applicable to them;
- (c) not request any Borrowing, and Borrower shall not use, and shall procure that its directors, officers, employees, Affiliates and agents shall not use, directly or indirectly, the proceeds of any Borrowing (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or AML Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or involving any goods originating in or with a Sanctioned Person or Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions by any Person (including any Person participating in the transactions contemplated hereunder, whether as underwriter, advisor, lender, investor, hedge provider, agent or otherwise); and
- (d) ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the Loans from being used contrary to clauses (a) through (c) above.

**6.24 AUDITORS AND ACCOUNTING.** No Group Member or Major Project Participant shall become (whether through a transfer or otherwise) a Prohibited Person.

**6.25 AUDITORS AND ACCOUNTING.** Borrower shall not change its independent certified accountant (unless as a result of a corporate reorganization or restructuring of such accountant) or make any material change in its accounting policies or financial reporting practices without consent of Lender (such consent not to be unreasonably withheld, conditioned, or delayed).

## **ARTICLE 7** **EVENTS OF DEFAULT; REMEDIES**

**7.1 EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an event of default (each, an "Event of Default") hereunder:

**7.1.1 *Failure to Make Payments.*** Borrower shall fail to pay, in accordance with the terms of this Agreement (a) any principal on any Loan on the date that such sum is due, (b) any interest on any Loan within [three] Business Days after the date such sum is due, (c) any scheduled fee, cost, charge or sum (not referred to in clause (a) or (b) of this Section 7.1.1) due hereunder or under any other Credit Documents within [eight] Business Days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within [five] Business Days after Administrative Agent has provided written notice to Borrower that such sum is due.

**7.1.2 *Bankruptcy; Insolvency.*** The Borrower shall become subject to a Bankruptcy Event.

**7.1.3 *Cross Defaults.*** Borrower shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving Debt (other than Debt under the Credit Documents) and the outstanding amount or amounts payable under any such agreement equals or exceeds \$[10,000,000] in the aggregate, (b) in the performance of any obligation due under any agreement involving such Debt if pursuant to such default, the holder of the obligation concerned has accelerated the maturity of any such Debt evidenced thereby which equals or exceeds \$[10,000,000] in the aggregate or (c) on and after Project Completion, any “event of default” or “termination event” shall occur under any Permitted Commodity Hedge Agreement or any other failure to make any payment or to perform any obligation due under any Permitted Commodity Hedge Agreement if the effect thereof is to cause outstanding amounts to become payable by Borrower thereunder in excess of \$[10,000,000].

**7.1.4 *Breach of Terms of Agreement.***

(a) **Defaults Without Cure Periods.** Borrower shall fail to perform or observe any of the covenants set forth in Sections 5.1 (*Use of Proceeds*), 5.4.3 (*Notices*), 5.9(a)(*Existence*), 5.14 (*Maintenance of Insurance*), 5.16 (*Special Purpose Entity*), 5.17(*Patriot Act*) or Article 6 (*Negative Covenants*).

(b) **Other Defaults.** Borrower shall fail to perform or observe any of its covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.4(a) or elsewhere in this Article 7, and such failure shall continue unremedied (i) for a period of [30] days after Borrower has Knowledge thereof or receives written notice thereof from Administrative Agent.

**7.1.5 *Unenforceability of Credit Documents.*** At any time after the execution and delivery thereof, any material provision of any Credit Document shall cease to be in full force and effect (other than by reason of the satisfaction in full of the Obligations of Borrower or any other termination of a Credit Document in accordance with the terms hereof or thereof), any Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction, the Borrower or any other Person contests in writing the validity or enforceability of any provision of any Credit Document or the Borrower or any other Person denies in writing that it has any or further liability or obligation under any Credit Document, or purports in writing to revoke, terminate or rescind any Credit Document.

**7.1.6 Misstatements; Omissions.** Any representation, warranty, certification, statement of fact made or deemed made by or on behalf of Borrower herein, in any other Credit Document or in any document or certificate delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made.

**7.1.7 Project Document Defaults.**

(a) **Borrower Breach.** Borrower shall be in breach in any material respect of, or in default in any material respect under, a Major Project Document and such breach or default shall continue unremedied for the period of time under such Major Project Document which Borrower has available to it in which to remedy such breach or default.

(b) **Project Completion Longstop Date.** The Project Completion shall not have occurred by the Project Completion Longstop Date.

**7.2 Remedies.** Other than with respect to a Default under the Performance Covenant, upon the occurrence and during the continuation of an Event of Default, the Lender may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that Lender may elect, in addition to such other rights or remedies as the Lender may have hereunder, under the Credit Documents or at law or in equity:

**7.2.1 Rights as Holder of Bonds.** Exercise any remedies available under the Indenture to Holders of Bonds issued thereunder.

**7.2.2 Rights Under TEF Act.** To the extent permitted under applicable Texas law, direct the Indenture Trustee to petition a court of competent jurisdiction to appoint a receiver over the Trust Estate to enforce the rights of Holders under the Indenture and the Power Sales Agreement in accordance with the provisions of Section 34.0108 of the TEF Act.

**7.2.3 No Further Loans or Letter of Credit.** Cancel all Commitments, refuse, and Administrative Agent, and Lender shall not be obligated, to continue any Loans, make any additional Loans, and no Agent shall be required, to make any payments, or permit the making of payments, from any Account or any Loan proceeds or other funds held by such Agent under the Credit Documents or on behalf of Borrower; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to Borrower, all such Commitments shall be cancelled and terminated without further act of any Agent or Lender.

**7.3 Performance Covenant Remedy.** With respect to the Performance Covenant set forth in Section 5.25, the sole remedy available to the Lender shall be a right, by action in mandamus or for specific performance, to compel performance of the Borrower's obligation to meet the requirements of the Performance Covenant.

**ARTICLE 8  
SCOPE OF LIABILITY**

Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, none of the Lender or its Agents shall have any claims with respect to the transactions contemplated by the Credit Documents against Affiliates of the Borrower or any present or future holder (whether direct or indirect) of any Securities of Borrower or any of its respective Affiliates (other than the Borrower), officers, directors, employees representatives, controlling persons, executives or agents (collectively, but in any case, excluding the Borrower, the "Non-Recourse Persons"), such claims against such Non-Recourse Persons (including as may arise by operation of law) being expressly waived hereby; provided that the foregoing provision of this Article 8 shall not (i) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Obligations, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue until fully paid, discharged, observed or performed, (ii) constitute a waiver, release or discharge of any lien or security interest purported to be created pursuant to the Credit Documents, (iii) limit or restrict the right of any Agent or Lender (or any assignee, beneficiary or successor to any of them) to name the Borrower or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to any Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Person, (iv) [reserved], (v) affect or diminish in any way or constitute a waiver, release or discharge of any obligation, covenant, or agreement made by any of the Non-Recourse Persons (or any security granted by the Non-Recourse Persons in support of the obligations of any person) under or in connection with any Credit Document (or as security for the Obligations of Borrower), (vi) limit the right of Lender to name any Non-Recourse Person as a party to any action to the extent necessary to enforce this Agreement, any other Credit Document, (vii) release Borrower from its obligations under the Security Agreement, or (viii) limit the liability of (1) any Person who is party to any Project Contract with the Borrower or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Contract (but subject to any limitation of liability in such Project Contract), certificate or statement, (2) any Person party to any Credit Document or (3) any Person rendering a legal opinion pursuant to any Credit Document, in each case under this clause (ix) relating solely to the liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the Discharge of Obligations.

## **ARTICLE 9** **AGENTS; SUBSTITUTION**

**9.1 RELIANCE.** Each of the Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. Each of the Agents also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Each of the Agents shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by Lender. As to any other matters not expressly provided for by this Agreement, none of the Agents shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of Lender (except that none of

the Agents shall be required to take any action which exposes such Agent to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of the Agents shall in all cases (including when any action by such Agent alone is authorized hereunder, if such Agent elects in its sole discretion to obtain instructions from Lender) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of Lender, and such instructions of Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Agents.

**9.2 DEFAULTS; MATERIAL ADVERSE EFFECT.** None of the Agents shall be deemed to have knowledge or notice of the occurrence of any Default, Event of Default or Material Adverse Effect, unless a Responsible Officer of such Person has received a notice from Lender or Borrower, referring to this Agreement, describing such Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of a Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to Lender. Each Agent shall take such action with respect to such Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as such Agent shall be reasonably directed by Lender; provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the Lenders.

**9.3 NON-RELIANCE.** Lender represents that it has, independently and without reliance on the Agents, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of Borrower and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon the Agents, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. None of the Agents shall be required to keep informed as to the performance or observance by Borrower or its Affiliates under this Agreement or the other Credit Documents or any other document referred to or provided for herein or therein to make inquiry of, or to inspect the properties or books of Borrower or its Affiliates.

**9.4 DEFAULTS; MATERIAL ADVERSE EFFECT.** None of the Agents shall be deemed to have knowledge or notice of the occurrence of any Default, Event of Default or Material Adverse Effect, unless a Responsible Officer of such Person has received a notice from Lender or Borrower, referring to this Agreement, describing such Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of a Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to Lender and each other Agent. Each Agent shall take such action with respect to such Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as such Agent shall be reasonably directed by Lender; provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default, Event of Default

or Material Adverse Effect as it shall deem advisable in the best interest of Lender.

**9.5 SUCCESSOR AGENT.** Subject to the appointment and acceptance of a successor Agent as provided below, any Agent may resign at any time by notifying Lender and Borrower no later than [30] days prior to the effective date of such resignation. Any Agent may be removed involuntarily upon notice thereto by Lender. Upon any such resignation or removal of an Agent, Lender shall have the right to appoint a successor to such Agent, which successor Administrative Agent. Upon the acceptance of any appointment as an Agent under the Operative Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the applicable retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations as the Administrative Agent only under the Credit Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Operative Documents.

**9.6 AUTHORIZATION.** Lender authorizes and directs each Agent to execute this Agreement and the other Credit Documents to which it is a party on behalf of Lender and agrees that the Agents may take such actions on behalf of Lender as are contemplated by the terms of this Agreement or the Credit Documents. Lender hereby irrevocably authorizes each of the Agents to take such actions on behalf of Lender and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and Lender hereby agrees to be bound by any such actions. Each Agent shall give notice to Lender of any Event of Default specified in this Agreement of which it has actual knowledge acquired in connection with the performance of its duties as an Agent hereunder. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by Lender, without hereby limiting any implied authority, and is hereby obligated, to distribute to Lender copies of all notices, financial statements and other materials delivered by Borrower pursuant to this Agreement as received by Administrative Agent.

