

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 313-06

**AN ORDINANCE**

authorizing the City Manager to execute an agreement with Ameresco Jefferson City LLC for the purchase of electricity from a landfill gas plant; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute an agreement with Ameresco Jefferson City LLC for the purchase of electricity from a landfill gas plant. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

## POWER PURCHASE AGREEMENT

This Power Purchase Agreement is entered into this \_\_\_\_\_ of August, 2006 by and between the City of Columbia, Missouri (hereinafter "Purchaser" or the "City") and Ameresco Jefferson City LLC, a Delaware limited liability company (hereinafter "Seller").

WHEREAS, Seller will construct, own and operate a landfill gas-fueled electric generating plant and facilities located at the Jefferson City Landfill, located at 5605 Moreau River Access Rd., Jefferson City, MO 65101 with an initial gross capacity of up to 3.171 MW (the installed nameplate capacity on the Commercial Operation Date, the "Initial Capacity")(such plant and facilities corresponding to the Initial Capacity, the "Plant"), which the parties anticipate will be characterized as a renewable or "ecologically friendly" energy source, and

WHEREAS, Purchaser owns and operates an electric power utility and is seeking electric power which is renewable or ecologically friendly.

NOW THEREFORE, in consideration of the mutual covenants set out herein below, the parties agree as follows:

### 1. Power Purchase

Commencing upon the date that the Plant begins producing electric energy, the City will purchase and the Seller will sell the electric energy output of the Plant, continuing for the term of this Agreement. Seller shall also transfer to the City all rights Seller may have to all other electrical products associated with the energy purchased by the City during the term of this Agreement, including without limitation, any capacity credits attributed to the Initial Capacity. Seller makes no written or oral representation or warranty, either express or implied, regarding the production or existence of energy or such other electrical products.

In addition to the electric power produced at the plant, the City shall receive ownership from Seller, at no additional charge, of all right, title and interest Seller may have, if any, to any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets or allowances attributable to the energy generated by the plant which is purchased by the City, along with the right to report the ownership of such to any authority or agency requiring or allowing this reporting; provided, that the City shall receive such ownership and such reporting rights only to the extent necessary to meet specific requirements in the definition of renewable energy applicable to the City and embodied in Appendix A to the 2006 Renewable Energy Report of the City's Water and Light Department ("City Environmental Attributes"). Seller makes no written or oral representation or warranty, either express or implied, regarding the current or future existence of any City Environmental Attributes.

## 2. Price

During the term of this Agreement, Purchaser shall pay Seller the per MWh price of energy set forth in Appendix D, which price shall be adjusted in accordance with Appendix D (the "Price"), delivered to Purchaser at the Point of Interconnection. The Price shall be the total compensation owed by the Purchaser for such energy and attributes related to such energy.

## 3. Tax or Production Incentives

Purchaser agrees and acknowledges that Seller shall own any and all tax or production incentives, tax credits, deductions, allowances and exemptions established by Federal, State or local law and any other payment, credit, deduction, benefit, grant or monetary incentive provided by a governmental body or any person, and, other than City Environmental Attributes, all emission credits, reductions or offsets, whether now in effect or arising in the future, arising from the activities contemplated by this Agreement, including but not limited to Renewable Energy Production Incentive Payments, and tax credits available under Section 29 and Section 45 of Subtitle A, Chap. 1A, Part IV of the Internal Revenue Code of 1986, as amended. Purchaser shall not take any action, including claiming Section 45 tax credits or any other thing to which Seller is entitled under this Section 3, that would in any way reduce or eliminate the availability to Seller of any such Seller entitlement, including without limitation the Section 29 or 45 tax credits.

## 4. Term

The term of this Agreement shall begin on the date above first written and, unless earlier terminated, continue until the date twenty years from the date Seller notifies Purchaser in writing of the beginning of energy production by the Plant for commercial purposes (the date of such notice, the "Commercial Operation Date.")

If however, the Commercial Operation Date does not occur on or before December 31, 2008, Purchaser shall have the right to terminate this Agreement by written notice, and, upon such termination, neither party shall have any duty, liability or obligation to the other.

