

**CITY OF MENIFEE**  
**COMMUNITY BENEFIT AGREEMENT**  
**NOVA BATTERY ENERGY STORAGE SYSTEM PROJECT**

This Community Benefit Agreement (“**Agreement**”) is entered into as of this \_\_\_ day of \_\_\_, 2023 by and between the City of Menifee, a municipal corporation (“**City**”) and Nova Power, LLC, a Delaware limited liability company (“**Developer**”). City and Developer are sometimes hereinafter individually referred to as a “**Party**” and collectively referred to as the “**Parties.**”

**RECITALS**

- A. **Whereas**, Developer owns approximately 42 acres of real property located within the City of Menifee, California, which is specifically described in the legal description set forth in Attachment “A” and leases a parcel of approximately 2 acres and from time to time may lease certain other adjacent parcels (hereinafter referred to as the “**Property**”); and
- B. **Whereas**, Developer has requested from the City certain entitlements and/or permits for the construction of improvements on the Property which are more particularly described as a battery energy storage system, which will use lithium-ion, flow battery, or other battery technology to store electrical energy from the grid to be discharged later when customer demand is high, and located to the east of Antelope Road, southwest of railroad tracks and Case Road, north of a drainage canal, electrical transmission corridor and McLaughlin Road, west of San Jacinto Road, and south of Ethanac Road and State Route 74 (APN: 331-180-022) (hereinafter referred to as the “**Project**”) and shown is Attachment “B”; and
- C. **Whereas**, Menifee Municipal Code section 9.300.070 provides that no conditional use permit for a battery storage facility, utility scale, shall be issued unless the City has entered into a legally binding and enforceable agreement that benefits the City; and
- D. **Whereas**, the City and Developer now desire to enter into this Agreement for the following purpose: to clarify the means by which Developer will make payment(s) to the City to ensure the Project includes the aforesaid community benefits pursuant to Menifee Municipal Code section 9.300.070.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Project. Developer proposes to construct and install or have constructed and installed at its own cost, expense, and liability the Project. Construction of the Project shall comply with all requirements set forth in Plot Plan No. PLN22-0154 and Conditional Use Permit No. PLN 22-0155, except as specifically modified herein (the “**City Approvals**”).

2. Construction Requirements. Construction of the Project shall be performed in accordance with the City Approvals and all applicable federal, state and local laws, ordinances, regulations, codes, and standards.

3. Community Benefit Fee. Developer shall make a one-time cash payment of \$6,540,317.00 to the City prior to the City’s issuance of building permits. Developer is informed that the City has discretion to use Developer’s payment for future benefits to the City overall. City acknowledges that this Community Benefit Fee shall be the sole fee associated with the Project such that no other contributions or participation in subsequent community improvement programs will be required. The Parties further agree that the payments made under this Section 3 and in Section 4 below satisfy Developer’s payment obligations to the City in connection with the construction, development, and operation of the Project and that the City waives all rights to any other fees, licenses, assessments, or other payments attributable to the Project, including fees, licenses, and assessments that may be enacted in the future; notwithstanding the foregoing, Developer shall continue to be responsible for impact fees identified in the conditions of approval and standard applicant permit fees that are scheduled and published by the City for the construction, development and operation of the Project.

4. Developer acknowledges the Project will be conditioned to participate in a future Road and Bridge Benefit District (“**RBBD**”) for needed infrastructure adjacent to the Project. Such RBBD is yet to be established but associated impact fees will be required once the RBBD is established. The Project’s RBBD obligation will be paid from a portion of the Community Benefit Fee. It is anticipated this amount would not exceed one million dollars (\$1,000,000) for the Project, however, the actual amount (once determined) of the RBBD obligation will not increase the Community Benefit Fee shown in Section 3 above.

5. Purchase of Equipment. Developer expects to obtain equipment and fixtures from construction contractors to complete the Project. Consistent with the requirements of applicable California law, the Developer agrees to cooperate with the City with respect to purchases of equipment and fixtures such that: (a) to the extent any such purchases of equipment and fixtures are from a construction contractor working for Developer at the Project site, Developer will, to the extent allowed by California law, require the construction contractor to secure the appropriate job-site sales tax permits such that such equipment and fixture purchases will be designated as having a point of sale within the City, such that the applicable sales tax will be collected and attributable to a purchase and sale within the City and (b) to the extent Developer is obligated to pay use tax on any such purchases of equipment and fixtures to be used at the Project site, Developer will, to the extent allowed by California law, secure the appropriate job-site use tax permits such that the applicable use tax will be collected and attributed to a Developer purchase within the City.

6. Permits. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and approvals and give all necessary and incidental notices required for the lawful construction of the Project. Developer shall conduct the work in

full compliance with the City Approvals, regulations, rules, and other requirements contained in any permit or approval issued to Developer. City will not unreasonably refuse to issue permits and approvals required for the construction of the Project. Each Party agrees to work together collaboratively with the other Party and to take such further actions and execute such additional documents as may be reasonably necessary to carry out the provisions of this Agreement while preserving, to the maximum extent possible, all material consideration to both Parties.

7. Approval of Plans and Specifications. Developer shall not commence work on the Project until all required plans and specifications set forth in the City Approvals have been submitted to and approved by the City Engineer, or his or her designee. The City Engineer's approval shall not unreasonably be withheld. City agrees to promptly review all subsequent Developer applications (e.g., for building and grading permit(s)) required for the completion of construction and commencement of operation of the Project. City and Developer agree to cooperate in applying for all necessary third-party approvals (e.g., from other agencies and utilities) required to complete the Project.

