

FIRST AMENDMENT TO AGREEMENT**SOLAR POWER PURCHASE AGREEMENT**

Between

CITY OF COLUMBIA, MISSOURI

And

TRUMAN SOLAR, LLC

THIS AMENDMENT (hereinafter “Amendment”) is made by and between the City of Columbia, Missouri (hereinafter “Buyer”), a municipal corporation whose address is 701 E. Broadway, Columbia, Missouri 65201 and Truman Solar, LLC (hereinafter “Seller”), a limited liability company authorized to transact business within the State of Missouri and whose address is 3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 904054, both parties to the Solar Power Purchase Agreement dated February 9, 2018 (hereinafter “Original Agreement”), and is entered into on the date of the last signatory below (hereinafter “Effective Date”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, in February of 2018, Buyer and Seller entered into the Original Agreement for the purpose of Seller constructing a renewable electric generating facility, connecting such facility to Buyer’s electric system, and Buyer purchasing output from the facility; and

WHEREAS, the Original Agreement had a fixed Scheduled Commercial Operation Date where Seller’s and Buyer’s facilities would interconnect and commence the transfer of energy into Buyer’s electric system; and

WHEREAS, both Parties wish to mutually amend the Original Agreement pursuant to Section 13.10 for purposes of changing the Scheduled Commercial Operation Date pursuant to the terms and conditions provided for in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. **General.** All terms and provisions of Original Agreement, a copy of which is attached hereto as **Attachment 2** and made a part of this Amendment, will remain in full force and effect on both Parties, except as amended in this Amendment. If there is conflict between this Amendment and the Original Agreement, or any earlier amendment, then the terms of this Amendment will prevail.
2. **Amendment.** The Original Agreement is amended by modification and replacement of the respective sections with the following language:
 - (a) Amending “Definitions and Rules of Interpretation”, Exhibit A of Original Agreement. The definition of “Condition Deadline” in this Exhibit A shall be replaced with the following language:

“Condition Deadline” means November 1st, 2019.

- (b) Replacing “Facility Milestones”, Exhibit C of Original Agreement. This Exhibit C shall be replaced in its entirety with “Amended Facility Milestones”, attached hereto as **Attachment 1** and made a part of this Amendment.
- 3. **Confirmation of Original Agreement as Amended.** The Parties hereby adopt, ratify and confirm the Original Agreement as it is amended by this Amendment. This Amendment shall be binding on, and inure to the benefit of, the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by their duly authorized representatives as of the date of the last signatory hereto.

BUYER: City of Columbia, MO

By: _____
Mike Matthes, City Manager

Date: _____

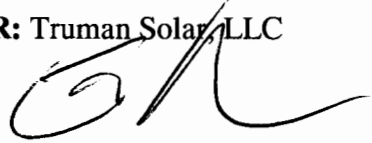
ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor AK

SELLER: Truman Solar LLC

BY:  _____

NAME: Evan Riley
Authorized Person

TITLE: _____

DATE: 11/16/18

EXHIBIT C
AMENDED FACILITY MILESTONES

<u>Milestone</u>	<u>Completion Date</u>
Seller obtains all Permits reasonably necessary to commence construction of the Facility	Condition Deadline
Scheduled Commercial Operation Date	12/31/19

SOLAR PROJECT POWER PURCHASE AGREEMENT

Between

CITY OF COLUMBIA, MISSOURI

AND

TRUMAN SOLAR, LLC

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EXHIBITS

Exhibit A –	Definitions and Rules of Interpretation
Exhibit B –	Facility Specifications
Exhibit C –	Facility Milestones
Exhibit D –	Notices and Billing Information
Exhibit E –	Contract Price
Exhibit F –	Expected Annual Production
Exhibit G –	Required Insurance

**Solar Project Power Purchase Agreement
(Truman Site)**

This Solar Project Power Purchase Agreement (this “**Agreement**”) is by and between the City of Columbia, Missouri (hereinafter “**Buyer**”), a municipal corporation whose address is 701 E. Broadway, Columbia, Missouri 65201 and Truman Solar, LLC (hereinafter “**Seller**”), a limited liability company authorized to transact business within the State of Missouri and whose address is 3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 904054, and is entered into on the date of the last signatory below (hereinafter “**Execution Date**”). Buyer and Seller are each individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, Seller desires to develop, design, construct, own (or lease) and operate a renewable electric generating Facility; and

WHEREAS, Seller desires to sell and deliver, and Buyer has agreed to purchase and receive, all of the Output from the Facility at the Delivery Point in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE ONE: GENERAL DEFINITIONS AND RULES OF INTERPRETATION

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Exhibit A, attached hereto and made a part of this Agreement, unless the context clearly requires otherwise. The Rules of Interpretation set forth in Exhibit A shall apply to the interpretation of this Agreement.

ARTICLE TWO: TERM AND TERMINATION

2.1 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Articles One, Seven, Nine, Ten and Twelve and Sections 2.1, 2.2, 11.1(c) through 11.7, 13.1 through 13.13. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

2.2 Conditions Precedent to Seller’s Obligations. The following conditions (the “**Seller Conditions Precedent**”) must be satisfied by the Conditional Deadline:

- (a) Seller shall have obtained all Permits necessary for it to construct and operate the Facility on terms acceptable to it;
- (b) Seller shall have obtained Site Control and all necessary agreements for the connection of the Facility to Buyer’s system; and

- (c) Seller shall have obtained a financing commitment for the construction of the Facility on terms acceptable to it.

Seller shall use commercially reasonable efforts to achieve the satisfaction of the Seller Conditions Precedent by the Condition Deadline. At Seller's request and at Seller's cost and to the extent commercially reasonable, Buyer will reasonably cooperate with Seller as may be necessary in order to assist Seller in achieving the satisfaction of the Seller Conditions Precedent. Seller may terminate this Agreement if the Seller Conditions Precedent are not satisfied for any reason on or before the Condition Deadline. Termination of this Agreement pursuant to this Section 2.2 shall not trigger the default provisions contained herein or any liability under this Agreement. The Parties may mutually agree, in writing, to extend the Condition Deadline and to extend the Scheduled Commercial Operation Date and the Facility Milestones correspondingly.