## 5. Early Termination

If Seller determines, in its sole discretion, that the Plant is not economic or is otherwise not feasible or advisable, then Seller shall have the right, upon thirty (30) days prior written notice to Purchaser, to terminate this Agreement without liability at any time, provided that such notice is given to Purchaser prior to June

30, 2007. Seller shall notify Purchaser in writing of the date of the later of the two events.

6. Additional Energy Output, Purchasers, Right of First Refusal

Seller may at its sole discretion determine from time to time to expand the beyond the capacity of the original Plant. Each time such a determination is made, Seller shall notify Purchaser of such determination and offer to sell the additional output (energy and certain associated electrical and environmental characteristics in the same manner as from the Plant) from such expansion to the Purchaser. The offer to sell shall be in writing and include the price to be paid, the term of the new agreement and other principal terms of the agreement.

Upon receipt of such offer, Purchaser shall have 60 days to accept the offer or to propose a counter offer. If the parties, each in their sole discretion, cannot agree upon terms within a total of 90 days of the transmission of Sellers offer, the offer shall expire and Seller shall be free to make offers to other parties.

Notwithstanding any expansion, offers or agreements with other parties, this Agreement shall continue in effect and Seller shall not use any landfill gas to fuel an expansion at any time unless at such time the Initial Capacity is receiving the quantity of landfill gas it requires.

7. Point of Interconnection

The Purchaser shall accept ownership of the electric energy subject to this Agreement at the point on the electrical system where the Plant is physically interconnected with the local distribution system, which is anticipated to be at the high side of Seller's step-up transformers at the Plant (the "Point of Interconnection").

8. Metering Requirements

The transfer of energy from Seller to Purchaser shall be measured by revenue quality metering equipment at the Point of Interconnection. Such metering equipment shall be selected, provided, installed, owned, maintained and operated by Seller or its designee in accordance with applicable Independent System Operator ("ISO") rules, Seller shall submit to the ISO, or allow the ISO to retrieve, any meter data required by the ISO related to the Plant output in accordance with the ISO's settlement and billing protocol and meter data tariffs. Purchaser shall have all reasonable access to relevant meters, associated facilities and meter data, as is necessary for Purchaser, or its designee, to perform its duties as scheduling coordinator and comply with the requirements of the ISO tariff. Seller shall further install and maintain all equipment necessary to monitor and transmit production outputs from the Plant ("SCADA"). Purchaser shall be

provided access to all monitored SCADA points to be used at their discretion in real time monitoring.

#### 9. Billing and Payment

Seller shall read the meter at the end of each calendar month of the Term and provide to Purchaser on or before the 5<sup>th</sup> day of the following month, an invoice based upon the meter data for energy delivered to the Point of Interconnection in such calendar month. Seller may also include in such invoice amounts reimbursable by Purchaser pursuant to Sections 11(e), (g) and (h). Such invoice may be transmitted electronically via e-mail. Should either the Seller or the Purchaser determine at a later date, but in no event later than two (2) years after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. If the amount invoiced was too low, Purchaser shall, upon receiving verification of the error and supporting documentation from the Seller, pay any undisputed portion of the difference within thirty (30) days of receipt of verification. If the amount invoiced was too high, Seller shall, upon receiving verification of the error and supporting documentation from the Purchaser, pay any undisputed portion of the difference within thirty (30) days of receipt of verification.

For energy delivered to Purchaser pursuant this Agreement, Purchaser shall pay Seller by electronic transfer of funds by the 20<sup>th</sup> day of the month the invoice is received. If such due date falls on a weekend or legal holiday, such due date shall be the next day which is not a weekend or legal holiday. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to two (2%) percent plus the average daily prime rate as determined from the "Money Rates" section of the East Coast Edition of *The Wall Street Journal* for the days of the late payment period multiplied by the number of days elapsed from and including the day after the due date, to and including the payment date. Interest shall be computed on the basis of a 365-day year. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index. Should Purchaser in good faith dispute the amount of an invoice, Purchaser may withhold such disputed amounts until the dispute is resolved. Such disputed amount shall bear interest at the interest rate described above. Failure of Purchaser to withhold any amount is not a waiver of Purchaser's right to challenge such amount. Both Parties shall maintain all records relating to amounts owed by the other Party under this Agreement for a minimum of two (2) years, and shall permit the other Party upon reasonable notice, to inspect and audit such records as the requesting Party deems reasonably necessary to protect its rights.

