

WATER DELIVERY AGREEMENT

The City of Yuma, an Arizona municipal corporation (“City”), and Yuma Cogeneration Associates, a Utah partnership (“Yuma Cogen”) enter into this Water Delivery Agreement (“Agreement”).

RECITALS

WHEREAS, Yuma Cogen owns Yuma County Parcel No. 180-18-009 consisting of approximately 42.75 acres of land located at 280 N. 27th Drive, Yuma, Arizona (the "Project Property") where it operates a 55 megawatt power station; and,

WHEREAS, the Project Property is member land located within the boundaries of the Yuma County Water Users' Association (the "Association"); and,

WHEREAS, the City has an entitlement, pursuant to a contract with the United States Secretary of the Interior, to 50,000 acre-feet annually of Colorado River Water; and,

WHEREAS, the City owns and operates a Water Pollution Control Facility located west of the Project Property (“WPCF”) pursuant to permit No. AZ0020443, issued by the United States Environmental Protection Agency; and,

WHEREAS, for the past thirty years the City has provided Yuma Cogen untreated Colorado River water (“Raw Water”) pursuant to a Water Delivery Agreement dated May 19, 1993; and,

WHEREAS, the May 19, 1993, Water Delivery Agreement expires on December 31, 2024; and,

WHEREAS, Yuma Cogen desires to continue to purchase Raw Water, with an option to also purchase wastewater effluent from the WPCF located west of the Project Property (“Effluent Water”), from the City for use in Yuma Cogen’s operations on the Project Property.

NOW, THEREFORE, in consideration of the recitals above, the City and Yuma Cogen covenant and agree as follows:

TERMS

1. **Recitals.** The recitals above are incorporated into this Agreement by reference.
2. **Term.** This Agreement shall commence on January 1, 2025, and shall terminate on December 31, 2045 (20-year term). Thereafter, this Agreement shall automatically renew annually for a one-year term unless notice of intent not to renew is given either party, no later than July 1 of the prior year.
3. **Raw Water Quantities; Flow Meter Required.** Except for years in which the United States Secretary of Interior declares a shortage of Colorado River water, the City shall provide Yuma Cogen up to 570 acre-feet of Raw Water per year at a maximum daily amount of 1.56 acre-feet per day. In years in which the Secretary of Interior declares a shortage of Colorado River water,

the City may reduce Raw Water deliveries to Yuma Cogen pro rata with all other industrial users of water served by the City.

Yuma Cogen shall maintain a flow meter, at a location acceptable to the City, to measure the amount of Raw Water received by Yuma Cogen. The flow meter must be capable of annual calibration, and it must calibrate within $\pm 10\%$ of a known volume. Yuma Cogen will supply documentation to the City of Yuma, Utilities Department of annual calibrations performed by a technician certified for the flow meter. These calibration reports are good for a maximum of twelve months from the date of calibration. Yuma Cogen shall perform the first calibration under this Agreement by February 1, 2025.

4. Raw Water Charges. Yuma Cogen will pay City a demand charge and a consumption charge for Raw Water as follows:

(a) Demand Charge for Raw Water. On or before January 15 of each year, Yuma Cogen will pay the City a demand charge for Raw Water for the remainder of the year unless it has elected to and is receiving Effluent Water and is paying Effluent Water fees pursuant to Section 5. The price for Raw Water shall be \$150.00 per acre-foot in 2025 and shall increase 3% per year over the life of this Agreement. Thus, the annual demand charge shall be as follows:

Year	Price per A/F	Quantity A/F	Demand Charge
2025	\$150.00	570	\$85,500.00
2026	\$154.50	570	\$88,065.00
2027	\$159.14	570	\$90,709.80
2028	\$163.91	570	\$93,428.70
2029	\$168.83	570	\$96,233.10
2030	\$173.89	570	\$99,117.30
2031	\$179.11	570	\$102,092.70
2032	\$184.48	570	\$105,153.60
2033	\$190.02	570	\$108,311.40
2034	\$195.72	570	\$111,560.40
2035	\$201.59	570	\$114,906.30
2036	\$207.64	570	\$118,354.80
2037	\$213.86	570	\$121,900.20
2038	\$220.28	570	\$125,559.60
2039	\$226.89	570	\$129,327.30
2040	\$233.70	570	\$133,209.00
2041	\$240.71	570	\$137,204.70
2042	\$247.93	570	\$141,320.10
2043	\$255.36	570	\$145,555.20
2044	\$263.03	570	\$149,927.10

