



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and City Council Members
FROM: William R. Gray, Public Works Director
Scott R. Tess, Environmental Sustainability Manager
DATE: November 22, 2016
RE: WCP Solar Services Power Purchase Agreement

Introduction

Attached to this memo is an ordinance authorizing the Mayor to execute a power purchase agreement with WCP Solar Services as well as the WCP Solar Service Power Purchase Agreement itself.

Background

In late 2015, the City of Urbana was awarded a technical assistance grant from Grow Solar: A Midwest Partnership to Move Markets, itself a US Department of Energy funded collaboration. The technical assistance provided to Urbana intended to lower four barriers to installation of new distributed solar photovoltaic (pv) capacity. 1) Review and reform of planning, zoning, and permitting practices regarding solar pv. 2) Install solar pv at a City-owned facility. 3) Conduct a 'solarize bulk solar purchase program. These activities are expected to lower the 1) convenience barrier, 2) social norm barrier, 3) information/uncertainty barrier, and 4) cost barrier.

Staff has been evaluating the viability of solar pv installations at City-owned facilities. Since no funds are appropriated for the purchase of a solar installation, staff pursued a power purchase agreement for a solar installation. A solar power purchase agreement allows a solar installer to install, own, operate, maintain, and decommission a solar array at a City-owned facility and receive its payments through a purchase price on each kilowatt hour (kWh) provided to the City facility from the solar array. At the end of the 25 year term, the solar installer shall decommission the solar array or may choose to sell the array to the City at fair market value.

In July of 2016, the City of Urbana released a Request for Quote for a solar installation at the Arbor Division Shop located at the closed landfill. The City received two bids and entered into negotiations with the lower bidder. Some elements of the final power purchase agreement include:

- 25 year term
- Supplies nearly all electricity needs for the City of Urbana Arbor Division Shop

- Renewable Energy Credits (RECs) and any other environmental claims shall be retained by the installer for the first 5 years. Starting in year 6, the RECs and environmental claims shall be owned by the City of Urbana.
- All installation, maintenance, taxes, or fees are paid for by the installer.
- The initial per kWh price is \$0.051 with an annual escalation of 4%. At the commencement of year 6 when new REC ownership accrues to the City, the price is \$0.1049 per kWh with an annual escalation of 2.5%, increasing to 4% by the end of the 25 year term. The City's contracted electricity cost through July 2019 is \$0.089 per kWh.

This agreement serves to hedge against future increases in the market cost of electricity, promote solar energy to our residents and businesses, develop the local solar market, and reduce the City's greenhouse gas emissions.

Recommendation

It is recommended that AN ORDINANCE APPROVING A POWER PURCHASE AGREEMENT WITH WCP SOLAR SERVICES, LLC be approved.

ORDINANCE NO. 2016-11-110

AN ORDINANCE APPROVING A POWER PURCHASE AGREEMENT WITH WCP SOLAR SERVICES, LLC

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. A Power Purchase Agreement between the City of Urbana, Illinois, and WCP Solar Services, LLC, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor



WCP SOLAR SERVICES, LLC

POWER PURCHASE AGREEMENT



Relating to the

CITY OF URBANA SOLAR PV PROJECT

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WCP SOLAR SERVICES, LLC
NAPERVILLE, • IL • 60563
(630) 729-2099 (PHONE) • (630) 929-0037 (FAX)

Power Purchase Agreement

This Power Purchase Agreement ("Agreement") is entered into as of [_____] [____], 2016, by and between WCP Solar Services, LLC, ("Provider") an Illinois limited liability company, and the City of Urbana("Purchaser").

WCP Solar Services, LLC, a privately held Limited Liability company in the State of Illinois, with its registered office located at 1057 Shore Rd, Naperville, IL 60563 (the "Provider" that expression where the context so admits shall be deemed to include its successors and assigns); and

The City of Urbana, with its principal office located at 400 South Vine Street, Urbana, IL 61801 (the "Purchaser"),

WHEREAS, The City of Urbana [Purchaser] is the owner of the property located at 1210 East University Avenue, Urbana, IL 61802, and desires to purchase from Provider the electric energy produced from the solar photovoltaic system that will be installed on the grounds of the property.

WHEREAS, WCP Solar Services, LLC desires to develop, design, construct, own and operate the project located on grounds of the property and sell to the City of Urbana the electric energy produced by the project.

WHEREAS, WCP Solar Services, LLC [Provider] plans to develop, design, finance, construct, commission, complete, own, operate, and maintain a solar photovoltaic power generation facility with a net capacity of 14.88-kWp located in Urbana, Illinois. (Final nameplate capacity to be determined based on engineering layout, building capacity, and Purchaser's requests.)

WHEREAS Provider wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Provider, the available capacity of the power generation facility and all of the Net Electrical

Output (as hereinafter defined) pursuant to the terms and conditions as set out in this Agreement.

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. GLOSSARY OF TERMS

Certain capitalized terms used in this Agreement have the meanings set forth in the GLOSSARY OF TERMS.

- 1.1 **"Access Rights"** means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project.
- 1.2 **"Affiliate"** means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.
- 1.3 **"Agreement"** means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.
- 1.4 **"Applicable Law"** means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.
- 1.5 **"Business Day"** means a day other than Saturday, Sunday, or other day on which commercial banks in Chicago are authorized or required by law to be closed.

- 1.6 **"Change in Law"** means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.
- 1.7 **"Commercial Operation Date"** means the date, which shall be specified by Provider to Purchaser pursuant to Section 4.4.2 when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.
- 1.8 **"Delivery Point"** means WCP Solar Services, LLC field office;
- 1.9 **"Dispute"** means a controversy or claim arising out of or relating to this Agreement.
- 1.10 **"Early Termination Amount"** means an amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, or Tax Attributes.
- 1.11 **"Electric Service Provider"** means any person, including the Local Electric Utility, authorized by the State of Illinois to provide electric energy and related services to retail users of electricity in the area in which the Site is located.
- 1.12 **"Environmental Attributes"** means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.
- 1.13 **"Fair Market Value"** means the price that would be paid in an arm's length, free market transaction, in cash, between an informed,

willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

- 1.14 **"Financing Party"** means a Project Lessor or Lender.
- 1.15 **"Force Majeure Event"** means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but is not limited to the following acts or events:
- 1.15.1 natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes;
 - 1.15.2 explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance;
 - 1.15.3 acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and
 - 1.15.4 strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.
- 1.16 **"Governmental Authority"** means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