2.3 Term. Seller's obligation to sell and deliver or cause to be delivered, and Buyer's obligation to purchase and receive, or cause to be received, all Delivered Power at the Delivery Point and all Environmental Attributes generated in connection therewith, and to pay Seller the Contract Price therefor, under this Agreement shall commence on the Initial Operation Date and shall continue for a period of thirty (30) years from the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the "**Initial Term**"). Seller and Buyer may, upon mutual written agreement, extend this Agreement for additional five (5) year terms (each such additional term, a "**Renewal Term**"). Notwithstanding any provision to the contrary contained in this Agreement, in no event shall an event of Force Majeure extend the term of this Agreement beyond the Initial Term or any Renewal Term.

ARTICLE THREE: CONTRACT PRICE

3.1 Contract Price. Buyer shall pay for Delivered Power on a per MWh basis, at the applicable Contract Price set forth in Exhibit E, attached hereto and made a part of this Agreement.

ARTICLE FOUR: PURCHASE AND SALE OF OUTPUT

4.1 Seller's and Buyer's Obligations. From and after the Initial Operation Date, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, all Delivered Power at the Delivery Point and all Environmental Attributes generated in connection therewith, and Buyer shall pay Seller the Contract Price therefor. Seller shall be responsible for any costs or charges imposed on or associated with the Delivered Power or its delivery of the Delivered Power up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Delivered Power or its receipt at and from the Delivery Point. Notwithstanding the sale by Seller to Buyer of all the Facility's Delivered Power and all Environmental Attributes generated in connection therewith, Seller shall retain title to all Environmental Incentives and Tax Benefits associated with the Facility or its Delivered Power.

4.2 Title and Risk of Loss. Seller shall convey good and marketable title to the Output to Buyer at the Delivery Point free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Output or

prevent the subsequent transfer of such Output by Buyer to a third party. Title to and risk of loss with respect to Output delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer when such Output is delivered at the Delivery Point. Until title passes, Seller shall be deemed in exclusive control of the Output and shall be responsible for and shall indemnify Buyer against any damage or injury caused thereby. After title to the Output passes to Buyer, Buyer shall be deemed to be in exclusive control of such Output.

4.3 RPS Compliance. All Environmental Attributes and any benefits derived therefrom are exclusively dedicated to and vested in Buyer. Seller shall deliver to Buyer all Environmental Attributes derived from the Facility. Each Party shall timely prepare and execute all documents and shall take all actions reasonably necessary under applicable law, regulations or other requirements, to cause the Environmental Attributes to vest in Buyer. The form of the transfer will be mutually agreed upon by the Parties.

4.4 Minimum Production. Seller has estimated that following the Commercial Operation Date, the Facility will deliver an annual expected performance output of Delivered Power as set forth in Exhibit F (the “**Expected Delivered Power**”), attached hereto and made a part of this Agreement, for any two consecutive Contract Years of the Term (in each case, a “**Measurement Period**”). If, starting with the second Contract Year, for reasons other than a Buyer-instructed curtailment pursuant to Section 4.9, Buyer’s inability or refusal to accept Delivered Power (other than as a result of Seller’s breach of its obligations under this Agreement), or events of Force Majeure, the Facility fails to deliver seventy percent (70%) of the Expected Delivered Power in any particular Measurement Period, then a shortfall of Delivered Power with respect to such Measurement Period equal to the difference between the Expected Delivered Power and the Delivered Power actually delivered (a “**Shortfall**”) shall be deemed to exist. In such case, Seller shall pay to Buyer Performance Liquidated Damages per MWh of such Shortfall on the monthly payment date immediately succeeding the Measurement Period for which Seller’s obligation to pay such amounts arose. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the Facility’s failure to deliver seventy percent (70%) of the Expected Delivered Power in any Measurement Period would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages. If Seller fails to satisfy the Expected Delivered Power requirement for any Measurement Period, for the purpose of determining compliance with the Expected Delivered Power requirement in the next rolling Measurement Period, the amount of Delivered Power generated in the first Contract Year of such Measurement Period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Delivered Power for such Contract Year, or (ii) the actual amount of Delivered Power generated by the Facility in such Contract Year.

4.5 Billing and Payment. Unless otherwise specifically agreed upon in writing by the Parties, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month. All undisputed amounts under any invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of (i) the twentieth (20th) day of each month or (ii) the fifteenth (15th) Business Day after receipt of the invoice or, if such day is not a Business Day, then on the next Business

Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.6 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment of the amount determined to be correct shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from the subsequent payment, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.7 within twelve (12) months after the invoice is rendered or any adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

4.7 Taxes. Seller shall be responsible for and shall pay (or reimburse Buyer for) any and all taxes or similar governmental charges of any type that may be assessed on or with respect to the Output prior to the Delivery Point, and Buyer shall be responsible for and shall pay (or reimburse Seller for) any and all taxes or similar governmental charges of any type that may be assessed on or with respect to the Output at and from the Delivery Point (including the sale and transfer of the Output to Buyer). Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes or similar governmental charges, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax or similar governmental charge.

4.8 Curtailement. Buyer may curtail, or require Seller to curtail, all or part of the expected Delivered Power at any time for any reason, including an Emergency Condition or Force Majeure, provided that, except when such curtailment results from an Emergency Condition or Force Majeure, Buyer shall be responsible for, and shall pay Seller for, full Contract Price of all curtailed Delivered Power. The full amount of curtailed Delivered Power will be determined by Seller, and agreed to by Buyer, in a commercially reasonable manner. In the event that Buyer requests Seller to curtail all or part of the Delivered Power, Seller shall curtail the Delivered Power as soon as reasonably possible after receiving and otherwise in accordance with notice from Buyer.