The amount of 570 acre-feet will be used for purposes of calculating the Demand Charge for Raw Water in all calendar years except those in which the City has reduced Raw Water deliveries to Yuma Cogen based on a shortage of Colorado River water declared by the Secretary of Interior, in which event, the City shall reduce the Demand Charge based on the actual amount the

City intends to deliver to Yuma Cogen in that calendar year. Failure to pay the Raw Water Demand Charge on or before January 15 of each year shall result in interest being added thereto at a rate of 0.05% per day.

(b) Consumption Charge for Raw Water. The per acre-foot charge for Raw Water shall be an amount equal to 45% of the amount determined by dividing the annual budget (excluding capital costs for projects exceeding one million dollars in cost) for the Water Utility by the total volume of water delivered to customers for the previous year. However, such projects exceeding one million dollars shall be included and amortized over the life of the asset or period of debt financing whichever is shorter, but in no event shorter than five years.

The City shall submit invoices to Yuma Cogen for Raw Water Consumption Charges on a monthly basis, or under such other billing schedule as the City shall deem appropriate for commercial or industrial water customers. Yuma Cogen shall pay invoices for Raw Water Consumption Charges (Consumption Charge Invoices) within 30 days after Yuma Cogen receives such invoices from the City. The Consumption Charge invoices shall set forth in reasonable detail the rates used and the method for calculating the amount due. Failure to pay Consumption Charge invoices within the 30-day period shall result in interest being added thereto at a rate of 0.05% per day.

5. Option to Purchase Effluent Water. Provided Yuma Cogen constructs the necessary infrastructure, Yuma Cogen shall have the option to purchase Effluent Water from the City at the quantities and prices identified below. The Effluent Water charges shall only be payable once Yuma Cogen begins receiving Effluent Water.

(a) Effluent Water Line and Infrastructure. Prior to exercising this option to purchase Effluent Water from the City, Yuma Cogen shall, at its expense, construct a water line and all infrastructure, including pumping devices, necessary to convey Effluent Water to its operations on the Project Property. The water line and infrastructure shall be sufficiently sized to deliver Effluent Water to the Project Property at the maximum rate and quantity authorized under this Agreement. Plans and designs for the construction of the water line and infrastructure must be approved by the City prior to the commencement of construction, and upon completion of construction, title to and responsibility for maintenance shall remain with Yuma Cogen. The City shall grant Yuma Cogen a license to maintain and repair the water line and infrastructure on City-owned property.

(b) Effluent Water Quantities. Yuma Cogen may purchase up to 1,000 acre-feet of Effluent Water from the City per year at a maximum daily amount of 2.74 acre-feet per day. Yuma Cogen shall maintain a flow meter, at a location acceptable to the City, to measure the amount of Effluent Water received by Yuma Cogen.

(c) Effluent Water Charges. Yuma Cogen shall pay City an Effluent Water Demand Charge and an Effluent Water Consumption Charge. The yearly per acre-foot rates for Effluent Water shall be equal to 50% of the yearly per acre-foot rates set for Raw Water in Paragraph 4. Yuma Cogen shall pay, and the City shall bill, all Effluent Water charges consistent with the

timelines established for Raw Water in Paragraph 4. Failure to pay an Effluent Water Charge when due shall result in interest being added thereto at a rate of 0.05% per day.

6. Change in State Law. Any change to state legislation that adversely affects revenue to the City from Yuma Cogen will result in an automatic increase in rates equal to 100% of the decline in the City's revenue from Yuma Cogen.