- 1.17 **"Hazardous Materials"** means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any Applicable Law.
- 1.18 **"Host"** means the Lessor of the property located at 1210 East University Avenue Urbana, IL 61802.
- 1.19 **"Indemnified Person"** means the person who asserts a right to indemnification under Section 16.
- 1.20 **"Indemnifying Party"** means the Party who has the indemnification obligation under Section 16 to the Indemnified Person.
- 1.21 **"Installer"** means the person designated by Provider to install the Project on the Premises – currently, WCP Solar Services, LLC.
- 1.22 **"Lender"** mean persons providing construction or permanent financing to Provider in connection with installation of the Project.
- 1.23 **"Liens"** has the meaning provided in Section 9.3
- 1.24 **"Local Electric Utility"** means the local electric distribution owner and operator which under the laws of the State of Illinois are responsible for providing electric distribution and interconnection services to Purchaser at Site.
- 1.25 **"Losses"** means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney's fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).
- 1.26 **"Net Electrical Output"** means:

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- 1.26.1 in respect of The Project, the electrical output in MWh delivered by The Project as measured at the Delivery Point; and
- 1.26.2 in respect of the Project, the aggregate Net Electrical Output of The Project as measured at the Delivery Point;
- 1.27 **"Operations Period"** has the meaning provided in Section 2.
- 1.28 **"Operations Year"** means a twelve-month period beginning at 12:00 a.m. on an anniversary of the Commercial Operation Date and ending at 11:59 p.m. on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Operations Year shall begin on the Commercial Operation Date.
- 1.29 **"Party"** means either Purchaser or Provider, as the context shall indicate, and "Parties" means both Purchaser and Provider.
- 1.30 **"Point of Delivery"** means the location where the purchaser's facility connects to the utility company's bi-directional meter.
- 1.31 **"Premises"** means the portions of the Site described on Exhibit D.
- 1.32 **"Project"** means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.
- 1.33 **"Project Lessor"** means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.
- 1.34 **"Provider"** means WCP Solar Services, LLC, a limited liability company, and all successors and assigns.
- 1.35 **"Purchaser"** means Purchaser and all successors and assigns.
- 1.36 **"Relocation Event"** means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.
- 1.37 **"Renewable Energy Certificate"** or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program, or certification

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authority indicating generation of a particular quantity of energy or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project.

- 1.38 **"Signature Date"** means the date the last Party signs the Agreement.
- 1.39 **"Site"** means the real property described on Exhibit C attached hereto.
- 1.40 **"Tax Attributes"** means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)
- 1.41 **"Term"** shall have the meaning provided in Section 2 hereof.

Section 2. TERM

- 2.1 Term
 - 2.1.1 This agreement shall commence on the Signature Date.
- 2.2 Purchaser will have the first right of refusal for the energy produced by the Project in this and all other subsequent agreements.
- 2.3 Operations Period.
 - 2.3.1 The Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 p.m. on the last day of the month in which the twenty fifth (25th) anniversary of the Commercial Operation Date occurs. Payments and Billing described in Section 6 of this Agreement shall commence on the Commercial Operation Date.
- 2.4 Extensions.
 - 2.4.1 Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms

and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

Section 3. ACCESS RIGHT

3.1 Access Specifications.

3.1.1 Purchaser hereby grants Provider and its designees (including Installer, persons responsible for implementing the Applicable Solar Program, and Financing Party) a nonexclusive license to access the Premises, for the Term, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Project, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. This license is not a warranty of title and does not convey any right, title, or interest in the Premises.

3.1.2 Access Rights with respect to the Site include without limitation:

- (a) Vehicular and Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.
- (b) Utilities. Water, drainage, electrical, and Ethernet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

3.2 Easement Rights.

3.2.1 Upon request by Provider, the Parties shall execute and record with the appropriate Land Registry easements and other instruments documenting the Access Rights granted by Purchaser to Provider in this Agreement, and which shall be in form and substance indicated on Exhibit G or other form agreed by the Parties. The cost of preparation and recording shall be borne by the Provider.

3.3 Remote Monitoring.

- 3.3.1 Provider will provide an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Purchaser to remotely monitor the Project.

Section 4. PLANNING, INSTALLATION, AND OPERATION OF PROJECT

4.1 Site Assessment and Planning.

- 4.1.1 After the Signature Date, the Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

4.2 Commencement of Construction, Modification of Design.

- 4.2.1 At any time after the Signature Date upon at least ten (10) Business Days notice to Purchaser, Provider shall have the right to commence installing the Project on the Premises.

4.3 Construction Commencement Deadline.

- 4.3.1 If within 365 days following the date of this Agreement (not including any days in which a Force Majeure Event existed), Provider has not commenced the installation of the Project on the Premises, Purchaser may terminate this Agreement by delivering

notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate. Upon any termination in accordance with this Section above neither Party shall have any further liability to the other with respect to the Facility, provided that

- (a) Provider shall remove any equipment or materials that Provider has placed on the Site;
- (b) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction;
- (c) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and

4.4 Contractors.

4.4.1 Provider shall use licensed contractors who meet the definition of a "qualified person" as defined by the Illinois Power Agency Act, to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Purchaser. Provider shall advise Purchaser of the Installer prior to commencement of the work on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Purchaser shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit F. Provider shall comply with all requirements of the Illinois Prevailing Wage Act 820 ILCS 130/.01, *et seq.*, as amended from time to time, including paying laborers, workers, and mechanics performing services on public works projects no less than the prevailing rate of wages in the City of Urbana insofar as required by the Act.

Status Reports.

4.4.2 Provider shall give Purchaser weekly updates, on the progress of installation of the Project and shall notify Purchaser of when Provider will commence testing of the Project. Purchaser shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Purchaser that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Purchaser. All electricity produced by the Project prior to the Commercial Operation Date shall be delivered to Purchaser and Purchaser shall pay for such electricity at the rate applicable to the first Operations Year but in no event greater than the rate otherwise payable by Purchaser to the Electric Service Provider.

4.5 Standard of Operation.

4.5.1 Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Purchaser and Purchaser's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Purchaser for conduct of business on the Site.