ARTICLE FIVE: FACILITY CONSTRUCTION; MILESTONES

5.1 Construction of Facility. Seller shall design and construct the Facility in accordance with Good Industry Practice, the Facility Milestones set forth on Exhibit C (as the same may be extended in accordance with Section 5.2), and the Facility Specifications set forth in Exhibit B.

5.2 Milestones. Seller shall use commercially reasonable efforts to complete each Facility Milestone as specified in Exhibit C on or before the date specified for each Facility Milestone listed in Exhibit C. Each Facility Milestone (including the Scheduled Commercial Operation Date) shall be extended on a day-for-day basis for each day of delay to Seller resulting from Force Majeure. If Seller fails to achieve any of the Facility Milestones (other than the Facility Milestone related to Commercial Operation) by the date specified in Exhibit C (as extended), then within ten (10) Business Days after such milestone date Seller shall deliver to Buyer an action plan that will detail the reasons why the applicable Facility Milestone was not achieved in a timely manner and what steps Seller has taken or will take in order to achieve Commercial Operation with respect to the Expected Facility Capacity on or before the date set forth in Exhibit C (such date (as so extended), the “**Scheduled Commercial Operation Date**”). If Seller fails to achieve Commercial Operation with respect to at least the Expected Facility Capacity on or before the Scheduled Commercial Operation Date, then for each day after the Scheduled Commercial Operation Date that Seller continues to fail to achieve Commercial Operation with respect to at least the Expected Facility Capacity, Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages. Seller shall pay any amounts owed to Buyer under this Section 5.2 in the monthly billing period immediately succeeding the billing period during which Seller’s obligation to pay such amounts arose. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller’s failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

5.3 Initial Operation Date. Seller will install the Facility in increments in its reasonable discretion and may begin generating and delivering Delivered Power and Environmental Attributes on the Initial Operation Date as soon as such increment has achieved Commercial Operation.

ARTICLE SIX: FACILITY OPERATION

6.1 Metering. Buyer shall provide, install, own, operate and maintain all Meter(s) in good operating condition in accordance with Good Industry Practice. If more than one Meter is installed, then data from all Meters shall be aggregated into one revenue Meter. The metering system design shall be approved by Buyer prior to commencement of construction of the Facility. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity, if supplied by the generator. Buyer shall provide Seller with access to all data generated from Buyer’s Meter(s). Seller, at its expense, may install additional check meters. Seller shall not install any check-metering equipment on Buyer-owned facilities. Seller shall not

undertake any action that may interfere with the operation of the Meters, and shall be liable for all costs, expense and liability associated with any such interference with the Meters.

6.2 Metering Assurance. In the event that revenue meters are required inside the Facility, Meters and corresponding networking equipment shall be installed in lockable cabinets. All communication cable shall be installed in rigid conduit. Seller instruments shall meet or exceed Buyer standards. Buyer networks shall remain isolated from Seller equipment. Seller shall provide Buyer with 24/7 access to this equipment.

6.3 Meter Tests. Meters shall be tested prior to installation, and during commissioning of the generator. Buyer will subsequently test these meters at its discretion and at its own expense. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the Meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer shall provide at least fifteen (15) days prior notice of routine Meter testing to Seller. If Seller has installed check meters in accordance with Section 6.1, Seller shall test and calibrate each such meter at least once every calendar year. Seller shall provide fifteen (15) days prior notice of routine check meter testing to Buyer. In the event of special Meter testing, the Parties shall notify each other with as much advance notice as practicable.

6.4 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Seller for the lesser of (a) the period in which the inaccuracy existed or (b) one hundred eighty (180) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Seller within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Seller by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section shall accompany Seller's next billing period statement.

6.5 Planned Delivery Schedules; Day-Ahead Notices. Ten (10) Business Days before the beginning of each month during the Term beginning in the month preceding the anticipated month of the Initial Operation Date, Seller shall provide to Buyer non-binding forecasts of expected available energy in a form reasonably acceptable to Buyer. Seller shall provide good-faith estimates based on expected production, including known curtailments and capacity reductions.

6.6 Outages.

- (a) In the event of any Forced Outage, Seller shall promptly notify Buyer of the same. Seller shall as soon as practicable under the circumstances notify Buyer verbally and shall then, within twenty-four (24) hours thereafter, provide written notice to Buyer. Such notice shall be submitted electronically to Buyer by facsimile or e-mail and will generally describe the nature of the Forced Outage, the expected duration and any other pertinent information that will assist Buyer in planning for the decreased Delivered Power and/or availability of the Facility as a result of the Forced Outage. Seller shall return the Facility to service as soon as reasonably possible, consistent with Good Industry Practice, after the circumstances that caused the Forced Outage cease to exist.
- (b) Within ninety (90) days prior to the Commercial Operation Date, and on or before the first day of each subsequent Contract Year, Seller shall provide Buyer with a schedule of such proposed Planned Outages. Buyer shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of Buyer's receipt of such schedule. Seller will use commercially reasonable efforts to accommodate Buyer's requests. Changes to the schedule may be requested by either Party and each Party shall make commercially reasonable efforts to accommodate such changes. Notwithstanding anything to the contrary contained herein, Seller shall provide no less than ninety (90) days prior written notice to Buyer before conducting any Planned Outages of the Facility.

6.7 Operation and Maintenance. Seller, at all times shall operate, maintain and repair the Facility in accordance with Good Industry Practice, and in material compliance with all applicable Permits and laws, rules, regulations, orders or the like.

6.8 Operations Reports. From the Initial Operation Date and throughout the Term of this Agreement, Seller shall provide Buyer with monthly reports regarding material data pertaining to the operation of the Facility in a form to be mutually agreed upon by the Parties (the "**Operations Report**"). The Operations Report format may be modified in any reasonable manner at Buyer's request from time to time during the Term of this Agreement.

