

## Letter of Agreement

This Letter of Agreement (“LOA”), effective as of its date of final execution (“Effective Date”), is entered by and between City of Socorro, New Mexico (Socorro), and International Center for Appropriate and Sustainable Technology (“ICAST”), a 501(c)(3) nonprofit. Socorro and ICAST are collectively referred to as the “Parties” and individually referred to as a “Party”.

### RECITALS

1. WHEREAS, City of Socorro in New Mexico, wishes to provide electricity to the residents and businesses in Socorro, and ICAST is a 501c3 nonprofit organization assisting local governments and municipal utilities with their Solar PV and energy storage projects; and
2. WHEREAS, Parties wish to jointly develop, install and commission a 5 MW solar PV and 10 MWh Battery Energy Storage project (the ‘Project’);
3. WHEREAS, on April 16, 2024, via City Council Resolution No. 24-04-16c, City of Socorro resolved to carry out the Project with ICAST, while pursuing various grant and incentive opportunities to reduce the cost of the Project for Socorro; and
4. WHEREAS, the Parties now wish to memorialize their terms under which they will mutually expend resources and otherwise cooperate towards implementing the Project.

NOW, THEREFORE, intending to be fully bound, and in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is acknowledged by all Parties, the Parties hereby agree as follows:

### **1. Purpose and Scope of LOA**

#### **1.1 Project Definition**

The Parties shall cooperate in performing the respective activities described in Section 1.3 below, for the purpose of developing and constructing a 5 MW solar PV and 10MWh BESS project, (the “Project”), on a site controlled or owned by Socorro, to serve all customers of the yet to be formed Socorro Municipal Utility.

#### **1.2 Commitment of Resources**

By this LOA, the Parties intend to commit to and authorize the expenditure of necessary resources, by all Parties, consistent with the terms of this LOA, to develop the Project, for the Solar power production and storage, via a financing mechanism that will allow Socorro to own the assets of the Project.

### 1.3 Roles and Responsibilities

Each Party will assume the following roles and responsibilities relating to the Project:

- ✓ ICAST will develop the financial viability and technical specifications for the Project;
- ✓ ICAST will partner with Socorro in applying for the various grants and incentives as they become available;
- ✓ ICAST will begin pre-development activities for the Project, upon signing of this LOA, including working with Socorro's Engineering Consultants on the Project's engineering design, site analysis, interconnection study, environmental studies, and permits;
- ✓ ICAST shall provide periodic updates to Socorro on Project costs and expenses, identification of grant and incentive funding opportunities, Project design and implementation issue as they arise;
- ✓ Socorro will assist by providing access to the site, provide copies of the studies and permits they have acquired to develop the Project on the site, and gain approval from local, State and Federal agencies as required;
- ✓ The Parties will exchange data and information, and otherwise communicate on a regular basis, as necessary, to advance the Project;
- ✓ Parties shall cooperate in providing all information, documentation, and signatures reasonably necessary to procure grants, permits, and agency approvals.

### 2. Term and Termination

This LOA shall be effective as of the Effective Date and shall continue for 24 months, unless terminated by any Party, at their sole discretion, by providing thirty (30) days' written notice of termination. Parties may agree to extend the LOA for another 12 months. Notwithstanding any expiration or termination of this LOA, the obligations and restrictions set forth in Sections 3, 4, 5, and 6, shall survive such expiration or termination of this LOA.

### 3. Costs and Expenses

Each Party shall initially bear all of its own costs and expenses for the Term of this LOA, consistent with the roles and responsibilities described in Section 1.3 above, *provided that*, if (1) Socorro terminates the LOA prior to the completion of the Term, as provided in Section 2 above; or (2) Socorro decides, within the Term, not to execute a contract for the Project development, that is viable on commercially reasonable terms, then Socorro shall reimburse ICAST for its efforts expended on the Project, after the Effective Date of this LOA, up to a maximum total of \$250,000. ICAST shall submit its final invoice to Socorro within thirty (30) days from termination or from the date that Socorro decides not to execute a final contract, whichever is applicable.

#### **4. Publicity**

Each Party shall obtain the other Parties' written consent prior to issuing any public statement or release, including without limitation news releases, articles, brochures, advertisements, prepared speeches, reports, or other information released to the public regarding or referring to the Project or this LOA.

#### **5. Confidentiality**

5.1 "Confidential Information" shall mean any and all confidential, proprietary or secret information, documents and/or materials which are disclosed by any Party ("Discloser") relating to this LOA during the term of this LOA and which are marked "Confidential" at the time of disclosure to the other Party ("Recipient") or, if orally disclosed, shall be identified as confidential by the Discloser at the time of disclosure and confirmed by a written notification with "Confidential" marking to be issued to the Recipient within thirty (30) days after the date of such disclosure; except that any oral discussion regarding written or electronic Confidential Information shall not require a written notification by the Discloser in order to be considered confidential.

5.2 The Recipient shall use the Confidential Information solely for the purpose of implementing this LOA and such Confidential Information will be kept confidential by the Recipient, except that the Recipient may disclose the Confidential Information or portions thereof to those of their advisors, affiliates, directors, officers, and employees (the persons to whom such disclosure is permissible being collectively called "Representatives") who need to know such information for the implementation of this LOA. Before disclosing the Confidential Information to any Representative, the Recipient will inform such Representative of the confidential nature of such information, their duty to treat the Confidential Information in accordance with this LOA and shall ensure that such Representative is legally bound by the terms and conditions of this LOA. The Recipient will take all reasonable safeguards to assure that no portion of the Confidential Information is disclosed to any other persons without the prior written consent of the Discloser.