#### 10. Operation of the Plant

Seller will operate and maintain the plant in a manner consistent with prudent utility practices and cooperate with the appropriate transmission system operators

as required in any written agreement between Seller and such operator described in Section 11(e).

Each year Seller will provide Purchaser with a nonbinding projection of scheduled outages and deratings and provide Purchaser with at least thirty (30) days advance notification of all actual scheduled outages and deratings. Seller will use reasonable efforts to minimize scheduled outages in accordance with prudent utility practice between June 1<sup>st</sup> and September 30 of each year.

#### 11. Sellers General Obligations

- a. Seller shall obtain in its own name (to the extent permissible under applicable law) and at its own expense any and all emissions, pollution or environmental permits necessary to operate the Plant in compliance with the environmental laws.
- b. Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of the Agreement, including such records as may be required by any governmental authority other than Purchaser or prudent utility practice.
- c. Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; and (ii) comply with all contractual obligations and requirements of law.
- d. Seller shall provide to Purchaser such other information regarding the permitting, engineering, construction, or operations of the Plant as Purchaser may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use.
- e. Seller shall enter into any agreements with the ISO required by the ISO for generators delivering power into the ISO-controlled grid. Purchaser shall be responsible for all costs under such agreements incurred after the Commercial Operation Date.
- f. Subject to other terms of this Agreement, Seller will have the sole and exclusive responsibility, at its expense, to deliver the energy to Purchaser at the Point of Interconnection.
- g. If not otherwise required under Section 11(e) above, Seller shall negotiate and enter into an interconnection agreement with the entity whose electrical system the Plant is interconnected with to enable Purchaser to transmit energy received at the Point of Interconnection through the ISO-controlled grid. Before Seller enters into such interconnection agreement, Seller agrees to provide Purchaser with each draft of such agreement as and when such draft is made available to Seller. Purchaser shall have the right to comment on each such draft within five (5) business days after the same is provided to Purchaser by or on behalf of Seller and Seller shall use commercially reasonable efforts to cause Purchaser's comments to be

incorporated into such interconnection agreement as executed and delivered by the parties thereto. Seller shall be responsible for and pay all charges associated with such interconnection agreement for initial non-recurring charges incurred prior to the Commercial Operation Date. All other costs and charges related to interconnection other than initial non-recurring costs incurred prior to the Commercial Operation Date will be reimbursed, on a pro rata, energy basis, by the purchasers of energy from the Plant. During the Term of this Agreement prior to any expansion of the plant capacity becoming available for commercial service and assuming that the Initial Capacity is not greater than 3.171 MW, Purchaser will reimburse Seller for 100% of such other costs and charges under such interconnection agreement paid or required to be paid by Seller under such interconnection agreement. Upon completion of an expansion of the capacity of the Plant which uses the interconnection facilities constructed under such interconnection agreement, such other costs and charges shall be prorated, on an energy basis, and Purchaser's share would be based on its energy compared to the energy of all such expansions of the capacity of the Plant delivered to the Point of Interconnection.

- h. Subject to a process for review by Purchaser identical to that set forth in Section 11(g), negotiate and enter into any other customary agreements with the ISO and the entity whose electrical system the Plant is interconnected with. Purchaser shall be responsible for all costs under such agreements.
- i. Seller will pay or cause to be paid all taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any governmental agency other than Purchaser on or with respect to energy from the Plant before the Point of Interconnection.

