

DOCKETED	
Docket Number:	23-OPT-02
Project Title:	Darden Clean Energy Project
TN #:	260023
Document Title:	Darden Community Benefits Plan Agreement - Westside Elementary
Description:	This agreements is a part of the Darden Project's overall Community Benefit Plan, in which Intersect Power will make significant investments over the next ten years to community based initiatives and programs in the Fresno County area.
Filer:	Becky Moores
Organization:	Intersect Power
Submitter Role:	Applicant
Submission Date:	11/13/2024 5:08:42 PM
Docketed Date:	11/14/2024

Donation Agreement

This Donation of Goods Agreement, dated as of December 19, 2023 (this "Agreement"), is entered between IP Darden I, LLC, a Delaware limited liability company ("Donor"), and Westside Elementary School District #28C, a California 501(c)(3) non-profit organization ("Recipient," and together with Donor, the "Parties," and each, a "Party").

RECITALS

- A. Donor is in the business of developing and operating renewable energy projects. Darden Solar Project located in Fresno County, California, is partially and indirectly owned by Donor;
- B. Recipient is a public elementary school located in Fresno, California, which is part of Fresno County, California, attending the needs of the same community; and
- C. Donor desires to make multiple contributions to Recipient, and Recipient desires to accept said contributions for the benefit of its charitable work in accordance with the terms and conditions agreed below.

AGREEMENT

The Parties agree as follows:

1. Charitable Donation. All payments made under the terms of this Agreement (the "Donation") shall be treated as charitable donations for all purposes. It is the intent of the Parties that the Donation be made and used in compliance with all applicable federal and state laws governing donations made to charitable organizations. Recipient represents and warrants to Donor that it is a tax-exempt entity pursuant to Section 501(c)(3) or other applicable sections of the Internal Revenue Code. The Parties acknowledge that they may be required by law to report information about the Donation and each Party agrees to report such information as legally required.

2. Donation. Donor agrees to make the following contributions to Recipient in the total amount of \$ [REDACTED]

<u>Year of Donation</u>	<u>Amount</u>
2023	\$ [REDACTED]
2024-2025	\$ [REDACTED] each year
2026	\$ [REDACTED]

2027	\$ [REDACTED]
2028-2032	\$ [REDACTED] per year

The Donation is contingent upon the full approval of the Darden Solar Project by all relevant local, state, and federal authorities, as applicable. Donor grants Recipient irrevocable ownership, rights, title, and interest in the Donation upon the terms and conditions set forth in this Agreement and without monetary payment to the Donor. Donation will be transferred to Recipient free and clear of any liens, claims, or encumbrances. Recipient will determine the disposition of the Donation subject to Section 2.1.

2.1 Conditions of Use. Recipient shall not use the Donation for the benefit of any owner, shareholder, officer, director, or employee of the Recipient.

3. Confidentiality. The Parties agree to take all reasonable measures to keep in confidence the execution, terms and conditions as well as performance of this Agreement, and the confidential data and information of any Party that the other Party may know or gain access to in relation to this Agreement (hereinafter referred to as “**Confidential Information**”), and shall not disclose such Confidential Information to any third party without the prior written consent of the disclosing party.

4. Public Announcements. Donor reserves the right to make public announcements and communicate with any news or other media organizations regarding this Agreement without prior consent of, or notice to, Recipient. Recipient shall not make any public announcements concerning this Agreement, or the transactions contemplated hereby or otherwise communicate with any news or other media organizations concerning this Agreement without the prior written consent of Donor.

5. Waiver and Release. Recipient itself and its respective present and former parents, subsidiaries, Affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Donor and its respective present and former, direct and indirect, parents, subsidiaries, Affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors, and permitted assigns from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations, damages, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity arising out of or in connection with this Agreement whether arising out of the negligence of Donor or Recipient or otherwise, except for any claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement and any liabilities that cannot be released or waived under applicable law. “**Affiliate**” means any entity which, directly or indirectly, controls, is controlled by, or is under common control with a Party. In this definition ‘controls’ and ‘control’ mean the power by contract to direct the management and policies of an entity through the beneficial ownership of 50% or more of voting equity securities or other equivalent voting interests of the entity. In the case of Donor, (i) ‘common control’ includes only those entities that are controlled directly or indirectly by Intersect Power Holdings,

LLC, and (ii) "Affiliates" (x) excludes any entity that directly or indirectly controls Intersect Power Holdings, LLC, (y) excludes any tax equity investor in a tax equity partnership, and (z) includes any project company entity owned by a tax equity partnership and managed by Donor or its Affiliate.

6. Indemnification. Recipient shall indemnify and defend Donor and its officers, directors, employees, agents, Affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party arising out of or related to any third-party claim alleging:

(a) breach or non-fulfillment of any provision of this Agreement by Recipient or Recipient's employees;

(b) any negligent or more culpable act or omission of Recipient (including any reckless or willful misconduct) in connection with the Donation;

(c) any alleged bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or culpable acts or omissions of Recipient (including any reckless or willful misconduct); or

(d) any failure by Recipient to comply with any applicable federal, state, or local laws, regulations, or codes in connection with the Donation.

7. Limitation of Liability. **IN NO EVENT SHALL DONOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE DONATION, OR ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT DONOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

8. Term and Termination. The terms of this Agreement shall remain in effect indefinitely unless terminated earlier by the Parties. Donor may terminate this Agreement by providing Recipient with 5 days' advance Notice (as defined in Section 9).

9. Notices. Any notice, demand or request (each, a "**Notice**") required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally, by overnight courier, sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the Party to be notified at such Party's address as set forth below, as may be subsequently modified by written notice:

If to Donor:

IP Darden I, LLC
9450 SW Gemini Drive PMB #68743
Beaverton, Oregon 97008-7105
Email: legal@intersectpower.com

If to Recipient:

Westside Elementary School District #28C
19191 W. Excelsior Avenue
Five Points, CA 93624
Email: bhernandez@westside-elem.com
Attention: Baldomero Hernandez, Superintendent

10. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

11. Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

14. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) other similar events beyond the control of the Impacted Party.

The Impacted Party shall give Notice within 7 days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following Notice given by it under this Section 17, the other Party may thereafter terminate this Agreement upon 7 days' Notice.

15. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

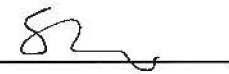
**WESTSIDE ELEMENTARY SCHOOL
DISTRICT #28C**

IP DARDEN I, LLC

By 

Name: Baldomero Hernandez

Title: Superintendent

By 

Name: Simon Ross

Title: Chief Commercial Officer