

Source: Water & Light *Tab*

Agenda Item No: B53-14  
Supplemental  
Information

To: City Council  
From: City Manager and Staff *MM*

Council Meeting Date: Mar 17, 2014

Re: Contract for the Supply of Wind Energy with Farmers City Wind - Supplemental Memo

**EXECUTIVE SUMMARY:**

Seller Party in this agreement has requested for agreement to be withdrawn.

**DISCUSSION:**

After negotiation, a Contract for the Supply of Wind Energy with Farmers City was finalized. In preparation for the request for Council Approval of this item, the Seller Party to this agreement experienced what they term as an "unexpected challenge". As a result, a corporate level approval was not obtained. The agreement needs to be withdrawn from Council consideration at this time.

**FISCAL IMPACT:**

None

**VISION IMPACT:**

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

**SUGGESTED COUNCIL ACTIONS:**

Motion and approval to withdraw the Contract for the Supply of Wind Energy with Farmers City Wind.

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

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

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

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

Council Bill No. B 53-14

**AN ORDINANCE**

authorizing a power purchase agreement with Farmers City Wind, LLC for the purchase of wind energy; 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 a power purchase agreement with Farmers City Wind, LLC for the purchase of wind energy. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

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

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

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

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

APPROVED AS TO FORM:

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

POWER PURCHASE AGREEMENT

between

FARMERS CITY WIND, LLC,

as Seller,

and

CITY OF COLUMBIA, MISSOURI,

as Buyer

Dated as of \_\_\_\_\_, 2014

*Farmers City Wind Project*

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#### Annexes

Annex A Notice

Annex B Form of Environmental Attestation and Bill of Sale

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT ("**Agreement**") is entered into effective as of \_\_\_\_\_, 2014 (the "**Effective Date**"), between **Farmers City Wind, LLC**, a Delaware limited liability company ("**Seller**"), and **City of Columbia**, a Missouri municipality ("**Buyer**"). Seller and Buyer are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

WHEREAS, Seller owns and operates a wind turbine electrical generation facility on a site located in Atchison County, Missouri, with a Project Installed Capacity of approximately 146 MW, and which is further defined below as the "**Project**";

WHEREAS, Buyer is subject to the Renewable Energy Standard of the City of Columbia, as defined in Chapter 27, Section 27-106 of the Columbia Code of Ordinances that requires the City of Columbia to provide a minimum percentage of electricity from certain renewable energy generating resources;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, thirteen and seven-tenths percent (hereinafter "Buyer's MW Share") of the wind energy produced by the Project and of the Other Project Attributes related to the generation of such Metered Output.

### AGREEMENT

NOW, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the sufficiency and adequacy of which are acknowledged, the Parties agree to the following:

### ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions. As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled



by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

“**Ancillary Services**” means those services other than Metered Output, Environmental Attributes and Capacity Attributes that are defined as Ancillary Services in the Open Access Transmission Tariff of MISO as of the Effective Date.

“**Applicable Law**” means all national, state, provincial, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives and requirements of all regulatory and other Governmental Authorities.

“**Average Deemed Generated Energy**” means the Monthly average of the Deemed Generated Energy for each Month during the previous five (5) Contract Years or of all previous Contract Years, to the extent that five (5) Contract Years have not yet elapsed.

“**Business Day**” means any Day except a Saturday, a Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. CPT and close at 5:00 p.m. CPT. Notwithstanding the foregoing, for scheduling purposes only, the term “Business Day” shall have the meaning given to that term from time to time by NERC on its website (<http://www.nerc.com>).

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

“**Buyer Approval**” shall mean completion of the process set forth in Section 7.1(b)(ii).

“**Buyer’s Cost to Cover**” means the positive difference, if any, between (a) reasonable costs incurred by Buyer to purchase electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services necessary to replace such Metered Output or Other Project Attributes (including any additional reasonable transaction costs, including those related to transmission and scheduling, directly associated with such purchase), stated in \$/MWh as determined by reference to the LMP Price; minus (b) the Contract Price, stated in \$/MWh, multiplied by the quantity in MWh of Metered Output and Other Project Attributes replaced for the applicable period; *provided* that if the difference between clause (a) minus clause (b) is zero or negative, then Buyer’s Cost to Cover shall be Zero Dollars (\$0).

“**Buyer’s CP Node**” the virtual point at which MISO assigns the locational price applicable to the Energy delivered from the Project allocable to Buyer’s market participant account, to be designated as of the date of approval and implementation of the Commercial Model Change.

**“Buyer’s Option”** shall have the meaning in Section 3.1(b).

**“Buyer Downgrade Event”** means (i) the underlying rating of the outstanding revenue bonds of Buyer’s electric utility division is rated by either of the Rating Agencies as less than BBB- or Baa3, (ii) if there are outstanding revenue bonds of Buyer’s electric utility division, but the underlying rating of such bonds does not exist, or (iii) there are no outstanding revenue bonds of Buyer’s electric utility division.

**“Buyer Economic Curtailment”** shall mean, during MISO Arrangement Phase TWO, (i) any economic curtailment of the Project by Buyer pursuant to the procedures in Section 4.6; or (ii) a curtailment occurring as a result of a MISO DIR dispatch down implemented in accordance with MISO’s tariff procedures. It shall not include a Reliability Curtailment or a System Curtailment. It shall also not include any curtailment due to scheduled or unscheduled maintenance or planned or unplanned outages.

**“Buyer Economic Curtailment Period”** shall mean, with respect to any given Buyer Economic Curtailment, the five minute period commencing with start of the Buyer Economic Curtailment in which such Buyer Economic Curtailment starts and ending with the end of the five minute period in which such Buyer Economic Curtailment ends.

**“Buyer’s MW Share”** means the thirteen and seven-tenths percent (13.7%) of the Energy produced by the Project and associated Other Project Attributes.

**“Calculation Period”** shall mean each hour during the Term.

**“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency, or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.

**“Capacity Attributes”** means MISO capacity attributes, or any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under MISO market rules.

**“Claiming Party”** has the meaning set forth in Section 10.3.

**“Commercial Model Change”** shall mean the event, when finalized, upon which MISO Arrangement Phase ONE ends and MISO Arrangement Phase TWO begins, and is a request by Buyer, with Seller’s cooperation and support, to satisfy the rules of MISO, to change the commercial pricing model utilized by MISO for determining locational marginal prices in MISO, in order to designate Buyer’s CP Node for assigning a locational marginal price to Energy delivered to the Metered Output Delivery Point from the Buyer’s MW Share of the Project allocable to Buyer’s Market Participant account, separate and distinct from Seller’s CP Node.

**“Confidential Information”** has the meaning set forth in Section 16.1.

***“Contract Price”*** has the meaning in Section 3.5.

***“Contract Year”*** means each calendar year during the Term, commencing on the first day of the Delivery Period; *provided* that if the first and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the first day of the Delivery Period to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last Day of the Term.

***“CPT”*** means Central Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Central Time Zone.

***“Credit Support”*** means collateral in the form of either: cash, letter(s) of credit complying with the requirements of Section 7.1, or other security acceptable to Seller in an amount acceptable to Seller.

***“Day”*** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours CPT on any calendar day and ending at 24:00 hours CPT on the same calendar day.

***“Deemed Generated Energy”*** means (i) if the Project is generating, the actual hourly output of Energy from the Project as measured by the Meters, or (ii) if the Project generation is reduced or the Project is not generating solely due to a Buyer Economic Curtailment during a Buyer Economic Curtailment Period, the quantity of electrical energy, expressed in MWh, that Seller reasonably calculates would have been lawfully produced by the Project and made available at the Metered Output Delivery Point during a relevant measurement period, multiplied by Buyer’s MW Share, and shall be determined by taking into account (1) during such period, the actual five- (5-) minute (or more frequent) wind speeds (interpolated over time intervals, if necessary), wind direction, ambient temperature, barometric pressure and air density measured by the permanent meteorological tower immediately before the commencement of the period in question, or, if such monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using Good Utility Practice; and (2) factoring in the number of turbines in service and capable of generation and available for dispatch on the particular date and time; and (3) excluding the energy used by Seller (sometimes referred to as house power) to meet any obligation imposed on or required of Seller to operate the Project or generate Energy for sale to Buyer under the terms of this Agreement; and (4) the power curve provided by the Turbine manufacturer (adjusted by historical data for the Metered Output of the Project compiled by Seller), as applied to the wind data referred to in clause (1), as adjusted for line losses to the Metered Output Delivery Point using historical data compiled by Seller. Deemed Generated Energy shall not include any deemed energy calculated for periods of Reliability Curtailments or System Curtailments. Seller also shall not include any deemed energy for planned or unplanned outages.

***“Defaulting Party”*** means the Party with respect to which an Event of Default under Article VIII has occurred.

***“Delivery Period”*** means the period that commences at 0000 hours on April 1, 2014 and continues through the remainder of the Term.

***“Disclosing Party”*** has the meaning set forth in Section 16.1.

***“Early Termination Date”*** has the meaning set forth in Section 8.4.

***“Effective Date”*** has the meaning set forth in the Preamble.

***“Energy”*** shall mean electric energy lawfully produced or generated by the Project and delivered to the Metered Output Delivery Point, which shall exclude all electric energy consumed by the Project, and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

***“Environmental Attributes”*** means any and all current and future environmental credits or benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy resource credits, offsets and allowances, attributable to the Project commencing on the Delivery Date and continuing during the Term, or otherwise attributable to the generation, purchase, sale or use of Metered Output from or by the Project during the Term, howsoever entitled or named, resulting from the production of renewable energy or avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including without limitation any of the same arising out of federal or state legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the CAMD, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Renewable Energy Certificate Reporting Rights to such Environmental Attributes. One (1) MWh of electrical energy from the Project corresponds to one (1) MWh of Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include any state or federal production, investment or other form of tax credit; any state, federal or private cash payment or grant relating in any way to the Project; or Metered Output.

***“Environmental Attestation and Bill of Sale”*** means an attestation and bill of sale with respect to Environmental Attributes in the form attached hereto as Annex B.

***“Event of Default”*** means any event of default set forth in Section 8.1.

***“Federal Power Act”*** means the Federal Power Act, as amended, 16 U.S.C. § 791a, *et seq.*

***“FERC”*** means the Federal Energy Regulatory Commission or any successor government agency.

***“Force Majeure Event”*** has the meaning set forth in Section 10.1.

***“Forced Facility Outage”*** means an unexpected failure of one or more components of the Project or any outage on the Transmission System that prevents Seller from making power available at the Metered Output Delivery Point and that is not the result of a Force Majeure Event. For purposes of this Agreement, a Forced Facility Outage shall include a Generator

Forced Outage, a Planned Transmission Outage, or an unplanned Transmission Outage, each as defined in the Midwest ISO Tariff.

***“Future Environmental Attributes”*** has the meaning set forth in Section 3.8.

***“Good Utility Practice”*** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry at a particular time, which a prudent operator in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time the decision was made, would have been expected to implement to accomplish the desired result in a manner consistent with law, regulation, codes, standards, reliability, safety, environmental protection, and economy. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry and which are in compliance with applicable laws and regulations. With respect to the Project, Good Utility Industry Practice(s) includes, but are not limited to, taking reasonable steps to ensure that:

- (a) Equipment, materials, resources and supplies are available to meet the Project’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Project;
- (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
- (f) The equipment will function properly under both normal and reasonably expected emergency conditions at the Project.

***“Governmental Authority”*** means any national, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including any Transmission Provider; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

**“Governmental Charges”** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority (other than charges imposed by MISO or any other Transmission Provider), including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Metered Output or Other Project Attributes contemplated by this Agreement. Governmental Charges shall not include fines or civil penalties assessed by any Governmental Authority for violations of any laws, rules, regulations, or ordinances.

**“Indemnified Party”** has the meaning set forth in Section 12.1(a).

**“Indemnifying Party”** has the meaning set forth in Section 12.1(a).

**“Institutional Investor”** means, collectively, any Person or Persons who acquire a direct or indirect interest in Seller as a part of a transaction to ensure that the Project is owned at least in part by a Person able to use the Tax depreciation benefits associated with holding an ownership interest in the Project (including any subsequent transferees of any such Person or Persons).

