

## POWER PURCHASE AND SALE AGREEMENT

(Avoided Cost – Solar)

This Power Purchase and Sale Agreement (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between \_\_\_\_\_, an [individual/corporation/limited liability company] whose address is \_\_\_\_\_ (“Seller”), and **Wabash Valley Power Association, Inc.**, an Indiana nonprofit corporation with principal offices located at 6702 Intech Blvd., Indianapolis, Indiana 46278 (“Buyer”).

### RECITALS

WHEREAS, Buyer is a nonprofit corporation engaged in the generation, transmission, and sale of electric capacity and Energy to its member systems; and

WHEREAS, Seller intends to construct, own, operate, maintain, and control a solar powered electric generating facility on a site located in \_\_\_\_\_ Township, \_\_\_\_\_ County, State of \_\_\_\_\_, consisting of \_\_\_\_\_, with a manufacturer’s nameplate capacity rating of \_\_\_\_ **kilowatts** (AC) (the “Facility”); and

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, electric capacity and/or Energy from the Facility in accordance with the terms hereof.

THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, Buyer and Seller agree as follows:

### ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings set forth below. Certain other capitalized terms are defined where they appear in this Agreement.

- 1.1 "Agreement" shall mean this Power Purchase and Sale Agreement.
- 1.2 "Business Day" shall mean a day on which Federal Reserve member banks in New York City are open for business, beginning at 8:00 a.m. and ending at 5:00 p.m. local time in Indiana.
- 1.3 "Buyer" shall mean Wabash Valley Power Association, Inc.
- 1.4 "Capacity" shall mean the maximum hourly integrated KWh delivered to the Delivery Point.
- 1.5 "Commercial Operation Date" or "COD" means the date when 100% of the nameplate capacity of the Facility is installed and can and does produce and deliver capacity and Energy to the Delivery Point, as certified for commercial operation by Buyer.
- 1.6 "Delivery Point" or "Delivery Points" shall mean the point of interconnection between the Facility and the local electric distribution system as described in **Exhibit A** attached hereto and incorporated by reference.

1.7 "Energy" shall mean the quantity of electricity produced over an integrated hour measured in kilowatt-hours ("KWh").

1.8 "Energy Rate" shall have the meaning as set forth in Section 4.1.

1.9 "Facility" means the Facilities described in the Recitals and as further described in **Exhibit B** attached hereto and incorporated herein by reference, all of which are owned and operated by Seller.

1.10 "Force Majeure" shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the party affected thereby, or in the case of third party obligations or facilities, the third party claiming suspension, and which by the exercise of due diligence the affected party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure includes, but is not restricted to: failure of interconnection facilities; acts of God; fire; explosion; civil disturbance; labor dispute; labor or material shortage; sabotage; action or restraint by court order or public or government authority, so long as the affected party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action; provided that neither (a) the loss of Buyer's markets nor Buyer's inability economically to use or resell Energy purchased hereunder nor (b), Seller's ability to sell Energy to a market at a more advantageous price, shall constitute an event of Force Majeure.

1.11 "Interest Rate" shall mean, on any date, two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates," provided that the Interest Rate shall never exceed the maximum rate permitted by applicable law.

1.12 "KW" shall mean one kilowatt.

1.13 "KWh" shall mean one kilowatt hour.

1.14 "MW" shall mean one megawatt.

1.15 "MWh" shall mean one megawatt hour.

1.16 "NERC" shall mean the North American Electric Reliability Council or any successor thereto.

1.17 "PURPA" means the Public Utility Regulatory Act of 1978.

1.18 "Power" shall mean the combination of Capacity and Energy.

1.19 "Seller" shall mean \_\_\_\_\_.

1.20 "Term" shall have the meaning set out in Section 2.1.

**ARTICLE 2**  
**CONTRACT TERM**

2.1 Term. The Term hereof shall commence on the Effective Date and expire at 11:59 p.m. (EST) on the tenth anniversary of the Commercial Operation Date and shall continue thereafter for successive terms of one (1) year unless terminated by either party upon providing the other party with written notice of such party's intent to not renew not less than ninety (90) days prior to the expiration of the then current term. This Agreement shall be null and void and of no force and effect if the Commercial Operation Date has not occurred on or before \_\_\_\_\_, 20\_\_.