ARTICLE SEVEN: REPRESENTATIONS AND WARRANTIES

7.1 Seller Representations and Warranties. Seller represents and warrants to Buyer as of the Execution Date as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has or will have all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than Permits or other regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);

- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, including any law, rule, regulation, order or the like governing the production and/or sale of electricity, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by general principles of equity or bankruptcy, insolvency or similar laws affecting creditors' rights and the enforcement of rights generally;
- (d) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (e) no Default or Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (f) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (g) the energy source from which the Output will be sold to Buyer has been designed to qualify as a Renewable Energy System.

7.2 Buyer Representations and Warranties. Buyer represents and warrants to Seller as of the Execution Date as follows:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by general principles of equity or bankruptcy, insolvency or similar laws affecting creditors' rights and the enforcement of rights generally;

- (d) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (e) no Default or Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (f) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

ARTICLE EIGHT: FORCE MAJEURE

8.1 Excuse. Neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to an event of Force Majeure. Time periods for compliance and deadlines (including Facility Milestones) will be extended on a day-for-day basis for the duration of any event of Force Majeure.

8.2 Definition. “**Force Majeure**” means, subject to the exclusions set forth in Section 8.3, any events that occur subsequent to the Execution Date and before the termination or expiration of the Term of this Agreement and that delay or prevent a Party’s performance of its obligations under this Agreement, but only to the extent that (i) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party’s reasonable control and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences. Force Majeure shall in any event include the following:

- (a) acts of God such as storms, hurricanes, floods, lightning, fire, explosion, quarantine, earthquakes, volcanic eruptions or other natural disasters;
- (b) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- (c) war, riot, epidemic, acts of a public enemy or other civil disturbance;
- (d) strike, walkout, lockout or other significant labor dispute; or
- (e) action or inaction of a Governmental Authority (including any change in law) that prevents Seller from operating the generating Facility or prevents the Buyer from taking delivery of the Output from Seller.

8.3 Exclusions. None of the following shall constitute an event of Force Majeure:

- (a) Buyer's inability economically to use or resell the Output; or
- (b) Seller's ability to sell the Output at a price greater than the price set forth in this Agreement.

8.4 Covenants. A Party claiming Force Majeure shall:

- (a) provide prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
- (b) exercise all reasonable efforts to continue to perform its obligations under this Agreement;
- (c) expeditiously take action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem (provided that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute); and
- (d) provide prompt notice to the other Party of the cessation of the Force Majeure event or condition giving rise to its excuse from performance.

8.5 Termination for Extended Force Majeure Event. This Agreement may be terminated by either Party if a Party's obligations hereunder have been excused by the occurrence of an event of Force Majeure pursuant to this Article Eight for longer than twelve (12) consecutive months. Termination of this Agreement pursuant to this Section 8.5 shall not be considered a termination due to an Event of Default or require the payment of damages by either Party. Following such termination, both Parties will be released from any further liability under this Agreement.

8.6 Material Casualty Event. This Agreement may be terminated (i) by Seller following a Material Casualty Event or (ii) by Buyer following a Material Casualty Event occurring after the Commercial Operation Date if Seller has not repaired or rebuilt the Facility to at least eighty percent (80%) of the installed Facility Capacity within one year of the occurrence of such Material Casualty Event. Termination of this Agreement pursuant to this Section 8.6 shall not be considered a termination due to an Event of Default or require the payment of damages by either Party. Following such termination, both Parties will be released from any further liability under this Agreement.

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. Except as stated in Section 9.2 and Section 9.4, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party, including by operation of law, without the prior written consent of the other Party, which

consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

9.2 Seller Permitted Assignment for Financing. Seller may without the prior consent of Buyer, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof, to any of Seller's Lenders in connection with any financing or other financial arrangements for the Facility. Notwithstanding any such transfer, pledge, encumbrance or assignment, Seller shall not be released or discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such transfer, pledge, encumbrance or assignment.

9.3 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

9.4 Collateral Assignment by Seller. In the event that Seller transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's Lenders, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's Lenders. In connection with any financing or refinancing of the Facility, Buyer shall (i) execute one or more estoppel certificates in respect of this Agreement in a form reasonably acceptable to Buyer (with such changes as may be reasonably necessary to make the certifications contained therein true in all respects), and (ii) negotiate in good faith with Seller and Seller's Lenders to agree upon a consent to collateral assignment of this Agreement, which consent to collateral assignment shall be in form and substance agreed to by Buyer, Seller and Seller's Lenders, and shall include the following provisions and any other customary provisions:

- (a) upon foreclosure (or assignment in lieu of foreclosure) of Seller's Lenders' mortgage or security interest in the Facility, Seller's Lenders may succeed to the rights and obligations of Seller under the Agreement;
- (b) the Parties shall not amend or modify this Agreement in any material respect without the prior written consent of Seller's Lenders (which approval shall not be unreasonably withheld, delayed or conditioned);
- (c) simultaneously with providing notice to Seller of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to any Seller's Lenders which Buyer has been provided written notice of;
- (d) Seller's Lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement; provided that so long as Seller's Lenders have initiated efforts to effect a cure of such Event of Default and are diligently pursuing such efforts, Seller's Lenders shall be provided an additional period not to exceed an additional ninety (90) days from the end of the cure period provided to Seller pursuant to this Agreement to effect a cure of such Event of Default;

- (e) if this Agreement is rejected or disaffirmed by Seller pursuant to bankruptcy law or other law affecting creditor's rights, then upon the request of Seller's Lenders, Buyer shall execute and deliver to Seller's Lenders or their designee a new power purchase agreement which shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination and shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement; and
- (f) upon receipt of a written request from Seller's Lenders, Buyer shall make any and all payments due and owing by Buyer under this Agreement to an account designated by Seller's Lenders, which payments Seller agrees will fully satisfy Buyer's payment obligations under this Agreement to the extent of such payments.