## 12. Purchaser Obligations

- a. **Delivery and Transmission**

Except for Seller's obligations pursuant to Section 11(g), Purchaser shall be solely responsible for paying all costs and charges associated with the receipt of energy, under this Agreement, at the Point of Interconnection and for the transmission and delivery of the energy from the Point of Interconnection to any other point. Purchaser or its designee shall be scheduling coordinator for the transmission of energy from the Plant in accordance with applicable ISO rules, and the rules of the entity with which the Plant is interconnected. Commercial arrangements for such transmission and delivery services will be coordinated and settled by Purchaser directly with the ISO or other third parties.
- b. **Taxes**

Subject to Purchaser's right to contest the applicability or amount of any such taxes, Purchaser will pay or cause to be paid all taxes on or with respect to the energy, environmental characteristics and other electrical

products delivered, tendered or transferred to Purchaser imposed at or after the Point of Interconnection. Purchaser shall not be responsible for any taxes measured on the net income of Seller or *ad valorem* taxes paid by Seller or Jefferson City Landfill LLC associated with the Site or the Landfill.

- c. Notification of Transmission Outages  
Purchaser will exercise reasonable efforts to provide Seller with as much advance notice as practicable of any outage on the electrical system with which the Plant is interconnected, or other transmission or delivery facilities, which may adversely affect the delivery of energy to the Purchaser.

### 13. Force Majeure

- a. In the event performance of the terms of this Agreement by a party is prevented, delayed or impaired as a result of a Force Majeure Event, such party shall not be liable to the other party for the nonperformance of the terms of this Agreement.
- b. In the event of any delay or nonperformance resulting from a Force Majeure Event, the party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance. The party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any party from its obligations to make payment of amounts due hereunder.
- c. Force Majeure Events shall include any act or event that delays or prevents a party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement to the extent that such act or event is reasonably unforeseeable and beyond the reasonable control of and without the fault or negligence of the party relying thereon as justification for such delay, nonperformance, or noncompliance, including, without limitation acts of nature, the unlawful or negligent acts of third parties outside of the control of the parties to this agreement, labor strikes or disturbances and the actions of federal, state or local governments and which the effected party has been unable to overcome by the exercise of its due diligence and reasonable efforts.

- d. Force Majeure Events shall not include (i) economic events which render this Agreement unprofitable or less profitable than anticipated by a party to this Agreement and (ii) recurring or permanent electric transmission interruptions or curtailments.

#### 14. Default

The following shall each constitute an “Event of Default” by a party:

- (a) Such party to this Agreement shall breach any material obligation of this Agreement and fail to cure such breach within ninety (90) days, or such time period as the parties shall agree upon, after written notification of that breach by the other party;
- (b) such party shall fail to make a payment due under this Agreement within thirty (30) days, written notice that such payment is due;
- (c) such party (i) is unable to pay its debts as such debts become due; (ii) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (iii) fails to controvert in a timely (but no more than 60 days) and appropriate manner, or acquiesce in writing to, any petition filed against such party under any bankruptcy or similar law; or (iv) takes any action for the purpose of effecting any of the foregoing.
- (d) The initiation of an involuntary proceeding against such party under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days, or in the event of the initiation by such party of a voluntary proceeding under the bankruptcy or insolvency laws.
- (e) Any representation made by such party under Section 17 is false in any material respect when made or becomes false during the term and such party fails to remedy such false representation within 30 days after written notice thereof by the other party.

#### 15. Termination

Upon the occurrence and continuance of an Event of Default, , the nondefaulting party may terminate this Agreement by written notice. Upon termination of this Agreement, neither Party shall be obligated to fulfill any of the terms of this Agreement, except for making the payments or fulfilling obligations arising or accruing prior to the effective date of termination.

In exercising its right to terminate the Agreement, the terminating party shall give the other party written notice of the date such termination shall be effective.

#### 16. Damages

Neither Party shall be liable to the other party under this Agreement for any indirect, special, or consequential damages, including but not limited to, loss of

use, loss of revenues, loss of profit, interest charges, cost of capital, or claims of its customers or members to which service is made.

#### 17. Indemnity

To the extent authorized by law, each party shall indemnify and hold harmless the other party, its officers, agents and employees, from any costs, proceedings or judgments for death or injuries to persons or damage to property arising from the tortious acts of the indemnifying party.

