

The only change to this filing is the addition of Schedule A which was missing from the earlier filing.

## OFF-COAL AGREEMENT

THIS AGREEMENT ("Agreement") made as of the 24 day of November, 2016.

### AMONG:

**CAPITAL POWER CORPORATION,**  
a body corporate having an office in the City of Edmonton, in the  
Province of Alberta  
("Company")

- and -

**CAPITAL POWER L.P.,**  
a limited partnership having an office in the City of Edmonton, in the  
Province of Alberta  
("CPLP")

- and -

**CAPITAL POWER (G3) LIMITED PARTNERHIP,**  
a limited partnership having an office in the City of Edmonton, in the  
Province of Alberta  
("CPG3LP")

- and -

**CAPITAL POWER (K3) LIMITED PARTNERSHIP,**  
a limited partnership having an office in the City of Edmonton, in the  
Province of Alberta  
("CPK3LP")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,**  
as represented by the Minister of Energy  
("Province")

### RECITALS:

WHEREAS the Province has determined that it is in the public interest to ensure that no more carbon dioxide and other air contaminants emanate from the combustion of coal after 2030;

WHEREAS the Province accordingly requires the Company and the Plant Owners to cease operations or businesses that produce coal-fired emissions;

WHEREAS the Province has determined that it is in the public interest to maintain a positive investment environment while ensuring that workers and communities affected by the coal phase out are supported;

WHEREAS each of CPLP, CPG3LP and CPK3LP are indirect subsidiaries and Affiliates of the Company, and CPLP is the owner of the Genesee 1 and Genesee 2 Plants, CPG3LP holds a joint venture interest in the Genesee 3 Plant and CPK3 holds a joint venture interest in the Keephills 3 Plant;

In consideration of the mutual promises and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

## 1. DEFINITIONS

In this Agreement, the following terms shall have the following defined meanings:

"**Affiliate**" has the meaning contemplated for that term in the *Securities Act*, RSA 2000 c. S-4 as amended to the date hereof, and for certainty, in the case of TransAlta Corporation shall include TransAlta Renewables Inc. and its Affiliates;

"**Affected Companies**" means TransAlta Corporation and ATCO Ltd.;

"**Coal-Fired Emissions**" means emissions from the combustion of coal into the atmosphere including, but not limited to, air contaminants such as sulphur dioxide, nitrogen oxides, mercury, primary particulate matter and carbon dioxide and other specified gases as defined in the *Climate Change and Emissions Management Act* and regulations thereunder;

"**Payment**" has the meaning set forth in Section 3(a) of this Agreement;

"**Parties**" means the Company, the Plant Owners and the Province;

"**Plant Owners**" means CPLP, CPG3LP and CPK3LP;

"**Plants**" means the coal powered electricity generation plants known as Genesee 1, Genesee 2, Genesee 3 and Keephills 3; and

"**Term**" means the period of time commencing on the date first above written and continuing until January 1, 2031.

## 2. CESSATION OF COAL-FIRED EMISSIONS

The Company and each of the Plant Owners covenant and agree that each will ensure that the Plants cease Coal-Fired Emissions on or before December 31, 2030. It is understood and agreed that in respect of any Plant where the Company or a Plant Owner holds less than a 100% interest in the applicable Plant, this covenant applies only to the extent of electricity production owned, controlled and dispatched by the applicable Plant Owner from that Plant. For greater certainty, nothing in this Agreement shall prevent or restrict any Plant from generating electricity at any time by any method other than by the combustion of coal.

## 3. PAYMENTS

- (a) Subject to the Company meeting the eligibility conditions in Section 5 and the obligations in Sections 6 and 7 each year, the Province covenants and agrees to pay to, or as directed by, the Company fourteen (14) annual payments each of \$52,414,828.49 (in aggregate, the "**Payment**").

- (b) The Payment shall be paid in annual payments of \$52,414,828.49 on or before July 31 in each year commencing in 2017, with the first payment being payable on or before July 31, 2017, and the last payment being payable on or before July 31, 2030. The Company shall provide bank account payment instructions for payment to the Province concurrently with the execution of this Agreement, and thereafter in accordance with a notice under Section 11(k) of this Agreement.
- (c) If the Company fails to meet the eligibility conditions in Sections 5 or fails to fulfill the reporting obligation in Section 6(a) or has commenced an action contrary to Section 7, as determined by the Province acting reasonably, and fails to cure such failure within 90 days of notice from the Province, then the Province shall not be required to make any further payments under this Agreement.
- (d) If the Company or any of the Plant Owners fail to fulfill the covenant in Section 2, then, in addition to any other remedies the Province may have at law (including injunctive relief), the Company shall repay the full Payment already paid by the Province under this Agreement.