4.6 Hazardous Materials.

4.6.1 Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider

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and Installer will stop work in the affected area and duly notify Purchaser and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Purchaser shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Purchaser may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Purchaser and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Purchaser notifies Provider and Installer that Purchaser has complied with all Applicable Laws, and a qualified independent expert provides written certification that

- (a) remediation has been accomplished as required by Applicable Law and
- (b) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the Project or the Site.

4.6.2 Purchaser shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses.

4.6.3 Notwithstanding the preceding provisions, Purchaser is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Purchaser required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.

4.7 Site Security.

4.7.1 Purchaser will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Purchaser premises, including the Project. Purchaser will advise Provider as quickly as reasonably practicable upon observing any damage to the Project. Upon request by Provider, such as Provider

receiving data indicating irregularities or interruptions in the operation of the Project, Purchaser shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations.

4.8 System Shut Down.

4.8.1 Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Purchaser notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Purchaser for costs of purchasing electricity that would have been produced by the Project but for such shutdown. Purchaser shall not have any obligation to pay Provider for electricity that would have been produced by the Project but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

Section 5. SALE OF ELECTRIC ENERGY

5.1 Sale of Electricity.

5.1.1 Throughout the Term, subject to the terms and conditions of this Agreement, Provider shall sell to Purchaser and Purchaser shall buy from Provider all electric energy produced by the Project, whether or not Purchaser is able to use all such electric energy.

5.1.2 The Point of Delivery of the electric energy shall be as determined by mutual consent by the Purchaser and Provider. Title to and risk of loss with respect to the energy shall transfer from Provider to Purchaser at the Point of Delivery.

5.2 Delivery of Electricity.

5.2.1 The electric energy from the Project shall be delivered from Provider to Purchaser at the Point of Delivery and otherwise in compliance with all requirements of the Local Electric Utility.

5.3 Limits on Obligation to Deliver.

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5.3.1 Provider does not warrant or guarantee the amount of electric energy to be produced by the limits on Project for any hourly, daily, monthly, annual, or other period. Provider is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Purchaser's electric requirements. Provider is not subject to rate review by any Governmental Authority.

5.4 Meter Testing.

5.4.1 Provider shall install one or more meter(s) at the Project, as Provider deems appropriate, to measure the output of the Project at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project. Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Purchaser shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Purchaser deems necessary, except if, after such testing, any meter is shown to be in error in Provider's favor by more than 2%, Provider shall pay for the cost of such test and shall make corresponding adjustments to the records of the amount of electrical energy provided by the Project delivered based on the period that is half-way in between the date of this testing and the last testing date of the meter. If there is an error of less than or equal to 2% no billing adjustments will be made. In the event there is an error of greater than 2%, Provider shall adjust the next invoice to be provided to Purchaser under Section 6.2 hereof, to either charge the Purchaser additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate or provide Purchaser a credit against future billing for energy produced under the stated meter amount during the applicable period, provided, however, that any deficiencies or credits not theretofore applied or satisfied at the expiration or earlier termination of the Operations Period shall be settled in cash.

Section 6. PAYMENT AND BILLING

6.1 Rates.

6.1.1 Purchaser shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

6.2 Billing.

6.2.1 Purchaser shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Purchaser with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

6.3 Invoice Delivery.

6.3.1 Invoices shall be in writing and shall be either

- (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid;
- (b) delivered by a recognized overnight or personal delivery service;
- (c) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or
- (d) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

City of Urbana
706 S. Glover Ave.
Urbana, IL 61802
Attention: Facilities Supervisor

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6.4 Payment.

6.4.1 Purchaser shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer or by check, to an account designated by Provider in the invoice or in a written notice delivered to Purchaser. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of

- (a) 1% per month, compounded monthly or
- (b) the highest rate allowed by applicable law.

6.5 Disputed Invoices.

6.5.1 If Purchaser objects to all or a portion of an invoice, Purchaser shall, on or before the date payment of the invoice is due,

- (a) pay the undisputed portion of the invoice, and
- (b) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Purchaser does not object prior to the date payment of any invoice is due, Purchaser shall be obligated to pay the full amount of such invoices but Purchaser may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Purchaser may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6.5, survive the expiration or termination of this Agreement.

Section 7. SUPPLEMENTAL POWER, NET METERING, AND RECS

7.1 Back-up and Supplemental Electricity.

7.1.1 Except as otherwise provided herein, throughout the Term, Purchaser shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the



Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

7.2 Net Metering and Utility Credits.

7.2.1 At any time that electric production from the Project is greater than Purchaser's requirements at such time, Purchaser shall nevertheless pay Provider for all of the electricity produced by the Project at the rates and in the manner provided in this Agreement. Provider shall make arrangements with the Local Electric Utility (with Purchaser's approval) so that power in excess of Purchaser's requirements may be delivered to the Local Electric Utility through the Point of Delivery and Purchaser shall receive any credits or payments from the Local Electric Utility that may be available under net metering or similar programs. If Applicable Law or the practice of the Local Electric Utility restricts the ability of the Purchaser to deliver electricity produced by the Project to the Local Electric Utility, then the Parties shall agree on alternate arrangements to enable Purchaser, insofar as possible, to receive benefits from the Local Electric Utility comparable to those available under net metering programs, provided that the economic benefits to Provider remain as provided in this Section 7.2. Provider will assist Purchaser in entering into alternative arrangements as necessary for the purposes of this Section. Any such alternative arrangement will, to the degree possible under the current regulatory and statutory provisions, include provisions which will preserve the benefit to Purchaser.

7.3 Interconnection.

7.3.1 Provider shall be responsible for arranging the interconnection of the Project with Purchaser's Local Electric Utility in a manner that includes bi-directional or "net metering".

7.4 Applicable Solar Program Incentives.

7.4.1 All incentives are owned and due to the Provider. Except as provided in Section 7.2, Provider shall receive all payments available under any Applicable Solar Program. Purchaser shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to

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receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Purchaser receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Purchaser's obligation to make any payments to Provider under this Section 7.4.1 is limited to any payments actually received by Purchaser. Provider shall assist Purchaser in researching and applying for all applicable incentives.

7.5 Ownership of Tax Attributes.

7.5.1 Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Purchaser shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Purchaser is deemed to be the owner of any such Tax Attributes, Purchaser shall assign the same (or the proceeds thereof) to Provider. If Purchaser receives any payments in respect of such Tax Attributes; it shall promptly pay them over to Provider.