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Project is interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities have been constructed, and are and will be operated and maintained during the Term.

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System in order to meet the terms and conditions of this Agreement.

**“Interest Rate”** means a per annum rate of interest equal to the lesser of (a) the prime lending rate published from time to time by the Federal Reserve Bank H.15 (519) Statistical Release website on such Day (or if not published on such Day, on the most recently preceding Day published) plus two hundred (200) basis points or (b) the maximum rate permitted by Applicable Law.

**“LMP Price”** means the real time locational marginal price, as calculated and reported by MISO on its website, at the Metered Output Delivery Point for the period in question.

**“Losses”** has the meaning set forth in Section 12.1(a).

**“Market Value”** has the meaning set forth in Section 8.5(b).

**“Market Participant”** has the meaning set forth in the Tariff.

**“Meter Data Management Agent”** has the meaning set forth in the Tariff.

**“Metered Output”** means a portion of the instantaneous Energy output, intermittent and variable within the hour, made available from the Project at the Metered Output Delivery Point, as measured by the Meters installed at the Metered Output Delivery Point, which such portion

shall be calculated as the total electrical Energy output of the Project, as measured by the Meters installed at the Metered Output Delivery Point, multiplied by Buyer's MW Share.

***"Metered Output Delivery Point"*** means the Transmission System's interconnection point at the high side of the transformer located at the Project substation. In MISO Arrangement Phase TWO, the Metered Output Delivery Point shall remain the same, but the LMP Price of the Buyer's CP Node shall be tethered by common reference to the Metered Output Delivery Point.

***"Meter(s)"*** has the meaning set forth in Section 5.1.

***"MISO"*** means the Midcontinent Independent Transmission System Operator, or any successor organization.

***"MISO Arrangement Phase ONE"*** has the meaning set forth in Section 4.1.

***"MISO Arrangement Phase TWO"*** has the meaning set forth in Section 4.1.

***"MISO Financial Schedule"*** means a schedule utilizing Financial Scheduling Software as such term is defined in the MISO Tariff.

***"Month"*** means a calendar month commencing at 00:00 CPT on the first Day of such month and ending at 24:00 CPT on the last Day of such month.

***"Monthly Invoice"*** has the meaning set forth in Section 6.1.

***"MW"*** means megawatt.

***"MWh"*** means megawatt hour.

***"NERC"*** means the North American Electric Reliability Corporation, and any successor entity.

***"Network Upgrades"*** shall have the meaning set forth in the Tariff.

***"Non-Defaulting Party"*** means, with respect to any Event of Default, the Party that is not the Defaulting Party.

***"Other Project Attributes"*** means, collectively, Environmental Attributes, Capacity Attributes and Ancillary Services.

***"Party"*** or ***"Parties"*** has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

***"Person"*** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

***“Planned Outage”*** means the removal of equipment from service availability for inspection, maintenance and/or general overhaul of one or more equipment groups. To qualify as a Planned Outage, such work must actually be conducted during the designated outage period.

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

***“Project”*** means the Farmers City wind turbine electrical generation facility, located in Atchison County, Missouri, and comprised of seventy-three Gamesa G87 2.0 MW Turbines, and the related substation and transmission line that will produce the Metered Output and Other Project Attributes made available to Buyer under this Agreement.

***“Project Installed Capacity”*** means 146 MW.

***“Project Lender”*** means any Person providing direct or indirect debt financing, refinancing or extending credit (including any financing lease) to Seller or Seller’s Affiliates.

***“Project Maintenance”*** means Seller’s planned partial or complete reduction of the Project’s generating capability for routine maintenance purposes.

***“Project Transmission Credits”*** shall have the meaning set forth in Section 4.13.

***“Rating Agency”*** shall mean either Moody’s or Standard & Poor’s.

***“Receiving Party”*** has the meaning set forth in Section 16.1.

***“Regulatory Event”*** has the meaning set forth in Section 18.9.

***“Reliability Curtailment”*** has the meaning set forth in Section 4.2.

***“Reliability Curtailment Notification”*** has the meaning set forth in Section 4.2.

***“Renewable Energy Certificate”*** or ***“REC”*** means the certificate that evidences the ownership of Environmental Attributes.

***“Renewable Energy Certificate Reporting Rights”*** means the right of a purchaser of renewable energy to report ownership of accumulated Renewable Energy Certificates in compliance with Applicable Law and include without limitation rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program (including pursuant to any tracking agency rules, if any).

***“Replacement Power”*** means (a) electrical Energy and/or (b) Environmental Attributes, Capacity Attributes or Ancillary Services.

***“Representative”*** has the meaning set forth in Section 14.1(a).

***“RTU”*** means the remote terminal unit interfacing with the SCADA for the Project.



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

**“Seller’s Cost to Cover”** means the positive difference, if any, between (a) the Contract Price effective for the applicable period, stated in \$/MWh, multiplied by the Deemed Generated Energy and (b) the net proceeds, stated in \$/MWh, realized by Seller from (i) the sale, if any, as valued by a third Person of electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services not taken or purchased by Buyer as required under this Agreement, less (ii) any additional reasonable transaction costs, including those related to transmission and scheduling, directly associated with such sale, if any; *provided* that if the difference between clause (a) minus clause (b) is zero or negative, then Seller’s Cost to Cover shall be Zero Dollars (\$0).

**“Seller’s CP Node”** shall mean the virtual point at which MISO assigns the locational price applicable to the Metered Output delivered from the Project allocable to the Seller’s Market Participant account and designated on the Effective Date as “MEC.FARMER”.

**“System Curtailment”** means the period of time during which there is any of the following:

(a) the Transmission Provider orders, directs, alerts, or provides notice to a Party to curtail Metered Output deliveries for the following reasons: (i) any System Emergency constituting a Transmission Provider “Emergency” Condition (as defined in the Interconnection Agreement), or (ii) any warning of any such anticipated System Emergency; or

(b) scheduled or unscheduled maintenance on the Transmission Provider’s Transmission System that prevents (i) Buyer from receiving or (ii) Seller from delivering Metered Output at the Metered Output Delivery Point.

**“System Curtailment Period”** shall mean, with respect to a given System Curtailment, the period commencing with the start of the Calculation Period in which such System Curtailment starts and ending with the end of the Calculation Period in which such System Curtailment ends.

**“System Emergency”** shall mean a condition on the Transmission Provider’s Transmission System, or on transmission facilities used to deliver the Metered Output from the Project to the Metered Output Delivery Point, which condition is likely to result in imminent significant disruption of service to the Transmission Provider’s customers or is imminently likely to endanger life or property, or is otherwise declared an emergency by the Transmission Provider.

**“Tariff”** means the MISO Tariff as amended from time to time.

**“Taxes”** means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including but not limited to ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer,

turnover, use or value-added taxes, payroll, unemployment, and any and all related items of withholding, deficiency, penalty, addition to tax, interest or assessment.

**“Term”** has the meaning set forth in Section 2.1 of this Agreement.

**“Termination Payment”** has the meaning set forth in Section 8.5(a).

**“Transmission Capacity”** means the maximum power that may be transferred across a transmission corridor while maintaining reliability in the region.

**“Transmission Event”** has the meaning set forth in Section 4.8(b).

**“Transmission Provider”** means MISO or any successor organization or other entity that operates the Transmission System, or to the extent applicable, the owner of the Transmission System.

**“Transmission Services”** has the meaning set forth in Section 4.8(b).

**“Transmission System”** means the transmission facilities operated by the Transmission Provider, now or hereafter in existence, which provide energy transmission service downstream from the Metered Output Delivery Point.

**“Turbine”** means a single wind turbine generating system included as part of the Project (including its tower, pad transformer, and controller system).

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa, and the masculine, feminine and neuter genders include all genders;

(c) a reference to a Section, paragraph, clause, Party, Attachment or Annex is a reference to that Section, paragraph, clause of, or that Party, Attachment or Annex to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any Attachment or Annex except as provided in subsection (h);

(d) a reference to a document or agreement, including this Agreement, shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(e) a reference to a Person includes that Person's successors and permitted assigns;

(f) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(g) references to any statute, code or statutory provision are to be construed as a reference to the same as it existed when this Agreement is executed, and includes references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(h) in the event of a conflict, a mathematical formula describing a concept or defining a term shall prevail over words describing a concept or defining a term;

(i) references to any amount of money shall mean a reference to the amount in U.S. Dollars;

(j) the expression "and/or" when used as a conjunction shall connote "any or all of";

(k) words, phrases or expressions not otherwise defined that (i) have a generally accepted meaning in Good Utility Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Good Utility Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## **ARTICLE II**

### **TERM AND TERMINATION**

2.1 Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement and subject to the provisions of Section 8.11, shall remain in full force and effect until midnight CPT on the twentieth (20th) anniversary of the start of the Delivery Period (the "***Term***").

2.2 Termination by Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement by both Parties.

2.3 Termination by Default. Upon the occurrence of an event of Default pursuant to Section 8.1, the Party not in default may terminate this Agreement in accordance with Section 8.4.

2.4 Termination by Convenience of Seller due to failure of Commercial Model Change. If the Commercial Model Change is not implemented by June 1, 2014 or by such other date as agreed to by the Parties in writing, Seller may terminate the Agreement in accordance with Section 4.1(b).

### ARTICLE III PURCHASE AND SALE: PRODUCT COMPONENTS

#### 3.1 Metered Output.

(a) In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Period, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to **Buyer's MW Share** that Seller makes available at the Metered Output Delivery Point in accordance with Article IV.

(b) Buyer's Option to Increase Buyer's MW Share. Buyer, at Buyer's sole option, may increase Buyer's MW Share up to twenty-seven and four tenths percent (27.4%) of the Project, on the same terms and conditions set forth herein (the "**Buyer's Option**"). To execute Buyer's Option, Buyer shall provide written notice to Seller of Buyer's exercise of Buyer's Option to purchase a greater share of the Project no later than June 1, 2014, or until such date as the Parties mutually agree in writing. The written notice shall specify the effective date of Buyer's Option and shall designate the new Buyer's MW Share. The Parties shall execute a written amendment to the Agreement to increase the Buyer's MW Share. Such increase in Buyer's MW Share will not become effective until the increase in megawatts is implemented at the Buyer's CP Node.

3.2 Environmental Attributes. In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Period, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to all **Environmental Attributes associated with Buyer's MW Share**, if any, attributable to the Project Metered Output of Energy.

3.3 Capacity Attributes. In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Period, Seller shall sell to Buyer, and Buyer shall purchase from Seller, any right, title and interest in and to all **Capacity Attributes associated with Buyer's MW Share**, if any, available with respect to the Project.

3.4 Ancillary Services. In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Period, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to **Ancillary Services associated with Buyer's MW Share**, if any, available with respect to the Project.

3.5 Contract Price. Buyer shall pay Seller for the Metered Output made available at the Metered Output Delivery Point; the Environmental Attributes, if any, attributable to Metered Output made available at the Metered Output Delivery Point; the Capacity Attributes, if any,

available with respect to the Buyer's MW Share; and the Ancillary Services, if any, available with respect to Buyer's MW Share, for the contract price of \$29.00/MWh (the "**Contract Price**").

3.6 Retention of Certain Rights and Privileges. Notwithstanding any other provision of this Agreement, Seller reserves and retains all rights and privileges to Metered Output and Other Project Attributes to the extent necessary for Seller to meet any obligations imposed on or required of Seller to operate the Project or generate electricity for sale to Buyer under the terms of this Agreement.

3.7 Seller's Obligations. Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to make Metered Output or Other Project Attributes available to Buyer for any period (a) in which Buyer fails to take Metered Output or Other Project Attributes from Seller, (b) in which Seller's obligation to make Metered Output available is excused pursuant to Section 4.5, (c) in which Seller's obligation to make Metered Output available is suspended pursuant to Section 8.2, or (d) in which either Party's obligations are suspended due to a Force Majeure Event.