**ARTICLE 3**  
**SALE AND PURCHASE OF POWER**

3.1. Sale and Purchase Obligations. Subject to the provisions hereof, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, all Power generated at the Facility that is delivered to the Delivery Point during the Term hereof.

3.2. Deliveries. Delivery hereunder of Energy generated at the Facility shall be made at the Delivery Point as described in Exhibit A.

**ARTICLE 4**  
**PRICE**

Notwithstanding termination of PURPA, or any provision thereof, or any revision, amendment, or change thereto, Buyer shall, for the full Term of this Agreement, pay Seller for Power received at the Delivery Point as follows:

4.1. Energy. Buyer shall pay for all Energy generated by the Facility that is delivered to and metered at the Delivery Point at the Energy Rate set forth on the attached Exhibit C. The parties agree that Buyer shall have the right prior to March 1<sup>st</sup> of each year to revise Exhibit C by providing a copy thereof to Seller, whereupon the revised Exhibit C shall thereafter be incorporated into and become a part of this Agreement and be applicable to Energy payments made hereunder thereafter until Exhibit C is subsequently revised.

4.2. Capacity. Buyer shall pay for Capacity generated by the Facility that is delivered to the Delivery Point at the rate set forth on the attached Exhibit C, as revised from time to time by Buyer. The parties agree that Buyer shall have the right prior to March 1<sup>st</sup> of each year to revise Exhibit C by providing a copy thereof to Seller, whereupon the revised Exhibit C shall thereafter be incorporated into and become a part of this Agreement and be applicable to Capacity payments made hereunder thereafter until Exhibit C is subsequently revised.

**ARTICLE 5**  
**ENVIRONMENTAL ATTRIBUTES**

This Agreement applies only to Power produced by the Facility and not any environmental attributes and/or green tags associated with production of energy from the Facility.

**ARTICLE 6**  
**DELIVERY POINTS AND TRANSFER OF TITLE**

6.1. Delivery Points. Electric Energy to be purchased and sold hereunder shall be delivered and received at the Delivery Point as shown on the attached **Exhibit A**.

6.2. Costs in Connection with Delivery. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Energy to the Delivery Point. Buyer shall be responsible for all costs or charges imposed in connection with the Energy after delivery to the Delivery Point.

6.3. Title and Risk of Loss. Title to and risk of loss of all electric Energy delivered hereunder shall transfer from Seller to Buyer upon delivery of the Energy to Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or injury caused by Energy delivered hereunder prior to delivery at the Delivery Point, and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, Energy delivered hereunder at and from the Delivery Point.

6.4. Warranty of Title. Seller warrants that it will deliver Energy to Buyer hereunder free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

6.5. Intermittent Resource. The Energy produced by the Facility is subject to the availability of the sun; therefore it is not a generating source capable of following a predetermined operating schedule. The Energy market within the Midcontinent ISO (MISO) and/or Pennsylvania New Jersey Maryland Power Pool (PJM) where applicable, allows intermittent resources an exemption from financial penalties that a generator would otherwise be subject to should it not meet a predetermined operating schedule. The Parties agree to work collectively to have the Facility deemed an Intermittent Resource by the MISO and/or PJM.

In the event the Facility shall not be deemed an Intermittent Resource and is subject to schedule deviation penalties, the Seller shall assume the responsibility for all schedule deviation costs imposed on the Buyer by the MISO and/or PJM. These costs will be netted from the amounts paid by Buyer to Seller under the terms of this Agreement.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

7.1. Representations and Warranties. As a material inducement to execution of this Agreement, each party hereby represents and warrants to the other party that:

a. If a party is a corporation or limited liability company, that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified or shall become duly qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

b. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, if applicable, or any contract to which it is a party, or to its knowledge any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to such party;

c. This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

d. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and

e. To the party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body that would materially adversely affect its ability to perform this Agreement.

7.2. No Other Representations and Warranties. Each party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other party with respect to the subject matter hereof.

## **ARTICLE 8 ADDITIONAL COVENANTS**

8.1 Distributed Generation Interconnection Agreement. Seller represents and warrants that it has entered into a Distributed Generation Interconnection Agreement with \_\_\_\_\_ behind \_\_\_\_\_ substation and will comply with its terms including but not limited to specific requirements related to local facilities and liability insurance.