#### **9.7 AGENT PROVISIONS.**

**9.7.1** Administrative Agent shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or under any other Credit Document.

**9.7.2** No Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); provided that the affected Agent uses reasonably diligent efforts to mitigate and resolve any such occurrence or event and resume performance of its obligations hereunder.

## ARTICLE 10 CONSULTANTS

**10.1 REMOVAL AND FEES.** Lender may remove from time to time, any one or more of the Consultants and Lender may appoint replacements. Notice of any replacement Consultant shall be given by Lender to Borrower, Administrative Agent and the Consultant being replaced. All reasonable and documented fees and expenses of the Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

**10.2 CERTIFICATION OF DATES.** Lender will request that the Consultants act diligently in the issuance of all certificates required to be delivered by the Consultants hereunder, if their issuance is appropriate. Borrower shall use commercially reasonable efforts to provide the Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such certificates.

## ARTICLE 11 MISCELLANEOUS

**11.1 ADDRESSES.** Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Lender: Public Utility Commission of Texas  
Attention: [●]

[•]  
[•]  
[•]

Telephone No. [•]

Facsimile No. [•]  
E-mail: [•]

With a copy to: [●]

If to Administrative Agent: [insert name]  
Attention: [•]

[●]  
[●]  
[●]

Telephone No. [•]

Facsimile No. [•]  
E-mail: [•]

If to Borrower: [insert name]  
Attention: [•]

[•]  
[•]  
[•]

Telephone No. [•]

Facsimile No. [•] Kerrville Public Utility Board Public Facility Corporation  
Attention: Mike Wittler, Executive Director

2250 Memorial Blvd.  
Kerrville, TX 78028  
[•]

Telephone No. 830-257-3050

Facsimile No. 830-792-8259

E-mail: [•]

With a copy to: [•]

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, FTA, Emery, DHL, Airborne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile with receipt confirmed by telephone, or (e) by Electronic Transmission (as defined below). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before [4:00 p.m.], recipient's time, and if transmitted after that time, on the next following Business Day; provided that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving thirty (30) days' notice to the other parties in the manner set forth above.

Borrower may deliver to any Agent, as the case may be, any borrowing certificate, collateral report or other material hereunder or under the other Credit Documents, by e-mail or

other electronic transmission (an "Electronic Transmission"), subject to the following terms:

1. Each Electronic Transmission must be sent by an authorized person of the Borrower (or any other authorized representative), and must be addressed to the e-mail address specified above in this Section 11.1 or such other e-mail address, as designated by Lender from time to time in accordance with this Section 11.1. Unless the applicable Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of each of the foregoing clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. If any Electronic Transmission is returned to the sender as undeliverable, the material included in such Electronic Transmission must be delivered to the intended recipient in another manner permitted by this Section 11.1.

2. Borrower shall maintain the original versions of all certificates, collateral reports and other materials delivered to any Agent by means of an Electronic Transmission and shall furnish to such Agent such original versions within [five] Business Days of such Agent's request for such original materials, signed and certified (to the extent required hereunder) by the officer submitting the Electronic Transmission.

**11.2 AMENDMENTS; WAIVERS.** Neither this Agreement nor any other Credit Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Borrower and Lender.

**11.3 LAWS.** Notwithstanding the provisions of this Article 11, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Lender, execute and deliver to Administrative Agent, or to such party or parties as Lender may designate, any and all further instruments as may in the opinion of Lender be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

**11.4 DELAY AND WAIVER.** No delay or omission to exercise any right, power or remedy accruing to the Lender upon the occurrence of any Event of Default, Default, Material Adverse Effect or any breach or default of Borrower or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Lender, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Default, Material Adverse Effect or other breach or default or unsatisfied condition

precedent be deemed a waiver of any other Event of Default, Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Agent or the Lender of any Event of Default, Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of any Agent or the Lender of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to the Agents and the Lender, shall be cumulative and not alternative or exclusive of any other rights or remedies provided.

**11.5 COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower will pay to each of the Agents and Lender all of their respective reasonable and documented out-of-pocket costs and expenses in connection with the preparation, negotiation, closing and administering of this Agreement, the other Credit Documents and the documents contemplated hereby, including the documented fees, expenses and disbursements of counsel, including Holland & Knight LLP in connection with the preparation of such documents and any amendments hereto. Borrower will reimburse (a) each Agent and Lender for all of their respective out of pocket costs and expenses, including attorneys' fees, expended or incurred by such Agents, and Lender for their out-of-pocket expenses (including, without limitation, fees and disbursements of attorneys' fees), in enforcing this Agreement or the other Credit Documents in connection with an Event of Default or Default, in actions for declaratory relief in any way related to this Agreement or in collecting any sum which becomes due under the Credit Documents or otherwise enforcing their rights and remedies hereunder and (b) such Agents and the Lender for their out-of-pocket expenses, including attorneys' fees and reasonable expert, consultant and advisor fees and expenses, in the case of a restructuring of the Loans or otherwise relating to the occurrence of any Default or Event of Default. All amounts due under this Section shall be payable within 30 days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

**11.6 ENTIRE AGREEMENT.** This Agreement and the other Credit Documents and any agreement, document or instrument attached hereto or thereto or referred to herein or therein integrate all the terms and conditions mentioned herein or therein or incidental hereto or thereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof or thereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any other Credit Document or any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. There are no promises, undertakings, representations or warranties by any Agent or Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

**11.7 GOVERNING LAW.** THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

**11.8 SEVERABILITY.** In case any one or more of the provisions contained in this

Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**11.9 HEADINGS.** Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

**11.10 ACCOUNTING TERMS.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Lender, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

**11.11 NO PARTNERSHIP, ETC.** The Agents and Lender, on the one hand, and Borrower, on the other hand, intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or among the Agents and Lender or among the Borrower, the Agents and the Lender. None of the Agents or Lender shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Project or otherwise. Except as otherwise expressly set forth herein, all obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project (if any) and to perform all obligations and other agreements and contracts relating to the Project shall be the sole responsibility of Borrower.

**11.12 LIMITATION ON LIABILITY.** No claim shall be made by Borrower against the Lender, any Agent or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Except to the extent expressly provided herein, no claim shall be made by Lender against Borrower or any of its respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and Agent and Lender hereby

waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person (as determined by a court of competent jurisdiction in a final and non-appealable judgment). The limitations on liability set forth in this Section 11.12 shall survive the termination of this Agreement and the date of discharge of the Obligations hereunder.

**11.13 WAIVER OF JURY TRIAL** TO THE EXTENT PERMITTED BY LAW EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

TO THE EXTENT PERMITTED BY LAW EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO.

**11.14 CONSENT TO JURISDICTION.** ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT MAY BE BROUGHT IN ANY STATE COURTS LOCATED IN TRAVIS COUNTY, TEXAS. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:

(a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(b) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID

ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;

(c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 11.1;

(d) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND

(e) AGREES THAT LENDER AND ITS AGENTS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION.

**11.15 SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement except with the prior written consent of Lender.

**11.16 COUNTERPARTS.** This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by facsimile transmission or electric transmission in "pdf" or other imaging format shall be as effective as delivery of a manually signed original.

**11.17 USURY.** Nothing contained in this Agreement shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount that may lawfully charge under applicable usury laws. In the event that the Lender shall collect monies which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lender, be returned to Borrower or credited against the principal balance then outstanding.

**11.18 SURVIVAL.** All representations, warranties, covenants and agreements made herein, in any other Credit Document and in the certificates or other instruments delivered in connection

with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Borrower set forth in Sections 11.5, 11.12, and 11.14 and the agreements of the Lender and Agents set forth in Article 9 shall survive the payment and performance of the Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement and the resignation or removal of an Agent. In addition, Notwithstanding anything in this Agreement or implied by law to the contrary, the Performance Covenant of the Borrower shall survive the payment and performance of the Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement and the resignation or removal of an Agent until [\_\_\_\_], 2045.<sup>3</sup>

**11.19 [PATRIOT ACT NOTICE.** In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States (“Applicable AML Law”), the Agents are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Agents. Accordingly, each of the parties agree to provide any Agent, upon its request from time to time such identifying information and documentation as may be available for such party in order to enable such Agent to comply with Applicable AML Law.]

**11.20 COMMUNICATIONS.** Borrower hereby agrees that it will use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the “Communications”), by transmitting the Communications by Electronic Transmission or in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the e-mail address referenced in Section 11.1 or such other e-mail address designated by Administrative Agent from time to time. Nothing in this Section shall prejudice the right of the Lender or Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

**11.21 IMMUNITY.** [The State of Texas and the PUCT do not waive sovereign immunity by entering into this Agreement and any of the other Credit Documents and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.]

**11.22 INDEPENDENCE OF THE BORROWER.** The Borrower confirms that:

---

<sup>3</sup> NTD: Date that is 20 years from Closing Date to be inserted.

**11.22.1** it has engaged legal, tax, regulatory and accounting advisors, and such other professional advisors as it deems appropriate, with respect to all matters in connection with the Project and the Operative Documents; and

**11.22.2** it has, upon its own due diligence as to all matters pertinent hereto with the assistance of its professional advisors, and notwithstanding any involvement of or consultation with Lender or any member of the PUCT, independently evaluated, and fully understands, acknowledges, and accepts, all risks arising or potentially arising under or in connection with the Project and each Operative Document.

**11.23 ROLE OF LENDER.**

**11.23.1** Notwithstanding anything to the contrary provided under the Operative Documents, it is specifically understood and agreed that PUCT is acting solely as lender and is not, and shall not be deemed or construed to act as, agent, advisor or fiduciary for the Borrower, or for any other Person.

**11.23.2** Except as expressly assumed by Lender under the Operative Documents, Lender shall have no liability or obligation whatsoever to Borrower or any other Person with respect to the transactions contemplated by the Operative Documents including, without limitation, for any oversight or monitoring, or any lack of oversight or monitoring, exercised by Lender in respect of, or the manner in which Lender may implement (or refrain from implementing), comply with (or refrain from complying with), any policy of the PUCT, and Borrower assumes full responsibility in respect of any action it takes (or fails to take) in connection with any recommendation, instruction or advice that PUCT may or may not give from time to time in connection with the Project or any Operative Document.