3.8 Future Environmental Attributes.

(a) The Parties acknowledge and agree that additional Environmental Attributes may be recognized by a Governmental Authority after the Effective Date ("**Future Environmental Attributes**"). Unless Buyer rejects the Future Environmental Attributes, Buyer shall bear any additional costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes in accordance with the following: (i) if such activities are undertaken solely to make sales of such credits and allowances from the Project to Buyer, then Buyer shall bear one hundred percent (100%) of the costs; and (ii) if such activities are undertaken to make sales of such credits and allowances from the Project to Buyer, Seller, and other Persons, then Buyer shall bear such costs on a pro rata basis. Seller shall deliver a good faith estimate of such additional costs to Buyer before incurring such costs.

(b) If Buyer accepts the Future Environmental Attributes pursuant to Section 3.8(a) above, Seller will propose in a commercially reasonable manner to Buyer additional terms and conditions, agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Attributes prior to any such sale or purchase, including terms, conditions and agreement with respect to (i) appropriate sale, purchase, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided* that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement. Buyer will have no less than sixty (60) days to accept such terms and conditions, or to provide written notice to Seller regarding which terms and conditions Buyer does not accept. Any amendment to this Agreement shall be in writing.

## ARTICLE IV MISO ARRANGEMENTS

### 4.1 MISO Arrangements Phase One and Phase Two.

(a) Seller CP Node (“MISO Arrangement Phase ONE”). As of the Effective Date hereof (and up until the Commercial Model Change is approved by MISO and is implemented by the Parties) Seller is registered with MISO as the party MISO looks to for all things related to having a CP Node at the Project (“***Seller’s CP Node***”). Seller’s CP Node is used in connection to the delivery of all of the output of the Project into MISO. Under this arrangement with MISO, Seller is the Market Participant and the Meter Data Management Agent for the Project. During MISO Arrangement Phase ONE, Seller shall serve as the Market Participant for the Project. As of the Effective Date hereof, Buyer’s Metered Output will be delivered to Buyer under this arrangement. This arrangement will continue until the Commercial Model Change is implemented.

(i) Delivery and Payment of Metered Output during MISO Arrangement Phase ONE (prior to the Commercial Model Change). Prior to the establishment of Buyer’s CP Node in MISO for Buyer’s MW Share of the output of the Project, Seller shall submit a MISO Financial Schedule for settlement in the MISO real-time energy market, for Buyer’s MW Share of the Project. Buyer shall confirm each MISO Financial Schedule no later than the deadline established by MISO for such confirmation; provided that if Buyer disputes any component of any such MISO Financial Schedule submitted by Seller, Buyer shall promptly notify Seller, and Buyer and Seller shall cooperate to resolve any discrepancies in a timely manner. Under this arrangement, Seller will dispatch Energy from the Project into the MISO system, and Buyer will receive from MISO (i) physical delivery of the Metered Output and (ii) a payment for the Energy delivered by Seller to MISO at MISO’s hourly LMP Price at Seller’s CP Node. Seller shall send Buyer a monthly invoice for delivery of Buyer’s Metered Output in the amount of the Contract Price times the Metered Output of deliveries for the month.

(b) Buyer to obtain a Buyer’s CP Node for Buyer’s MW Share of Project. No later than March 15, 2014, the Parties shall begin the process of causing MISO to identify a separate CP Node with MISO for Buyer’s MW Share of the Project (“***Buyer’s CP Node***”). Unless the Parties agree in writing otherwise or unless the delay in the Commercial Model Change is due to an act or omission by MISO, then both Parties agree to use commercially reasonable efforts to ensure that the Commercial Model Change shall be implemented no later than June 1, 2014. Seller shall cooperate and support Buyer as practicable in this effort. Except with respect for the role of Meter Data Management Agent, which shall remain with Seller, upon implementation of Commercial Model Change, Buyer or Buyer’s designee will be the Market Participant for Buyer’s MW Share and shall deal directly with MISO on all matters related to that role under the MISO Tariff. The result of this will be that the Project has two CP Nodes, a Seller’s CP Node for Seller’s portion of the Project and a Buyer’s CP Node for Buyer’s portion of the Project. Each Party will be the Market Participant for its respective CP Node. Seller will be the Meter Data Management Agent for both CP Nodes. If after commercially reasonable efforts by both Parties, the Commercial Model Change is not implemented by June 1, 2014 or by such other date as agreed to by the Parties in writing, the Parties shall continue with MISO

Arrangement Phase I, unless Seller opts to terminate the Agreement pursuant to this Section. If the Commercial Model Change is not implemented by June 1, 2014 or by such other date as agreed to by the Parties in writing, Seller may terminate the Agreement during MISO Arrangement Phase ONE. Such termination shall be treated as a termination by convenience of the Seller. Notwithstanding any other provision of the Agreement to the contrary, Buyer shall have no liability for damages or for a Termination Payment if Seller opts to terminate the Agreement for convenience pursuant to this Section.

(c) Buyer's CP Node and Scheduling/Settlement terms for ("MISO Arrangement Phase TWO"). Upon the implementation of the Buyer's CP Node for the Buyer MW Share of the Project (the Commercial Model Change), Buyer or Buyer's designee shall be Market Participant for Buyer's MW Share under Buyer's CP Node. Buyer shall be responsible for all Market Participant charges, costs, expenses and settlements associated with Buyer's Metered Output or the Buyer's CP Node. Buyer is also responsible for all scheduling and bidding of energy at the Buyer's CP Node. Seller shall send Buyer a monthly invoice for delivery of Buyer's Metered Output in the amount of the Contract Price times the Metered Output of deliveries for the month.

(i) Forecasting Services. Seller shall provide Buyer and Buyer's designee with internet access to the same third party wind generation forecasting site for the Project that Seller uses. On the forecasting service website, Buyer and Buyer's designee shall have access to day-ahead as well as hour-ahead forecasts. Seller shall have no liability for the accuracy of such forecasts.

#### 4.2 Dispatchable Intermittent Resource ("DIR") Arrangements.

(a) During MISO Arrangement Phase ONE. During MISO Arrangement Phase ONE, as the Market Participant, Seller shall be responsible for dispatch offers pursuant to Section 4.1(a)(i).

(b) DIR Arrangements During MISO Arrangement Phase TWO. During MISO Arrangement Phase TWO, Buyer will have its own Buyer's CP Node and Buyer or Buyer's designee will be responsible for all dispatch offer decisions for the dispatch of Buyer's Metered Output. If a Buyer Economic Curtailment occurs, then Buyer will be obligated to pay Seller the Contract Price for the Deemed Generated Energy that was not produced, that Seller could have lawfully produced if there was no Buyer Economic Curtailment Period.

(c) Reliability Curtailment, System Curtailment, or Any Curtailments due to Forced Facility Outage or Planned Outages. Any negative pricing dispatch effect on delivery of energy from the Project caused by the negative price signals of MISO shall not be considered to be a Reliability Curtailment. "Reliability Curtailment" means a curtailment that Seller or Buyer is caused to make to the Project's output because of a direct reliability phone call or other notification from MISO requiring the curtailment of deliveries from the Project ("**Reliability Curtailment Notification**"). Buyer shall have no liability to Seller for curtailment consequences of a Reliability Curtailment Notification. Likewise, Buyer shall have no liability to Seller for

curtailment consequences due to a System Curtailment, or Forced Facility Outage, or Planned Outages.

#### 4.3 Title and Risk of Loss.

(a) Metered Output and Other Project Attributes. Title to and risk of loss related to the Metered Output and Other Project Attributes shall pass and transfer from Seller to Buyer at the Metered Output Delivery Point.

(b) Liens and Encumbrances. Seller warrants that it will deliver to Buyer the Metered Output and Other Project Attributes free and clear of all liens, security interests, claims and encumbrances or any other interest by any Person arising before the Metered Output Delivery Point.

#### 4.4 Delivery.

(a) Delivery of Environmental Attributes Through Attestation. Environmental Attributes shall be delivered by Seller to Buyer in an Environmental Attribute Attestation and Bill of Sale form, attached hereto as Annex B or other legal form to be agreed to between the Parties. If and to the extent that a correction is made for metering error in accordance with Article V, Seller shall notify Buyer directly and shall undertake such other commercially reasonable measures as are necessary to reconcile the number of RECs awarded to Buyer with the corrected Metered Output.

(b) Delivery of Capacity Attributes. At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer. Buyer shall bear the costs associated with preparing and executing any such documents and instruments. Capacity Attributes shall be deemed made available to Buyer for invoicing purposes in the Month in which such Capacity Attributes are transferred pursuant to this Section 4.4(b).

(c) Delivery of Ancillary Services. At Buyer's request, the Parties shall execute such documents and instruments reasonably required to effect recognition and transfer of the Ancillary Services, if any, to Buyer. Buyer shall bear the costs associated with preparing and executing any such documents and instruments. Ancillary Services shall be deemed made available to Buyer for invoicing purposes in the Month in which such Ancillary Services are transferred pursuant to this Section 4.4(c).

4.5 Seller Reductions in Delivery. Seller shall operate and maintain the Project in accordance with Good Utility Practice and in accordance with Applicable Law; *provided* that Seller's obligation to make available the Metered Output or Other Project Attributes to Buyer pursuant to this Agreement is on an as-generated, instantaneous basis and is contingent on, among other things, the availability of each Turbine and the presence of wind to generate energy therefrom, and Seller's failure to make the Metered Output or Other Project Attributes available to Buyer due solely to the as-generated, instantaneous behavior of Energy delivered hereunder



(other than amounts sold by Seller to a third party in violation of this Agreement) shall not give Buyer the right to any damages.

(a) Notwithstanding any other provision of this Agreement to the contrary, Seller, exercising Good Utility Practices, may reduce deliveries of Metered Output and Other Project Attributes if and for so long as Seller reasonably believes that reduction is necessary:

(i) for a Planned Outage.

(ii) to construct, install, maintain, repair, replace, remove or inspect any of its equipment or facilities that is not for a Planned Outage; or

(iii) in connection with a condition likely to result in significant damage to Seller's equipment or if Seller otherwise deems such reduction necessary to protect life or property that is not for a Planned Outage.

Seller shall provide Buyer with notice, the extent thereof, and expected duration, if known, of any and all planned outages and unplanned outages.

(b) Seller shall reduce deliveries of Metered Output from the Project if instructed or otherwise required to do so by (i) Transmission Provider during a System Curtailment Period, or if otherwise required to do so by Transmission Provider, in either case, subject to the terms and conditions of that certain Interconnection Agreement, dated as of May 6, 2008, among Seller, Farmers City Wind, LLC or (ii) by Buyer pursuant to Section 4.5(d) or (e).

(c) Seller may reduce deliveries of Metered Output in the event that SELLER is unable to deliver such Metered Output due to a Force Majeure event but only for so long and only to the extent necessitated by such Force Majeure event.

(d) Seller shall reduce deliveries of Metered Output from the Project in the event that Buyer, the Transmission Owner, or the Transmission System Operator instructs or otherwise requires that Seller reduce deliveries of Metered Output.

(e) In the event Buyer exercises any Buyer Economic Curtailment in MISO Arrangement Phase TWO, Seller shall use commercially reasonable efforts to mitigate any charges, fees and penalties arising from such Buyer Economic Curtailment, including but not limited to any imbalance charges assessed by the Transmission Provider. Notwithstanding such efforts, Buyer shall be responsible for any such charges, fees and penalties and shall hold Seller harmless and indemnify Seller, to the extent allowed by law, for any such charges, fees and penalties paid by Seller with respect thereto.

(f) Forced Facility Outage. Seller shall have the right to reduce deliveries of Metered Output and Other Project Attributes during any Forced Facility Outage. Seller shall provide Buyer with notice and expected duration (if known) of any Forced Facility Outage.

(g) Seller shall use Good Utility Practice to mitigate any charges, fees and penalties arising from such Forced Facility Outage or Unplanned Outage, including but not limited to any imbalance charges assessed by the Transmission Provider.