## **ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES**

9.1. Events of Default. The following occurrences shall constitute Events of Default:

a. Failure by a party to make any payment required hereunder when due if such failure is not remedied within ten (10) Business Days after receipt by the defaulting party of written notice of such failure, provided that the payment in question is not the subject of a good faith dispute pursuant to Article 10;

b. Any representation or warranty made by a party pursuant to Article 7 shall have been false in any material respect when made;

c. Failure by either party to deliver or receive Energy hereunder, where such failure is not excused by Force Majeure or by the fault of the other party and is not cured within ten (10) Business Days after the defaulting party receives written notice of such default from the other party;

d. During the term hereof, Seller delivers Energy generated at the Facility to a third party other than for consumption in connection with the Seller's personal or business operations where the Facility is located;

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

f. Any other material breach of this Agreement not specifically enumerated, which is not cured within thirty (30) days after notification of default by the non-defaulting party.

## 9.2. Remedies.

a. Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting party may terminate this Agreement by written notice to the other party designating the date of termination and delivered to the defaulting party no less than ten (10) days before such termination date.

b. For all claims, causes of action and damages, the parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Section 9.1, nor the termination of this Agreement by a non-defaulting party pursuant to Section 9.2(a), shall limit the right of a non-defaulting party to the rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other party and for damages incurred by the non-defaulting party as a result of the termination of this Agreement.

## **ARTICLE 10** **BILLING AND PAYMENT**

10.1. Billing and Payment. Each calendar month during the Term, Buyer will produce a statement on the Seller's behalf setting forth the total amount due for Capacity and Energy delivered during the immediately preceding month, the quantities of Capacity and Energy that were delivered during such month, and any other amounts due Seller hereunder. Notwithstanding the foregoing, the parties agree that Buyer shall pay Seller on a quarterly basis, without interest if paid by the date due. For each quarterly period (January through March, April through June, July through September, October through December) of each calendar year, Buyer shall pay Seller on or before the end of the following month for all amounts due during such preceding three month period. If the payment due date is not a Business Day, the payment due date shall be on the immediately following Business Day. All payments by Buyer shall be remitted to Seller by wire transfer in accordance with Section 16.2. Buyer payment amounts under twenty dollars, (\$20.00) will be carried over to the next payment period.

10.2. Interest on Late Payments. Amounts not paid when due shall accrue interest from, and including, the due date to, and excluding, the date of payment at the Interest Rate.

10.3. Disputed Amounts. If either Party disputes any amount due pursuant to a statement rendered hereunder, the disputing Party shall notify the other Party of the specific basis for the dispute and Buyer shall pay that portion of the statement that is undisputed, on or before the due date. If any amount disputed by Buyer is determined to be due Seller, or if the parties resolve the

payment dispute, the amount due shall be paid within five (5) Business Days after such determination or resolution, along with interest accrued at the Interest Rate from the due date for such payment until the date paid.

10.4. Audit. Each party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine the records of the other party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder. Upon request, each party shall provide to the other party statements evidencing the quantities of Energy delivered at the Delivery Point. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a party questions the accuracy of such payment or statement within one year after the date of such statement or payment. This Section 10.4 will survive termination of this Agreement for a period of one (1) year.

#### **ARTICLE 11**

#### **ASSIGNMENT; BINDING EFFECT**

11.1. Assignment. Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the need for consent from the other party, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an affiliate of such party; or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such party. Additionally, Seller may assign its rights and obligations hereunder with respect to any of the Facility to any person or entity that acquires such Facility from Seller; provided, however, that no assignment permitted hereunder shall relieve the assignor of its obligations hereunder unless the permitted assignee agrees in writing to be bound by the terms and conditions hereof.

11.2. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assignees.

#### **ARTICLE 12**

#### **FORCE MAJEURE AND LIMITATION OF LIABILITY**

12.1. Force Majeure. If either party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement, and if such party gives notice and full details of the event of Force Majeure to the other party as soon as practicable after the occurrence of such event, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected party (other than the obligation to make any payment when due hereunder) shall be suspended to the extent of the affected party's inability to perform its obligations hereunder to such event of Force Majeure required. The affected party shall take all reasonable steps to remedy the cause of the Force Majeure with all reasonable dispatch; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, Energy at points other than the Delivery Points.

12.2. Duty to Mitigate. Each party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other party's default or non-performance of this Agreement.