7. Designated Use of Raw Water and Effluent Water. Any Raw Water and Effluent Water provided by the City under this Agreement may only be used for the co-generation of electricity and thermal output; e.g., makeup water for steam electric generating units, cooling, air emissions control and providing steam or hot water to a thermal host. Any other use of such water without the City's consent shall be deemed a breach of this Agreement. Yuma Cogen shall not sell, transfer or encumber the Raw Water and Effluent Water delivered to Yuma Cogen under this Agreement without the City's prior written consent.

8. Permit for Effluent Use. If required by law, Yuma Cogen shall apply for a wastewater re-use permit and shall use commercially reasonable efforts to obtain issuance of such permit and to comply with the terms and conditions of the permit. To the extent required by law, the City shall participate and support Yuma Cogen in the application process for a wastewater re-use Permit. Yuma Cogen shall utilize Effluent Water in compliance with the wastewater re-use permit, if any, and any applicable rules and regulations. Should amendment or clarification of this Agreement be required by such rules and regulations, both parties hereto agree to cooperate in good faith to comply with such requirements. If any governmental regulations or court orders preclude the City from providing Effluent Water or Yuma Cogen from using Effluent Water for the purposes specified in this Agreement, the City shall have no obligation to provide Effluent Water and Yuma Cogen shall have no obligation to take, use or dispose of Effluent Water to the extent any of those uses are prohibited by such regulations or order.

If Yuma Cogen's right to use Effluent Water is challenged by any third party, the City and Yuma Cogen agree to defend such action and equally share the resulting defense costs thereof. If, as a result of such legal action, the City is ordered by a court of competent jurisdiction to discontinue delivering Effluent Water to Yuma Cogen in the quantity specified herein, the City shall no longer have any obligation to deliver Effluent Water under this Agreement.

9. Right to Return Flow from Plant or Disposal of Effluent with City Approval. The City shall have, at its sole discretion, the option to recapture from Yuma Cogen unused Raw Water or Effluent Water used by Yuma Cogen at its facility on the Project Property, without cost to the City; provided, however, that 1) City shall pay for any additional piping, pumping or associated expenses, and 2) the City is under no obligation to recapture said Raw Water or Effluent Water, whether used or unused by Yuma Cogen. Yuma Cogen shall have full responsibility for treatment of Effluent Water to meet federal, state or City water quality standards applicable to the method of Yuma Cogen's discharge prior to the recapture of such effluent by the City.

10. Water Quality. Raw Water delivered to Yuma Cogen by the City shall be at least the same quality as the Raw Water delivered to the City from the Colorado River. Effluent Water delivered

to Yuma Cogen shall be of a quality sufficient to meet the discharge requirements of the City's current NPDES permit No. AZ0020443.

11. Water Rights. In the event the City and the Yuma County Water Users' Association ("Association") enter into an agreement pursuant to which Association members may appoint the City as their agent for delivery by the City of the water entitlements for urbanized association member lands, Yuma Cogen agrees to promptly appoint the City, as provided in the contract between the City and the Association, as its agent to deliver all water entitlement(s) for uses other than irrigation, greenhouse irrigation or landscape irrigation for all Association member lands owned by Yuma Cogen. Yuma Cogen shall take all actions reasonably necessary to appoint the City as its agent as provided in the preceding sentence.

12. Taxes. Yuma Cogen shall pay all applicable city, county, state and federal taxes levied on Yuma Cogen's use of Raw Water or Effluent Water. Yuma Cogen shall pay all surcharges levied by the City for the purpose of retaining and/or protecting the City water entitlements or other water resources at the same percentage rate of consumption charges as is applicable to all water or effluent users served by the City.

13. Termination. This Agreement shall be subject to termination as provided in this Section 13:

(a) Bankruptcy. This Agreement shall immediately terminate upon the filing by or against Yuma Cogen or its legal representative of a petition for relief in bankruptcy under any chapter of the Federal Bankruptcy Code if such filing is not dismissed within 90 days of such filing.