**11.23.3** Any reviews, approvals, or due diligence undertaken by PUCT is for the sole benefit of PUCT alone and not for the benefit of any third party, foreseen or unforeseen, or the Borrower and shall create no fiduciary or other obligation in any respect to any third party, foreseen or unforeseen, or the Borrower.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the day and year first above written.

Kerrville Public Utility Board Public  
Facility Corporation  
a Texas public facility corporation,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

PUBLIC UTILITY COMMISSION OF  
TEXAS,  
as Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
to Credit Agreement

**DEFINITIONS**

**“Acceptable Accountant”** means each of (i) Bolinger Segars Gilbert & Moss LLP (ii) PwC, LLP, (iii) Ernst & Young LLP, (iv) KPMG LLP and (v) any other nationally recognized independent certified accountant approved by Lender (such approval not to be unreasonably withheld, conditioned, or delayed).

**“Acceptable Bank”** shall mean a U.S. domestic bank or U.S. domestic office of a foreign bank, in each case, having an unsecured long-term senior debt rating of any two of the following: (a) at least A3 by Moody’s, (b) at least A- by Fitch, and (c) at least A- by S&P.

**“Additional Open Market Bond Funding”** means indebtedness issued by the Borrower under the Indenture to finance the Project in addition to the indebtedness authorized in the Series 2025A Supplement and the Series 2025B Supplement.

**“Additional Project Documents”** means each Project Document entered into by, or assigned to, Borrower subsequent to the Closing Date (a) which provides for the payment by Borrower of, or the provision to Borrower of, goods or services with a value in excess of, \$[10,000,000] in any calendar year or \$[20,000,000] for the full term of such Additional Project Document, (b) which provides for termination fees or liquidated damages that could reasonably be expected to exceed \$[10,000,000] in any calendar year, or (c) the termination or cancellation of which could reasonably be expected to have a Material Adverse Effect; provided that Additional Project Documents shall not include any contract or agreement (i) for the purchase of insurance required by the Credit Documents, (ii) entered into to consummate any (x) sale, lease, transfer or disposal allowed pursuant to the Credit Documents or (y) Eligible Investments or (iii) that provides for, governs, or evidences Permitted Debt (and any related Permitted Liens), other than any such agreement or contract in respect of any Hedging Agreements that otherwise satisfy the criteria for Additional Project Documents.

**“Administrative Agent”** means Deloitte LLP, in its capacity as TEF Administrator, and any successor TEF Administrator appointed by the Lender.

**“Affiliate”** means as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person.

**“Agents”** means the Administrative Agent.

**“Agreement”** has the meaning given in the preamble hereto.

**“AML Laws”** means all laws, rules, and regulations of any jurisdiction applicable to any Lender, Borrower, or any guarantor or any other party providing credit support in respect of any Person’s obligations under the Credit Documents from time to time concerning or relating to anti-money laundering.

**“Mandatory Amortization Schedule”** means the schedule for repayment of the

principal of the Loans as set forth on Exhibit F to the Agreement.

“Annual Facility Budget” has the meaning given in Section 5.11.2.

[“Anti-Corruption Laws” means (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended, (b) the UK Bribery Act 2010, (c) anti-bribery legislation promulgated by the European Union and implemented by its member states, (d) legislation adopted in furtherance of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (e) similar legislation applicable to Borrower, Borrower’s Subsidiaries or any guarantor or any other party providing credit support in respect of any Person’s obligations under the Operative Documents from time to time.

“Anti-Terrorism Laws” means any of the following: (a) the Anti-Terrorism Order; (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations); (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations); (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations); (e) the anti-money laundering provisions of the USA PATRIOT Act; (f) the USA PATRIOT Act; (g) any regulations promulgated pursuant to the laws, orders and regulations listed in the foregoing clauses (a)-(f) of this definition; or (h) comparable laws, rules and directives administered or enforced by the United Nations Security Council, the European Union, or a member state of the European Union.

“Anti-Terrorism Order” means Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the U.S. Code of Federal Regulations).]

“Applicable Permit” means any Permit, including any zoning, land use, environmental or species protection, pollution (including air, water or noise), sanitation, safety, floodplain, development, siting or building Permit issued by any Governmental Authority, including but not limited to, FERC, PUCT, Texas Department of Transportation, Texas Commission on Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Federal Aviation Administration, U.S. Department of Energy, FERC, NERC, TRE (a) that is necessary under applicable Legal Requirements or any of the Operative Documents to be obtained by or on behalf of Borrower at such time in light of the stage of development, siting, construction or operation of the Project to construct, test, operate, maintain, repair, lease, own or use the Project as contemplated by the Operative Documents, to sell electricity from the Project or deliver fuel to the Project, or for Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Borrower, Agents, or Lender nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to, or not exempt from, regulation under the FPA or PUHCA or regulated by the PUCT as an “electric utility,” “transmission and distribution utility,” “retail electric provider” or “public utility” as defined in PURA solely as a result of the development and construction or operation of the Project or the sale of electricity therefrom, except that Borrower is subject to compliance with various registration, operation and maintenance standards and record keeping and reporting obligations, if required under the laws of Texas.

**“Authorizing Resolutions”** means (i) the resolution of the Borrower authorizing this Agreement; (ii) the resolution of the Utility Board authorizing this Agreement and the Credit Documents; and (iii) the resolution of the City of Kerrville, Texas authorizing this Agreement.

**“Available Flag”** means the binary flag that is equal to the minimum of a COP Available Flag and a RT Available Flag.

**“Availability Period”** means the period from the Closing Date to the earliest of (a) December 31, 2025 if the initial Borrowing has not occurred by such date, (b) the date on which the Commitment is terminated in full or permanently reduced to zero pursuant to the terms of this Agreement, and (c) the Commercial Operations Date.

**“Available Construction Funds”** means, at any time and without duplication, the sum of (a) amounts in the Construction Fund, (b) the amount of the undisbursed proceeds, if any, of the then-available Commitment, and (c) undisbursed Loss Proceeds which are available in the Loss Proceeds Account for payment of Project Costs.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled **“Bankruptcy”**, as now and hereafter in effect, or any successor statute.

**“Bankruptcy Event”** means an event which shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a petition or consent or shall otherwise institute any similar proceeding under any other applicable Federal or state law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer with similar powers for itself or any substantial part of its assets; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable Federal or state law and (a) the petition commencing the involuntary case is not timely or appropriately controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, (d) such Person files an answer to the petition commencing the involuntary case admitting the material allegations contained therein or (e) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer having similar powers, over such Person or all or a part of its property shall have been entered; or any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

**“Bankruptcy Law”** means the Bankruptcy Code, any similar federal, state or foreign law for the relief of debtors and all other federal, state or foreign laws relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or the relief of debtors from time to time in effect.

**“Base Case Financial Model”** means a mechanically sound financial model prepared by the Borrower in good faith, showing financial projections and underlying assumptions for the Project (including updated estimates of Project Costs and Operating Costs) and believed by the Borrower to be reasonable, in Excel form and otherwise in accordance with the Operative Documents, that are set forth on a semi-annual basis, for the period from the Closing Date to a date falling no sooner than [12] months after the Scheduled Maturity Date, which projections are: (a) consistent with the Construction Budget, the Annual Facility Budget, the Project Milestone Schedule and (b) designed to demonstrate, among other things, compliance with the Maximum Loan-to-Project Cost Ratio and all other financial covenants in the Credit Documents up to (and including) the Principal Repayment Date immediately prior to the Scheduled Maturity Date. References to “Base Case Financial Model” refer to the Closing Date Base Case Financial Model or any or any updated Base Case Financial Model Update.

**“Bonds”** means the bonds of the Borrower issued under the Series 2025B Supplement to the Indenture.

**“Borrower”** has the meaning assigned to such term in the preamble.

**“Borrower Flood Notice”** has the meaning given in Section 3.1.13(b).

**“Borrowing”** has the meaning given in Section 3.2.

**“Borrowing Date”** has the meaning given in Section 3.2.1(a).

**“Business Day”** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or the State of Texas or is a day on which banking institutions or governmental agencies located in such jurisdiction are authorized or required by law or other governmental action to close.

**“Calculation Period”** means, as to a particular date, a rolling period of 12 full calendar months immediately preceding the immediately preceding Payment Date.

**“Capital Expenditures”** means expenditures made by Borrower to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding expenditures related to Major Maintenance), which, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the statement of cash flows of Borrower.

**“Cash”** means money, currency or a credit balance in any demand account or deposit account (as such term is defined in the UCC).

**“Casualty Event”** means [\_\_\_\_\_].

**“Change of Law”** means the occurrence after the Closing Date of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty by any Governmental Authority, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not

having the force of law, but if not having the force of law, being of a type with which Lender customarily complies) by any Governmental Authority.

“Closing Date” means the date on which the conditions set forth in Section 3.1 are or were satisfied or waived.

“Closing Date Base Case Financial Model” has the meaning given in Section 3.1.18(b).

“Closing Date Distribution” means the amount contemplated by the Flow of Funds Memorandum (a) to be paid to the Borrower as reimbursement for documented Project Costs incurred prior to the Closing Date (as verified by the Independent Engineer)[], and (b) to be paid to [●] or any Affiliate thereof as repayment of any loans or advances (together with interest due and payable thereon, if any) provided to Borrower prior to the Closing Date the proceeds of which were utilized by Borrower for payment of documented Project Costs prior to the Closing Date (as verified by the Independent Engineer)[].

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation” means the satisfaction of each of the following conditions:

(a) the “[Facility Substantial Completion Date]” under and as defined in the Construction Contract shall have occurred, and “[Facility Substantial Completion]” under the [●] shall have occurred by satisfaction of all requirements of Section [●] of the [●];

(b) all interconnection facilities shall have been completed and shall be operational;

(c) all necessary and material facilities needed for the operation of the Project shall have been completed and shall be operational; and

(d) the resource commissioning date, as defined in the ERCOT Protocols, for the last generation resource that is part of the Project, has occurred;

(e) the Project is able to satisfy all obligations arising under the Gas Supply Agreement and the Revenue Put Agreement in accordance with the terms thereof.

“Commercial Operation Date” means the date that Commercial Operation is achieved, as certified by a Responsible Officer of Borrower and confirmed by the Independent Engineer pursuant to Section 3.3.

“Commercial Operation Longstop Date” means [●].<sup>4</sup>

“Commitment” has the meaning given in Section 2.2.1.