#### **4. EQUIVALENT RIGHTS**

- (a) The Parties acknowledge that the Province is under no legal obligation to compensate or otherwise pay any amount to the Company as result of the phase out of Coal-Fired Emissions; nevertheless, the Province determined the amount of Payment in accordance with the formula attached in Schedule A hereto. If the Province enters into a similar off-coal agreement with any of the Affected Companies or their Affiliates and uses a different formula that, if applied to the Company, would result in a materially higher Payment, then the Province will pay the difference to the Company in equal increments over the remaining annual payment dates. In this Section, "materially higher" means a difference of at least \$5 million over 14 years.
- (b) The Parties further acknowledge that the Province relied on information from the Company in relation to some of the inputs into the formula, specifically, the net book value of the Plants. If, as a result of a review or examination under Section 6, the Province determines, acting reasonably, that the net book value is lower than the value provided by the Company, then the Province may recalculate the Payment and reduce the Payment accordingly.

#### **5. CONTINUING ELIGIBILITY FOR PAYMENT**

The Company will fulfill the following eligibility conditions during the Term:

- (a) The Company will spend a minimum of one million dollars (\$1,000,000) each calendar year, and over the Term of this Agreement commencing in 2017 a minimum aggregate of seventy million dollars (\$70,000,000) on investment and investment related activities in Alberta with respect to the electricity business. For purposes of this Section 5(a), "investment and investment related activities" includes:
  - (i) any and all capital expenses of any nature or kind, including but not limited to planning, new capital investments, sustaining capital expenditure or major maintenance capital expenditure; and
  - (ii) any and all development costs or expenses of any nature or kind, including those incurred in relation to the preparation/ or submission of bids, production or procurement

of studies, including technical feasibility studies, and environmental impact assessments, obtaining, maintaining or appealing regulatory approvals, consulting on market design, stakeholder engagement, or and planning; and

- (iii) any and all costs of infrastructure development; and, construction, maintenance, or decommissioning,

including in each of the foregoing clauses (i) to (iii) in respect of any coal-to-gas conversion of the Plants.

- (b) The Company shall maintain a continual significant business presence in the Province of Alberta, by:
  - (i) maintaining its registered and head office in Alberta;
  - (ii) maintaining employment of no less than two hundred (200) employees in Alberta; and
  - (iii) continuing to generate electricity or otherwise participating in the electricity market in Alberta;

provided that, in the event that a majority of the shares of the Company are acquired by an arm's length third party or substantially all of the assets of the Company are transferred to an arm's length third party, the condition related to the head office shall no longer apply.

- (c) The Company will each calendar year provide an aggregate of fifty thousand dollars (\$50,000) to support the Village of Warburg, Alberta and the other communities surrounding the Plants known as Genesee 1, Genesee 2 and Genesee 3 and the employees of the Company and employees of the Plant Owners, which may include programs and initiatives recommended by the Advisory Panel on Coal Communities.
- (d) The Company shall fulfill its existing and future legal obligations to affected employees, including severance and pension obligations.
- (e) In the event the Plants are not going to be converted to natural gas by December 31, 2030, the Company will spend a minimum of two million dollars (\$2,000,000) on the retraining and severance for Plant employees who will lose their jobs as the result of ceasing Coal-Fired Emissions. These expenditures may also include contributions to programs and initiatives recommended by the Advisory Panel on Coal Communities. To the extent any such payment reflects existing or future legal obligations of severance to affected employees, the Province acknowledges such payments will be also be considered toward the fulfilment by the Company of Section 5(d).

## 6. REPORTING

- (a) The Company will deliver a report, certified by a senior officer, (without personal liability), to the Minister of Energy and the Minister of Economic Development and Trade (or their respective successors) each year by May 31 confirming that, as of the prior December 31, the eligibility conditions in Section 5 were satisfied and providing reasonable detail in respect of such confirmation and such further information as the Province may reasonably request in relation to

the Company's performance of its obligations and fulfilling the eligibility conditions under this Agreement.