ARTICLE TEN: INDEMNIFICATION; INSURANCE; LIMITATION OF LIABILITY

10.1 Indemnification. To the fullest extent not prohibited by law, Seller shall indemnify and hold harmless Buyer, its directors, officers, agents, and employees from and against all Claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of Seller, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Seller or a subcontractor for part of the services), of anyone directly or indirectly employed by Seller or by an subcontractor, or for anyone whose acts Seller or its subcontractor may be liable, in connection with providing the services in this Agreement. This provision does not, however, require Seller to indemnify, hold harmless, or defend Buyer from the negligence of Buyer, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Buyer or a subcontractor for part of the services), of anyone directly or indirectly employed by Buyer or by an subcontractor, or for anyone whose acts Buyer or its subcontractor may be liable.

10.2 Insurance. At all times during the Term of this Agreement, Seller shall maintain, at its own expense, insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as set forth in Exhibit G, attached hereto and made a part of this Agreement. Such insurance policies shall be maintained only with insurers rated at least A- VII by AM Best or comparable ratings agency. If an insurer rating drops below A- VII during a policy period, Seller has until the start of the next policy period to obtain insurance with an insurer rated at least A- VII. Within ten (10) Business Days after receipt of a request for the same from Buyer, Seller shall deliver to Buyer a certificate of insurance for any or all policies maintained in accordance with this Section 10.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions. If Seller fails to comply with the provisions of this Section 10.2, Seller shall save harmless and indemnify Buyer from any direct or indirect loss and liability, including attorneys' fees and costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Seller complied with the requirements of this Section 10.2. In addition, if Seller fails to comply with the provisions of this Section 10.2 at any time during the Term of this Agreement, then it shall be deemed an Event of Default, pursuant to Section 11.1(g).

10.3 Damage to Property. Except where caused by the other Party's negligence or willful misconduct, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction. The provisions of this Section 10.3 shall survive any termination, cancellation, expiration or suspension of this Agreement.

10.4 Limitation on Damages. To the fullest extent permitted by law and notwithstanding other provisions of this Agreement to the contrary, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability or otherwise for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement. For purposes of clarification, payment made by either Party to satisfy penalties or payments owing under Sections 4.5, 5.2, or 11.2, shall not be considered special, indirect, incidental, multiple, punitive, consequential or incidental damages under this Section. In addition, this limitation on damages shall not apply with respect to Claims brought by third parties for which a Party is entitled to indemnification under this Agreement. The provisions of this Section 10.4 shall survive any termination, cancellation, expiration or suspension of this Agreement.

ARTICLE ELEVEN: DEFAULT; REMEDIES

11.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article Eight, an event of default ("**Event of Default**") shall be deemed to have occurred with respect to a Party (the "**Defaulting Party**") upon the occurrence of one or more of the following events:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice is received by the Party failing to make such payment;
- (b) any representation or warranty made by such Party in Section 7.1 or 7.2, as applicable, is false or misleading in any material respect (provided that (i) if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur only if the misrepresentation or breach of warranty is not remedied within thirty (30) days after notice and (ii) if the misrepresentation or breach of warranty is not capable of a cure, but the non-Defaulting Party's damages resulting from the inaccuracy can reasonably be ascertained, an Event of Default will be deemed to occur only if the payment of such damages is not made within ten (10) Business Days after a notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party);
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after notice, provided that such thirty (30) day period shall be extended for up to an

additional ninety (90) days if such Party reasonably commences the cure of such failure and diligently pursues the same;

- (d) such Party (i) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (iii) makes an assignment for the benefit of creditors, (iv) consents to the appointment of a receiver of the whole or any substantial part of its assets or (v) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof;
- (e) in the case of Seller, its failure to declare the Commercial Operation Date on or before the date that is one hundred eighty (180) days following the Scheduled Commercial Operation Date (as the same may be extended pursuant to Section 5.2);
- (f) in the case of Seller, the Facility fails to deliver fifty percent (50%) of the Expected Delivered Power in any two (2) consecutive Contract Years for reasons other than Interconnecting Utility outages, Buyer's inability to accept Delivered Power, or events of Force Majeure or Emergency Conditions; and
- (g) in the case of Seller, failure to comply with the insurance provisions provided for in this Agreement at any time during the Term of the Agreement, if such failure is not remedied within fifteen (15) days after written notice is received by Seller.

11.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (a) to send notice, designating a day, no earlier than ten (10) Business Days after the day such notice is deemed to be received and no later than twenty (20) Business Days after such notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**"), (b) to terminate this Agreement and end the Term effective as of the Early Termination Date and collect the Termination Payment, which shall be calculated in accordance with Section 11.3 below or as otherwise expressly provided in this Agreement; (c) withhold any payments due to the Defaulting Party under this Agreement and such payments shall be offset against the Termination Payment; (d) suspend performance; and (e) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.

11.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated

market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Output, (c) at the same Delivery Point, and (d) for the remainder of the Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remainder of the Term of the Agreement and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Agreement. Notwithstanding any other provision in this Agreement to the contrary, the Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting in connection with its termination of this Agreement and shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages (unless such damages are part of a Party's Gains, Losses and Costs as those terms are defined herein). The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Termination Payment.

11.4 Notice of Termination Payment. As soon as practicable after delivery of a notice of termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due from the Defaulting Party to the Non-Defaulting Party, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within fifteen (15) Business Days after such notice is effective.

11.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Article Twelve.

11.6 Rights and Remedies Are Cumulative. Except as otherwise provided herein, the rights and remedies of a Party pursuant to this Article Eleven shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 Rights and Obligations Surviving Termination. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Buyer's or Seller's covenants, agreements, representation and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including:

- (a) the obligation of Seller to pay Performance Liquidated Damages accrued prior to the date of termination under Section 4.5;
- (b) the obligations to make a Termination Payment under Section 11.4;

- (c) the indemnity obligations provided in Section 10.1;
- (d) the obligations of confidentiality set forth in Section 13.1;
- (e) the right to pursue remedies under Article Eleven and Section 13.1;
- (f) the right to receive a Termination Payment under Section 11.4;
- (g) the limitations of liabilities under Article Ten; and
- (h) the obligations to pay Daily Delay Damages under Section 5.2.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting, either Party may seek any legal relief options available to it, including voluntary arbitration if both Parties mutually agree to it.