#### 4.6 Buyer Economic Curtailment in MISO Arrangement Phase TWO.

(a) Buyer shall have the option, in its sole discretion, to curtail deliveries of Metered Output in any amount up to the Buyer's MW Share and for any period of not less than five (5) minutes. If a MISO DIR dispatch down occurs whereby MISO uses Buyer's real-time offer to dispatch down Buyer's MW Share during MISO Arrangement Phase TWO, then Buyer will be obligated to pay Seller the Contract Price for the Deemed Generated Energy that was not produced. Such MISO DIR dispatch down implemented in accordance with MISO's Tariff shall be deemed to be a Buyer Economic Curtailment and the amount and duration of the curtailment shall be in accordance with MISO's procedures.

(b) In the event that Buyer or Buyer's designee in its role as Market Participant, is subject to any costs, fees, or penalties due to Seller's failure to follow instructions from the Transmission Provider, Buyer shall not be responsible for and shall not pay the Contract Price for either Deemed Generated Energy or Metered Output. To the extent allowed by law, Seller shall indemnify Buyer for any such costs, fees or penalties that result from Seller's failure to follow the instructions of the Transmission Provider.

#### 4.7 Delivery Reductions Notification Requirements.

(a) Using Good Utility Practices, the Parties shall provide timely notice to each other of information that may impact the Project and the Metered Output and shall notify each other of any curtailment of Metered Output in a timely manner. The Parties shall also provide access to information reasonably necessary to perform the terms of this Agreement, including information reasonably necessary to verify Seller's determination of Deemed Generated Energy for any full or partial Calculation Period.

(b) To the extent Seller has knowledge of a Seller reduction of Metered Output pursuant Section 4.5, Seller, using Good Utility Practices and in accordance with the requirements of MISO, shall provide notice of such reduction to Buyer as soon as reasonably practicable and with sufficient time to allow Buyer to comply with the requirements of MISO and Good Utility Practices.

(c) Seller is responsible for securing Transmission Provider approvals for Project outages, including securing changes in its outage schedules when Transmission Provider disapproves Seller's schedules or cancels previously approved outages. Using Good Utility Practices, Seller shall communicate any Transmission Provider-required changes to Buyer in a timely manner.

#### 4.8 Transmission.

(a) Seller's Obligation. Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to make available Metered Output from the Project to the Metered Output Delivery Point.

(b) Buyer's Obligation. Buyer shall pay all costs required to take Metered Output at the Metered Output Delivery Point and deliver such energy to points beyond. Except for System Curtailments, Reliability Curtailments, or a transmission event caused by a Force Majeure Event, Buyer shall bear all risk and costs associated with such Transmission Services ("**Transmission Services**") including risk of transmission outage or curtailment or any other failure of electric transmission service at and from the Metered Output Delivery Point that adversely impacts Buyer's ability to receive the Metered Output after delivery ("**Transmission Event**").

4.9 Additional Costs and Change in Law. The Contract Price shall not be subject to adjustment on account of any tariff, regulatory change, or any other charges.

4.10 Unexcused Failure to Take Delivery by Buyer and Unexcused Failure of Delivery by Seller.

(a) If Buyer fails to take Metered Output and such failure to take is not excused by Seller's default or a Force Majeure Event or a System Curtailment or a Reliability Curtailment, or Seller is not able to make available Metered Output or Other Project Attributes due to Buyer's breach of this Agreement, then Buyer shall timely pay to Seller, Seller's Cost to Cover if Buyer chooses to avoid termination of the Agreement. During such period that Buyer so fails to take Metered Output or is otherwise in breach of this Agreement, Seller shall not be required to make available and shall not make available, any Other Project Attributes corresponding to such Metered Output.

(b) Except as provided for in Section 4.5, if Seller fails to deliver Metered Output to Buyer and such failure to deliver is not excused by Buyer's Event of Default, a Forced Majeure Event, a System Curtailment, a Reliability Curtailment, a Buyer Economic Curtailment, or Buyer is not able to take delivery due to Seller's breach of this Agreement, then Seller shall timely pay to Buyer, Buyer's Cost to Cover, if Seller chooses to avoid termination of the Agreement.

4.11 Ownership of Project. Other than the right and obligation to buy Metered Output and Other Project Attributes from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any ownership or proprietary rights in the Project in favor of Buyer, and Buyer hereby disclaims, any right, title or interest in any part of the Project.

4.12 Sales for Resale. All Metered Output delivered to Buyer hereunder shall be sales for resale. Buyer shall provide Seller with any documentation reasonably requested by Seller to evidence that Buyer is exempt from sales tax in connection with its purchase of Metered Output under this Agreement.

4.13 Transmission Credits. Seller shall be entitled to all Transmission Credits resulting from Network Upgrades undertaken in connection with the Project (“Project Transmission Credits”). Buyer shall reasonably cooperate with Seller in order to provide any certificates, documents or other items reasonably required to grant all rights to such Project Transmission Credits to Seller. In no event will Buyer have any obligation or liability for Network Upgrades, as defined in and as required in accordance with the Interconnection Agreement as amended or supplemented from time to time, or otherwise required by or of Seller for reasons unrelated to Buyer.

## **ARTICLE V METERING, MEASUREMENT AND TESTING**

5.1 Metering. Metering and data processing equipment at the Project, which is designated as the settlement meter by MISO (the “***Meter(s)***”) shall be used for the registration, recording and transmission of information regarding Metered Output and any associated Environmental Attributes. The Meter shall be operated, maintained and calibrated in accordance with the Interconnection Agreement. If Buyer requests, Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meter promptly following receipt of the same by Seller or its Affiliate(s).

5.2 Measurements. MISO’s readings of the Meters shall be conclusive as to the amount of electrical energy generated by the Project; *provided* however that Seller, at Buyer’s direction and at Buyer’s expense, shall have the right to request that the Meters be tested, and if any Meter is out of service or is determined to be registering inaccurately, the electrical Energy generated by the Project shall be measured as provided by the Interconnection Agreement.

## **ARTICLE VI BILLING AND PAYMENT**

6.1 Monthly Billing. Seller shall provide Buyer with an invoice no later than the tenth (10th) Day of each Month for the amount due Seller for Metered Output and Other Project Attributes that Seller made available and taken by Buyer under this Agreement during the previous Month (each, a “***Monthly Invoice***”). If the Commercial Operation Date occurs on a Day other than the first Day of any Month, Seller shall include any amounts due for the portion of such Month, plus the immediately following Month, in the initial Monthly Invoice sent to Buyer. Seller shall transmit each Monthly Invoice by email or by first class mail or as otherwise mutually agreed by the Parties in writing. Each Monthly Invoice shall include sufficient detail to allow Buyer to verify such Monthly Invoice. If Seller does not correctly reflect on the Monthly Invoice the amount Buyer owes, or does not provide a Monthly Invoice in a Month in which Buyer owes amounts to Seller, Seller shall have the right to submit a Monthly Invoice to Buyer on any date for such amounts for payment in accordance with the provisions of this Section 6.1, or shall have the right to include such amounts on the Monthly Invoice for the following Month.

6.2 Payments. Buyer shall pay the undisputed portion specified in each Monthly Invoice by electronic funds transfer of immediately available funds by the later of the twentieth (20th) Day of the Month or the tenth (10th) Business Day after receipt of such invoice. If the due

date does not fall on a Business Day, then the payment shall be due on the next following Business Day. Buyer shall pay Seller in accordance with electronic funds transfer instructions provided to Buyer by Seller from time to time; *provided* however that any changes to electronic funds transfer instructions shall not be effective until two (2) Business Days after the date of receipt of notice from Seller. The Parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be conclusive evidence of receipt.

6.3 Payments Due Buyer. Buyer shall invoice Seller for amounts owed to Buyer in accordance with the process set forth in Section 6.1. Seller shall deduct any payments due to Buyer in accordance with this Section from the Monthly Invoice for the Month in which such amount becomes due to Buyer. In the event that, for any Month, amounts due to Buyer exceed amounts due to Seller for such Month, Seller shall deduct any such excess from the Monthly Invoice for the following Month(s); *provided* however that if Seller has not paid all amounts due Buyer within three (3) months from the Month in which such amounts became due, Seller shall remit payment to Buyer for any remaining amount within ten (10) Days after delivery of the Monthly Invoice in the third (3rd) Month.

6.4 Records; Auditing.

(a) Maintenance of Records. Each Party shall maintain complete and accurate records as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least five (5) years after the date the Monthly Invoice was received by Buyer, or (ii) if there is a dispute relating to a Monthly Invoice, the date that is five (5) years after the date on which such dispute is resolved.

(b) Audit Rights. Each Party, upon thirty (30) Days' written notice to the other Party, at its sole expense, has the right to have its duly authorized Representatives examine the records of the other Party during regular business hours to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. Each Party shall have two (2) years after the date on which a Monthly Invoice is received to audit that Monthly Invoice. To the extent allowed by law, audit rights under this Agreement shall be subject to a Receiving Party's obligations of confidentiality with respect to third parties. To the extent allowed by law, each Party shall use commercially reasonable efforts to address or comply with such confidentiality obligations to enable each Party to exercise its audit rights under this Agreement, including the redaction of certain information to the extent that such redaction will not affect the Receiving Party's audit rights.

6.5 Billing Disputes. In the event of a billing dispute, the disputing Party shall note the disputed amount but shall pay the undisputed portion on or before the due date. Upon resolution of the billing dispute, the Party owing any amounts shall pay the amount owed within five (5) Business Days of the date of such resolution, plus interest calculated on the amount owed at the Interest Rate. If a potential billing error is discovered after any Monthly Invoice or other invoice has been paid, either Party shall notify the other Party of the billing dispute as soon as

reasonably possible, but in any event within two (2) years following the receipt of such Monthly Invoice or other invoice. Any Monthly Invoice or other invoice that has not been disputed within such two (2) year period shall be conclusive, final and no longer subject to adjustment. If either Party overpays any Monthly Invoice or other invoice through inadvertent errors or as a result of a dispute, the overpayment shall be returned by the owing Party upon determination of the correct amount. If Seller underbills Buyer, Seller shall have the right to adjust the error by adding the underbilled amount to a subsequent invoice and such amount shall become due and owing within the time allowed by Section 6.1.

6.6 Interest on Unpaid Amounts. If a Party fails to pay the full amount due on or before the close of business on the due date, the owing Party shall pay interest on the unpaid amount at the Interest Rate, which shall be added to the next Monthly Invoice. If a due date occurs on a Day that is not a Business Day, interest shall begin to accrue on the next succeeding Business Day.

## **ARTICLE VII CREDIT AND MISCELLANEOUS FINANCIAL ISSUES**

### **7.1 Credit; Nature of Buyer's Obligations; Source of Payments.**

#### **(a) Credit Support:**

(i) If at any time there shall occur a Buyer Downgrade Event, written notice shall be provided by Seller requesting Credit Support as determined by the Seller. Upon receipt of such notice, Buyer shall have thirty (30) Days to remedy the situation by providing such Credit Support to the Seller. In the event that Buyer fails to provide such Credit Support or other credit assurance acceptable to the Seller within thirty (30) Days of receipt of notice, then an Event of Default will be deemed to have occurred and the Seller will be entitled to the remedies set forth in Article 8 of this Agreement.

(ii) Any letter of credit provided pursuant to this Agreement must be issued by a U.S. commercial bank, financial institution or a foreign bank with a U.S. branch with such bank with an unsecured, long-term credit rating of at least A- from S&P and a similar rating of at least A3 from Moody's, must be in a form acceptable to the issuing bank and Seller, and must contain customary and commercially reasonable terms acceptable to Seller. If the issuer of the letter of credit fails to maintain an unsecured, long-term credit rating of at least A- from S&P and a similar rating of at least A3 from Moody's (i) Buyer shall notify Seller thereof as soon as practicable thereafter and (ii) Buyer shall have thirty (30) Days after receipt of written request therefor by Seller to replace such Letter of Credit with another letter of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having an unsecured, long-term credit rating of at least A- from S&P and a similar rating of at least A3 from Moody's, in a form acceptable to the issuing bank and Seller, and containing customary and commercially reasonable terms acceptable to Seller. Costs of a letter of credit shall be borne by Buyer. Upon receipt of any replacement letter of credit by Seller, Seller shall as soon reasonably practical return the replaced letter of credit to Buyer.

(b) Nature of Buyer's obligation.