(b) Colorado River Contract. At such time, if any, that the City's Colorado River contract with the United States expires or terminates, and is not renewed, the City's obligation to deliver water pursuant to this Agreement shall automatically terminate; provided, however, that if the City's entitlement to 50,000 acre-feet of Colorado River water is reduced and the City is unable, using reasonable efforts, to secure replacement water, the City may, at its option, terminate this Agreement or reduce the amount committed to herein prorata in the same proportion as all other commercial or industrial water customers. The decision is in the sole discretion of the City Council. If this Agreement terminates pursuant to this subsection, Yuma Cogen shall be eligible to receive potable water from the City to the same extent and under the same terms and conditions as all other commercial or industrial water customers served by the City.

(c) Preemption. Any restriction or preemption under state or federal law which substantially restricts, substantially limits or prohibits the rate setting and control prerogatives of the City in this agreement automatically terminates this Agreement.

(d) De-annexation. If the Project Property is de-annexed from the City of Yuma or annexed into another municipality, this Agreement automatically terminates.

(e) Conflict of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.

14. On-site jobs. Throughout the duration of this Agreement, Yuma Cogen shall maintain a minimum of 10 full-time jobs at its facility on the Project Property.

15. Enforcement. The City shall enforce all applicable laws, ordinances, rules and regulations regarding discharges into its wastewater collection system. Control of connections to and discharges into said collection system shall be established and maintained in accordance with the applicable standards.

16. Cooperation. The parties hereto shall fully cooperate with and assist one another in obtaining all licenses, permits, authorizations, approvals and consents in all judicial and administrative proceedings required in or related to the performance of this Agreement, including but not limited to, the delivery and use of Effluent Water by the parties. To the extent, required by applicable law, Yuma Cogen or the City may file this Agreement with the Arizona Department of Environmental Quality.

17. Damage and Destruction to Yuma Cogen and City Water Lines and Infrastructure. Yuma Cogen shall repair and be responsible for any damage to or destruction of any part of the Raw Water, Effluent Water, lines and infrastructure constructed or maintained by Yuma Cogen under the May 19, 1993, Water Delivery Agreement or this Agreement that is not caused by City's or its employees', agents' or subcontractors' negligence. Yuma Cogen shall forthwith cause such repairs to be completed at its expense, and no such damage or destruction (including any destruction necessary in order to make repairs required by any declaration or order of any public authority) shall in any way annul or void this Agreement and the rights of Yuma Cogen to receive Raw Water or Effluent Water pursuant hereto. To the extent of any damage to such lines by the City or its employees, agents or subcontractors, the City shall be responsible to promptly complete such repairs or to promptly reimburse Yuma Cogen for all costs incurred in completing such repairs.

If Yuma Cogen causes any damage to or destruction of a water line or infrastructure that is owned and maintained by the City, Yuma Cogen shall promptly indemnify the City for all damages, to persons, property or otherwise, resulting from such damage to or destruction of the City water line or infrastructure. The City will use reasonable efforts to mitigate such damages and to timely repair such water lines or infrastructure.

18. Force Majeure. If either party hereto is delayed or prevented from performing any act required hereunder by reasons of acts of God, drought, floods, strikes, lockouts, labor troubles, civil disorder, war, destruction of delivery facilities, failure of the United States or the Yuma County Water Users' Association to deliver or make available Colorado River water to the City, inability to procure materials or other cause without fault and beyond the control of the party obligated hereunder (financial inability excepted), performance of such acts shall be excused for the period of delay and the period for the performance of any such acts shall be extended for a period equivalent to the period of such delay.

19. Specific Performance; Claims for Damages. In the event of any breach of or default on any of the terms or provisions of this Agreement by any of the parties hereto, the other party shall have, in addition to a claim for damages from such breach or default, and in addition to any

right or remedy available at law or in equity, the right to demand and have specific performance of this Agreement.

20. Jurisdiction/Venue; Attorneys' Fees; Jury Trial Waiver. Any action to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action commenced in accordance with the terms of this paragraph.

In the event any party hereto finds it necessary to bring an action at law or in equity, or commence other proceedings, against the other party to enforce any of the terms, covenants or conditions of this Agreement, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall recover from the other party in such action or proceeding all reasonable costs and attorneys' fees, as determined by the Court. The parties agree to waive any right to a trial by jury to the maximum extent allowed by law.