7.6 Environmental Attributes.

7.6.1 Provider (and/or Financing Party) shall be the owner of any Environmental Attributes which may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person for the first 5 years of operation. At the commencement of year 6, the Purchaser shall retain ownership of all Environmental Attributes. Purchaser shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Environmental Attributes, and if Purchaser is deemed to be the owner of any such Environmental Attributes, Purchaser shall assign the same (or the proceeds thereof) to Provider. If Purchaser receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

7.7 Renewable Energy Credits.

7.7.1 Provider shall be the owner of any Renewable Energy Credits that may arise as a result of the operation of the Project and shall be entitled to transfer such Renewable Energy Credits to any person

for the first 5 years of operation. At the commencement of year 6, the Purchaser shall retain ownership of all Renewable Energy Credits. Purchaser shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Renewable Energy Credits, and if Purchaser is deemed to be the owner of any such Renewable Energy Credits, Purchaser shall assign the same (or the proceeds thereof) to Provider. If Purchaser receives any payments in respect of such Renewable Energy Credits, it shall promptly pay them over to Provider.

7.8 No Resale of Electricity.

7.8.1 Except as contemplated by the provisions of Section 7.2, the electricity purchased by Purchaser from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provider, which approval shall not be unreasonably withheld, and Purchaser shall not take any action which would cause Purchaser or Provider to become a utility or public service company.

Section 8. INTERCONNECTION AGREEMENT WITH LOCAL ELECTRIC UTILITY

8.1 Interconnection.

8.1.1 Provider shall pay for and obtain all approvals from the Local Electric Utility (Ameren Illinois) for the interconnection of the Project to the grid network.

8.1.2 All costs related to the interconnection study will be borne by the Provider.

8.1.3 Purchaser will allow for the interconnection to the grid network through its distribution network and utility account.

Section 9. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

9.1 Permits.



9.1.1 Provider shall pay for and obtain all approvals from each Governmental Authority necessary for the construction and operation of the Project, including land use permits, building permits, demolition, and waste disposal permits, and approval.

9.2 System Ownership.

9.2.1 Except as provided in Section 10, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Purchaser and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

9.3 Liens.

9.3.1 To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or material man's lien), charge, security interest, encumbrance or claim of any nature, including claims by any Governmental Authority for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or material man's lien against Purchaser's interest in the Site. If permitted under Applicable Law, Provider will include contract provisions in any Installer contracts as to the indemnification by all contractors, subcontractors and materialmen of Purchaser as to any responsibility of Purchaser regarding the Liens as defined herein and will post notices of non-responsibility to notify Installer and others on the Site that Purchaser is not responsible for work performed on the Project. Each Party shall promptly notify the other

of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

9.4 Non Disturbance Agreements.

- 9.4.1 Purchaser shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises that could reasonably be construed as prospectively attaching to the Project, Purchaser shall promptly upon request of Provider, provide an acknowledgement and consent from such lien holder, in form and substance reasonably acceptable to Financing Party, stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement.
- 9.4.2 As the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry at the Provider's expense.
- 9.4.3 Purchaser may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

Section 10. PURCHASE OPTIONS; REMOVAL AT END OF TERM



10.1 Early Purchase Options.

10.1.1 Prior to the twenty fifth (25th) anniversary of the Commercial Operation Date, provided no Purchaser Event of Default has occurred and is continuing, the Purchaser shall have the option to purchase the Project from Provider at the Fair Market Value of the Project at such anniversary date plus, if applicable, repayment or recapture of Applicable Solar Program or other governmental payments occasioned by the exercise of such option. If the Purchaser disagrees with the estimate of the Fair Market Value of the Project, the Purchaser may choose to participate in the dispute resolution process, but it also may withdraw its election to exercise the early purchase option at any time and without penalty.

10.2 End of Term Purchase Option.

10.2.1 Purchaser shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Purchaser shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Purchaser its appraisal of the Fair Market Value of the Project at the end of the Term. Purchaser may, but is not obligated to, accept such appraisal. If Purchaser does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Purchaser may choose to participate in the dispute resolution process, but it also may withdraw its election to exercise the end of term purchase option at any time and without penalty, and the Provider shall then promptly decommission and remove the Project. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be undertaken by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project and shall be undertaken consistently with the terms of such transaction so

that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

10.3 Transfer of Ownership.

10.3.1 Upon Purchaser's notice that it elects to exercise the option set forth in either Section 10.1 or 10.2 above, Provider shall prepare and deliver to Purchaser a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Purchaser a bill of sale conveying the Project to Purchaser. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, or portions thereof, to Purchaser.

10.4 Operation and Maintenance After Sale.

10.4.1 Prior to the effective date of Purchaser's purchase of the Project under Section 10.1 or 10.2, Purchaser and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Purchaser's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

10.5 Decommissioning.

10.5.1 If Purchaser does not exercise the option set forth in either Section 10.1 or 10.2 above, then Provider, at its expense, shall promptly decommission and remove the Project following the expiration of the Operations Period. Provider shall not be obligated, however, to remove any support structures for the Project which are affixed to Purchaser's structures or any below grade structures, including foundations and conduits, or any roads. Purchaser grants Provider and its representative's reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Purchaser will provide Provider adequate storage space on the Site

convenient to the Premises for materials and tools used during decommissioning. Provider shall be responsible for providing shelter and security for stored items during de-commissioning and removal. Purchaser further agrees that its normal security measures, practices, and policies which apply to its own premises shall also apply to the Project. During decommissioning, Provider will comply with all Applicable Laws.

10.6 No Survival of Purchase Option.

10.6.1 The options for Purchaser to purchase the Project under Sections 10.1 and 10.2 shall not survive the termination of this Agreement.

Section 11. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE

11.1 Purchaser Requested Shutdown.

11.1.1 Purchaser from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Purchaser's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Purchaser will pay Provider an amount equal to the sum of

- (a) payments that Purchaser would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown;
- (b) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown; and
- (c) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on the actual operation of the Project during the

same period in the previous Operations Year, unless Provider and Purchaser mutually agree to an alternative methodology.

11.2 Provider Safety Shutdown.

11.2.1 In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4.8, Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site that are not under the control of Provider, whether or not under the control of Purchaser, may interfere with the safe operation of the Project. Provider shall give Purchaser notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities.