8. Default; Notice; Remedies. In the event of any default or breach of this Agreement by Developer, City shall provide notice to Developer of the default or breach. Developer shall have ten (10) days following receipt of the notice of default/breach to begin to diligently pursue remedying the default/breach. No action by City pursuant this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

9. General Provisions.

A. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party as to all terms in the Agreement.

B. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

C. Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, contractors, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

D. Notices. Any written notice to Developer shall be sent to:

Nova Power, LLC  
Attn: Francisco Escobedo  
26226 Antelope Road  
Menifee, CA 92585

and

Nova Power, LLC  
Attn: Mitch Weinberg  
3003 Oak Road, Suite 400  
Walnut Creek, CA 94597

and

Nova Power, LLC  
Attn: Jill Van Dalen  
3003 Oak Road, Suite 400  
Walnut Creek, CA 94597  
and

Nova Power, LLC  
Attn: Chief Legal Officer  
717 Texas Avenue, Suite 1000  
Houston, TX 77002

Any written notice to City shall be sent to:

City of Menifee  
29844 Haun Road  
Menifee, CA 92586  
Attn: Armando G. Villa, City Manager

E. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

F. Waiver. A Party's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein shall not relieve the other Party of any of its obligations under this Agreement.

G. Project Financing. "**Project Financing**" means any construction and/or long term financing, any other type of financing or tax equity financing, as may be necessary for the Project. The Parties acknowledge and understand that the development and construction of the Project may be financed by Project Financing. The Parties agree to consider and negotiate in good faith changes or additions to this Agreement that may be reasonably requested by the Project Financing lenders in order to support the Project

Financing (including but not limited to provisions under which lenders shall be entitled to receive copies of any notices hereunder that the City provides to Developer and that lenders shall be given the right to consent to any proposed changes or modifications to this Agreement), subject at all times to the City's right to withhold its consent to any amendments it deems unacceptable to the City.

H. Assignment or Transfer. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City except to an affiliate of Developer; provided, however, that Developer may make such assignments as the Developer deems necessary for collateral security purposes to aid in providing Project Financing for the Project without the consent of the City. Any other attempts to assign this Agreement or any interest herein without prior written consent of City shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. The City shall not withhold such approval if Developer's successor entity provides reasonably satisfactory evidence to City that it possesses the financial resources equivalent or superior to those of Developer to meet the obligations in this Agreement. Upon an assignment as allowed by this Section 9.H., Developer shall be released from its obligations under this Agreement; provided that assignee shall commit in writing to assume Developer's obligations under this Agreement.

I. Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns.

J. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

K. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

L. Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

M. Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Project, the prevailing party, whether by final judgment or arbitration

award, shall be entitled to and recover from the other party all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a party in good faith in the prosecution of an action or proceeding, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition, and transcript costs and any other cost or expense, the award of which a court of competent jurisdiction may determine to be just and reasonable ("**Litigation Expenses**"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Litigation Expenses.

N. Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, or approval issued by City for the Project shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

O. Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

P. Effective Date. This Agreement is not a commitment by the City to approve the Project. This Agreement shall have no force or effect until or unless the Project is approved, following compliance with the California Environmental Quality Act. This Agreement will become effective after the conditional use permit is final and non-appealable and this Agreement has been formally approved by the City and executed by the appropriate authorities of City and Developer.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first written above.

CITY:

CITY OF MENIFEE, a California municipal corporation

\_\_\_\_\_  
Armando G. Villa, City Manager

ATTEST: \_\_\_\_\_  
Stephanie Roseen, Acting City Clerk

APPROVED AS TO  
FORM: RUTAN & TUCKER, LLP

\_\_\_\_\_  
Jeffrey T. Melching, City Attorney

“Developer”

Nova Power, LLC, a Delaware Limited Liability  
Company

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

Its: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

A FEE ESTATE.

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF MENIFEE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, BEING IN THE UNINCORPORATED AREA OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT LAND SHOWN WITHIN CERTIFICATE OF PARCEL MERGER NO. 1622 FILED SEPTEMBER 13, 2005 IN 2005-0753554 OFFICIAL RECORDS OF RIVERSIDE COUNTY, CA.

TOGETHER WITH ALL THAT LAND SHOWN WITHIN THAT CERTAIN CERTIFICATE OF PARCEL MERGER NO. 1624 FILED SEPTEMBER 13, 2005 IN 2005-0753556 OMICAL RECORDS OF RIVERSIDE, CA

TOGETHER WITH LOTS 746 AND 749 AS SHOWN WITHIN THAT CERTAIN MAP OF ROMOLA FARMS NO. 6A AS SHOWN WITHIN A MAP FILED JULY 9, 1926 IN MAP BOOK 14, AT PAGES 63, 64 AND 65, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

TOGETHER WITH THAT PORTION OF THE EAST HALF OF LOT HH (ANTELOPE ROAD) ADJOINING LOT 7 46 ON THE WEST.

TOGETHER WITH THAT PORTION OF THE WEST HALF OF LOT JJ (SAN JACINTO ROAD) ADJOINING LOT 749 ON THE EAST.

SAID LEGAL DESCRIPTION IS PURSUANT TO CERTIFICATE OF PARCEL MERGER NO. 1623, RECORDED NOVEMBER 3, 2005 AS INSTRUMENT NO. 2005-0913379, OFFICIAL RECORDS.



## **Attachment B**

### **Nova Power Bank Project - Site Plan**