---

<sup>4</sup> NTD: May not be later than December 31, 2030.

**“Commodity Hedge and Power Sale Agreement”** means any agreement (including each confirmation entered into pursuant to any master agreement) providing for any swap, cap, collar, put, call, floor, future, option, spot, forward, power purchase and sale agreement (including, but not limited to, option and heat rate options, and revenue puts), netting agreement or similar agreement, tolling agreement or capacity purchase agreement, in all cases whether settled financially or physically.

**“Communications”** has the meaning given in Section 11.20.

**“Comparable Project”** means one or more simple-cycle gas turbine electric generating facilities that have, in the aggregate, a nameplate capacity of 100 megawatts or more.

**“Consents”** means, collectively, (a) each consent and agreement with respect to each Major Project Document entered into on or prior to the Closing Date, and (b) with respect to any Additional Project Document, to the extent required pursuant to Section 5.13, a consent and agreement of each party to such Additional Project Document (other than Borrower) substantially in the form of Exhibit D, with such modifications as may be reasonably acceptable to Lender.

**“Construction and Equipment Contracts”** means the Construction Contract and the [•].<sup>5</sup>

**“Construction Budget”** means a budget setting forth all expected Project Costs through Final Completion delivered to Lender on the Closing Date pursuant to Section 3.1.17, as the same may be amended, revised or modified from time to time in accordance with Section 6.21.1.

**“Construction Contract”** means the [Construction Contract], dated as of [•], between Borrower and the Construction Contractor.

**“Construction Contractor”** means [•].

**“Construction Management Agreement”** means the Construction Management Agreement, dated as of the date hereof, between Borrower and [•].

**“Construction Requisition”** means a requisition in the form attached hereto as Exhibit [ ].

**“Consultants”** means, collectively, the Insurance Consultant, the Independent Engineer, the Market Consultant and the Environmental Consultant.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and **“Controlling”** and **“Controlled”** shall have meanings correlative thereto.

**“COP Available Flag”** is a binary flag that equals one if each hourly check of the

---

<sup>5</sup> NTD: Definition to include Major Project Documents for construction, turbine equipment and transformers.

Project's current operating plan for the hour that includes the interval in question indicates the Project will be available in that interval (i.e., any status other than OUT), with such hourly checks starting at 14:30 on the day before the relevant interval; otherwise, the flag equals zero.

"Credit Documents" means the Agreement, the Power Supply Agreement, the Indenture, and the Bonds.

"Credit Party" means each Agent and Lender.

"Date Policies" has the meaning given in Section 4.21.6.

"Debt" means, with respect to any Person at any date, without duplication:

- (a) all Debt for Borrowed Money;
- (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such Person to pay the deferred purchase price of property or services, and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, but excluding trade accounts payable and other accrued expenses arising in the ordinary course of business;
- (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument;
- (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person or is nonrecourse to the credit of such Person;
- (h) all reimbursement obligations, contingent or otherwise, with respect to any surety, performance or other similar bond;
- (i) all guarantees by such Person of any of the foregoing; and
- (j) obligations in respect of any transactions under any Commodity Hedge and Power Sale Agreement.

"Debt for Borrowed Money" means of any Person, at any date of determination, the sum, without duplication, of (a) all items that, in accordance with GAAP, would be classified as indebtedness on a consolidated balance sheet of such Person at such date, and (b) all obligations

of such Person under acceptance, letter of credit or similar facilities at such date.

“Debt Service” means, for any period, the sum of all (a) all interest payable during such period in respect of the Loans, and (b) all scheduled principal payable during such period in respect of the Loans (excluding, for the avoidance of doubt, voluntary prepayments pursuant to the Credit Documents). For avoidance of doubt, all Loan payments shall be made via payments on and in accordance with the terms of the Bonds delivered to the Lender in connection with each Loan.

“Default” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

“Default Rate” has the meaning given in Section 2.3.2.

[“Deposit” means an amount equal to 3% of the Total Project Costs to be placed in escrow pursuant to the Deposit Escrow Agreement.]

[“Escrow Deposit Agreement” means the Deposit Escrow Agreement, dated as of the date hereof, among Borrower, Administrative Agent and the Texas Comptroller of Public Accounts.]

“Discharge of Obligations” means

(a) payment in full in Cash of (i) the outstanding principal amount of Debt under the Credit Agreement and any other Credit Document and (ii) interest, fees, reimbursement expenses and all other amounts accrued and owing at or prior to the time such amounts are paid (including interest accruing (or which would, absent the commencement of an Insolvency or Liquidation Proceeding of the Borrower, accrue) on or after the commencement of any Insolvency or Liquidation Proceeding of the Borrower, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Debt outstanding under the Credit Agreement and the other Credit Documents;

(b) the termination or expiration of all commitments, if any, to extend credit that would constitute Obligations;

(c) payment in full in Cash of all other Obligations (including all Agent fees) that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid.

“Disqualified Owner” means any Person that, as of the date it first becomes a direct or indirect owner of membership interests in Borrower: (a) is, or is an Affiliate of a Person that is a Sanctioned Person or Sanctioned Country, or is described by or designated in any Anti-Terrorism Order; (b) is, or is an Affiliate of a Person that is, in violation of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws; or (c) has, or is an Affiliate of a Person that has, been convicted of money laundering (under any AML Laws, including 18 U.S.C. Sections 1956 or 1957), which conviction has not been overturned.

“Dollars” and “\$” means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

“Early Termination Event” means, with respect to any Permitted Commodity Hedge Agreement, the occurrence of any termination event or any event of default (howsoever defined in such Permitted Commodity Hedge Agreement) under any Permitted Commodity Hedge Agreement which results in the termination of such Permitted Commodity Hedge Agreement.

“Electronic Transmission” has the meaning given in Section 11.1.

“Eligible Facility” means an “eligible facility” within the meaning of PUHCA.

“Eligible Investments” has the meaning given in the Indenture.

“Eligible Project Costs” means Project Costs that satisfy the following conditions: Lender has determined (i) the Project Costs to be “Project Costs” in accordance with subsection (e)(6) of the Rules; and (ii) the Project Costs are identified in the Construction Budget. For the avoidance of doubt, the funding of the Reserve Fund to the applicable Reserve Fund Requirement shall not constitute Eligible Project Costs.

“Emergency Operating Costs” means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of Borrower (or Operator as operator of the Project) as the case may be, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property or environmental contamination.

“Energy Management Agreement” means the Energy Management Agreement, dated as of [●], and entered into by Borrower and [●] and any Replacement Project Document entered into by Borrower in respect of such agreement.

“Engine Supply Agreement” means [●].

“Environmental Assessment” means a Phase I Environmental Site Assessment with respect to the Site, the Real Property, and the Easements, prepared by the [Environmental Consultant], in accordance with ASTM Standard E1527-21. References to the date of such Environmental Assessment shall mean the earliest date that any component of all appropriate inquiry required pursuant to 40 C.F.R. Part 312 was conducted.

“Environmental Claim” means any and all written administrative, regulatory or judicial suits, demands, decrees, claims, licens, judgments, orders, settlement agreements, fines, penalties, warning notices, notices of noncompliance or violation, investigations, requests for information, proceedings, hearings, removal or remedial actions or orders, issued pursuant to any Environmental Law and relating in any way to (a) a violation or alleged violation of, or liability under, Environmental Law or Permit issued (or left unissued due to the negligence of Borrower) under any Environmental Law, or (b) a Release or threatened Release of Hazardous Substances.

“Environmental Consultant” means [●].

**“Environmental Law”** means any and all Governmental Rules applicable to the Project or Borrower or any Real Property and relating to (a) pollution or protection of the Environment or of human health and safety; (b) the generation, use, storage, handling, transportation, treatment, processing, assessment, removal, remediation, Release or disposal of Hazardous Substances; (c) occupational safety and health and industrial hygiene to the extent relating to exposure to Hazardous Substances; or (d) land use.

**“Escrow Account”** means an escrow account held by the Comptroller, acting by and through the Trust Company.

**“Escrow Amount”** mean an amount equal to 3% of the estimated total Project Costs as set forth in the Closing Date Base Case Financial Model.

**“Escrow Conditions”** means, with respect to the Project, (a) the Resource Commissioning Date occurs before the fourth [third][1] anniversary of the Closing Date, or (b) (i) the Resource Commissioning Date occurs after the fourth anniversary of the Closing Date but before the fifth [fourth] [2] anniversary of the Closing Date, and (ii) Lender, in its sole and absolute discretion, finds that extenuating circumstances caused a delay in the Resource Commissioning Date.

**“Escrow Funds”** has the meaning given in Section [3.1.35].

**“ERCOT”** means the Electric Reliability Council of Texas, Inc., or its successor or other entity certified by the PUCT as “independent organization” pursuant to PURA Section 39.151.

**“ERCOT Protocols”** means the binding documents adopted by ERCOT, including any attachments or exhibits referenced therin, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. The version of the ERCOT Protocols in effect at the time of the performance or non-performance of an action shall govern with respect to that action.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations thereunder.

**“Event of Default”** has the meaning given in Article 7.

**“Exempt Wholesale Generator”** means an “exempt wholesale generator” as defined in 18 C.F.R. § 366.1.

**“Facility”** means the Commitments and the Loans made thereunder.

**“Federal Reserve Board”** means the Board of Governors of the Federal Reserve System.

**“FERC”** means the Federal Energy Regulatory Commission and its successors.

**“Final Completion”** means the achievement of “[Facility Final Completion]” under the Construction Contract, the achievement of “[Final Completion]” under the [•].

**“Final Drawing”** has the meaning given in Section 3.4.7(b).

**“Final Maturity Date”** means the earliest of (a) the Scheduled Final Maturity Date and (b) the date on which the entire outstanding principal amount of the Loans, together with all unpaid interest, fees, charges and costs, shall be accelerated in accordance with the Agreement; provided that if such date is not a Business Day, the Final Maturity Date shall be the immediately preceding Business Day from such date.

**“Financial Officer”** means, with respect to any Person, the general manager, any director, the chief financial officer, the controller, the treasurer or any assistant treasurer, any vice president of finance or any assistant vice president of finance or any other vice president or assistant vice president with significant responsibility for the financial affairs of such Person.

**“Fitch”** means Fitch, Inc.

**“FPA”** means the Federal Power Act, as amended, including the regulations of the FERC thereunder.

**“Fuel Management Agreement”** means the Fuel Management Services Agreement, dated as of [•], by and among Borrower and [•].