11.2.2 Provider and Purchaser shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. If a shutdown pursuant to this Section 11 continues for one hundred and eighty (180) days or longer, either Party may terminate this Agreement.

11.3 Project Relocation.

11.3.1 Purchaser may request to move the Project to another location on the Site or to another site owned by Purchaser, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion. In connection with such relocation, Purchaser shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Purchaser shall also provide any consents or releases required by Provider in connection with the new location. Purchaser shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, following the Relocation Event, Purchaser will pay Provider an amount equal to the sum of

- (a) payments that Purchaser would have made to Provider hereunder for electric energy that would have been produced by the Project but for such Relocation Event;

- (b) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced but for such Relocation Event; and
- (c) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project but for such Relocation Event. Determination of the amount of energy that would have been produced but for such Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Purchaser mutually agree to an alternative methodology.

11.4 Sale of Site.

11.4.1 In the event Purchaser transfers (by sale, lease, or otherwise) all or a portion of its interest in the Site, Purchaser shall remain primarily liable to Provider for the performance of the obligations of Purchaser hereunder notwithstanding such transfer. However, if no Purchaser Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and the subsequent owner executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Purchaser may be released from further obligations under this Agreement.

Section 12. TAXES

12.1 Income Taxes.

12.1.1 Provider shall be responsible for any and all income taxes associated with payments from Purchaser to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

12.2 Sales Taxes.

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12.2.1 Purchaser shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Purchaser. Purchaser shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

12.3 Real Estate Taxes

12.3.1 Provider shall be responsible for any and all real estate taxes assessed upon the Site.

12.4 Tax Contests.

12.4.1 Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

12.5 Payment of Delinquent Taxes.

12.5.1 In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.

12.6 Reimbursement Deadline.

12.6.1 Any reimbursement of taxes owing pursuant to this Section 12 shall be paid within twenty (20) Business Days of receiving an invoice therefor from the Party who paid the taxes.

Section 13. INSURANCE

13.1 Coverage.

13.1.1 Purchaser and Provider shall each maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Term.

13.2 Applicable Solar Program Requirements.

13.2.1 Purchaser and Provider will also maintain the additional insurance requirements (if any) specified in Exhibit F to satisfy the requirements of the Applicable Solar Program.

13.3 Insurance Certificates.

13.3.1 Each Party shall furnish current certificates indicating that the insurance required under this Section 13 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days written notice before the insurance is cancelled or materially altered.

13.4 Certain Insurance Provisions.

13.4.1 Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

13.5 Insurance Providers.

13.5.1 All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

Section 14. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS

14.1 Cooperation.

14.1.1 The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

14.2 Purchaser to Not Restrict Solar Access.

14.2.1 Purchaser, or any lessee, grantee, or licensee of Purchaser, shall not erect any structures on, or make other modifications to, or plantings on, the Site that will interfere with the construction, operation, maintenance of, or solar access of, the Project.

14.3 Adjoining Properties.

14.3.1 If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Purchaser and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Purchaser and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Purchaser for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of

- (a) twenty five years or
- (b) the remaining term of this Agreement without regard to Purchaser's option to purchase the Project.

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Section 15. PRESS RELEASES

15.1 Press Releases.

15.1.1 The Parties acknowledge that they each desire to publicize information about this Agreement and the Project. However, this Agreement provides that each party notifies the other, in writing, at least ten (10) days prior to the scheduled press release and seeks to afford joint press releases where possible.

15.1.2 The Parties therefore agree that each may make independent press releases about entering into this Agreement, the size and location of the Project, and the identity of the other Party, without the prior written consent of the other Party, provided that Section 15.1.1 is satisfied.

- (a) The parties agree that claims of ownership of and responsibility for Environmental Attributes, including greenhouse gas reductions represented by Renewable Energy Credits, belong to and shall be attributed to the Provider or any party those Environmental Attributes are sold or assigned to.

15.2 Permissible Disclosures.

15.2.1 Provider may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provider in connection with the Project.

15.3 Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 15 and agrees that the provisions of this Section 15 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 15. The provisions of this Section 15 shall survive until three years after the effective date of any termination of this Agreement.

Section 16. INDEMNIFICATION

16.1 Provider Indemnification.

16.1.1 Provider shall indemnify, defend and hold Purchaser and its directors, officers, employees, agents, volunteers, and invitees ("Purchaser's Indemnified Parties"), harmless from and against all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following:

- (a) Any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of Provider's (or its contractor's) negligence or willful misconduct;
- (b) Provider's violation of Applicable Law;
- (c) Any failure to properly interconnect or comply with the procedures of the Local Electric Utility; or
- (d) Any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or by any of Provider's employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Purchaser's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Purchaser or any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Purchaser or any Purchaser Indemnified Party.

16.2 Purchaser Indemnification.

16.2.1 Purchaser shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party ("Provider's Indemnified Parties"), harmless from and against all Losses incurred by the Provider's Indemnified Parties to the extent arising from or out of:

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- (a) Any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Purchaser's Indemnified Parties;
- (b) Purchaser's violation of Applicable Law; or
- (c) The presence, removal or remediation of any Hazardous Materials on the Site (other than any Hazardous Materials brought on to the Site by Provider's Indemnified Parties). Purchaser shall not be obligated to indemnify Provider or any Provider Indemnified Parties for any Loss to the extent such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.

16.3 Notice of Claims.

16.3.1 Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

16.4 Defense of Claims.

16.4.1 The Indemnifying Party has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment



of money damages only and does not require the acknowledgement of the validity of any claim.

16.5 Payments.

16.5.1 At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account

- (a) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and
- (b) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnifying Party is being indemnified.

16.6 Survival of Indemnification.

16.6.1 The obligations of indemnification hereunder shall survive termination of this Agreement.

Section 17. REPRESENTATIONS AND WARRANTIES

17.1 Mutual Representations.

17.1.1 Each Party hereby represents and warrants to the other, as of date hereof, that:

- (a) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.
- (b) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under
 - (i) its organizational documents;

- (ii) any agreement or other obligation by which it is bound;
 - (iii) any law or regulation.
- (c) Enforceability.
- (i) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken;
 - (ii) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and
 - (iii) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.
- (d) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any Governmental Authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

Section 18. FORCE MAJEURE

18.1 Excuse for Force Majeure Event.

18.1.1 Except as provided in Section 18.2 or otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly

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- (a) notify the other Party in writing of the existence and details of the Force Majeure Event;
- (b) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event;
- (c) notify the other Party in writing of the cessation of such Force Majeure Event; and
- (d) resume performance of its obligations hereunder as soon as practicable thereafter.