#### 18. Representations and Warranties

Each party represents and warrants to the other:

(a) that it is duly and lawfully organized and validly existing, and has the legal and actual authority to make and carry out this Agreement, to perform the obligations herein and to execute this Agreement.

(b) that this Agreement has been duly and validly executed and delivered by such party and, as of the date first set forth herein, constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms against such party, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity

(c) that there are no actions, suits, proceedings or investigations pending or known to the party which would individually or in the aggregate have a material or adverse effect on the ability of the party to perform its obligations under this Agreement.

#### 19. Dispute Resolution

In the event a dispute arises between Purchaser and Seller regarding the application or interpretation of, or in any way relating to this Agreement, Purchaser and Seller shall use commercially reasonable efforts to reach a reasonable and equitable resolution of the matter on an expedited basis. In the event such efforts do not result in the resolution of the dispute, either Party may by written notice request the other Party to designate an officer of its management to meet at the Plant, or at any other mutually agreed location, to resolve the dispute. The designated officers shall meet promptly but in any event within twenty-one (21) days following the notice date unless a later date is specified in the notice, and shall have the authority to resolve the dispute. In conjunction with any meetings pursuant to this paragraph, (i) upon request of either Party the other Party shall cooperate to select a mutually agreeable independent technical consultant to assist in the resolution of any technical dispute, the related costs and

expenses of such consultant to be borne equally by the Parties; and (ii) all such discussions shall be confidential and deemed settlement discussions for purposes of all applicable procedural rules, should the dispute eventually result in litigation.

If the procedures referenced in the preceding paragraph do not result in resolution of the dispute within five (5) days after commencement of the referenced officers' meeting (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations), the Parties shall be free to initiate litigation; provided that nothing herein shall be deemed to restrict the ability or right of either Party to seek injunctive relief.

## 20. No Changes to Rates, Terms or Conditions

Except as provided herein, no change may be made to the rates, terms or conditions of this Agreement at the request of any Party, or by FERC acting *sua sponte* on behalf of any Party, except as required by FERC in the public interest. To that end and to the extent any such rights exist, each Party waives any and all rights to seek changes to the rates, terms, and conditions contained in this Agreement pursuant to sections 205 or 206 of the Federal Power Act or otherwise. The terms of this Agreement shall be interpreted as being fixed, and subject only to the "public interest" standard of review, consistent with the interpretation by the Federal Energy Regulatory Commission of *United Gas Pipe Line Co. v. Mobile Gas Svcs.*, 350 U.S. 332 (1956), and *F.P.C. v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956), as of the date of execution of this Agreement.

## 21. Assignment

- a. Either Party may assign this Agreement with the prior written approval of the other Party and the other Party shall not unreasonably withhold that permission.
- b. Notwithstanding Section 20(a), Seller will have the right to assign all of its rights, interests and obligations under this Agreement with respect to the Plant to an owner trust or an equity investment vehicle or a special purpose entity that, in each case, is wholly-owned by Seller and owns the Plant, or as security to a lender for the purpose of providing financing or refinancing for all or a portion of the Plant (which may include refinancing in connection with an expansion of the Plant), in which case Seller shall be able to assign those rights, interests and obligations under this Agreement with respect to the portion of the Plant subject to such financing or refinancing (and in connection therewith, Purchaser shall execute and deliver or otherwise provide to the lenders a consent agreement and other customary documents and instruments in a form reasonably requested by the lenders and reasonably acceptable to Purchaser. Purchaser may withhold consent if a proposed assignment by Seller will result in any change to Purchaser's rights and obligations under this Agreement.

- c. No assignment of this Agreement or the rights and obligations of Seller under this Agreement by Seller will relieve Seller of liability for any breach by the assignee or for any other failure by assignee to perform its obligations hereunder.
- d. No assignment of this Agreement or the rights and obligations of Purchaser under this Agreement shall relieve the Purchaser of liability for all the obligations to Seller under this Agreement.

22. Title

At the time of delivery to Purchaser, Seller shall convey good and workable title to the energy and other attributes conveyed under this Agreement to Purchaser and shall protect, defend and indemnify Purchaser from and against any claim that the energy delivered to the Point of Interconnection (and associated attributes) is or was subject to any lien, encumbrance or other right of any third party.