5.3 If the Recipient or any of their Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or shall be advised by counsel to disclose any of the Confidential Information, the Recipient shall undertake reasonable efforts to provide the Discloser with prompt notice of such requirement or advice prior to disclosure so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this LOA. If such protective order or other remedy is not obtained, or the Discloser waives compliance with the provisions hereof, the Recipient agrees to furnish only that portion of the Confidential

Information which it is legally required to so furnish and, at the request of the Discloser, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the Discloser.

5.4 The nondisclosure obligations set forth herein shall not apply to any portion of the Confidential Information which (a) was known to the Recipient and obtained on a non-confidential basis prior to its disclosure to the Recipient by the Discloser, (b) is available or, without the action or inaction of the Recipient, becomes available to the general public, (c) is received by the Recipient from a third Party not bound by a confidentiality obligation, or (d) is independently developed by the Recipient without violating any of its obligations under this LOA.

5.5 If this LOA shall be terminated or the Discloser so requests in writing, the Recipient will return to the Discloser within thirty (30) business days all copies of Confidential Information in tangible form in its or its Representatives' possession or certify within such period that it has destroyed such information; provided, however, that the Recipient's sole obligation with respect to the disposition of any internal memoranda or other materials prepared by it that incorporate any such Confidential Information shall be to redact or otherwise expunge all such Confidential Information from such materials.

5.6 In the event of any breach of the provisions of this Article, the Discloser shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

5.7 All Confidential Information shall remain the sole and exclusive property of the Discloser.

## **6. Miscellaneous**

### **6.1 No Waiver**

Except as otherwise provided in this LOA, no delay or forbearance of a Party in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.

### **6.2 Compliance with Laws.**

Each Party shall conduct its business affairs in an ethical and professional manner, consistent with all best industry practices and with all applicable laws, rules, regulations, and authority

requirements in the course of executing the Project. Neither Parties will in the course of conducting its business engage in conduct which is misleading or deceptive or is likely to mislead or deceive and/or constitutes any breach of any law.

### 6.3 Governing Law

This LOA is made under, governed by, construed, and enforced in accordance with, the laws of the State of New Mexico, without giving effect to its choice of law principles. Any action brought with respect to the matters contained in this LOA shall be brought in the federal or state courts located in the State of New Mexico.

### 6.4 Dispute Resolution

If any dispute arising under this LOA remains unresolved after informal discussions between the parties, the dispute shall be finally settled by arbitration in New Mexico, in accordance with the Arbitration Rules of the American Arbitration Association in effect on the Effective Date. The award shall be final and binding upon the Parties and the prevailing Party in such proceeding shall be awarded its reasonable attorneys' fees and costs.

### 6.5 Assignment Prohibited

This LOA shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns. Neither Party shall have the right to assign any of its rights, duties, or obligations under this LOA, by operation or law or otherwise, without the prior written consent of the other Party. Any purported assignment in violation of this section shall be null and void.

### 6.6 No Third-Party Beneficiaries

Nothing expressed or referred to in this LOA will be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this LOA or any provision of this LOA. This LOA and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

### 6.7 Entire LOA

This LOA constitutes the entire LOA between the parties relating to the subject matter hereof, superseding all prior and contemporaneous agreements, understandings, or undertakings, oral or written with respect to the subject matter. Any amendment or modification of this LOA or any part hereof shall not be valid unless in writing and signed by the parties. Any waiver hereunder shall not be valid unless in writing and signed via by the Party against whom waiver is asserted.

### 6.8 Severability

If any term or provision of this LOA, or the application thereof to any person, entity or circumstances is to any extent decreed to be invalid or unenforceable, the remainder of this LOA, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this LOA shall be valid and enforceable to the fullest extent permitted by law.

### 6.9 No Joint Venture

This LOA shall not be construed as constituting either Party as partner, joint venture or fiduciary of the other Party or to create any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Parties, or as providing a Party with the right, power or authority (express or implied) to create any duty or obligation of the other Parties.

### 6.10 Authority

Each Party represents and warrants that (1) it has full power and authority to enter into and perform this LOA, without any further consent or approval, and the person signing this LOA on behalf of each has been properly authorized and empowered to enter into this LOA; (2) it is duly organized, validly existing and in good standing under all applicable laws; and (3) this LOA constitutes a legal, valid and binding obligation of the Party and does not constitute a breach or default of any of the organizational and governing documents of the Party or the terms, conditions or provisions of any laws by which the Party is bound or any agreements to which the Party is a Party; and does not result in a breach or constitute a default under that Party's charter or bylaws, or any indenture or loan or credit agreement, or any other agreement or instrument to which it may be bound or affected.

## **7. Counterpart and Electronic Signatures**

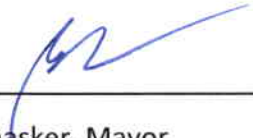
This LOA may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterpart may be discarded, and the remaining pages assembled as one document. The parties agree that this LOA and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable to the parties which preserve the final terms of the LOA or such writing. A Party's signature transmitted by E-mail or other

acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this LOA.

IN WITNESS WHEREOF, the Parties hereto have executed this LOA as the day and year identified below.

**City of Socorro**

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



Print Name and Title: Ravi Bhasker, Mayor

Date: April 16, 2024

**International Center for Appropriate and Sustainable Technology**

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

Print Name and Title: Ravi Malhotra, Founder and President

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