18.2 No Excuse for Payment for Prior Services.

18.2.1 Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.

18.3 Restoration.

18.3.1 In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Purchaser shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Purchaser. If Purchaser does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Purchaser does elect to restore the Premises, Purchaser shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 18.3,

- (a) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and

- (b) the confidentiality provisions of Section 15, the indemnity obligations under Section 16 hereof, and the dispute resolution provisions of Section 24 hereof shall continue to apply notwithstanding the termination of this Agreement.

18.4 Termination for Force Majeure Event.

18.4.1 Notwithstanding anything to the contrary in this Section 18, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 10.5 (unless there has been a casualty event, in which case the provisions of Section 18.3 above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and Dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

Section 19. CHANGE IN LAW

19.1 In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will promptly submit to Purchaser a written notice setting forth

19.1.1 the applicable Change in Law;

19.1.2 the manner in which such Change in Law increases Provider's costs; and

19.1.3 Provider's proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases

in costs. Purchaser agrees to an adjustment in the then applicable and future rates such that the new rates compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the rates set forth in Exhibit A.

Section 20. PROVIDER DEFAULT AND PURCHASER REMEDIES

20.1 Provider Events of Default.

20.1.1 Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

- (a) **Misrepresentation.** Any representation or warranty by Provider under Section 17 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Purchaser identifying the defect.
- (b) **Abandonment during Installation.** After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Purchaser stating that, in Purchaser's reasonable determination, Provider has abandoned installation of the Project;
- (c) **Failure to Operate.** After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of Governmental Authority, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 18.2 (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Purchaser stating that, in Purchaser's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days



during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

- (d) **Obligation Failure.** Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 18.1 (relating to Force Majeure Events), and such failure is not cured within:
 - (i) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or
 - (ii) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Purchaser identifying the failure.
- (e) **Insolvency.** Provider
 - (i) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property;
 - (ii) admits in writing its inability, or is generally unable, to pay its debts as such debts become due;
 - (iii) makes a general assignment for the benefit of its creditors;
 - (iv) commences a voluntary case under any bankruptcy law;
 - (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts;
 - (vi) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or
 - (vii) takes any action authorizing its dissolution.

20.2 Financing Party Opportunity to Cure; Purchaser Remedies.

20.2.1 Upon an Event of Default by Provider, provided that Purchaser complies with its obligations under Section 22 and Financing Party

does not cure such Event of Default by Provider, Purchaser may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue other remedies available at law or equity.

Section 21. PURCHASER DEFAULT AND PROVIDER REMEDIES

21.1 Purchaser Events of Default.

21.1.1 Purchaser shall be in default of this Agreement if any of the following ("Purchaser Events of Default") shall occur:

- (a) **Misrepresentation.** Any representation or warranty by Purchaser under Section 17 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.
- (b) **Obstruction.** Purchaser obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within ten (10) days of when such payment was due.
- (c) **Payment Failure.** Purchaser fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.
- (d) **Obligation Failure.** Purchaser fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 18.1.1 (relating to Force Majeure Events), and such failure is not cured within:
 - (i) ten (10) days if the failure involves a failure to maintain required insurance; or

- (ii) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.
- (e) Insolvency. Purchaser
 - (i) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property;
 - (ii) admits in writing its inability, or be generally unable, to pay its debts as such debts become due;
 - (iii) makes a general assignment for the benefit of its creditors;
 - (iv) commences a voluntary case under any bankruptcy law;
 - (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts;
 - (vi) acquiesces in, or fails to contest in a timely manner, any petition filed against Purchaser in an involuntary case under bankruptcy law or seeking to dissolve Purchaser under other Applicable Law; or
 - (vii) takes any action authorizing its dissolution.

21.2 *Default Damages.*

- 21.2.1 Upon an Event of Default by Purchaser, Provider may require Purchaser to pay to Provider the Early Termination Amount, sell electricity produced by the Project to persons other than Purchaser, and recover from Purchaser any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity. After Provider's receipt of such Early Termination Amount pursuant to this Section 21.2, Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

Section 22. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS

22.1 Financing Arrangements.

22.1.1 Provider may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in the Project to any persons providing financing for the Project. Purchaser acknowledges that Provider will obtain construction financing for the Project from third party and that Provider may either obtain term financing secured by the Project or sell or assign the Project to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Purchaser acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, an assignment of this Agreement, with the Purchaser's prior written consent, and a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Purchaser agrees as follows:

(a) Consent to Collateral Assignment.

1. Provider may sell the Project to a Financing Party but that no assignment of the Agreement is valid without the prior written consent of the Purchaser.

Section 23. LIMITATIONS ON DAMAGES

23.1 EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Section 11 and 21.2), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 24. DISPUTE RESOLUTION

24.1 Negotiation Period.

24.1.1 The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.

24.2 Mediation.

24.2.1 If, after such negotiation in accordance with Section 24.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the Dispute shall meet for at least three (iii) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

24.3 Arbitration of Disputes.

24.3.1 Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 24.1.1 or 24.2.1 shall (except as provided in Section 24.4) be settled by binding arbitration between the Parties conducted in the state of Illinois, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") in effect on the date that a Party gives notice of its demand for arbitration.

24.3.2 Dispute Submission. The Party initiating the Arbitration (the "Submitting Party") shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the "Responding Party"), which demand must include statements of the facts and circumstances surrounding the Dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

24.3.3 Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliate. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than \$250,000, the



Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, "Panel" means either a single arbitrator or a group of three arbitrators selected as provided herein.

- 24.3.4 Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.
- 24.3.5 Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the Dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.
- 24.3.6 Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel's costs shall be made on a monthly basis prior to the Award.

24.4 Exceptions to Arbitration.

24.4.1 The obligation to arbitrate shall not be binding upon any Party with respect to

- (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute;
- (b) actions to enforce an award of a Panel or otherwise to collect payments not subject to a bonafide dispute; or
- (c) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

24.5 Survival of Arbitration Provisions.

24.5.1 The provisions of this Section 24 shall survive any termination of this Agreement and shall apply (except as provided herein) to any Dispute arising out of this Agreement.