- (b) The Company will permit the Province or the Province's representative, on reasonable notice, during normal business hours, to examine and take copies of the records of the Company in relation to the performance of its obligations, and meeting the eligibility conditions, under this Agreement and in relation to any information provided by the Company related to the net book value of the Plants. The Province shall treat the information made available to the Province under this Section 6(b) in substantially the same manner as if it was "Confidential Information" under the Confidentiality Agreement between the Province, the Company and others dated April 1, 2016.

## 7. NO ACTIONS

- (a) Subject to the provisions of Section 7(b), neither the Company nor any Plant Owner shall commence any legal action against the Province or any provincial agencies, including the Independent System Operator and the coal facilitator, with respect to the phase out of Coal-Fired Emissions from the Plants, including with respect to the mines, coal supply agreements, mining contracts, or mining equipment related to the coal used to fuel the Plants or alleging any other cause of action in relation to the phase out of Coal-Fired Emissions from the Plants.
- (b) Notwithstanding the provisions of Section 7(a), nothing in this Agreement shall prevent the Company or any Plant Owner from commencing any legal action against the Province or any provincial agency with respect to:
  - (i) the enforcement of its rights under this Agreement;
  - (ii) any power purchase arrangement (as defined under the *Electric Utilities Act (Alberta)*) to which the Company or a Plant Owner is a party;
  - (iii) the operation of its business in the ordinary course, including any regulatory or civil proceedings arising in respect thereof; or
  - (iv) any matter not related to the phase out of Coal-Fired Emissions from the Plants.

## 8. REPRESENTATIONS AND WARRANTIES

- (a) The Company and each of the Plant Owners represents and warrants to the Province, and acknowledges that the Province is relying thereon, that it has all requisite corporate or partnership power, capacity and authority to enter into and deliver this Agreement and to perform its obligations hereunder and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to the general qualifications that: (i) enforcement may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights generally; (ii) equitable remedies, including the remedies of specific performance and injunctive relief, are available only in the discretion of the applicable court; (iii) the equitable or statutory powers of the courts in Canada having jurisdiction to stay proceedings before them and the execution of judgments; and (iv) enforceability of provisions which purport to sever any provision which is prohibited or unenforceable under applicable law without affecting the

enforceability or validity of the remainder of such document would be determined only in the discretion of the court.

- (b) The Province represents and warrants to the Company and the Plant Owners, and acknowledges that the Company and each of the Plant Owners is relying thereon, that the Province has all requisite power, capacity and authority to enter into and deliver this Agreement and to perform its obligations hereunder and this Agreement has been duly executed and delivered by the Province and constitutes a legal, valid and binding obligation of the Province, enforceable against the Province in accordance with its terms, subject to the general qualifications that: (i) procedures and remedies available as against the Province are subject to the *Proceedings Against the Crown Act* (Alberta); (ii) equitable remedies, including the remedies of specific performance and injunctive relief, are available only in the discretion of the applicable court; (iii) the equitable or statutory powers of the courts in Canada having jurisdiction to stay proceedings before them and the execution of judgments; and (iv) enforceability of provisions which purport to sever any provision which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such document would be determined only in the discretion of the court.

## 9. PUBLICITY

The Company and the Province agree to coordinate the messaging in their press releases with respect to this Agreement with each other and the matters contemplated herein forthwith after the date hereof, and will provide each other with advance copies of their respective final press releases. The Province hereby consents to this Agreement being filed on the Company's profile on the System for Electronic Document Retrieval and Analysis (SEDAR).

## 10. DISPUTE RESOLUTION

- (a) If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, either party may refer such dispute to senior representatives (Executive/Senior Vice President or higher of the Company and Deputy Minister or higher of the Province) of both Parties who have authority to settle the dispute by sending a notice of referral to the other Party. As soon as practicable after receipt of the notice of referral but in any event within ten (10) Business Days, the senior representatives shall meet in person to attempt to resolve the dispute. If no meeting of such senior representatives has taken place within 15 Business Days after such referral or if the dispute has not been resolved within 30 days from the receipt of the notice of referral, either Party may initiate proceedings in a court of law in respect of the dispute.
- (b) The Parties submit to the exclusive jurisdiction of the courts in the Province of Alberta and the appellate courts therefrom.