**“Flow of Funds Memorandum”** means the memorandum delivered by Borrower to Administrative Agent and Lender with respect to the disbursement of funds on the Closing Date.

**“Future Permits”** means Permits that, at the relevant time of inquiry, in light of the stage of development, construction or operation of the Project and pursuant to applicable Legal Requirements or Operative Documents, are not yet required to be obtained for the Project.

**“GAAP”** means generally accepted accounting principles in the United States consistent with those applied in the preparation of the financial statements referred to in the Agreement.

**“Gas Supplier”** means [•].

**“Gas Supply Agreement”** means, collectively, (i) the [Base Contract for Sale and Purchase of Natural Gas], dated as of [•], by and among Borrower and [•], and (ii) the [Special Provisions to Base Contract for Sale and Purchase of Natural Gas], dated as of [•], by and among Borrower and [•], and (iii) the Transaction Confirmation, dated as of [•], by and between Borrower and [•].

**“Gas Transportation Agreement”** means that certain [FTS Form of Transportation Service Agreement Applicable to Firm Transportation Service Under Rate Schedule FTS], Contract No. [•], dated as of [•], between the Borrower and [•].

**“Governing Documents”** means, with respect to any Person, the certificate or

articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

**“Governmental Authority”** means any federal, state, municipal, regional, national, tribal or other government, governmental department, commission, board, bureau, court, agency or instrumentality, political subdivision or any entity or officer thereof exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government and shall also include any supra-national body exercising such powers or functions, such as the European Union or the European Central Bank. For the avoidance of doubt, **“Governmental Authorities”** include FERC, PUCT, ERCOT, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the U.S. Federal Aviation Administration, the U.S. Department of Energy, NERC and TRE.

**“Governmental Rule”** means any law (including common law), statute, rule, regulation, Permit, ordinance, order, code, treaty, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority, including the ERCOT Protocols and any Environmental Law, in each case, whether in effect as of the date of this Agreement or as of any date hereafter.

**“Group Members”** has the meaning given in Section 4.26.

**“Hazardous Substances”** means those substances, chemicals, materials or wastes regulated under Environmental Law, including substances, chemicals, materials or wastes regulated as “hazardous,” “extremely hazardous,” “toxic,” a “pollutant,” or a “contaminant,” or for which standards of conduct or liability are or may be imposed pursuant to Environmental Laws, including petroleum, asbestos or asbestos-containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, and noise.

**“Hedging Agreement”** means any agreement in respect of any interest rate swap, forward rate transaction, forward commodity transaction, commodity swap, commodity option, interest rate option interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract or other similar agreements.

**“Historical Debt Service Coverage Ratio”** means, as of any date of determination, the ratio of (a) actual Operating Cash Available for Debt Service for the immediately preceding 12-month period, to (b) Debt Service payable during the immediately preceding 12-month period, and which shall be calculated based on the Financial Statements that have been, or are required to have been, delivered by the Borrower pursuant to Section 5.5; provided that if less than 12 full months have elapsed, the period for the calculation of such ratio shall be the actual period of up to 12 full months that have occurred.

**“Improvements”** means those works that constitute the Project.

**“Indenture”** means that certain Trust Indenture, dated as of [ ] 1, 2025, by and between Kerrville Public Utility Board Public Facility Corporation and U.S. Bank Trust Company, National Association, as amended from time to time.

“Independent Engineer” means [●] or another engineering consultant selected in accordance with Section 10.1.

“Independent Engineer Report” means the report entitled “[●]”, dated as of [●], and delivered by the Independent Engineer, including all exhibits, appendices and any other attachments.

“Insolvency or Liquidation Proceeding” means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any of the Borrower Parties;

(b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any of the Borrower Parties or with respect to a material portion of its assets;

(c) any liquidation, dissolution, reorganization or winding up of any of the Borrower Parties whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any of the Borrower Parties.

“Insurance Consultant” means [●] or another insurance consultant selected in accordance with Section 10.1.

“Insurance Consultant Report” means the report entitled “[●]”, dated as of [●], and delivered by the Insurance Consultant, including all exhibits, appendices and any other attachments thereto.

“Insurance Proceeds” means proceeds received by the Borrower from any claim submitted under an insurance policy with respect to the Project.

“Intellectual Property” means any and all of the following, in any jurisdiction in the world, and all rights therein: (a) patents, patent applications, patent disclosures, and industrial designs (including utility models, designs, and industrial property), registrations and applications for registration of industrial design rights, and all reissues, reexaminations, divisionals, continuations, continuations-in-part and extensions of any of the foregoing; (b) Internet domain names, social media accounts, trademarks, service marks, trade dress, trade names, logos, corporate names, and other similar designations of source, association or origin, and registrations and applications for registration for any of the foregoing together with all of the goodwill associated therewith; (c) copyrights (registered or unregistered), works of authorship, and copyrightable works, and registrations and applications for registration for any of the foregoing; (d) mask works and registrations and applications for registration thereof; (e) software; (f) trade secrets and other confidential information, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know how, processes and techniques, methods, methodologies, algorithms, formulas, research and development

information, drawings, specifications, designs, plans, proposals, technical data, financial and marketing plans and customer and supplier lists and information; (g) rights of publicity and likeness; (h) any other intellectual property rights and (i) copies and tangible embodiments thereof (in whatever form or medium).

**“Interconnection Agreements”** means, collectively, the Standard Generation Interconnection Agreement and any related facilities extension agreement, facilities construction agreement, discretionary service agreement, or comparable agreements, as applicable.

**“Interest Rate”** means 3.0%.

**“IT Systems”** has the meaning given in Section 4.21.4.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided that in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

**“Knowledge”** means, with respect to:

(a) the Borrower, the actual knowledge of any Principal Persons of the Borrower or any knowledge that should have been obtained by any Principal Person of such Person upon reasonable investigation and inquiry; and

(b) any other Person, the actual knowledge of any such Person or any knowledge that should have been obtained by such Person upon reasonable investigation and inquiry.

**“Legal Requirements”** shall mean, as to any Person, any requirement under any Permit or under any Governmental Rule, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

**“Lender”** has the meaning given in the preamble.

[**“Lender Force Majeure Event”** means any act, event or circumstance that is beyond the control of any Lender or its Agents, including any act or provision of any present or future law or regulation of any Governmental Authority (other than Lender, unless Lender is issuing such regulation in compliance with Governmental Rules), any act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, strike or other material labor disruption, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, the unavailability of the Federal Reserve Bank wire, disruption or failure of the Treasury Financial Communications System or other wire or communication facility, closure or shutdown of the federal government or any agency or instrumentality thereof, unforeseen or unscheduled closure or evacuation of such Person’s office or any other similar event.]

**“Lien”** means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, covenant, condition or restriction, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective

under Legal Requirements, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loan-to-Eligible Project Costs Ratio” means, as of any date of determination, the ratio of:

(a) the aggregate outstanding principal amount of all Loans (including, for the avoidance of doubt, the principal amount of any requested Loan), to

(b) the aggregate amount of Eligible Project Costs (as evidenced to the reasonable satisfaction of Lender, in consultation with the Independent Engineer, and for which the Borrower has not been reimbursed), incurred and paid on or prior to the relevant Requested Loan Date (or reasonably anticipated to be paid within [30] days after such Requested Loan Date).

“Loans” has the meaning given in Section 2.1.1.

“Major Maintenance” means labor, materials and other direct expenses for any overhaul of, or major maintenance procedure for, the Project or any part thereof which require significant disassembly or shutdown of the Project, (a) in accordance with Prudent Industry Practices, (b) pursuant to manufacturers’ requirements to avoid voiding any such manufacturer’s warranty or (c) pursuant to any applicable Legal Requirement.

[“Major Project Documents” means the following:

- (a) the Construction Contract;
- (b) the Engine Supply Agreement;
- (c) the Payment and Performance Bonds;
- (d) the Transformer Supply Agreement;
- (e) the Gas Supply Agreement;
- (f) the Interconnection Agreements;
- (g) the Gas Transportation Agreement;
- (h) the O&M Agreement;
- (i) Reserved;
- (j) the Construction Management Agreement;
- (k) the Fuel Management Agreement;
- (l) the Energy Management Agreement;
- (m) each Permitted Commodity Hedge Agreement;

- (n) each Additional Project Document; and
- (o) each Replacement Project Document for any Major Project Document.]

**“Major Project Participants”** means each counterparty to a Major Project Document.

**“Market Consultant”** means [Deloitte I.I.P] or another electric market consultant selected in accordance with Section 10.1.

**“Market Report”** means the report entitled “[●]”, dated as of [●], and delivered by the Market Consultant, including all exhibits, appendices and any other attachments.

**“Material Adverse Effect”** means (a) a material adverse change in the current business, property, results of operation or financial condition of the Project or of Borrower, taken as a whole, (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower’s ability to perform its material obligations under the Credit Documents (taken as a whole), (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Lender’s interest in the Trust Estate, taken as a whole and (d) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the material rights and remedies of Lender under any of the Credit Documents.

**“Maximum Loan-to-Eligible Project Costs Ratio”** means [60]%.

**“Minimum Notice Period”** means not later than [12:00 p.m., Austin, Texas time] at least [three] Business Days before the date of any Borrowing or Optional Prepayment.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“NERC CIP Standards”** means the North American Electric Reliability Corporation’s Critical Infrastructure Protection Reliability Standards.

**“New Permits”** has the meaning given in Section 3.4.8(a).

**“Non-Applicable”** means, any specified time period allowing a request for rehearing or administrative appeal to the applicable Governmental Authority or the filing of litigation or an appeal to a court having jurisdiction over any Permit (other than Permits that do not have limits on appeal periods under Legal Requirements), as applicable, has either elapsed without any such request for rehearing, administrative appeal, litigation or appeal having been brought or, if any such rehearing, administrative appeal, litigation or appeal was brought during such time period, such rehearing, administrative appeal, litigation or appeal has been denied or otherwise resolved with finality.

**“Non-Recourse Persons”** has the meaning given in Article 8.

**“Notice of Borrowing”** means a request by Borrower in accordance with Section

2.1.2 and substantially in the form of Exhibit B-1 thereto.

“Notice of Project Completion” means a request by Borrower in accordance with Section 3.4.1 and substantially in the form of Exhibit B-5 thereto.