21. Notices. All notices, demands, instructions, approvals, or other communications required or permitted to be given hereunder ("Notice Documents") shall be in writing and shall become effective (1) three calendar days after such are deposited in the United States mail, postage prepaid, addressed as shown below, or to such other address as either party hereto may, from time to time, designate in writing pursuant hereto or (2) 24-hours after Notice Documents are dispatched by overnight mail scheduled for delivery by 10:30 a.m. the day following that upon which the Notice Documents were placed in control of the overnight service.

Yuma Cogen: Yuma Cogeneration Associates
c/o BHE Renewables, LLC
1615 Locust Street
Des Moines, IA 50309
Attn: General Counsel

The City: City of Yuma
180 West First Street
Yuma, Arizona 85364
Attn: Director of Public Works

22. Entire Agreement; Arizona Law Governs; Time of the Essence; Amendments & Waivers. This Agreement constitutes the entire agreement between the parties hereto and no party shall be liable or bound to the other in any manner by any agreements, warranties, representations or guarantees except as specifically set forth herein. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of Arizona. Time is of the essence in this Agreement. This Agreement may only be amended or modified by a written agreement executed by the parties. Any waiver shall be in writing and executed by the party against which it is enforced. No failure or delay by a party in exercising any

right, power, or privilege under this Agreement shall be deemed a waiver thereof or preclude exercise of any other or further right, power or privilege hereunder.

23. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns; provided, however, that neither party nor its successors and assigns may assign this Agreement, or encumber all or any portion of its rights under this Agreement to any party without the prior written consent of the other party. Any attempt by either party to assign this Agreement, or assign or encumber all or any portion of its rights hereunder without the prior written consent of the other party shall be void. Further, provided, that without consent of the City, Yuma Cogen may assign rights and interests to a lender for purposes of providing security for financing Yuma Cogen's facility on the Project Property.

24. Compliance with Laws. Except as provided herein, the City shall, at its expense, comply with all applicable requirements of all municipal, county, state and federal authorities now or hereafter in force and shall faithfully observe all federal, state and local statutes, laws, ordinances, rules, regulations and orders now or hereafter in force. The judgment of any court of competent jurisdiction, or the admission of the City in any action or proceeding against the City, whether Yuma Cogen is a party thereto or otherwise, that the City has violated any such statute, law, rule, regulation or order, shall be conclusive of that fact as between the City and Yuma Cogen.

Yuma Cogen shall, at its expense, comply with all applicable requirements of all municipal, county, state and federal authorities now or hereafter in force and shall faithfully observe all federal, state and local statutes, laws, ordinances, rules, regulations and orders now or hereafter in force. If Yuma Cogen fails to comply with such laws, it shall be deemed a breach of this Agreement. The judgment of any court of competent jurisdiction, or the admission of Yuma Cogen in any action or proceeding against Yuma Cogen, whether the City is a party thereto, or otherwise, that Yuma Cogen has violated any such statute, law, rule, regulation or order, shall be conclusive of that fact as between the City and Yuma Cogen.

25. Severability. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

26. Boycott of Israel. Pursuant to A.R.S. § 35-393.01, Yuma Cogen certifies it is not engaged in a boycott of Israel as of the effective date of this Agreement and agrees for the duration of this Agreement to not engage in a boycott of Israel.

27. Authority to Act; Counterparts. Each undersigned representative of the parties to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

This Agreement may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission (including by email), each of which will be deemed an original, but all of which together constitute one instrument.

IN WITNESS WHEREOF, this Agreement is executed effective as of the ____ day of December, 2024.

YUMA COGENERATION ASSOCIATES, a
Utah partnership

By: _____
Name: Eric Bowen
Its: VP Generation Operations

CITY OF YUMA, an Arizona municipal
corporation

By: _____
Name: John D. Simonton
Title: City Administrator

Attest:

By: _____
Name: Lynda L. Bushong
Title: City Clerk

Approved as to form:

By: _____
Name: Richard W. Files
Title: City Attorney