Section 25. NOTICES

25.1 Delivery of Notices. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either

25.1.1 delivered by hand;

25.1.2 mailed by first-class, registered or certified mail, return receipt requested, postage prepaid;

25.1.3 delivered by a recognized overnight or personal delivery service;

25.1.4 transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or



25.1.5 transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Purchaser:

City of Urbana
706 S. Glover Ave.
Urbana, IL 61802
Attention: Tess, Scott
Email: srtess@urbanaininois.us

If to Provider:

WCP Solar Services, LLC
1057 Shore Rd
Naperville, IL 60563
Attention: Dr Everton Walters
Email: drwally@wcp-solar.com

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

Section 26. MISCELLANEOUS

26.1 Governing Law.

26.1.1 This Agreement shall be governed by the laws of the State of Illinois, including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

26.2 Rules of Interpretation.

26.2.1 Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this



Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

26.3 Severability.

26.3.1 If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party's benefits, the matter shall be resolved under Section 24.3 in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

26.4 Amendment and Waiver.

26.4.1 This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

26.5 Assignment.

26.5.1 Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, except that either party, upon written notice to the other

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Party, may transfer the Agreement to a separate entity which is owned by an original Party hereto or to an entity whose owners are at least 75 percent identical to the present owners of the Party, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

26.6 Sole Record of Agreement

26.6.1 This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

26.7 Survival of Obligations

26.7.1 Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

26.8 Approvals and Consents

26.8.1 An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

26.9 Counterparts

26.9.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same agreement.

26.10 Service Contract.

26.10.1 This Agreement is a service contract pursuant to Section 7701 of the Internal Revenue Code.

26.11 No Joint Venture.

26.11.1 This Agreement does not create a joint venture, partnership, or other form of business association between the Parties.

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26.12 Equal Employment Opportunity

26.12.1 The Provider shall comply in all respects with Equal Employment Opportunity responsibilities as articulated in Section 2-119 of the Urbana City Code and the Urbana Human Rights Ordinance, Section 12 of the City Code for the duration of this agreement.

26.13 Site Maintenance

26.13.1 The Provider shall be responsible for maintenance of the Project and the Site for the duration of this Agreement including mounting, modules, inverters, Site erosion control, and Site vegetation control.

26.13.2 The provider shall maintain stabilization of the ground at the Site with the use of aggregate, or asphalt millings, or turf grass, or monarch and pollinator supportive native plant species comprising 75% of the Site vegetation and of such heights that the plants do not shade the solar cells, or any combination of these practices.

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Purchaser have executed this Power Purchase Agreement as of the date first set forth above.

This Agreement will be effective 2ND day of November, 2016.

SIGNED, SEALED, AND DELIVERED

PURCHASER

PROVIDER

City of Urbana

WCP Solar Services, LLC

By: _____

By: 

Attest: _____

Attest Dr. Everton Walters

Title Mayor

Title President/CEO

Address 400 S. Vine St.

Address 1057 Shore Rd

Urbana, IL 61801

Naperville, IL 60563



EXHIBIT A – Energy Purchase Rate

ENERGY PURCHASE RATES

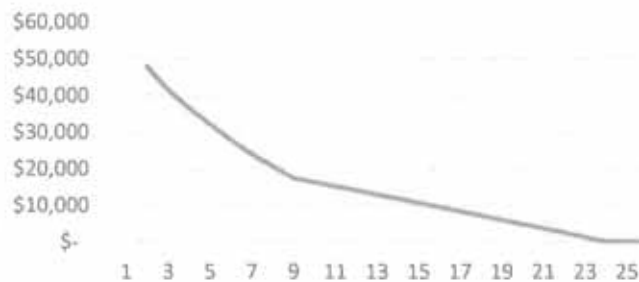
| Operations Year | Price per kWh |
|-----------------|---------------|
| 1 | \$0.0510 |
| 2 | \$0.0530 |
| 3 | \$0.0552 |
| 4 | \$0.0574 |
| 5 | \$0.0597 |
| 6 | \$0.1049 |
| 7 | \$0.1076 |
| 8 | \$0.1104 |
| 9 | \$0.1133 |
| 10 | \$0.1163 |
| 11 | \$0.1195 |
| 12 | \$0.1227 |
| 13 | \$0.1261 |
| 14 | \$0.1296 |
| 15 | \$0.1332 |
| 16 | \$0.1347 |
| 17 | \$0.1386 |
| 18 | \$0.1426 |
| 19 | \$0.1468 |
| 20 | \$0.1511 |
| 21 | \$0.1117 |
| 22 | \$0.1162 |
| 23 | \$0.1209 |
| 24 | \$0.1257 |
| 25 | \$0.1307 |

EXHIBIT B – Early Termination Amounts

EARLY TERMINATION AMOUNTS

| Operations Year | Early Termination Amount |
|-----------------|--------------------------|
| 1 | \$47,787 |
| 2 | \$41,552 |
| 3 | \$36,497 |
| 4 | \$32,150 |
| 5 | \$27,803 |
| 6 | \$23,986 |
| 7 | \$20,701 |
| 8 | \$17,415 |
| 9 | \$16,302 |
| 10 | \$15,184 |
| 11 | \$14,060 |
| 12 | \$12,930 |
| 13 | \$11,795 |
| 14 | \$10,654 |
| 15 | \$9,507 |
| 16 | \$8,355 |
| 17 | \$7,197 |
| 18 | \$6,034 |
| 19 | \$4,864 |
| 20 | \$3,689 |
| 21 | \$2,508 |
| 22 | \$1,321 |
| 23 | \$129 |
| 24 | \$50 |
| 25 | \$1 |

Early Termination Value



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EXHIBIT C – Description of Site

DESCRIPTION OF SITE

The site is located at 1210 E. University Avenue in the City of Urbana, IL.