“O&M Agreement” means the [Operation and Maintenance Agreement], dated as of [●], entered into by and between Borrower and Operator.

“O&M Costs” means all direct and indirect costs of operation, maintenance, and repair of the Project and the reasonable administrative expenses of the Corporation related solely to the Project.

“Obligated Capacity” is equal to the adjusted seasonal net max sustainable rating (defined as the registered ERCOT Seasonal Net Max Sustainable Rating adjusted for planned derates).

“Obligations” means and includes, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by Borrower to the Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Agreement or any of the other Credit Documents, including all interest, fees, charges, expenses, attorneys’ fees and accountants fees chargeable to Borrower and payable by Borrower hereunder or thereunder.

“Open Market Bond Funding” means monies obtained by the Borrower from the proceeds of Bonds issued by the Borrower under the terms of the Series 2025A Supplement.

[“Operating Cash Available for Debt Service” means, for any period, (a) revenues from the Power Supply Agreement received during such period *minus* (b) the sum of (i) O&M Costs paid (provided that O&M Costs relating to insurance premiums shall, for purposes of this definition, be accounted for by ratably allocating such amounts over the period to which they apply rather than accounting for them solely during the period in which they were paid) *plus* (ii) all Ordinary Course Settlement Payments payable by Borrower in respect of Commodity Hedge and Power Sale Agreements *plus* (iii) any required deposits into Funds held by the Indenture Trustee under the terms of the Indenture.]

“Operative Documents” means, collectively, the Credit Documents and the Project Documents.

“Operator” means [●], a [●] limited liability company.

“Optional Prepayment” has the meaning given in Section 2.1.6(b).

“Ordinary Course Settlement Payments” means all regularly scheduled payments due under any Commodity Hedge Agreement from time to time, calculated in accordance with the terms of such Commodity Hedge Agreement, but excluding, for the avoidance of doubt any “Settlement Amounts” or “Termination Payments” due and payable under such Commodity Hedge Agreement in connection with an Early Termination Event.

“Original Base Case Financial Model” means the Base Case Financial Model, titled [●] and approved by Lender as of [●].

“OT Systems” has the meaning given in Section 4.21.4.

“PAF” means, for any 12-month measurement period, the ratio, expressed as a percentage and calculated with ERCOT availability and real time telemetered data of (a) an amount equal to (i) (A) the RT Telemetered HSL *multiplied by* (B) the Available Flag, *divided by* (ii) the Obligated Capacity, to (b) the Total Evaluated Period Intervals.

“Payment and Performance Bonds” means, collectively, the “[Payment Bond]” and the “Performance Bond” delivered by the Construction Contractor on the “[Notice to Proceed Date]” under the Construction Contract.

“Performance Covenant” means the covenant set forth in Section 5.25.

“Performance Covenant Undertaking” means that certain Performance Covenant Undertaking, dated as of the date hereof, among Borrower and the Lender.

“Performance Tests” means (a) the “[Performance Tests]” as defined in the Construction Contract, or (b) performance tests that are substantially equivalent to the “Performance Tests” as defined in the Construction Contract.

“Permit” means any and all franchises, licenses, permits, approvals, consents, notifications, filings, submissions, certifications, registrations, tariffs, authorizations, exemptions, variances, qualifications, and other rights, privileges and approvals issued by any Governmental Authority or required under any Governmental Rule.

“Permitted Affiliate Transactions” means (a) the Operative Documents in effect on the Closing Date entered into by Borrower with any or more of its Affiliates, and the transactions expressly contemplated thereby and Replacement Project Documents in respect thereof and the transactions expressly contemplated thereby (provided that such Replacement Project Documents are on substantially similar terms and conditions as the Project Documents they replace or are otherwise approved by Administrative Agent), (b) transactions on terms no less favorable to Borrower than would be included in an arm’s-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by Borrower with any of its employees, officers or directors in the ordinary course of business, (d) the payments expressly permitted by Section 6.6.2 (other than Section 6.6.2(b)), (e) any transaction otherwise expressly permitted or contemplated by Section 6.4 and (f) an arrangement by any Affiliate of any credit support required to be provided under any Permitted Commodity Hedge Agreement so long as claims of such Affiliate arising out of such credit support are treated as Open Market Bond Funding to Borrower.

“Permitted Capital Expenditures” means Capital Expenditures incurred by Borrower in accordance with Prudent Industry Practices that are (a) necessary to operate the Project in compliance with applicable Legal Requirements or (b) incurred in the ordinary course of the operation and maintenance of the Project excluding, for the avoidance of doubt, Major Maintenance.

"Permitted Commodity Hedge Agreement" means any Commodity Hedge and Power Sale Agreement entered into in the ordinary course of business, and, in any case:

- (i) to sell, purchase or hedge against fluctuations in the price of energy, natural gas, ancillary services, capacity, electric or natural gas transmission service or other commodity to which Borrower has actual or reasonably expected exposure;
- (ii) that is not for speculative purposes;
- (iii) that is entered into in the best interest of, and on terms fair and reasonable to, Borrower;
- (iv) with respect to physical sales of energy, capacity or ancillary services, commits Borrower to no more than the actual uncommitted available output on a net basis (based on physical and seasonal input and output availability) of the Project (taking into account the each Permitted Commodity Hedge Agreement then in effect and all commitments to sell energy, capacity or ancillary services in the ERCOT system);
- (v) does not create, permit or suffer to exist any Lien other than Permitted Liens;
- (vi) is entered into with a Permitted Commodity Hedge Counterparty;
- (vii) if such agreement is a fuel supply or fuel transportation agreement, either (A) it has been approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed, (B) is an agreement to remarket excess gas purchased in the ordinary course of business or (C) is a physical fuel supply or fuel transportation agreement the term of which begins no earlier than the end of the term of the Gas Supply Agreement and has terms and conditions substantially similar to, or more economically favorable to Borrower than, terms and conditions then-available on an arms' length basis for agreements of such kind and provides for the same delivery points or receipt points as the Gas Supply Agreement in effect on the Closing Date, and is with a counterparty of a comparable or better standing than the counterparties to the Gas Supply Agreement; and
- (viii) if such agreement is a swap, option, collar or cap involving, or settled by reference to, one or more commodities, or such agreement is a power purchase agreement, tolling agreement or capacity purchase agreement, either (A) it has been approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed, (B) (w) any index-based pricing terms in such agreement are the same as the Revenue Put Agreement so as to avoid any incremental basis risk resulting from engaging in transactions based on different index locations (it being acknowledged that this sub-clause (w) shall not restrict the ability of Borrower to sell energy at the Project's electrical interconnection point with the ERCOT transmission system), (x) any heat rate and variable operating and maintenance specifications in such agreement are consistent in all material respects with the then expected performance of the Project, (y) after giving effect to such agreement, no more than [●] % of the Project's [●] MW of capacity, shall be subject to, or committed under, a Permitted Commodity Hedge Agreement described in this clause (viii), and (z) the term of such agreement is no longer than one year from the date such agreement

is entered into or (C) it is an agreement in respect of sales into ERCOT day-ahead and real-time energy markets.

“Permitted Commodity Hedge Counterparty” means, with respect to any Permitted Commodity Hedge Agreement:

- (a) any Person that is reasonably acceptable to Lender;
- (b) ERCOT;
- (c) any Person that is a commercial bank, insurance company, or other similar financial institution of any Affiliate thereof;
- (d) any Person that is a public utility under the FPA or ERCOT or a reputable exchange (e.g., InterContinental Exchange);
- (e) any Person that is in the business of selling, marketing, purchasing, or distributing electric energy, capacity, ancillary services, fuel, or emissions credits, whether settled financially or physically;
- (f) the Gas Supplier; and
- (g) the Revenue Put Counterparty.

“Permitted Debt” means:

- (a) Debt or other obligations incurred under the Credit Documents;
- (b) to the extent constituting Debt (but not for borrowed money), indemnification obligations of Borrower under the Project Contracts;
- (c) trade or other similar Debt incurred in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith;
- (d) contingent liabilities of Borrower incurred in the ordinary course of business, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Applicable Permit, Credit Document or Project Document;
- (e) capital lease obligations and any other Debt of Borrower (including purchase money obligations incurred by Borrower to finance the purchase price of discrete items of equipment not comprising an integral part of the Project that extend only to the equipment being financed) in an aggregate amount of secured principal not exceeding \$[15,000,000] at any one time outstanding;

(f) obligations of Borrower in respect of performance bonds, bid bonds, completion guarantees, surety bonds or similar instruments in an aggregate amount not exceeding \$[15,000,000] at any one time outstanding,

(g) ordinary course indemnities under agreements that are not Operative Documents or in connection with the issuance of the Title Policy or endorsements or supplements thereto,

(h) to the extent constituting Debt, obligations of Borrower under Permitted Commodity Hedge Agreements,

(i) to the extent constituting Debt, Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; provided that the Debt described in this clause is extinguished within [15] Business Days of its incurrence,

(j) other unsecured indebtedness owed to Affiliates of Borrower in an amount not to exceed \$[75,000,000] solely to the extent it is fully subordinated to the secured Obligations and made subject to a duly executed and delivered subordination agreement substantially in the form of Exhibit C-2, and

(k) other unsecured Debt in an amount not to exceed \$[15,000,000].

“Permitted Liens” means:

(a) the Lien on Trust Estate created by the Indenture;

(b) Liens or pledges of deposits of cash securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(c) Liens created for the benefit of the counterparty to any Permitted Commodity Hedge Agreement;

(d) Liens in connection with or evidenced by Permitted Debt described in clause (e) in the definition thereof;

(e) all exceptions disclosed in Schedule B of the Title Policy on the Closing Date;

(f) easements, rights-of-way, restrictions, trackage rights, defects or irregularities in title, restrictions on use of real property and other similar non-monetary encumbrances or liens, in each case that, in the aggregate, do not have a Material Adverse Effect on the use of the property encumbered thereby in connection with the Project;

(g) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder and covering only the assets leased;

(h) any zoning, building and land use laws, regulations and ordinances or similar Legal Requirement that (i) individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect and (ii) do not individually or in the aggregate materially detract from (A) the value of the Project or (B) the ability of Borrower to use the property affected by such restrictions for its intended use with respect to the construction, development, ownership, use or operation of the Project;

(i) Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(j) Liens not otherwise permitted hereunder so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed \$[2,500,000] at any one time;

(k) Liens of Borrower arising by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights arising in the ordinary course of business;

(l) extensions, renewals and replacements of any of the foregoing or following Liens to the extent and for so long as the Debt or other obligations secured thereby remain outstanding.