(i) 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 the revenues received from the sale of electricity to Buyer's retail customers, only when earned by 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 the Law of the State of Missouri. Buyer shall take reasonable steps to establish and maintain in effect a schedule of rates and charges that are expected to generate sufficient revenues to cover all of the costs Buyer incurs to supply electricity to its customers, including but not limited to, the cost of procuring or supplying electricity and Other Project Attributes for its customers under this Agreement. If, at any time, Seller believes in good faith, based on an analysis that is reasonable under the circumstances that Buyer's schedule of rates and charges will not generate sufficient revenues to cover all of the costs Buyer expects to incur to supply electricity to its customers, including but not limited to the cost of procuring Energy and Other Project Attributes under this Agreement, then Seller has the right to request, in writing, adequate assurance in an amount to be determined in a commercially reasonable manner. Upon receipt of such written notice, Buyer shall have thirty (30) Business Days to respond to such request by providing such adequate assurance.

(ii) Within ten (10) business days of the Effective Date of this Agreement, Buyer shall provide Seller with a certified copy of an ordinance properly passed by the City of Columbia city council approving Buyer's entry into this Agreement.

(c) Source of Buyer's Payments. The obligation of the Buyer to make payments to the Seller under the terms of this Agreement shall be limited to the obligation to make payments from the revenues of the Buyer's electric utility system and available electric utility system reserves. All payments made by the Buyer pursuant to this Agreement shall constitute the operation and maintenance expenses of its electric utility system. The Buyer shall not be obligated to levy any taxes, general or special, for the purpose of paying to the Seller any sum due under this Agreement.

7.2 Financing Liens.

(a) Assignment as Security to Project Lender. Seller, without Buyer's approval, shall have the right to grant a security interest in its rights and obligations under this Agreement to any Project Lender as security for any loan made to or for the benefit of Seller. Promptly after granting such security interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Project Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the Project Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(b) If Seller encumbers its interest under this Agreement as permitted by this Section 7.2, the following provisions shall apply:

(i) Project Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 8.10, and such act performed by Project Lender shall be as effective to prevent or cure a default as if done by Seller.

(ii) Upon the receipt of a written request from Seller or any Project Lender, Buyer shall, and shall use commercially reasonable efforts to, execute or arrange for the delivery of such certificates, consents, opinions and other documents as may be reasonably necessary for Seller to consummate any financing or refinancing and may enter into reasonable agreements with such Project Lender that provide that Buyer and Project Lender recognize the rights of such Project Lender upon foreclosure of Project Lender's security interest and such other provisions as may be reasonably requested by any such Project Lender; *provided* however that any such agreement shall not constitute a modification hereof unless the Parties amend this Agreement in writing.

(iii) Buyer agrees that no Project Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on Seller's part or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any Project Lender has assumed Seller's obligations under this Agreement pursuant to this Section 7.2; *provided* that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Project Lender fails to perform Seller's obligations under this Agreement.

## **ARTICLE VIII EVENTS OF DEFAULT; REMEDIES**

8.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" if such event is not cured within the applicable cure period:

(a) A Party files a petition for voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or either Party voluntarily taking advantage of any such law or act by answer or otherwise. Such event shall constitute an "Event of Default" upon its occurrence and no cure period shall be applicable.

(b) A Party fails to make any undisputed payment or fails to timely pay its Costs to Cover when due under this Agreement (net of outstanding damages and any other rights of offset that such Party may have pursuant to this Agreement), where such failure is not cured within thirty (30) Days of written notice to the Party, unless otherwise agreed to by the Parties.

(c) A Party assigns this Agreement or any of its rights hereunder (except as may be permitted under Section 7.2 for Seller or Section 18.1 for Seller or Buyer), unless cured within ten (10) Days of written notice to the Party.



(d) Buyer fails to comply with the credit provisions in Section 7.1(a) and such failure is not remedied within the cure period provided for in Section 7.1(a).

(e) A Party fails to comply with any other obligation under this Agreement, other than for the failure of such Party to comply with an obligation under this Agreement for which a specific remedy has been agreed, and such failure is not cured within thirty (30) Days of written notice to the Party.

(f) Any representation or warranty made by such Party in this Agreement proves to have been false when made and such representation and warranty is not cured within thirty (30) Days of written notice to the Party.

(g) With respect to either Party, the filing of a case in bankruptcy or any proceeding under any other insolvency law is filed against the Party as debtor that could materially impact the Party's ability to perform its obligations hereunder unless such case is dismissed or stayed within sixty (60) Days after the date of filing of such proceeding.

## 8.2 Remedies for an Event of Default.

(a) Subject to Article IX, Seller shall have the right, but not the obligation, to do the following:

(i) Upon the occurrence and notice to Buyer of Buyer's Event of Default or Potential Event of Default:

(1) suspend performance of its obligations under this Agreement;

(2) sell to a third Person, free and clear of any claims by Buyer, all Metered Output and Other Project Attributes for such period during which Seller suspends performance hereunder; and/or

(3) receive actual, direct damages that Seller incurred from Buyer in connection with such Event of Default (including during any applicable cure period, whether or not Seller elected to suspend performance during such cure period). Subject to Article IX, the Parties agree that the Termination Payment recoverable on account of an Event of Default include any unpaid and owing Seller's Cost to Cover payments incurred prior to the Early Termination Date.

(ii) Upon the occurrence and notice to Buyer of Buyer's Event of Default, Seller may also call on and draw down upon the Credit Support that Buyer provided to satisfy any and all payments due and amounts otherwise owing under this Agreement.

(b) Subject to Article IX, Buyer shall have the right, but not the obligation, to do the following:

(i) Upon the occurrence and notice to Seller of Seller's Event of Default or Potential Event of Default:

(1) suspend performance of its obligations under this Agreement (except for the payment of amounts due and owing before the occurrence of the Event of Default of Seller); and/or

(2) receive actual, direct damages that Buyer incurred from Seller in connection with such Event of Default (including during any applicable cure period, whether or not Buyer elected to suspend performance during such cure period). Subject to Article IX, the Parties agree that the Termination Payment recoverable on account of an Event of Default include any unpaid and owing Buyer's Cost to Cover payments incurred prior to the Early Termination Date.

### 8.3 Failure to Cure.

(a) Except as provided in subsection (b) of this section, if an Event of Default occurs, the Non-Defaulting Party shall have the right to terminate this Agreement upon delivering a notice of termination as provided in Section 8.4.

(b) Exceptions. The Non-Defaulting Party shall not be entitled to terminate this Agreement if such Event of Default is not reasonably capable of being cured within the applicable cure period under Section 8.1, so long as the Defaulting Party (a) has commenced to cure the default within such applicable cure period, (b) is diligently pursuing such cure, (c) is capable of curing the Event of Default within a reasonable time after the expiration of such cure period, and (d) such Event of Default is in fact cured within such reasonable period of time.

8.4 Termination for an Event of Default. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 8.1, the Non-Defaulting Party shall have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Section 8.2(a) or (b), respectively, to (a) designate by notice to the Defaulting Party a Day, no earlier than the Day such notice becomes effective and no later than twenty (20) Days after the Day such notice becomes effective, on which this Agreement shall terminate (the "**Early Termination Date**"); (b) recover a Termination Payment in connection with such termination; and (c) subject to the express limitations set forth in Section 8.8, Article IX, and any express limitations set forth in this Agreement, pursue any other right or remedy available under this Agreement or Applicable Law. For the avoidance of doubt, the Non-Defaulting Party shall not be entitled to Cost to Cover for the period commencing and following the Early Termination Date.

### 8.5 Termination Payment.

(a) If this Agreement terminates due to an Event of Default, the Non-Defaulting Party shall calculate an amount (the "**Termination Payment**") equal to the aggregate of (i) the Market Value (as defined below) of this Agreement to the Non-Defaulting Party, plus (ii) any costs incurred by the Non-Defaulting Party as a result of terminating this Agreement due to the Defaulting Party's default, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party that arose before the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to

the Defaulting Party, minus (v) any amounts that the Non-Defaulting Party is able to recover pursuant to mitigation under Section 8.8. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

(b) “**Market Value**” means:

(i) where Seller is the Non-Defaulting Party, the product of:

(A) the excess, if any, of (1) the Contract Price for the number of Months remaining in the Term, minus (2) the Monthly average of the fair market price of electrical energy and Environmental Attributes (of the type sold under this Agreement), Capacity Attributes (of the type sold under this Agreement), and Ancillary Services, whether sold separately or bundled as a package, for the number of Months remaining in the Term, determined in a commercially reasonable manner by the Non-Defaulting Party, taking into account, among other valuations, a reasonable number of quotations from leading dealers in energy contracts, settlement prices on established, actively traded power exchanges and other bona fide third-party offers, and other relevant market information, and

(B) the Average Deemed Generated Energy for the number of Months remaining in the Term.

(ii) where Buyer is the Non-Defaulting Party, the product of:

(A) the excess, if any, of (1) the Monthly average of the fair market price of electrical energy and Environmental Attributes (of the type sold under this Agreement), Capacity Attributes (of the type sold under this Agreement), and Ancillary Services, whether sold separately or bundled as a package, for the number of Months remaining in the Term, determined in a commercially reasonable manner by the Non-Defaulting Party, taking into account, among other valuations, a reasonable number of quotations from leading dealers in energy contracts, settlement prices on established, actively traded power exchanges and other bona fide third-party offers, and other relevant market information, minus (2) the Contract Price for the number of Months remaining in the Term, and

(B) the Average Deemed Generated Energy for the number of Months remaining in the Term.

(iii) For purposes of this Section 8.5, if the market price cannot be reasonably calculated in clause (i)(A)(2) or clause (ii)(A)(1) above for the entire period of the number of Months remaining in the Term, the market prices that are determined by the Non-Defaulting Party shall be averaged, and such market price shall be used for purposes of calculating Market Value.

**8.6 Notice of Termination Payment.** As soon as practicable after designating of an Early Termination Date, the Non-Defaulting Party shall notify the Defaulting Party of the

Termination Payment amount, if any, payable by the Defaulting Party to the Non-Defaulting Party. The Defaulting Party shall have the right to dispute the Termination or the Termination Payment by notice to the Non-Defaulting Party within ten (10) Business Days. The notice shall include a written statement setting forth in reasonable detail the calculation of such amount, together with reasonable supporting documentation. If such statement shows a Termination Payment due by the Defaulting Party, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within thirty (30) Days after receipt of such notice. If the Defaulting Party disputes the correctness of the notice or statement from the Non-Defaulting Party, the Parties shall meet to negotiate a resolution. The Parties' obligations under this Agreement shall remain in effect after termination for purposes of complying with all of the provisions of this Section 8.6. If the Defaulting Party has not received notice by the date that is thirty (30) Days following the last Day of any applicable cure period, the Non-Defaulting Party is deemed to have waived the Event of Default and no further damages shall accrue with respect to such Event of Default.

8.7 Other Remedies. This Agreement's termination shall not relieve either Party of any unfulfilled obligation or undischarged liability of such Party as of the Early Termination Date, including any damages (i.e. Cost to Cover) that either Party incurred as a result of any breach of or Event of Default under this Agreement before the Early Termination Date *provided* that the Termination Payment shall be the Parties' sole and exclusive remedy under this Agreement for termination. The Non-Defaulting Party shall have the right to exercise any of the rights and remedies with respect to Credit Support, including any ancillary rights and remedies under Applicable Law then in effect, upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting a Defaulting Party. The Non-Defaulting Party shall apply the Credit Support proceeds realized upon the exercise of any such rights or remedies to reduce the Defaulting Party's obligations under this Agreement, subject to the Non-Defaulting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.8 Duty/Right to Mitigate.

(a) Each Party agrees that it has a duty to mitigate damages, and that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or nonperformance of this Agreement, including take such mitigation into account pursuant to Section 8.5(a)(v); *provided* that in no event shall the mitigating Party be required to pay any amounts to the nonperforming Party in connection with such mitigation. The Parties shall exercise commercially reasonable efforts when purchasing or selling, as the case may be, electrical energy, Environmental Attributes, Capacity Attributes, or Ancillary Services in order to mitigate damages pursuant to this Section 8.8.