ARTICLE THIRTEEN: MISCELLANEOUS

13.1 Confidentiality. Buyer is subject to the provisions of Missouri Revised Statutes Chapter 610, Governmental Bodies and Records (hereinafter, "**Missouri Sunshine Law**"). The Parties agree that the Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, as amended. Seller shall maintain the confidentiality of information and records which are not subject to public disclosure under the Missouri Sunshine Law. Seller shall not disclose to any third party, or use for any purpose inconsistent with this Agreement, any confidential user information it receives in connection with performance of its obligations under this Agreement. Seller should maintain its own confidential and proprietary information it believes to be closed under the Missouri Sunshine Law. If Seller provides any information or documents to Buyer that it believes are closed records (including but not necessarily limited to, records relating to scientific technological innovations in which the Seller has a proprietary interest), then Seller shall designate such records to be "confidential" or "proprietary" by conspicuously marking the records as such. If the Buyer receives an open records request for any such records marked by Seller as "confidential" or "proprietary", then Buyer will notify Seller to allow Seller an opportunity to protect such documents from public disclosure.

13.2 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

13.3 Governing Law. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in

Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

13.4 Notices. All notices, requests, statements or payments shall be made as specified on Exhibit D. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

13.5 Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties relative to all services provided for herein. All previous or contemporaneous agreements, representations, promises and conditions relating to Seller's services described herein are superseded.

13.6 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

13.7 Headings and Titles. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

13.8 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.

13.9 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

13.10 Amendments. No amendment to this Agreement shall be effective unless it is mutually agreed upon by the Parties in writing and duly executed by an authorized representative of each Party.

13.11 No Third-Party Beneficiary. No provision of this Agreement is intended to, nor shall it in any way, inure to the benefit of any person, so as to constitute such person a third-party beneficiary under the Agreement.

13.12 Nature of Buyer's Obligations. The obligations of Buyer under this Agreement which require the expenditure of funds, shall be conditional obligations, subject to the availability of funds appropriated for those purposes and payable out of revenues received from the sale of electricity to Buyer's retail customers only when earned or due Seller in accordance with the provisions of this Agreement and shall not be construed to be general obligations of the City of Columbia or a debt of the City of Columbia within the meaning of the Constitution and Laws of the State of Missouri. Notwithstanding the foregoing, to the maximum extent permitted by law, Buyer hereby covenants and agrees (a) to take all actions necessary to seek the appropriation of funds necessary to perform Buyer's payment obligations hereunder, including but not limited to submitting budget requests on a yearly basis that are sufficient to cover Buyer's payment obligations hereunder for the subsequent fiscal year, (b) to consider Seller as Buyer's sole and exclusive supplier of Delivered Power up to the total amount of electricity generated by the Facility, and (c) to not otherwise take steps to circumvent or defeat the intentions of this Section 13.12 or this Agreement.

13.13 No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protection as provided by federal and state constitution or laws.

13.14 Comply with all Laws. Seller shall comply with all federal, state, and local laws, rules, regulations and ordinances.

13.15 Unauthorized Aliens Prohibited. Seller shall comply with the Missouri Revised Statute Section 285.530 in that Seller shall not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work within the State of Missouri. Seller shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization work program with respect to the employees working in connection with the contracted services. Seller shall also complete a Work Authorization Affidavit on a form provided by the Buyer. Seller shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor attesting to its compliance.

13.16 Contract Documents. The Contract Documents include this Agreement and the following attachments and exhibits, which are incorporated herein by reference.

Exhibit:

- A. Definitions and Rules of Interpretation
- B. Facility Specifications

- C. Facility Milestones
- D. Notices and Billing Information
- E. Contract Price
- F. Expected Annual Production
- G. Required Insurance

In the event of a conflict between the terms of any of the Contract Documents and the terms of this Agreement, the terms of this Agreement control. In the event of a conflict between the terms of any Contract Documents, the terms of the documents control in the order listed above.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory below.

BUYER: City of Columbia, MO

By: 
Mike Matthes, City Manager

Date: 2-9-18

ATTEST:

By: 
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By:  AK
Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. 17560555 - 501049, and that there is an unencumbered balance e to the credit of such appropriation sufficient to pay therefor.

By: 
Michelle Nix, City Director of Finance *for*

SELLER: Truman Solar, LLC

By: 

Name: Matthew McGovern

Title: Authorized Person

Date: 12/19/17

Exhibit A
Definitions and Rules of Interpretation

A. Definitions.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“**Agreement**” means this Solar Project Power Purchase Agreement and all exhibits attached hereto.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“**Buyer**” has the meaning set forth in the Preamble.

“**Casualty Event**” means any physical damage to or destruction of all or any portion of the Facility by any cause which qualifies as an event or circumstance described in subparts (a) through (c) of the definition of Force Majeure set forth in Section 8.2.

“**Claims**” means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“**Commercial Operation**” means that the Facility or any part thereof, as applicable, has been constructed in accordance with Good Industry Practice and is capable of delivering Delivered Power to and at the Delivery Point.

“**Commercial Operation Date**” means the date declared by Seller, on which Seller has achieved Commercial Operation with respect to the Facility Capacity equal to or greater than the Expected Facility Capacity. Seller shall declare the Commercial Operation Date by notice delivered to Buyer a minimum of seventy-two (72) hours in advance of the Commercial Operation Date.

“**Condition Deadline**” means three hundred sixty-five (365) days after the Execution Date of this Agreement.

“**Contract Price**” means the price in \$U.S. as set forth in Exhibit E to be paid by Buyer to Seller for the purchase of the Output.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement (including, in the case of Seller as the Non-Defaulting Party, tax recapture costs) and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Daily Delay Damages” means a daily amount equal to Five Hundred Dollars (\$500) per day for each day after the Scheduled Commercial Operation Date (as may be extended) that Seller fails to achieve the Commercial Operation Date.