**"Person"** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**"Personal Information"** means, as pertinent to an identified and/or identifiable employee, applicant, contractor, individual business contact, website user, or other natural person: (1) the individual's name, address, date of birth, financial account information, credit or debit card information, e-mail address, medical insurance number, Social Security number, and health information, including protected health information as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as (2) any other data relating to such identified or reasonably identifiable natural person.

**"POF"** means, for any 12-month measurement period, the ratio, expressed as a percentage and calculated with ERCOT data of (a) one *minus* (b) an amount equal to (i) the Total Evaluated Period Intervals *divided by* (ii) the Total Period Intervals.

**"Power Sales Agreement"** means that certain Power Sales Agreement, dated as of       , 2025 by and between Kerrville Public Utility Board and Kerrville Public Utility Board Public Facility Corporation.

**"Principal Persons"** means any executive officer, director, or other Person with primary management or supervisory responsibilities with respect to any Group Member or any other Major Project Participant.

“Principal Repayment Date” shall mean each Payment Date on the Bonds on which principal is due and payable.

“Privacy and Security Laws” has the meaning given in Section 4.21.6.

[“Prohibited Person” means any Person:

(a) that fails to comply with the following provisions of the Texas Government Code and other Legal Requirements as noted: §556.005 and §556.0055 (receipt of funds not prohibited by lobbying); §669.003 (does not employ current or former executive head or employees of PUCT during certain timeframes); §2155.004(b) (has not financially participated in preparing contract specifications on which loan agreement is based); §2155.006 and §2261.053 (has not been convicted of, or assessed a penalty for, violating federal law regarding awards related to hurricane relief, recovery, or reconstruction efforts); §2155.0061 (has not been convicted of any offense related to the direct support or promotion of human trafficking); §2252.152 and Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” published by the United States Department of the Treasury, Office of Foreign Assets Control (does not finance or engage in business with terrorists); §2271.002 (does not boycott Israel); §2274.002 (does not discriminate against firearm entities); §2276.002 (does not boycott energy companies); Texas Government Code Chapter 572 and Texas Utilities Code Chapter 12 (does not employ or hire restricted individuals); Texas Government Code Chapter 2275 and Texas Business and Commerce Code Chapter 117, known as the Lone Star Infrastructure Protection Act (not owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor of Texas, or headquartered in any of those countries); Texas Business and Commerce Code Chapter 17 (has not been subject of or found liable for allegations of unfair or Deceptive Trade Practices violations); Texas Business and Commerce Code §15.01, et. seq. and 15 U.S.C. §1, et. seq. (has not violated antitrust laws); and Texas Family Code §231.006 (does not have delinquent child support);

(b) that is debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Agreement by any state or federal agency;

(c) that is, or is owned by a holding company or owns a subsidiary that is: (i) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); (ii) listed in Section 1260H of the 2021 NDAA; (iii) owned by the government of a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. §791.4; or (iv) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. §791.4; or

(d) that is a Sanctioned Person.]

“Project” has the meaning given in the recitals.

“Project Completion” means satisfaction or waiver in writing of the conditions set forth in Section 3.4.

“Project Completion Date” means the date on which Project Completion occurs.

“Project Completion Longstop Date” means [●].

“Project Costs” means the following costs and expenses incurred or to be incurred on or prior to the Project Completion Date in connection with the ownership, acquisition, development, design, engineering, procurement, permitting, construction, installation, equipping, assembly, inspection, testing, completion, start-up, commissioning, operation and financing of the Project:

- (a) all amounts payable under the Construction Contract and the other Project Documents and, any contractor bonuses, site leasing and preparation costs, any interconnection and transmission upgrade costs payable by Borrower, costs related to acquisition, development and construction of facilities for the receipt of natural gas, water and other inputs to, and to transport or deliver electricity and other outputs from, the Project, and all other amounts payable under the Project Documents prior to Final Completion, including contingency provided for in the Construction Budget and amounts payable in order to complete the Punch List;
- (b) financing, advisory, consulting, legal, accounting and other fees and related costs;
- (c) all other Project-related costs, including fuel-related costs and prepaid fuel costs, any development costs (including funding any mitigation measures (such as community projects and the purchase of certain nearby residences) required in connection with the Project), management services fees and expenses and costs and expenses to complete the construction and financing of the Project;
- (d) contingency funds, required reserves, start-up costs and initial working capital costs;
- (e) property and sales taxes due in respect of the Project;
- (f) O&M Costs incurred prior to the Project Completion Date;
- (g) payments and fees under the Permitted Commodity Hedge Agreements (other than termination payments under the Permitted Commodity Hedge Agreements);
- (h) payments to ERCOT;
- (i) costs and expenses incurred with the negotiation and preparation of the Operative Documents and the formation of Borrower;
- (j) interest (including interest during construction), fees and other amounts payable under the Credit Documents;
- (k) repayment of existing debt (and any interest, fees and costs associated with same);

(l) fees and costs payable under the Construction Management Agreement;

(m) costs and expenses of obtaining insurance for the Project; and

(n) amounts required to fund, the Reserve Fund in accordance with the terms of the Indenture and this Agreement.

“Project Document Modification” has the meaning given in Section 6.10.

“Project Documents” means, without duplication, the Major Project Documents and each other agreement related to the development, construction, operation, maintenance, management, administration, ownership or use of the Project, the sale of power therefrom, the provision of gas, electricity and other services thereto and Real Property rights and interests relating to the Project, in each case, entered into by, or assigned to, Borrower.

“Project Schedule” means a schedule setting forth the expected schedule and milestones for construction of the Project through Final Completion delivered to the Lender on the Closing Date pursuant to Section 3.1.17.

“Projected Debt Service Coverage Ratio” means, as of any date of determination, the ratio of (a) Operating Cash Available for Debt Service for the next succeeding 12-month period based on amounts projected in an updated Base Case Financial Model, adjusted based on the then current Market Study using a methodology consistent with the Closing Date Base Case Financial Model and taking into account any Permitted Commodity Hedge Agreement not in default to (b) Debt Service scheduled for the next succeeding 12-month period.

“Prudent Industry Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by independent operators of natural gas-fired electric generation stations in the ERCOT system of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the design, engineering, construction, operation, maintenance, repair and use of gas turbines, electrical generators and electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. “Prudent Industry Practices” does not necessarily mean one particular practice, method, equipment specification or standard in all cases and shall not be interpreted to require the adoption or implementation of any particular best or most optimal practice, but is instead intended to encompass a set of practices, methods, equipment, specifications and standards of safety and performance in compliance with all applicable Governmental Rules and generally accepted by independent operators of natural gas-fired electric generation stations in the ERCOT system of a type and size similar to the Project, having due regard for, among other things, the preservation of manufacturers’ warranties and operating instructions and recommended maintenance, the requirements or guidance of Governmental Authorities, Legal Requirements, applicable interconnection operating guidelines and rules, transmission provider rules and the requirements of insurers.

“PUCT” means the Public Utility Commission of Texas or any successor agency.

**“PUHCA”** means the Public Utility Holding Company Act of 2005, including the regulations of the FERC thereunder.

**“Punch List”** has the meaning given in the Construction Contract.

**“PURA”** means the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 43.151 (2023) and the regulations of the PUCT thereunder.

**“Qualified Manager”** means a Person that has substantial experience as an asset manager of a Comparable Project, including a minimum of [three] years of managing one or more Comparable Projects (whether now or in the past).

**“QSE”** means Qualified Scheduling Entity as defined in the ERCOT Protocols.

**“Qualified Services Provider”** means a Person that is recognized in the electric power industry as having substantial experience as a construction management support services provider for a Comparable Project for at least [two] years and having technical, administrative and managerial expertise expected to provide construction management support services to a Comparable Project.

**“Payment Date”** has the meaning set forth in the Bonds.

**“Real Property”** means all right, title and interest of Borrower in and to any and all parcels of real property (including the Site) owned, leased or operated by Borrower together with all of Borrower’s interests in all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

**“Regulation D”** means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

**“Related Parties”** means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

**“Release”** means any release, spill, emission, leaking, emptying, seeping, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration, whether active or passive, of any Hazardous Substance into the Environment, including the movement of any Hazardous Substance through the air, soil, subsurface, surface water or groundwater. **“Released”** is the verb form of **“Release”**.

**“Remaining Costs”** has the meaning given in the Depositary Agreement.

**“Replacement Obligor”** means a Person acceptable to Lender; provided that, in each case, if such Person is entering into a Replacement Project Document that relates to a Major Project Document that was subject to a Consent, on the date the such Person enters into such Replacement Project Document, such Person enters into a Consent.

**"Replacement Project Document"** means any Project Document entered into by Borrower with a Replacement Obligor in replacement of a Major Project Document, which, in each case, shall be in form and substance reasonably satisfactory to Lender.

**"Requested Loan Date"** means, for any Notice of Borrowing, the date requested by the Borrower for Lender to make a Loan.

**"Resource Commissioning Date"** has the meaning given in the ERCOT Protocols.

**"Responsible Officer"** shall mean, as to any Person, its president, executive officer or financial officer, treasurer or any Person who is a manager or managing member of a limited liability company (or any of the preceding with regard to any such manager or managing member) or any other officer or similar official thereof, in each case responsible for the administration of the obligations of such Person in respect of this Agreement and the other Credit Documents.

**"Restricted Payment Conditions"** has the meaning given in Section 6.6.1.

**"Risk Management Policy"** has the meaning given in Section 5.21.

**"RT Available Flag"** is a binary flag that equals one if the real time telemetered resource status code indicates the Project is available (i.e., any status other than OUT); otherwise, the flag equals zero.

**"RT Telemetered HSL"** means the high sustainable limit telemetered by the Project in real time.

**"Rules"** has the meaning given in the recitals.

**"S&P"** means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

**"Sanctioned Country"** means, at any time, a country, region or territory which is, or whose government is, the subject or target of any Sanctions broadly restricting or prohibiting dealings with such country, region, territory or government (currently, Cuba, Iran, North Korea, Syria, and the Crimea, Luhansk and Donetsk regions of Ukraine).