## 11. GENERAL

- (a) Enurement. This Agreement shall enure to the benefit of, and be binding upon, each of the Parties and their successors.
- (b) No Partnership or Other Relationship. Nothing herein contained shall be read or construed as creating a partnership, trust or agency relationship or as imposing upon any Party any partnership, trust, good faith or other duty, obligation or liability of any kind, it being the express

intention of the Parties that the respective rights, obligations and liabilities of each of the Parties under this Agreement and in respect of the subject matter hereof generally, shall be contractual in nature as independent contractors.

- (c) Severability. If any provision of this Agreement is deemed to be unenforceable, in whole or in part, such provision will be deemed to be severed from this Agreement and the remainder of this Agreement will remain enforceable to the fullest extent permitted by law.
- (d) Waiver. No failure or delay by a Party in exercising any right, power or privilege it has will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege. No waiver of any provision shall be binding upon the Party unless the same is in writing and signed by the Parties.
- (e) Choice of Law/Venue. This Agreement shall be governed by the laws in force in the Province of Alberta and the federal laws of Canada applicable therein.
- (f) Amendments. This Agreement may not be amended except by written agreement of the Parties.
- (g) Survival. (i) Any provision of this Agreement under which an obligation of one Party hereto has accrued but has not been discharged shall not be affected by termination of this Agreement, nor shall the Party liable to perform be discharged as a result of any such termination, nor shall termination prejudice any right of one Party against the other in respect of anything done or omitted hereunder prior to such termination or in respect of any right to damages or other remedies. (ii) For greater clarity, the Company's and Plant Owners' obligation to cease Coal-Fired Emission shall survive the termination of this Agreement indefinitely.
- (h) No Other Representations. This document contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties in respect of the subject matter hereof. No other representations have been made relating to the subject matter hereof.
- (i) Time of the Essence. Time is of the essence in this Agreement.
- (j) No Implied Covenants. The Parties have expressed herein their entire understanding and agreement concerning the subject matter of this Agreement. No implied covenant, condition or term shall be read into this Agreement, nor shall any prior oral or written understanding entered into modify or compromise any of the terms and conditions herein.
- (k) Notices. Any notices required or permitted hereunder shall be sent by courier or email to:

The Province:

Office of the Deputy Minister, Energy  
8th Floor Petroleum Plaza NT  
9945 - 108 Street  
Edmonton, AB  
T5K 2G6

Attention: Deputy Minister of Energy  
Email: coleen.volk@gov.ab.ca

The Company or the  
Plant Owners:

All CPC companies  
c/o General Counsel  
1200,10423-101 St.  
Edmonton AB T5H0E9

Any such notices shall be effective upon receipt. Each Party shall provide notice to the other Party of any change in its address in accordance with the notice provisions of this Section 11(k).

- (l) Interpretation. The insertion of headings is solely for convenience of reference and shall not affect the interpretation of any provision. Unless the context otherwise requires, words used herein importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation". The Parties agree that the Company may fulfill its obligations and eligibility conditions hereunder through its Affiliates, provided that the liability of the Company for performance by its Affiliates shall not be affected thereby. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof and include any agreement supplemental thereto. "Person" shall be interpreted broadly and includes any individual, partnership, association trust, body corporate or other entity. References to "Section" followed by a number or a letter means and refers to the specified section or clause in this Agreement. All currency amounts in this Agreement are stated and shall be paid in Canadian dollars.
- (m) Assignment. Subject to Section 11(n), the Company may assign this Agreement with the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed. It shall be reasonable for the Province to withhold consent if the Province has reasonable grounds for insecurity with respect to the prospective assignee's ability to meet the obligations in this Agreement. Notwithstanding the foregoing, the Company and the Plant Owners may assign this Agreement to an Affiliate that is controlled, directly or indirectly, by the Company without the consent of the other Parties provided the Company remains legally responsible for all the obligations in this Agreement.
- (n) Transfer of Ownership of Plants. The Company or the Plant Owners may not transfer title to any of the Plants, except with the consent of the Province, not to be unreasonably withheld, and provided that the new owner agrees to be bound by the terms of this Agreement. It shall be reasonable for the Province to withhold consent if the Province has reasonable grounds for



insecurity with respect to the new owner's ability to meet the obligations in this Agreement. The Company or the Plant Owners may transfer partial ownership of any Plant(s), with the consent of the Province not be unreasonably withheld, provided that the Company remains subject to all its rights and obligations in this Agreement. Notwithstanding the foregoing, the Company and the Plant Owners may transfer title to or partial ownership in any Plant to an Affiliate that is controlled by the Company without the consent of the Province, provided that the Affiliate agrees to be bound by the terms of this Agreement and provided the Company remains legally responsible for all the obligations in this Agreement.