(b) So long as there is no negative economic impact on Buyer, Seller shall be entitled to reduce the amount of monetary damages payable by Seller pursuant to Sections 8.2 and 8.5 as and to the extent Seller provides Buyer with Replacement Power reasonably acceptable to Buyer (which shall include Environmental Attributes, Capacity Attributes and Ancillary Services to replace the Other Project Attributes that would have been available if the

obligation to provide Metered Output under the terms of this Agreement had been met) in substitution for any monetary damages that would otherwise have been due.

(c) If the Non-Defaulting Party elects to terminate this Agreement following an Event of Default, the Non-Defaulting Party shall make commercially reasonable efforts to enter into long-term agreement(s) for the purchase or sale, as the case may be, of electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services, on terms and conditions reasonably similar to the terms and conditions of this Agreement and consistent with the Non-Defaulting Party's customary business practices (including with respect to satisfaction of counterparty credit); *provided* that such duty to mitigate (i) shall not be a condition to collecting the Termination Payment, and (ii) shall terminate on the Early Termination Date.

8.9 Remedies Cumulative. Subject to the express limitations set forth in Section 8.7 and Article IX, each Party's right or remedy provided in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided in this Agreement, and a Party's exercise, or the beginning of the exercise, of any one or more of the rights or remedies provided shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies; *provided* that no Party is entitled to double recovery of any payment or remedy due.

8.10 Cure Rights of Project Lender and Institutional Investor. Buyer shall notify any known Project Lender or Institutional Investor of any Event of Default described in Section 8.1, and Buyer shall accept a cure performed by any Project Lender or Institutional Investor and shall negotiate in good faith with any Project Lender or Institutional Investor as to the cure period(s) that will be allowed for any Project Lender or Institutional Investor to cure any Seller Event of Default. Buyer shall accept a cure performed by any Project Lender or Institutional Investor so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Project Lender or Institutional Investor. Notwithstanding any such action by any Project Lender or Institutional Investor, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

8.11 Effect of Termination of This Agreement. The provisions of this Agreement shall remain in effect only to the extent (a) necessary to provide for final billings and adjustments related to the period before termination with respect to Metered Output and associated Other Project Attributes made available before the termination date and (b) that payment of any money is due and owing to any Party pursuant to this Agreement; *provided* however that such termination shall not affect or excuse the performance of any Party under any provision of this Agreement that by its terms survives any such termination.

8.12 Right to Sell or Purchase After Termination. If either Party terminates this Agreement, Seller shall have the right to sell, free and clear of any claim by Buyer, any electrical energy or Other Project Attributes to any third Person, and Buyer shall have the right to purchase, free and clear of any claim by Seller, any electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services from any third Person.

## ARTICLE IX LIMITATIONS

9.1 Waiver of Certain Damages. Notwithstanding any other provision of this Agreement (except to the extent indemnification payments are made pursuant to Article 12 as a result of an indemnified Person's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members) as a result of actions included in the protection afforded by the indemnification set forth in Article 12), neither Buyer nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or nonperformance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

## ARTICLE X FORCE MAJEURE EVENT

### 10.1 Definition.

(a) “*Force Majeure Event*” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance.

(b) Without limiting the generality of the foregoing, and so long as the following events satisfy the conditions outlined in Section 10.1(a), Force Majeure Events may include: acts of God; actions of the elements such as heavy rains, floods, earthquakes, hurricanes, tornadoes, lightning, ice storms, landslides, mudslides, high winds of sufficient strength or duration to materially damage the Project or significantly impair its operation for a period of time longer than normally encountered by wind energy facilities under comparable circumstances; subsurface or other site conditions (including without limitation environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); long-term material changes in renewable energy flows across the Project caused by climatic change; explosion; fire; epidemic; sabotage; terrorism; transportation delays; unavailability of materials; full or partial reduction in the electric output of the Project caused by defective equipment or equipment failure due to equipment design defects or serial defect, equipment manufacturing defects or any other cause other than Seller's failure to comply with Good Utility Practice; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strike or other labor difficulty caused or suffered by a Party or any third Person beyond the reasonable control of such Party or its Affiliates (even if such difficulties could be resolved by conceding to the demands of a labor group); directives from the Transmission Provider causing Seller to divert Metered Output to address reliability concerns or System Emergency; System Emergencies affecting the Project; or any restraint or restriction imposed by

Applicable Law or any directive from a Governmental Authority, which by exercise of due diligence and in compliance with Applicable Law a Party could not reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with Applicable Law, has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a Governmental Authority).

(c) Events described in Sections 10.1(a) and (b) that affect the Transmission Provider or another third Person shall also be considered "Force Majeure Events."

10.2 Exceptions or Exclusions to Force Majeure Event. Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Metered Output or Other Project Attributes at a lower price, or Seller's ability to sell Metered Output or Other Project Attributes at a higher price, than the Contract Price), or (ii) a Party's inability to make payment when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above.

10.3 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure Event from carrying out, in whole or in part, its obligations under this Agreement or from complying with, in whole or in part, conditions under this Agreement, such Party (the "**Claiming Party**") shall give notice and details of the Force Majeure Event to the other Party as soon as practicable, unless otherwise specified by the terms of this Agreement. In addition, any completion milestones or deadlines or time periods by which performance is due, including but not limited to the achievement of Commercial Operation, shall be extended for a period of time equal to the time period of such suspension. The Claiming Party shall use commercially reasonable efforts to remedy the Force Majeure Event with all reasonable dispatch. The suspension of performance and compliance with such conditions due to the Force Majeure Event shall be of no longer duration and no greater scope than is required by the Force Majeure Event; *provided* however that a Force Majeure Event affecting Seller that only partially prevents the performance of its obligation or compliance with conditions under this Agreement may relieve Seller completely or partially, at Seller's election, of performing such obligations or complying with such conditions. The Claiming Party shall promptly notify the non-Claiming Party when it is able to resume performance of its obligations and compliance with such conditions under this Agreement, if it is able to do so. Until the non-Claiming Party is so notified, it shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by a Force Majeure Event. No Party shall be relieved by operation of this Article X of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event. If the Force Majeure Event reduces but does not prevent Seller from making available Metered Output and Other Project Attributes, then Seller shall suspend deliveries of Metered Output and Other Project Attributes on a pro rata basis (among all purchasers of output of the Project) relative to the extent by which the Force Majeure Event reduces the Metered Output, and Other Project Attributes that the Project would otherwise produce but for the Force Majeure Event. If deliveries of Metered Output or Other Project Attributes are prevented in whole or in part by a Force Majeure Event, the

deliveries in question shall not be made up and the Term shall not be extended to permit any makeup or offset of the lost deliveries.

#### 10.4 Force Majeure Termination.

(a) Either Party shall have the right to terminate this Agreement, without liability to the other Party, by giving written notice of such termination to the other Party, if a single Force Majeure Event occurs and prevents a Party from making available, on the part of Seller, or taking, on the part of Buyer, all of the Metered Output or Other Project Attributes, or its other material obligations or conditions under this Agreement for a period of at least twelve (12) consecutive Months; *provided* that if the Claiming Party is the Party electing to terminate this Agreement, the Claiming Party shall only be entitled to terminate this Agreement under this Section 10.4 if it has met its obligations under Section 10.3. Such termination shall be effective as of the first Day of the first Month after the expiration of such twelve- (12-) Month period, or, if the expiration of such twelve- (12-) Month period occurs on or after the twenty-fifth (25th) Day of the Month, the termination shall be effective as of the first Day of the second Month after the expiration of such twelve- (12-) Month period.

(b) Notwithstanding the provisions of Section 10.4(a), if the Force Majeure Event (i) is one that has materially and adversely affected the production and sale of Metered Output and Other Project Attributes as contemplated by this Agreement and (ii) is such that the suspension can be corrected through repair or restoration work to the Project or other actions by Seller, Seller shall have the right to furnish to Buyer as soon as practicable after such Force Majeure event, but in no event later than eighteen (18) consecutive Months after the occurrence of such Force Majeure Event, the plans and, if applicable, the construction contract, for the restoration or repair of the Project, together with evidence reasonably satisfactory to Buyer of the total cost of restoration or repair of the Project and of Seller's ability to finance such total cost. Buyer shall have the reasonable opportunity to review and comment on such plans and financing; *provided* that Seller shall have the right to redact or withhold commercially sensitive from any relevant plans or financing documents. Buyer shall not have the right to terminate this Agreement during any suspension so long as Seller is using Good Utility Practice to complete such repair work, restoration or such other actions.

10.5 Obligations. A Party claiming and giving proper notice of a Force Majeure Event shall be excused from the performance of its obligations and complying with the conditions of this Agreement to the extent and during the period that the Force Majeure Event prevents performance by that Party, but no Party shall be relieved by operation of this Article X of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event. For the avoidance of doubt, in the event of a Force Majeure Event with respect to Buyer, Seller shall have the right to sell all or a portion of the Metered Output or Other Project Attributes to any Person. When Buyer resumes its ability to perform under this Agreement, Seller shall continue to be excused for failure to make available Metered Output and Other Project Attributes to Buyer to the extent resulting from Seller's obligations under third-party contracts that Seller entered into as permitted under this Section 10.5, until such third-party contracts are required to be terminated in accordance with the following: (i) if the estimated duration of the Force Majeure Event, as stated in the notice provided by Buyer pursuant to Section 10.2 (as may



be updated from time to time), is less than one hundred eighty (180) Days, Seller shall use commercially reasonable efforts, but shall not be required, to terminate such sales before the end of the period stated in the notice (as updated from time to time) if the actual period of such Force Majeure Event ends before such date, and (ii) in the event that the estimated duration of such Force Majeure Event, as stated in the original notice that Buyer provided pursuant to Section 10.2, is greater than one hundred eighty (180) Days, Seller shall terminate such sales no later than the date that is thirty (30) Days after Buyer delivers notice to Seller that the period of such Force Majeure Event has ended; *provided* however that Seller shall use commercially reasonable efforts, but shall not be required, to terminate such sales on such lesser notice as Buyer may provide; *provided* further that notwithstanding anything to the contrary in this Agreement, Seller shall not be required to terminate such sales before the date that Buyer estimated as the date of the end of the period of the Force Majeure Event in its original notice specifying the estimate of the period of such Force Majeure Event.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES**

11.1 Seller's Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller. Seller has the authority and shall maintain the authority to transact business within the State of Missouri. Failure to maintain authority to transact business in the State of Missouri shall constitute a material breach of this Agreement if not cured within 30 Days.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. Seller's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on Seller's part and does not and will not require the consent of any trustee or holder of any indebtedness or other of Seller's obligations or any other party to any other agreement with Seller.

(c) As of the date of the execution and delivery of this Agreement, Seller has obtained and will maintain any authorization, approval, order, license, permit, franchise or consent, and any registration, declaration or filing with any Governmental Authority required in the ordinary course of performance of this Agreement and for the operation of the Project.

(d) The execution and delivery of this Agreement, consummation of the transactions contemplated in this Agreement, and Seller's fulfillment of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Seller, Seller's formation documents or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other

evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(e) Seller has duly executed and delivered this Agreement. This Agreement is a legal, valid and binding obligation enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(f) To the Seller's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Seller's ability to perform its obligations under this Agreement.

11.2 Buyer's Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a municipality, duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Buyer or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(d) Buyer has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(e) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Buyer, or to its knowledge threatened against Buyer;

(f) To Buyer's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Buyer's ability to perform its obligations under this Agreement;

(g) Buyer's execution and delivery of this Agreement, consummation of the transactions contemplated in this Agreement, and fulfillment of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect applicable to Buyer, Buyer's formation documents or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(h) Buyer has been duly executed and delivered this Agreement. This Agreement is a legal, valid and binding obligation enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

11.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in compliance with any and all Applicable Laws.

## ARTICLE XII INDEMNITY

### 12.1 Indemnification.

(a) Subject to the provisions of Article IX and only to the extent allowed by law, Seller and Buyer (each, an "**Indemnifying Party**") shall defend, save harmless and indemnify the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of or to the Indemnified Party or any third party (collectively, "**Losses**") to the extent arising out of, resulting from or caused by the Indemnifying Party's negligence or willful misconduct, or that of its Affiliates, directors, officers, employees or agents.