### **ARTICLE 13**

#### **OPERATION AND SCHEDULING**

13.1. Representatives of the Parties. Each party shall designate authorized representatives to communicate hereunder with regard to scheduling and related matters. Each party shall comply with the applicable operating policies, criteria and/or guidelines of NERC and any regional or sub-regional reliability council and/or any regional transmission organization (RTO) and Independent System Operator (ISO).

13.2. Notice of Changes in Scheduled Quantity. Seller will make a reasonable attempt to notify Buyer of anticipated reductions in the quantity of electricity to be delivered due to scheduled maintenance and/or downtime. Notification will be made as far in advance as reasonably possible.

### **ARTICLE 14**

#### **TAXES**

14.1 Seller shall be responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local governmental agency on the Energy sold and delivered hereunder before the delivery of such Energy to the Delivery Point. Buyer shall be responsible for all existing and any new sale, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local government agency on the Energy sold and delivered hereunder upon and after the delivery of such Energy to the Delivery Point. Each party shall indemnify, release, defend and hold harmless the other party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Energy sold, delivered and received hereunder that are the responsibility of the first party pursuant to this Article 14.

### **ARTICLE 15**

#### **CONFIDENTIALITY**

15.1 Neither party shall disclose the terms of this Agreement concerning the price for Power to any third party, other than a party's and its Affiliates' employees, lenders, counsel or accountants who have agreed to keep such terms confidential, except as required to comply with any applicable law, order, regulation or exchange rule; provided, each party shall notify the other party of any proceeding of which it is aware which may result in disclosure. The parties shall be entitled to all remedies available at law or in equity to enforce this confidentiality obligation; provided, however, that any monetary damages awarded in connection therewith shall be limited to actual, direct damages.

### **ARTICLE 16**

#### **NOTICES AND ADDRESS FOR PAYMENT**



16.1. Notices. All notices, requests, statements or payments shall be made to the addresses set out below. Notices shall be in writing and shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered, as evidenced by a receipt issued by the courier delivering the notice or the sender's facsimile machine. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. A party may change its address by providing notice of same in accordance herewith:

To Seller: Name \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Email \_\_\_\_\_

To Buyer: Wabash Valley Power Association, Inc.  
6702 Intech Blvd.  
Indianapolis, Indiana 46278  
Attn: President & CEO

16.2. Wire Transfer Information for Payment. Payment shall be made to the following account:

Acct # \_\_\_\_\_  
Routing # \_\_\_\_\_

Payment shall be by wire transfer to such account as Seller shall designate from time to time by written notice.

## **ARTICLE 17**

### **MISCELLANEOUS**

17.1. Entirety. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any prior or contemporaneous agreements or representations of the parties affecting the same subject matter.

17.2. Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Indiana, without regard to principles of conflicts of law.

17.3. Non-Waiver. No waiver by either party hereto of any one or more defaults by the other party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

17.4. Headings; Attachments. The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all attachments referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

17.5. Survival. All indemnity and audit rights shall survive the termination of this Agreement for a period of one (1) year.

17.6. No Third Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third party beneficiary contract.

17.7. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date first set out above. This Agreement shall not become effective as to either party unless and until executed by both parties.