**"Sanctioned Person"** means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), the United Nations Security Council, the European Union or any of its member states, His Majesty's Treasury, Switzerland or any other relevant authority, (b) any Person located, organized or resident in, or any Governmental Authority or governmental instrumentality of, a Sanctioned Country or (c) any Person 25% or more directly or indirectly owned by, controlled by, or acting for the benefit or on behalf of, any Person described in clauses (a) or (b) hereof.

**"Sanctions"** means economic or financial sanctions or trade embargoes or

restrictive measures enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce (b) the United Nations Security Council; (c) the European Union or any of its member states; (d) His Majesty's Treasury; (e) Switzerland; or (f) any other relevant authority.

“Scheduled COD Date” means [●].

“Scheduled Final Maturity Date” means [●]<sup>6</sup>.

“Securities” means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Security Breach” has the meaning given in Section 4.21.7.

“Series 2025A Supplement” has the meaning provided in the Power Sales Agreement.

“Series 2025B Supplement” means the Series Supplement (as defined in the Indenture) to the Indenture in the form attached hereto as Exhibit [ ].

“Site” means all Real Property comprising and/or included within the Project, including, without limitation, the Real Property, and rights and interests therein described in Schedule A to the Title Policy and depicted on the survey.

“Standard Generation Interconnection Agreement” means the Standard Generation Interconnection Agreement, effective as of [●], by and between Borrower and [●], the interconnecting transmission service provider.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 50% or more of the shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers, or similar governing body, of such corporation, partnership, limited liability company or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of a Person.

“Substantial Completion” means the achievement of [Facility Substantial

---

<sup>6</sup> NTD: To insert 20 years from the execution date.

Completion] (as defined in each of the Construction Contract and [•]).

“TEI” has the meaning given in the recitals.

“Total Period Intervals” means the total number of intervals in the evaluation period.

“Total Evaluated Period Intervals” means the total number of intervals in the evaluation period, excluding any that occurred during an approved planned outage of the Project.

“Total Loss” has the meaning given in the Depositary Agreement.

“Transformer Supply Agreement” means [•].

“TRE” means Texas Reliability Entity, Inc., a regional entity exercising authority delegated by NERC.

“Treasury” means the U.S. Department of Treasury.

“Trust Estate” has the meaning set forth in the Indenture.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Texas.

“Unforced Capacity” has the meaning given in the ERCOT Protocols.

“Unsatisfied Condition” means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can become effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Agreement, or (c) must be satisfied as of a future date but with respect to which facts or circumstances exist which could result in a failure to satisfy such Permit condition.

“USA PATRIOT Act” has the meaning given in Section 11.19.

“Withdrawal Liability” means liability to any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) as a result of a complete or partial withdrawal from such multiemployer plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

## RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.
2. A reference to a Governmental Rule (except as otherwise provided in this Agreement) includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
3. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.
4. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
5. The words "include", "includes" and "including" are not limiting.
6. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Agreement shall control.
7. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time as permitted under this Agreement and in effect at any given time.
8. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
9. References to "days" shall mean calendar days, unless the term "Business Days" shall be used. References to a time of day shall mean such time in [Austin, Texas], unless otherwise specified.
10. If, at any time after the Closing Date, Moody's, Fitch or S&P shall change its respective system of classifications, then any Moody's, Fitch or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.
11. For all purposes of the Credit Documents, any reference to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership, or trust, or an allocation of assets to a series of limited liability company, limited partnership, or trust (or the

unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with such Person. Any division of a limited liability company, limited partnership, or trust shall constitute a separate Person under this Agreement and the other Credit Documents (and each division of any limited liability company, limited partnership, or trust that is a Subsidiary, joint venture, or any like term shall also constitute such a Person or entity).

12. The Credit Documents are the result of negotiations between, and have been reviewed by Borrower, each party to any such Credit Document, Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against Borrower, any party to any such Credit Document or the Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

EXHIBIT B - KPUB RESOLUTION 25-05

RESOLUTION NO. 25-05

**RESOLUTION APPROVING FINANCING OF A POWER GENERATION FACILITY BY THE KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION THROUGH THE ISSUANCE OF BONDS; AUTHORIZING THE EXECUTION OF THE POWER SALES AGREEMENT BY THE KERRVILLE PUBLIC UTILITY BOARD TO SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION WITH, AND THE TAKING OF OTHER ACTION TO EFFECT, THE ISSUANCE, SALE AND DELIVERY OF SUCH BONDS; AND RESOLVING RELATED MATTERS**

**WHEREAS**, the City Council of the City of Kerrville, Texas (the "City") authorized and approved the creation of the Kerrville Public Utility Board Public Facility Corporation (the "Corporation") under Chapter 303, as amended, Texas Local Government Code (the "Act"), for the purpose of financing or providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of "public facilities" (as defined in the "Act"), including electric power supply facilities to be devoted to public use by the City's electric, light and power system (the "System"), as managed by the Kerrville Public Utility Board ("KPUB") in an orderly, planned manner and at the lowest possible costs (collectively, the "Public Purposes"); and

**WHEREAS**, the Corporation's Board of Directors (the "Board") has determined that it is in the public interest and to the benefit of the City's residents that it continue to finance the construction of a Gas-Fired Reciprocating Internal Combustion Engine (RICE) Facility Project (the "Project"), as further described in the Corporation Resolution (defined below), in order to effectuate the Public Purposes in a timely and cost effective manner; and

**WHEREAS**, the Corporation has developed a plan of finance for the Project under which it expects to issue in one or more series of tax-exempt and taxable revenue bonds (collectively, the "Bonds") issued under the terms of a Trust Indenture as further described in the Corporation Resolution (the "Indenture"); and

**WHEREAS**, the Bonds will be special limited obligations of the Corporation, secured and payable by the pledge of the revenues generated under the terms of a power sales agreement (the "Power Sales Agreement") between the Corporation and KPUB, under the terms of which KPUB will purchase a portion of the Project's output in exchange for making the payments described under the Power Sales Agreement; and

**WHEREAS**, the Project is expected to cost approximately \$181,000,000, including certain financing costs and capitalized interest; and

**WHEREAS**, the Project is expected to provide KPUB with a financially stable and reliable source of electric power that would not otherwise be available through purchases of electricity using long term power agreements with wholesale power suppliers other than the Corporation; and

**WHEREAS**, pursuant to Senate Bill 2627 - the Powering Texas Forward Act (the "TEF Act")- the Public Utility Commission of Texas ("PUCT") was directed by the Texas Legislature to administer the Texas Energy Fund ("TEF") to provide grants and loans to finance the construction, maintenance, modernization, and operation of electric facilities in Texas through four different programs, one of which is the In-ERCOT Generation Loan Program; and

**WHEREAS**, under the In-ERCOT Generation Loan Program, the PUCT, in its capacity, as Lender, is authorized to provide low-interest loans to qualifying companies for the construction of new dispatchable electric generating facilities in the ERCOT power region; and

**WHEREAS**, PUCT adopted 16 Texas Administrative Code §25.510 to establish the application process, project eligibility requirements, evaluation criteria, and loan terms for the In-ERCOT Generation Loan Program; and

**WHEREAS**, the Corporation constitutes part of the City's municipally owned utility and is authorized by law to construct, maintain, or finance the Project and may borrow money from the TEF under the Texas Administrative Code; and

**WHEREAS**, KPUB submitted on behalf of the Corporation an application to the In-ERCOT Generation Loan Program and TEF approved the application and is expected to provide under the terms of a credit agreement between PUCT and the Corporation (the "Credit Agreement") financing for 60% of the cost of the Project at a rate of interest equal to 3% per annum; and

**WHEREAS**, under the terms of the Credit Agreement the Corporation will issue and deliver to the PUCT from time to time certain of its Bonds issued on a taxable basis; and

**WHEREAS**, the Corporation has worked with its financial advisor to develop a plan to finance the remaining costs of the Project using Bonds sold on the open market issued on a taxable or tax-exempt basis; and

**WHEREAS**, the Board of the Corporation approved a resolution authorizing the financing of the Project through the issuance of the Bonds, the execution of the Indenture, the Power Sales Agreement, the Credit Agreement, and the transactions contemplated thereby, in the form

attached hereto as Exhibit A (the "Corporation Resolution"); and

**WHEREAS**, prior to the issuance of Bonds, the Power Sales Agreement, the Corporation's Bond Resolution, and the transactions contemplated therein must be approved by KPUB; now therefore,

**BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE KERRVILLE PUBLIC UTILITY BOARD THAT:**

**Section 1.** The Project is hereby approved by KPUB. The Indenture, the Credit Agreement, and the Power Sales Agreement, in the form attached to the Corporation Resolution, to be executed by the Corporation, and the Power Sales Agreement to be executed by KPUB, are hereby approved, with such changes as approved and authorized by the resolution of the Corporation, not contrary to the general intent thereof and as the Chief Executive officer of KPUB shall deem necessary or appropriate. KPUB is also hereby authorized to enter into a continuing disclosure agreement, in the form approved by the chief executive officer of KPUB, if the Corporation determines it will facilitate the marketing or sale of the Bonds.

**Section 2.** The Chief Executive Officer of KPUB is hereby authorized to negotiate and execute the final form of the Power Sales Agreement and to deliver a certificate evidencing approval by KPUB, as purchaser under the Power Sales Agreement, of the final terms of any series Bonds issued by the Corporation pursuant to the Corporation Resolution. The chief executive officer and staff of KPUB are hereby authorized to participate in the preparation of a preliminary official statement and official statement with respect to any such Bonds and to perform all acts necessary or convenient to facilitate the marketing and sale of the Bonds. All acts heretofore performed on behalf of the Corporation by KPUB staff or directors, officers, consultants, or agents of KPUB which are in conformity with the purposes and intent of this Resolution, and in furtherance of the issuance of the Bonds and the execution, delivery and performance of the transactions approved herein and as contemplated by the transactions authorized herein and in the Corporation Resolution shall be, and the same hereby are in all respects, ratified, approved and confirmed.

**Section 3.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of KPUB.

**Section 4.** All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

**Section 5.** This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**Section 6.** If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and KPUB hereby declares that this Resolution would have been enacted without such invalid provision.

**Section 7.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

**Section 8.** This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED, APPROVED AND ADOPTED** on this 7<sup>th</sup> day of March, 2025

---

Larry Howard, Chairman

ATTEST:

---

Glenn Andrew, Secretary

**Exhibit A**

**CORPORATION RESOLUTION**

**(Please See Previously Attached Resolution)**