(b) Notwithstanding anything to the contrary in this Section 12.1, neither Party shall be entitled to be indemnified hereunder for its Losses to the extent caused by its own negligence or willful misconduct.

12.2 Notice of Claims; Procedure. Each Party shall, with reasonable promptness after obtaining knowledge thereof, provide the other Party against whom a claim for indemnification is to be made under this Article XII with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. A potential Indemnifying Party shall have thirty (30) Days after its receipt of the claim notice to notify the potential Indemnified Party in writing whether or not the potential Indemnifying Party agrees that the claim is subject to this Article XII and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party shall cooperate with the Indemnifying Party, without limitation, by making all relevant information and the testimony of employees and agents material to the defense of the claim available to the Indemnifying Party. The Indemnifying Party shall reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as the Indemnifying Party is contesting the claim in good faith and with diligence, the Indemnified Party shall not pay or settle the claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any claim at any time without the consent of the Indemnifying Party; *provided* that in such event it waives any right to indemnification by the Indemnifying Party. If the potential Indemnifying Party does not provide a responsive notice within the thirty- (30-) Day period set forth in this Section 12.2, the Indemnified Party shall have the right to contest, settle or compromise the claim at its exclusive discretion, and the Indemnifying Party will waive any claim, defense or argument that the Indemnified Party's settlement or defense of such claim is in any respect inadequate or unreasonable.

12.3 Survival; Limitations. The indemnity obligations and Parties' rights set forth in this Article XII shall survive this Agreement's the termination for two (2) years after the termination becomes effective.

### **ARTICLE XIII INSURANCE**

13.1 Insurance Requirements. 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's performance of this Agreement. Such insurance shall be placed with responsible and reputable insurance companies in compliance with Applicable Law applicable to Seller.

(a) Workers' Compensation/Employer's Liability. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance which comply with Applicable Law applicable to Seller.

(b) Automobile Liability. Seller shall maintain Automobile Liability Insurance in compliance with Applicable Law applicable to Seller, including coverage for owned, non-owned and hired automobiles for both bodily injury (including death) and property damage, including automobile liability uninsured/underinsured motorist protection endorsements.

(c) Third Party Liability. Seller shall maintain third party liability insurance in compliance with Applicable Law applicable to Seller 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 and maintenance of the Project. Such policy shall be written with a limit of liability not less than \$10,000,000 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, underground hazards, broad form property damage and personal injury liability.

(d) Property Insurance. Seller shall maintain property insurance on a project-specific basis covering cost of repairing Project and or Interconnection equipment to operational condition. Such policy shall be written with coverage sufficient to replace and rebuild the Project. Coverage shall include, but not be limited to, fire, storm damage, equipment failure, damage to equipment precluding operation under prudent utility practice, premises/operations, explosion, collapse, underground hazards, broad form property damage.

Seller shall provide Buyer with applicable insurance certificates confirming the insurance coverages required above.

13.2 Insurance Proceeds. In the event that a Party is obligated to indemnify the other Party under Article XII, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's Loss net of any insurance proceeds the Indemnified Party received following the Indemnified Party's reasonable effort to obtain such insurance proceeds.

## **ARTICLE XIV DISPUTE RESOLUTION**

### **14.1 Dispute Resolution.**

(a) Seller or Buyer shall each appoint a representative to coordinate implementation of this Agreement with the other Party (each a "***Representative***" and collectively the "***Representatives***"). If any dispute arises with respect to any Party's performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), certain of Buyer's and Seller's senior officers or executives shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), either Party shall have the right to

refer the dispute to a court. The deadlines under this subsection may be extended upon reasonable prior notice by the Party unable to reasonably comply with a deadline, upon the mutual agreement of the Parties.

(b) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

(c) Each Party certifies that it has been induced to enter into this Agreement or instrument by, among other things, the mutual waivers and certifications set forth above in this Article XIV.

(d) While any dispute is pending, the Parties shall continue to perform their obligations under this Agreement notwithstanding such dispute.

## **ARTICLE XV COOPERATION**

15.1 Cooperation. The Parties acknowledge that they are entering into a long term arrangement in which the cooperation of both of the Parties will be required.

(a) In the event that, at any time during the Term, any of the following occurs the effect of which is that the benefits and burdens of this Agreement are no longer as contemplated by the original intentions of the Parties, the Parties shall use their commercially reasonable efforts to amend this Agreement in order to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens to each Party:

(i) if any Governmental Entity levies or otherwise imposes a tax on the sale or purchase of Energy and or Credits ("Transfer Taxes") that was not in effect as of the Effective Date, regardless of whether such Transfer Taxes are imposed on BUYER or SELLER, but excluding in all events taxes based on or measured by net income; or

(ii) the applicable Transmission System Operator or Transmission System Operator Tariff is changed in a manner that materially adversely affects SELLER or BUYER; or

(iii) if an applicable regional reliability council issues a directive, rule or regulation that materially adversely affects SELLER or BUYER.

(b) With respect to Section 15.1(a)(i), 15.1(a)(ii), and (a)(iii), no Party is obligated to agree to a change in the Contract Price.

## **ARTICLE XVI CONFIDENTIALITY**

16.1 Confidential Information.

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project, that they consider confidential and proprietary (the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Article.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those of its employees, directors, agents or third party contractors who need to know it, and for the purposes of this Agreement who shall be bound by the terms of this Section 16.1; and

(iii) Use such Confidential Information solely for the purpose of developing the Project, and for purposes of this Agreement.

(c) The restrictions of this Section 16.1 do not apply to:

(i) Release of this Agreement or any part or summary hereof to any Governmental Authority required for obtaining any approval or making any filing, provided that (a) each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law and (b) the Receiving Party, shall provide reasonable notice to the Disclosing Party, prior to disclosure (if not prevented by law), of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party prior to the date hereof, provided that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law, including Chapter 610 of

the Revised Statutes of Missouri; the Receiving Party shall provide reasonable notice to the Disclosing Party of the time and scope of the intended disclosure.

(d) Notwithstanding anything to the contrary in this Article XVI, Confidential Information may be disclosed (a) by Seller to any potential Project Lender or potential Institutional Investor; (b) by Buyer to any Buyer Lender; or (c) by either Party to any other entity expressing an interest in providing equity or debt financing or refinancing and/or Credit Support to such Party (and to any agent of or consultant to such entity), and the agent or trustee of any of the foregoing so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article XVI to the same extent as if it were a Party.

(e) Neither Party shall issue any press or publicity release, other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law (provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by an appropriate protective order, the other Party as provided in Section 16.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project, or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) Notwithstanding the foregoing, each Party shall have the right to disclose Confidential Information to such Party's Affiliates and any of such Party's or such Party's Affiliates' employees, officers, board members, consultants and attorneys and other Persons involved in assisting such Party or such Party's Affiliates in connection with this Agreement; *provided* that such Representatives are informed of the requirements of this Article XVI and agree to be bound in writing by the provisions of this Agreement. A Receiving Party shall be responsible for ensuring that all Persons to whom it discloses Confidential Information under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized Person pursuant to this Agreement's requirements.

(g) The obligations of the Parties under this Section 16.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

**16.2 Injunctive Relief.** Each of the Parties acknowledges and agrees that the other Party would be irreparably harmed if any Confidential Information of the Disclosing Party were to be disclosed to third Persons, or if any use were to be made of such Confidential Information other than that permitted under this Agreement, and further agrees that the Disclosing Party shall have the right to seek injunctive relief upon any violation or threatened violation of the terms of this Article XVI, in addition to all other rights and remedies available at law or in equity, without having to post a bond or other security.



16.3 Survival of Confidentiality Provisions. The Parties' obligations under this Article XVI shall remain in full force and effect for two (2) years following the termination of this Agreement.

16.4 Missouri Sunshine Law is Applicable. Nothing in this Agreement shall be construed to supersede, conflict with or otherwise defeat any provision of the Missouri Revised Statutes Chapter 610 Governmental Bodies and Records ("Missouri Sunshine Law").

## **ARTICLE XVII NOTICES AND MULTIPLE ORIGINALS**

17.1 Notices. Except as may be otherwise expressly provided in this Agreement, all notices, requests, statements and other communications to be given under this Agreement shall be made to the addresses and Persons specified in Annex A hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, express courier, facsimile or electronic mail (so long as a copy of such electronic mail notice is provided by hand delivery or express courier). Except as may otherwise be specified in this Agreement, all notices, requests, statements and other communications shall be deemed to have been duly given on (a) the date of delivery if delivered by hand or by express courier, (b) the time stamp upon delivery if sent by electronic mail, (c) the date of receipt of a time-stamped, legible copy thereof if sent by facsimile, or (d) the earlier of the dates set forth in clauses (a), (b) and (c) if delivery is made by more than one of such means. Either Party shall have the right to change its respective notice information upon giving the other Party at least ten (10) Days' prior notice thereof.

17.2 Multiple Originals and Signatures. The Parties agree that three originals of this Agreement shall be executed. Buyer shall retain two Agreements with original signatures. Seller shall retain one Agreement with original signatures.

## **ARTICLE XVIII MISCELLANEOUS**

18.1 Assignment.

(a) Restriction of Assignments. Except as otherwise provided below, neither Party may assign this Agreement without the other Party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld. The nonassigning Party shall have the right to withhold its consent if the other Party proposes to assign its rights or delegate its duties under this Agreement to any Person whose creditworthiness is less than the creditworthiness of the assigning Party. Buyer shall have the right to withhold its consent if Buyer believes that the Person to whom Seller proposes to assign the Agreement does not have sufficient experience in the operation of the Project. Any assignment in violation of this provision shall be void.

(b) Seller's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied in this Agreement to the contrary, Seller shall have the right to,

without the Buyer's prior written consent, assign this Agreement (i) as part of any tax equity financing; (ii) to a purchaser of all or substantially all of the assets of Seller; (iii) to a Seller Affiliate, including to a Seller Affiliate as part of a partnership formation; (iv) in connection with a merger of Seller with another Person or any other transaction resulting in a direct or indirect change of control of Seller; or (v) in connection with the grant of a security interest to a Project Lender pursuant to Section 7.2; *provided* that in (ii) and (iv) above, such purchaser, Affiliate or Person surviving such merger or assignment, as applicable, (x) agrees in writing to be bound by the terms of this Agreement; (y) has creditworthiness equal to the creditworthiness of Seller; and (z) has sufficient experience in the operation of the Project.

(c) Buyer's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied in this Agreement to the contrary, Buyer shall have the right to, without Seller's prior written consent, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Buyer; (ii) to a Buyer Affiliate; or (iii) in connection with a merger of Buyer with another Person or any other transaction resulting in a change of control of Buyer; *provided* that such purchaser, Affiliate or Person surviving such merger, as applicable, (x) agrees in writing to be bound by the terms of this Agreement, (y) meets or exceeds the creditworthiness of Buyer (or is supported by Credit Support) or (z) in the case of assignment to an Affiliate under (ii) above, the obligations of Affiliate are supported by Credit Support.

(d) Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a Party's interest in this Agreement shall assume such Party's existing and future obligations to be performed under this Agreement. Unless the Parties otherwise agree, upon any permitted assignment of this Agreement to an assignee with equal creditworthiness and such assignee's written assumption of this Agreement, the assigning Party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; *provided* however that in all other cases, the assigning Party shall continue to be bound by this Agreement unless the Parties otherwise agree.

18.2 Cooperation with Institutional Investor. If any Person proposes to make an investment in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller and, as a result of such investment such Person would become an Institutional Investor, upon receipt of a written request from Seller or any such Person, Buyer shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate the investment by such Person in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates.

18.3 Governing Law and Venue. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Missouri, without regard to its principles of conflicts of law. The venue for all litigation arising out of, or relating to this contract document, shall be in the Circuit Court of Boone County, Missouri, or in the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of the state or federal courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

18.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior discussions and agreements between the Parties with respect to the Project. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed in this Agreement.