“Default” means an event which, with notice or the passage of time, or both, would constitute an Event of Default.

“Defaulting Party” has the meaning set forth in Section 11.1.

“Delivered Power” means the total quantity of electrical power (alternating current) generated by the Facility as measured by Meters at the Delivery Point.

“Delivery Point” means the point at which the Delivered Power will be delivered and received, as specified in Exhibit B.

“Early Termination Date” has the meaning set forth in Section 11.2.

“Effective Date” means the date on which all of the conditions set forth in Section 2.2 have been satisfied (or Seller has waived in writing its right to terminate this Agreement based upon Seller’s failure to satisfy the Seller Conditions Precedent).

“Emergency Condition” means a condition or situation: (i) that is imminently likely to endanger life, health or property; (ii) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the distribution system operated by affected local utility or the transmission system operated by the transmission provider; (iii) that, in the case of the Seller, is imminently likely (as determined in a nondiscriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or the Interconnection Facilities; (iv) will result in Buyer being unable to meet specific FERC, NERC, or WECC Reliability Standards or other operational condition that would result in Buyer’s Balancing Authority being unable to operate the system reliably, or (v) or any abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission/distribution facilities or generation supply that could adversely affect the reliability of the bulk electric or host utility’s systems.

“Environmental Attributes” means all environmental and other attributes as may exist from time to time that differentiate the Facility or its Delivered Power from energy generated by fossil fuel or nuclear powered generating units, and any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from such Facility, and its displacement of conventional energy generation, including (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States

Environmental Protection Agency or other governmental agencies, (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, and (iii) credits, benefits or allowances resulting from the compliance of such Facility or its Delivered Power with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include RECs but do not include Environmental Incentives or any capacity, reliability or other power attributes related to the Facility or its Delivered Power.

"Environmental Incentives" means all grants, credits, rebates, incentive payments, benefits, allowances and entitlements of any kind awarded or payable in connection with the installation, ownership or operation of a solar renewable energy system, including rebates, payments and incentives under the American Recovery and Reinvestment Act. "Environmental Incentives" shall exclude Environmental Attributes but shall include Tax Benefits.

"Event of Default" has the meaning set forth in Section 11.1.

"Execution Date" has the meaning set forth in the Preamble.

"Expected Delivered Power" has the meaning set forth in Section 4.5.

"Expected Facility Capacity" has the meaning as described in Exhibit B.

"Facility" means the electric power generation equipment, controls, meters, switches, connections, conduit, wires and other equipment connected to the Delivery Point installed on the Site by Seller pursuant to the specifications attached hereto as Exhibit B for the purposes of providing electric power to Buyer under this Agreement.

"Facility Capacity" means the total nameplate capacity of the Facility, in MW direct current, that has achieved Commercial Operation as of any particular date.

"Facility Milestones" means each of the milestones listed in Exhibit C.

"Force Majeure" has the meaning set forth in Section 8.2.

"Forced Outage" means any shutdown or unavailability of greater than twenty-five (25%) of the Facility other than pursuant to a Planned Outage, including for reasons of unanticipated equipment breakdown, human error or Emergency Conditions. A Forced Outage shall not include any Outage that may be deferred to the next scheduled Planned Outage, consistent with Good Industry Practice and without materially increasing the risk of damage to equipment, decreasing safety or incurring additional costs.

"Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner.

Factors used in determining economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

“Good Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power industry, including those that would be implemented and followed by a prudent operator of solar generating facilities similar to the Facility, during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry.

“Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.

“Initial Operation Date” means the first date on which the Facility is energized and operates in parallel with the Interconnecting Utility System and delivers Delivered Power (including test Delivered Power) to and at the Delivery Point.

“Initial Term” has the meaning set forth in Section 2.3.

“Interest Rate” means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (ii) the maximum rate permitted by applicable law.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output. A Party shall use commercially reasonable efforts to

obtain third-party information in order to determine Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information. If the Non-Defaulting Party is the Seller, then in addition to lost payments for Output pursuant to this Agreement, "Losses" shall also include any associated loss of Environmental Incentives or Tax Benefits.

"Material Casualty Event" means the occurrence of a Casualty Event (i) if prior to the Commercial Operation Date, that is reasonably likely to extend achievement of the Commercial Operation Date by more than one (1) year or (ii) if after the Commercial Operation Date, where the Casualty Event has caused Facility Capacity to be reduced by more than 50% and the period for the full restoration or repair of that portion of the Facility damaged by the Casualty Event is reasonably likely to exceed one (1) year.

"Measurement Period" has the meaning set forth in Section 4.5.

"Meter" means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Buyer, or its designee, required for (i) accurate determination of the quantities of Output from the Facility and for recording other related parameters required for the reporting of data to Seller, and (ii) the computation of the payment due to Seller from Buyer. Meters do not include any check meters Seller may elect to install as contemplated by Section 6.1.

"MW" means megawatts of electrical power.

"MWh" means megawatt hours of electrical energy.

"Non-Defaulting Party" means the Party other than the Defaulting Party.

"Operations Report" has the meaning set forth in Section 6.8.

"Outage" means the period during which the Facility or a portion thereof is out of service.

"Output" means, collectively, the Delivered Power produced by the Facility and all of the associated Environmental Attributes.

"Party" means Buyer or Seller.

"Parties" means Buyer and Seller.

"Performance Liquidated Damages" means \$22.50/MWh.

"Permits" means all permits and approvals, regulatory or otherwise, required from Governmental Authorities for the construction, ownership and operation of the Facility.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real

estate investment trust, Governmental Authority (or any agency or political subdivision thereof) or any other form of entity.

“**Planned Outage**” means an Outage that is not a Forced Outage, and refers to the shutdown or unavailability of greater than fifty percent (50%) of the Facility for inspection or maintenance in accordance with an advance schedule.

“**RECs**” means a renewable energy credit defined under any state or federal law or regulation associated with the production of electricity from an eligible renewable energy resource.