\_\_\_\_\_

**WABASH VALLEY POWER ASSOCIATION, INC.**

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

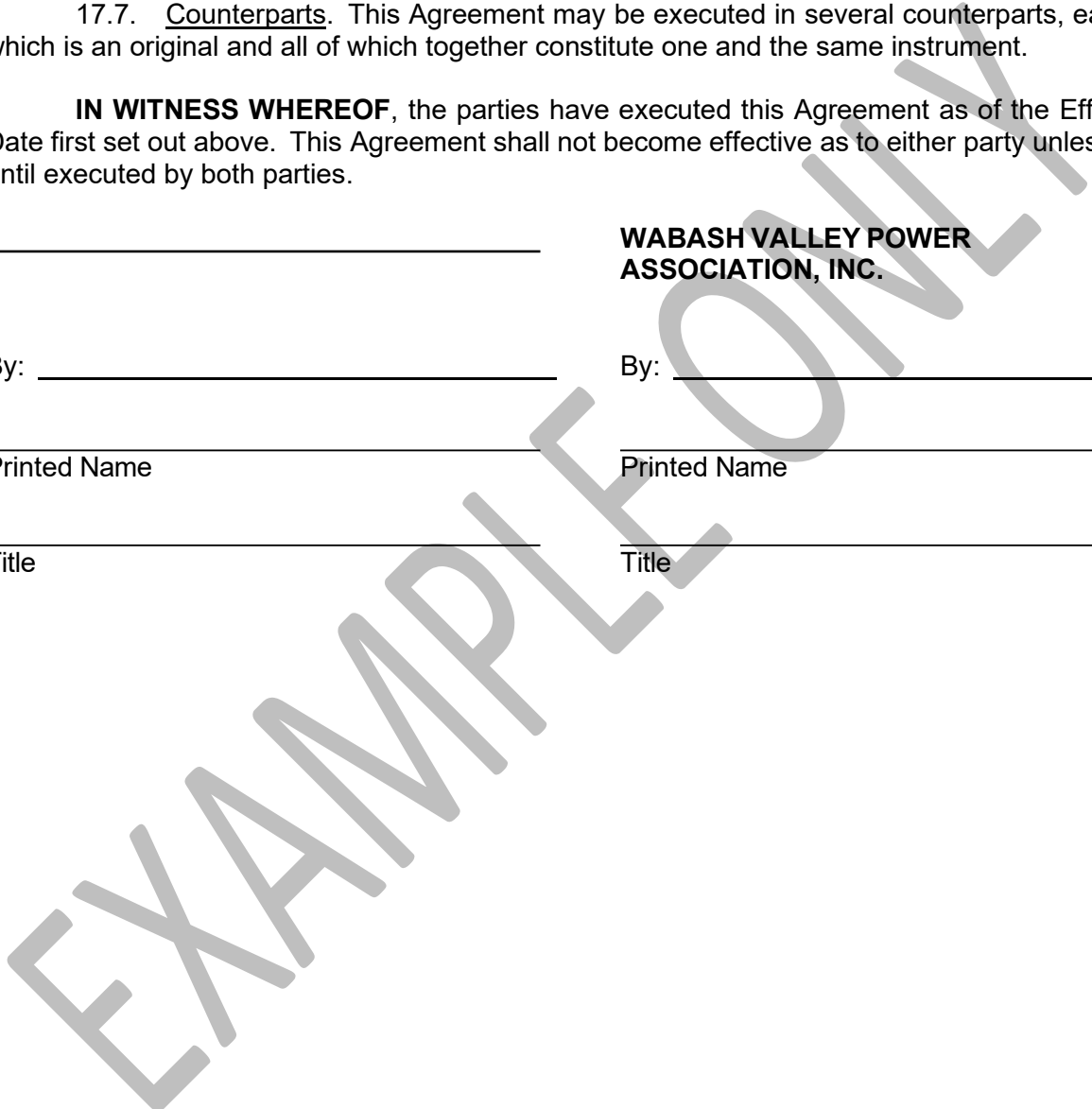
By: \_\_\_\_\_

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

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

Title \_\_\_\_\_

Title \_\_\_\_\_



**EXHIBIT A**

**DELIVERY POINT**  
(One-Line Diagram)

EXAMPLE ONLY

**EXHIBIT B**

**DESCRIPTION OF FACILITY**

EXAMPLE ONLY

**EXHIBIT C**

**Capacity Rate and Energy Rate**

**Annual Avoided Cost**

WABASH VALLEY POWER ASSOCIATION, INC.  
Schedule "CG"  
Purchase of Power from Qualifying Facility

EFFECTIVE MARCH 1, 2023 TO FEBRUARY 29, 2024

The following rates will be offered subject to:

1. A contract between the qualifying facility and Wabash Valley Power Association setting forth all terms and conditions governing the purchase of electric power from the qualifying facility.

**RATES:**

For Wabash Valley coincident window peak contracted capacity supplied each month	\$5.50	per kW
For On-peak energy supplied each month	\$.08149	per kWh
For Off-peak energy supplied each month	\$.05809	per kWh

kW represents WVPA's billing peak of 5 PM to 8 PM  
(excludes NERC holidays and weekends)

kWh On-peak represents summation of hours between 6 AM and 10 PM  
(excludes NERC holidays and weekends)

kWh Off-peak represents summation of hours between 10 PM and 6 AM  
(includes NERC holidays and weekends)