23. Notice

Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

Address:	City of Columbia Water & Light Department P.O. Box 6015
City, State Zip:	Columbia, MO 65205
Attention:	Manager, Rates & Fiscal Planning
Telephone:	573-874-7325
Telefax:	573-443-6875

On behalf of Purchaser;

and to:

Ameresco Jefferson City LLC  
c/o Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: General Counsel

Telecopier: 508-661-2201  
Telephone: 508-661-2200

With a copy to:

Ameresco Jefferson City LLC  
c/o Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: Vice President, Renewable Energy

Telecopier: 508-661-2201  
Telephone: 508-661-2200

On behalf of Seller:

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice delivered in the manner set forth in this Section. Any such notice, demand, request, or communication shall be deemed received (i) if delivered by hand by a party or sent by facsimile and (ii) upon receipt by the receiving party if sent by courier or U.S. mail.

24. Captions

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

25. No Third Party Beneficiary

No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

26. No Dedication

No undertaking by one party to the other under any provision of the Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public or affect Seller as an independent entity and not a public utility.

27. Entire Agreement; Integration

This Agreement, together with all Appendices attached hereto, constitutes the entire agreement between the parties and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the parties, and neither party shall be

deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.

28. Applicable Law

The Agreement is made in the State of Missouri without regard for conflicts of law principals and shall be interpreted and governed by the laws of the State of Missouri and/or the laws of the United States, as applicable. Venue shall be in Boone County, Missouri or the United States Western District of Missouri.

29. Nature of Relationship

The duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Purchaser or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party. Seller and Purchaser shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

30. Severability

Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.

31. Counterparts

This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of, which shall be deemed an original.

32. Confidentiality

Purchaser acknowledges Sellers request to hold all reformation regarding this Agreement confidential. Purchaser shall disclose such information to third parties only to the extent required by law (including, without limitation, Missouri's Sunshine Law).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF COLUMBIA, MISSOURI

BY: \_\_\_\_\_  
H. William Watkins, City Manager

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

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred Boeckmann, City Counselor

AMERESCO JEFFERSON CITY LLC  
By Ameresco, Inc., its sole member

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

Name: Michael T. Bakas

Title: Vice President

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

**APPENDIX A**

**INTENTIONALLY DELETED**

**APPENDIX B**

**FORM OF ATTESTATION**

**Ameresco Jefferson City LLC  
Environmental Attribute Attestation and Bill of Sale**

Ameresco Jefferson City LLC ("Ameresco") hereby sells, transfers and delivers to the City of Columbia, Missouri ("Customer") certain environmental attributes and the right to report ownership of such environmental attributes associated with the generation of the indicated energy for delivery to the grid in accordance with the Power Purchase Agreement (the "Contract") dated \_\_\_\_\_, 2006 between Ameresco and Customer arising from the generation for delivery to the grid of the energy by the facility described below:

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_  
Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_  
(for facility that has added renewable capacity, show operational date and amount of new capacity)

<u>Dates</u>	<u>MWhrs generated</u>
_____ 200__	_____
_____ 200__	_____
_____ 200__	_____

in the amount of one environmental attribute or its equivalent for each megawatt hour generated; and Ameresco further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of such environmental attributes and associated reporting rights referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

[check one:]

- iv) Ameresco owns the Facility.
- iv) to the best of Ameresco's knowledge, each of such environmental attributes and associated reporting rights associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Ameresco to Customer all of Ameresco's right, title and interest in and to the subject environmental attributes and reporting rights associated with the generation of the energy for delivery to the grid.

Contact Person: \_\_\_\_\_ tel: 1-508-661-2200; fax: 1-508-661-2201

WITNESS MY HAND,

AMERESCO JEFFERSON CITY LLC  
By: Ameresco, Inc., its sole member

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

## APPENDIX C

### INSURANCE COVERAGES

At its own expense, Seller shall secure and maintain during the Term the following insurance with the coverage amounts indicated for occurrences during and arising out of Seller performance of this Agreement. Such insurance shall be placed with responsible and reputable insurance companies in compliance with Requirements of Law.