18.5 Drafting and Interpretation. This Agreement shall be considered for all purposes as prepared through the Parties' joint efforts and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

18.6 Amendment of Tariffs. Each Party agrees that if it seeks to amend any applicable wholesale power sales tariff during the Term of this Agreement, such amendment shall not in any way affect this Agreement or any remaining transactions under this Agreement without the other Parties' prior written consent or unless required by Applicable Law.

18.7 Amendment. No amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both Parties.

18.8 Non-Waiver. No waiver by any Party of any one or more defaults by the other Parties in performing any provision of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party in exercising any right, power, privilege or remedy hereunder shall operate as a waiver thereof.

18.9 Severability. Any provision of this Agreement declared or rendered invalid, unlawful or unenforceable by any applicable Governmental Authority or deemed unlawful because of a change in Applicable Law (individually or collectively, such events referred to as "**Regulatory Event**") shall not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided* further that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to amend this Agreement in order to give effect to the original intention of the Parties.

18.10 Survival. All audit rights and confidentiality obligations shall survive this Agreement's termination (with respect to confidentiality, to the extent provided in Article XVI, and with respect to audit rights for the period ending two (2) years following termination of this Agreement).

18.11 Forward Contract. The Parties intend that this is a "forward contract" between "forward contract merchants," as those terms are defined in the United States Bankruptcy Code, and that this transaction is intended to be physically settled at the Metered Output Delivery Point.

18.12 No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third Person or entitle any third Person to any claim, cause of action, remedy or right of any kind, it being the Parties' intent that this Agreement shall not be construed as a third-party beneficiary contract.

18.13 Relationships of Parties. The Parties shall not be deemed to be in a partner or joint venture relationship by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of any other Party. Neither Seller nor Buyer shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for each Party's services as an independent contractor.

18.14 Annexes. Any and all Annexes referred to in this Agreement are, by such reference, incorporated into and made a part of this Agreement for all purposes.

18.15 Attorneys' Fees. If a Party commences a legal proceeding against the other Party because of an alleged breach of such Party's obligations under this Agreement, each Party shall bear its own expenses, including reasonable attorneys' fees, incurred in connection with the legal proceeding and any appeal thereof.

18.16 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

18.17 Non-Recourse Obligations. Notwithstanding any other provision of this Agreement, no Person (nor any officer, employee, executive, director, agent or authorized representative of any such Person) other than Seller and Buyer and, to the limited extent explicitly set forth in any Credit Support documentation, the Person obligated to provide such Credit Support, shall be liable for any payments due or for the performance of any obligation.

18.18 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a nonParty, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "**Mobile-Sierra Doctrine**"), unless overruled.

18.19 Employment of Unauthorized Aliens. Seller agrees to comply with Missouri State Statute section 285.530 in that Seller shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this contract the Seller shall, by sworn affidavit and provision of documentation, affirm its parent company's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Seller shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

18.20 Compliance with Laws. Seller shall, at all times, observe and comply with all federal, state, and local laws, ordinances, rules and regulations.

18.21 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 protections as provided by federal and state constitution or law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their respective duly authorized representatives as of the date first above written.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
Mike Matthes, City Manager

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor

**FARMERS CITY WIND, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ANNEX A

### NOTICE

Seller	Buyer
<p><b>Notices:</b></p> <p>Farmers City Wind, LLC 1125 NW Couch, Suite 700 Portland, OR 97209 Fax: (503) 796-6937 Email: <a href="mailto:contract.admin@iberdrolaren.com">contract.admin@iberdrolaren.com</a> Attention: Contract Administration</p>	<p><b>Notices and Invoices:</b></p> <p>Notices to:</p> <p>City of Columbia Water and Light Department P.O. Box 6015 Columbia, Missouri 65205 Fax: 573-443-6875 Attention: Tad Johnsen and Ryan Williams Email: <a href="mailto:tajohnse@gocolumbiamo.com">tajohnse@gocolumbiamo.com</a> <a href="mailto:rpwillia@gocolumbiamo.com">rpwillia@gocolumbiamo.com</a></p> <p>Invoices to:</p> <p>City of Columbia Water and Light Department P.O. Box 6015 Columbia, Missouri 65205 Attention: Jim Windsor and Kyla Morgan Email: <a href="mailto:jrw@gocolumbiamo.com">jrw@gocolumbiamo.com</a> <a href="mailto:KJDOLLIN@gocolumbiamo.com">KJDOLLIN@gocolumbiamo.com</a></p>

**ANNEX B**  
**FORM OF ENVIRONMENTAL ATTESTATION AND BILL OF SALE**

**I. Facility information**

Name of Generation Facility ("Facility"):

\_\_\_\_\_

Company or Person That Owns Facility ("Seller"):

\_\_\_\_\_

Address of Facility:

\_\_\_\_\_

\_\_\_\_\_

North American Electricity Reliability Corporation ("NERC") Region in Which Facility Is Located:<sup>1</sup>

\_\_\_\_\_

Facility ID Number:<sup>2</sup> \_\_\_\_\_ ☐ EIA or ☐ QF? (check one)

Project Installed Capacity (MW): \_\_\_\_\_

Date Facility Was First Operational: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date of Capacity Upgrade or Repowering:<sup>3</sup> \_\_\_\_/\_\_\_\_/\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> If you are unsure which region Facility is in, see <http://www.nerc.com/regional/>.

<sup>2</sup> Enter Energy Information Administration ("EIA") identification number for the generating facility; if there is no EIA number, enter the utility-assigned Qualifying Facility ("QF") identification number.

<sup>3</sup> If applicable. Repowered facilities must meet Green-e Energy's criteria for repowering, available at [http://www.Green-e.org/docs/Repowering\\_Defin\\_and\\_Instructions.doc](http://www.Green-e.org/docs/Repowering_Defin_and_Instructions.doc).



Email Address: \_\_\_\_\_

**II. Renewable electricity or RECs<sup>4</sup> supplied to Purchaser indicated below, by fuel type**

On the table below, list the renewable megawatt-hours ("MWh") sold or transferred to Purchaser, broken down by quarter of generation in separate rows:

Fuel Type <sup>5</sup>	# MWh RECs / Renewable Elec. Sold	Period of Generation (quarter/yy or mm/yy)

**III. Declaration**

I, (print name and title) \_\_\_\_\_, declare that the ☐ renewable electricity (electricity bundled with renewable attributes) / ☐ renewable attributes only<sup>6</sup> (check one) generated by Facility during the Period of Generation were sold exclusively from Seller to \_\_\_\_\_ ("Purchaser").

I further declare that

- 1) all the renewable attributes (including CO<sub>2</sub> benefits), including any emissions offsets, reductions or claims represented by the renewable electricity generation listed above were transferred to Purchaser;
- 2) to the best of my knowledge, the renewable attributes were not sold, marketed or otherwise claimed by a third party other than Purchaser;
- 3) Seller sold the renewable attributes only once;

<sup>4</sup> Renewable Energy Certificates, which represent the renewable attributes of 1 MWh of renewable electricity generation.

<sup>5</sup> If using biomass fuels, list out the specific type (i.e., landfill gas, wood waste, etc.) and fill in Section IV below.

<sup>6</sup> If selling renewable attributes to Purchaser without electricity, please fill in the name of the load-serving entity buying the undifferentiated electricity, if applicable, at the bottom of this Declaration section.

4) the renewable attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard or other renewable energy mandate by Seller, nor to the best of my knowledge, by any other entity other than Purchaser;<sup>7</sup>

5) the renewable electricity sold or electricity associated with the attributes sold was not used on-site for powering electric generation equipment (parasitic load);

6) if Purchaser is receiving electricity bundled with renewable attributes from Seller, the renewable electricity was delivered into the NERC region in which Facility is located;

7) if Facility is located in Canada, it is EcoLogo certified and was throughout the Period of Generation; and

8) the electricity that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Seller, or, to the best of my knowledge, any other entity other than Purchaser.

Please indicate the following:

Is Facility owner reporting its direct greenhouse gas emissions in a legally binding cap-and-trade program for the time period of generation listed on this form?

- ☐ Yes;<sup>8</sup> list the cap and trade program: \_\_\_\_\_  
☐ No

If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here:

\_\_\_\_\_

☐ Check box if sale is part of a Qualifying Facility ("QF") contract

**IV. Additional statement required for and applicable to biomass facilities only**

<sup>7</sup> Renewable attributes used by Purchaser for any of the purposes listed in Section III(4) are ineligible for Green-e Energy certification.

<sup>8</sup> In this case the renewable electricity or RECs reported on this form may be ineligible for Green-e Energy certification. For more information, contact Green-e Energy Staff at (415) 561-2100.

- 1) I attest that no more than five percent (5%) fossil fuels and other fuels that are not Green-e Energy eligible, measured on a BTU basis, were used, including as a start-up, pilot or supplemental fuel, to produce the electricity and/or RECs in the above Green-e Energy eligible biomass generation plant or biomass boiler;
- 2) I attest that this facility was in substantial compliance with its operating permit regarding emissions during the Period of Generation reported above;
- 3) I attest that if this facility is subject to New Source Review ("NSR"), it was compliant with all standards pertaining to NSR during the period of generation reported above; and
- 4) I attest that Seller owned the renewable and environmental attributes of the biomass fuels I have listed in the table below at the time of the fuel's use for electricity generation.

Biomass Fuel Type	Facility That Produced Fuel or Origin/Source of Fuel

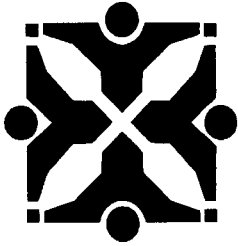
**V. Signature**

As an authorized agent of Seller, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution



Source: Water & Light

Agenda Item No:

To: **City Council**  
From: **City Manager and Staff**

Council Meeting Date: Mar 3, 2014

Re: Contract for the Supply of Wind Energy with Farmers City Wind

**EXECUTIVE SUMMARY:**

Staff has prepared for Council consideration an ordinance authorizing the City Manager to execute an agreement with Farmers City Wind. This is a 20 year contract with Farmers City Wind for 20 megawatts of wind energy from Atchison County, Missouri. The agreement has an energy cost of \$29.00 per megawatt hour for the life of the contract.

**DISCUSSION:**

The City of Columbia Purchasing Department sent out a request for proposal, on behalf of Columbia Water & Light, in June 2013. The most favorable proposal came from Iberdrola Renewables. After discussions, we have agreed on a 20 year contract with Farmers City Wind for 20 megawatts of wind energy from the facility located in Atchison County, Missouri. Iberdrola Renewables develops, owns and operates renewable energy projects nationwide and is the second largest wind developer in the U.S. with over 5,500 MW of renewable capacity under its management across 19 states. This wind facility is built, directly connected to the MISO system and in production so delivery of energy under this contract can begin within a month of execution.

This agreement has an energy cost of \$29.00 per megawatt hour for the life of the contract. According to the renewable energy ordinance, the cost of the energy can not raise the electric rates more than 3%. The estimated cost for the city's share of the energy will have a 0.6% impact on rates the first year.

In 2013 Columbia Water & Light had 6.97% of its electric supply coming from renewable energy resources which surpasses the 2013 requirement passed by voters in 2004. By 2018 the city will be required to have 15% of its electric supply from renewable resources. It is estimated that this contract will increase the annual renewable percentage by about 4%.

**FISCAL IMPACT:**

Funds for this contract were not included in the annual budget for Purchased Power. For the remaining eight months of FY14, the total expenditure is estimated at \$1,000,000 of which \$500,000 is projected to be a renewable impact on rates. At this time, no appropriation is requested. The Purchased Power account balance will be monitored and the need for an appropriation will be determined before the end of FY14.

**VISION IMPACT:**

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

9 Vision Statement: Columbia residents and businesses conserve all the community's natural resources, work cooperatively to apply best planning practices, model energy efficiency, transition to renewable energy, and approach zero waste generation.

**SUGGESTED COUNCIL ACTIONS:**

Approval of the ordinance authorizing the City Manager to execute an agreement with Farmers City Wind.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$1,000,000.00 <input type="text"/>	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$1,000,000.00 <input type="text"/>	Duplicates/Epands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time		Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	9
Operating/ Ongoing		Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	