“**Renewable Energy System**” means an Eligible Renewable Energy Resource as defined in the REST, or other applicable law.

“**Renewal Term**” has the meaning set forth in Section 2.3.

“**Schedule**” or “**Scheduling**” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s transmission providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Output to be delivered on any given day or days during the Term at the Delivery Point.

“**Scheduled Commercial Operation Date**” has the meaning set forth in Section 5.2.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller’s Lenders**” means any Persons, and their permitted successors and assignees, providing funding in connection with any development (including credit support, letters of credit and related mechanisms), bridge, construction, permanent debt or tax equity financing or refinancing for the Facility.

“**Shortfall**” has the meaning set forth in Section 4.5.

“**Site**” means the real property on which the Facility is located, to be determined in accordance with the provisions set forth in Exhibit B.

“**Site Control**” means that Seller either (i) owns the Site or (ii) has obtained the necessary rights to construct and operate the Facility on the Site throughout the Term.

“**Tax Benefits**” means incentive tax credits attributable to the Facility or its Delivered Power (or cash grants in lieu thereof), accelerated depreciation attributable to the Facility or its Delivered Power, and any other tax credit or tax write-offs allowed under applicable law attributable to the Facility or its Delivered Power, irrespective of whether such Tax Benefits accrue for the benefit of Seller, any of its Affiliates or any investor of Seller or any of its Affiliates.

“**Term**” means the Initial Term and any Renewal Term(s).

“Termination Payment” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of this Agreement pursuant to Section 11.2 and all amounts then owed to the Non-Defaulting Party by the Defaulting Party. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

B. Rules of Interpretation. The following rules of interpretation shall apply to this Agreement:

1. Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.
2. Capitalized terms used in this Agreement, including the exhibits hereto, shall have the meaning set forth in Part A of this Exhibit A, unless otherwise specified.
3. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other. Other grammatical forms of defined words or phrases have corresponding meanings.
4. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.
5. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.
6. All references to dollars are to U.S. dollars.
7. A reference to a law includes any amendment or modification to such law, and all regulations, rulings and other laws promulgated under such law.
8. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
9. The words “include,” “includes” and “including” means “including but not limited to”.
10. References to “days” mean calendar days, unless the term “Business Days” shall be used.

**Exhibit B
Facility Specifications**

Facility Specifications contained herein shall be completed by Seller following final approval of all engineering documents and prior to commencing facility construction. The completed Exhibit B shall become a part of this Power Purchase Agreement once it is received, signed and dated by Buyer's Director of Utilities, which execution shall not be unreasonably withheld, conditioned or delayed. Buyer's Director of Utilities is authorized to sign this Exhibit on behalf of Buyer.

Delivery Point

To be mutually agreed and designated by Buyer and Seller at the time that Seller obtains Site Control.

Expected Facility Capacity: _____ MW (DC), not to exceed 10 MW (AC)

Facility Specifications

Specify number and type of photovoltaic modules: _____

Module watt size: _____

Number and Size of inverters: _____

Type of tracking technology and mounting system (as applicable): _____

Voltage of series connections: _____

Transformer Specifications: _____

Additional Information: _____

Received by Buyer:

Signature: _____
City Director of Utilities

Date: _____

Exhibit C
Facility Milestones

Milestone	Completion Date
Seller obtains all Permits reasonably necessary to commence construction of the Facility	Condition Deadline
Scheduled Commercial Operation Date	4/1/2019

Exhibit D
Notices and Billing Information

General Notices:

If to Seller:

Cypress Creek Renewables
Attn: Asset Management
3250 Ocean Park Blvd
Suite 355
Santa Monica, CA 90405

Phone: (310) 581-6299
Fax: (310) 684-5875

With a copy to:
Cypress Creek Renewables
Attn: Legal
3250 Ocean Park Blvd
Suite 355
Santa Monica, CA 90405

Phone: (310) 581-6299
Fax: (310) 684-5875

If to Buyer:

Director of Utilities
Utilities Department
City of Columbia, Missouri
P.O. Box 6015
Columbia, Missouri 65205

Operations Related Notices and Billing Information:

[To be designated by Parties prior to Facility construction commencement]

Exhibit E
Contract Price

The Contract Price is **\$44.81/MWh**, with **0%** escalation per year.

Exhibit F
Expected Annual Production

Exhibit F shall be completed by Seller prior to Commercial Operating Date. Signatures of both parties shall be required when complete; provided, however, that Buyer shall not unreasonably refuse to consent to the figures provided by Seller. The completed Exhibit F shall become a part of this Power Purchase Agreement once it is received, signed and dated by both Parties, which execution shall not be unreasonably withheld, conditioned or delayed. Buyer's Director of Utilities is authorized to sign this Exhibit on behalf of Buyer.

Contract Year

Year []: _____ MWh

Seller:

Buyer:

Sign: _____

Sign: _____
City Director of Utilities

Print: _____

Print: _____

Date: _____

Date: _____

Exhibit G
Required Insurance

(a) Seller, at its own cost and expense, shall maintain and keep in full force and effect from the date hereof through the later of the date of expiration or termination of the Agreement, the following insurance coverage:

(i) Worker's Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limit of one million dollars (\$1,000,000) for disease and injury to employees;

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury and broad form property damage, products/completed operation, contractual liability and independent contractors protective liability all with minimum combined single limit liability of five million dollars (\$5,000,000); and

(iii) Commercial Property Insurance in an amount equal to the replacement cost of the Facility, to protect against risks of physical loss or damage, including, if applicable, coverage for earth movement and flood, and mechanical breakdown coverage.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof. The Buyer, its officers, agents and employees shall be named as additional insured on all insurance policies required by the specifications hereunder to be purchased by Seller.

(c) Seller shall require its insurer(s) to endeavor to notify the Buyer of any non-renewal of, or cancellation of, the insurance required by this Section at least thirty (30) days prior to the effective date of such change or cancellation except in the case of non-payment of premiums in which case the notice shall be ten (10) days.