1. Workers' Compensation/Employer's Liability. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance which comply with Requirements of Law.
2. Automobile Liability. Seller shall maintain automobile Liability Insurance in compliance with Requirements of Law, including coverage for owned, non-owned and hired automobiles for both bodily injury (including death) and property damage, including automobile liability contractual endorsement, uninsured/underinsured motorist protection endorsements.
3. Third party Liability. Seller shall maintain third party liability insurance in compliance with Requirements of Law, on a project-specific basis covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation of maintenance of the Plant. Such policy shall be written with a limit of liability not less than \$3,000,000 and a deductible not to exceed \$10,000. Such liability may be in any combination of primary and excess/umbrella. Coverage shall include, but not be limited to, premises/operations, explosion, collapse, and underground hazards, broad form property damage and personal injury liability. Such coverage shall not contain exclusions for punitive or exemplary damages.

**APPENDIX D**

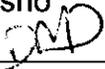
**PRICE AND ADJUSTMENTS**

<b><u>Year</u></b>	<b><u>Price</u></b> <b><u>(\$MWh)</u></b>
<b>1 – 20</b>	<b>52.50</b>

Source:

Water & Light  
Department

Dan Dasho



Fiscal Impact

YES

NO

To: City Council

From: City Manager and Staff



Date: August 3, 2006

Subject: Agreement with Ameresco Inc. for the purchase of electricity from a landfill gas plant

**EXECUTIVE SUMMARY:** The Water and Light Department has worked out an agreement with Ameresco Inc. to purchase electricity from a landfill gas plant to be located at the Jefferson City landfill starting no later than January 2008. The expected power output of the landfill gas plant is 3.17 Megawatts with a production of over 25,000 Megawatt Hours of electricity per year. It will provide the City with approximately 2% of the electric energy in 2008. The contract with Ameresco stipulates a \$52.50 fee per Megawatt Hour, which is fixed for the term of the 20 year contract.

**DISCUSSION:** In response to the renewable energy initiative passed in November, 2004 the Water and Light Department issued an RFP late last year requesting renewable energy for the City of Columbia. Ameresco, Inc. was selected from that solicitation as having the best proposal for final negotiations. The contract which emerged from those negotiations provides the City of Columbia with the output of a 3.17 Megawatt generator powered by landfill gas from the Jefferson City landfill. The contract involves purchase of electricity over a twenty year project life, at a fixed fee of \$52.50 per megawatt hour. Although the plant is yet to be built, Ameresco has satisfied the city that they both have contract rights for the gas from the landfill and the proven ability to implement their proposal into a successful project.

Landfill gas is produced when anerobic bacteria decompose the biomass constituents found in landfills. It is approved as an eligible resource for Columbia's renewable energy portfolio standard. Landfill gas production projects are highly desirable renewable resource because they provide a high degree of reliability and can satisfy capacity requirements. There are, however, a minimal number of landfills in Missouri that are large enough to support a biogas to electricity project as is being proposed.

Ameresco has agreed to build and operate the plant in Jefferson City. They will pay for any costs necessary to connect the plant to Ameren UE's electric distribution system in Jefferson City. Columbia is responsible to pay Ameresco for the electric output of the plant, and is responsible to pay all carriage charges that result once the electric output moves past the point of interconnection. Columbia has entered into discussions with Ameren

regarding the carriage fees, and have concluded that they will have a minor impact on the overall cost effectiveness of the project.

The output from the generator is expected to provide Columbia with 2% of its 2008 energy requirements. In 2008 the annual electric sales are expected to be approximately 1,217,640 MWH, thus requiring 24,353 MWH of renewable energy to meet the 2% obligation of the renewable energy ordinance.

**SUGGESTED COUNCIL ACTION:** That the Council pass an ordinance to allow the City Manager to enter into a contract with Ameresco agreeing to pay \$52.5 per Megawatt Hour as produced from their Jefferson City landfill operation for the twenty year term of the contract.

DMD/srb