- (o) Execution by Counterpart/Facsimile/PDF. This Agreement may be executed in one or more counterparts (including delivery in electronic PDF form), all of which shall be considered one and the same agreement. If a Party delivers a counterpart in electronic PDF form, that Party shall promptly thereafter deliver to the other Party an originally executed counterpart.
- (p) No Third Party Beneficiary. Notwithstanding anything contained herein to the contrary, the provisions of this Agreement are not intended to be for the benefit of any other person to whom obligations are owed by, or who may have any claim against, the Company, except for the Province. No such person shall obtain any rights under this Agreement or shall, by reason of this Agreement, be permitted to make any claim against the Company nor shall any provision of this Agreement be, or construed to be, for the benefit of any other third party.

***[The remainder of this page has been left intentionally blank. Signature page follows.]***

IN WITNESS of the foregoing, this Agreement has been executed by each Party as of the date specified above.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ALBERTA, AS REPRESENTED BY THE  
MINISTER OF ENERGY**

**CAPITAL POWER CORPORATION**

Per: Margaret McCuaig-Boyd  
Signature

Margaret McCuaig-Boyd  
Print Name

Minister of Energy  
Title

Per: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Per: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name


\_\_\_\_\_  
Title


IN WITNESS of the foregoing, this Agreement has been executed by each Party as of the date specified above.

HER MAJESTY THE QUEEN IN RIGHT OF  
ALBERTA, AS REPRESENTED BY THE  
MINISTER OF ENERGY

Per: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title

CAPITAL POWER CORPORATION

Per:   
Signature  
\_\_\_\_\_  
Print Name  
Brian Vausjo  
\_\_\_\_\_  
Title  
President

Per:   
Signature  
\_\_\_\_\_  
Print Name  
Kate Chisholm  
\_\_\_\_\_  
Title  
SVP, Legal & External  
Relations

**CAPITAL POWER L.P., by its general partner,  
Capital Power GP Holdings Inc.**

Per:   
Signature

Brian Vaago  
Print Name

President  
Title

**CAPITAL POWER (G3) LIMITED PARTNERSHIP,  
by its general partner, Capital Power  
Generation Services Inc.**

Per:   
Signature


Brian Vaago  
Print Name

President  
Title

Per:   
Signature

Kate Chisholm  
Print Name

SVP, Legal & External  
Relations  
Title

Per:   
Signature

Kate Chisholm  
Print Name


SVP, Legal & External  
Relations  
Title

**CAPITAL POWER (K3) LIMITED  
PARTNERSHIP, by its general partner,  
Capital Power Generation Services Inc.**

Per:   
\_\_\_\_\_  
Signature

*Brian Vaasjo*  
\_\_\_\_\_  
Print Name

*President*  
\_\_\_\_\_  
Title

Per:   
\_\_\_\_\_  
Signature

*Kate Chisholm*  
\_\_\_\_\_  
Print Name

*SVP, Legal & External*  
\_\_\_\_\_  
Title  
*Relations*

Schedule A

**TRANSITION PAYMENT FORMULA**

### Schedule A: Capital Power

Net book value provided by company:

**\$ 1,820,521,752.25**

Pro-rated by percentage of life remaining after 2030 to give proxy for 2030 NBV: divided by remaining years under federal end-of-life as of November 2016, then multiplied by years stranded:

**\$ 1,082,307,248**

Deducted by 10% for sub-critical units and 20% for super-critical units:

**\$ 895,576,750.53**

**Unit-by-unit breakdown:**

<b>Unit</b>	<b>Federal end-of-life</b>	<b>Pro rata factor</b>	<b>Flat deduction (10%/20%)</b>
Genesee 1	2044	50%	\$ 161,044,581.73
Genesee 2	2039	39%	\$ 106,533,984.79
Genesee 3 (50%)	2055	64%	\$ 152,255,486.12
Keephills 3 (50%)	2061	69%	\$ 475,742,697.90
<b>Total</b>			<b>\$ 895,576,750.53</b>

Discount 2030 NBV back to net present value (NPV) at 3% in 2016:

**\$ 592,081,736.25**

Annuity payment (over 14 years):

**\$ 52,414,828.49**