Figure 1 - the Site

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EXHIBIT D – Description of Premises

DESCRIPTION OF PREMISES

A PART OF THE NW ¼ OF SECTION 10, T. 19 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT II

PART OF THE NW ¼ OF SECTION 10, T. 19 N., R. 9 E. OF THE 3RD P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT AN IRON PIPE MONUMENT FOUND AT THE SW CORNER OF THE NW ¼ OF SECTION 10, T. 19 N., R. 9 E. OF THE 3RD P.M.; THENCE N. 0°34'46" W., ALONG THE WEST LINE OF THE NW ¼ OF SAID SECTION 10, 1326.21 FEET TO THE NW CORNER OF THE SW ¼ OF THE NW ¼ OF SAID SECTION 10, SAID POINT BEING ALSO THE NW CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NW ¼ OF SAID SECTION 10; THENCE N. 89°09'56" E., ALONG THE NORTH LINE OF THE SW ¼ OF THE NW ¼ OF SAID SECTION 10 AND NORTH LINE OF SAID LOT 6, 330.00 FEET TO AN IRON PIPE MONUMENT SET ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE S. 0°34'46" E., ALONG SAID EAST LINE, 235.35 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1091.00 FEET OF SAID LOTS 5 AND 6; THENCE N. 89°11'23" E., ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 877.00 FEET OF SAID LOTS 5 AND 6; THENCE S. 0°34'46" E., ALONG SAID EAST LINE, 1091.00 FEET TO AN IRON PIPE MONUMENT SET ON THE SOUTH LINE OF THE NW ¼ OF SAID SECTION 10; THENCE S. 89°11'23" W., ALONG SAID SOUTH LINE, 877.00 FEET TO THE POINT OF BEGINNING, CONTAINING 23.747 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS,

TRACT III

PART OF THE NW ¼ OF SECTION 10, T. 19 N., R. 9 E. OF THE 3RD P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCING AT AN IRON PIPE MONUMENT FOUND AT THE SW CORNER OF THE NW ¼ OF SECTION 10, T. 19 N., R. 9 E. OF THE 3RD P.M.; THENCE N. 0°34'46" W., ALONG THE WEST LINE OF SAID SECTION 10, 1326.21 FEET, TO THE SW CORNER OF THE NW ¼ OF THE NW ¼ OF SAID SECTION 10, SAID POINT BEING ALSO THE NW CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NW ¼ OF SAID SECTION 10, AND ALSO BEING THE TRUE POINT OF BEGINNING; THENCE N. 0°34'46" W., ALONG THE WEST LINE OF

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SAID NW ¼ OF THE NW ¼, 535.23 FEET TO A POINT ON THE CENTERLINE OF THE SALINE BRANCH DRAINAGE DITCH; THENCE N. 50°05'03" E., ALONG SAID CENTERLINE, 49.37 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF F.A.I. ROUTE 5; THENCE S. 39°55'14" E., ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 222.08 FEET TO AN IRON PIPE MONUMENT SET AT A POINT OF CURVATURE; THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5245.51 FEET, FOR A DISTANCE OF 380.68 FEET TO AN IRON PIPE MONUMENT SET; THENCE N. 45°55'17" E., ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE 80.00 FEET TO AN IRON PIPE MONUMENT SET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5165.51 FEET AND AN INITIAL TANGENT BEARING S. 44°04'43" E., FOR A DISTANCE OF 825.04 FEET TO AN IRON PIPE MONUMENT SET; THENCE S. 48°12'49" E., ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 298.13 FEET TO AN IRON PIPE MONUMENT SET ON THE EAST LINE OF THE W ½ OF THE NW ¼ OF SAID SECTION 10, SAID POINT BEING ON THE WEST LINE OF LOT 3 OF TRUMAN ESTATES SUBDIVISION OF THE NW ¼ OF SAID SECTION 10; THENCE S. 0°36'27" E., ALONG SAID WEST LINE, 137.23 FEET TO AN IRON PIPE MONUMENT SET ON THE SOUTH LINE OF SAID LOT 3; THENCE N. 89°11'31" E., ALONG SAID SOUTH LINE 20.00 FEET TO AN IRON PIPE MONUMENT SET ON THE EAST LINE OF THE WEST 20.00 FEET OF LOT 4 OF SAID TRUMAN ESTATES SUBDIVISION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8 OF BUEL S. BROWN'S SUBDIVISION OF SAID LOT 4; THENCE S. 00°36'27" E., ALONG SAID EAST LINE AND WEST LINE OF SAID LOT 8, 596.53 FEET TO AN IRON PIPE MONUMENT SET ON THE SOUTH LINE OF THE NW ¼ OF SAID SECTION 10; THENCE S. 89°11'23" W., ALONG SAID SOUTH LINE 465.63 FEET TO AN IRON PIPE MONUMENT SET ON THE EAST LINE OF THE WEST 877.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE N. 0°34'46" W., ALONG SAID EAST LINE, 1091.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1091.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE S. 89°11'23" W., ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE N. 0°34'46" W., ALONG SAID EAST LINE, 235.35 FEET TO AN IRON PIPE MONUMENT SET ON THE SOUTH LINE OF THE NW ¼ OF THE NW ¼ OF SAID SECTION 10 AND THE NORTH LINE OF LOT 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE S. 89°09'56" W., ALONG SAID SOUTH LINE, 330.00 FEET TO THE POINT OF BEGINNING CONTAINING 16.132 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

BEING TRACTS II AND III AS SHOWN ON A PLAT OF SURVEY PREPARED BY THOMAS B. JORDAN, ILLINOIS PROFESSIONAL LAND SURVEYOR NUMBER 2014, DATED NOVEMBER 5, 1982, AND RECORDED NOVEMBER 5, 1982 IN PLAT BOOK "Z" AT PAGE 23 IN THE OFFICE OF THE RECORDER OF DEEDS, CHAMPAIGN COUNTY, ILLINOIS. SAID TRACTS HAVING PERMANENT IDENTIFICATION NUMBER OF 91-21-10-151-005, COMMONLY KNOWN AS 901 N. SMITH ROAD, URBANA, ILLINOIS.



EXHIBIT E – Description of Project

DESCRIPTION OF PROJECT

Nameplate capacity

The Proposed Project will have a nameplate capacity of 14,880 W or 14.88-kWp. The Project will be comprised of a total of 48 solar photovoltaic panels rated at 310W (or equivalent individual size panels for the total capacity).

Note: WCP reserves the right to change the type of panels used to develop the system, provided that the system nameplate capacity varies less than 0.1%.

Footprint

The footprint of the Project is to be determined but the system will be ground mounted.

Output Criteria

The Project will have an output with a frequency of 60 Hz with a 1 phase 240 AC volts

System CEC-AC rated Capacity (kW)

It is expected that the Project will have a derate factor of approximately 0.77 and consequently the expected AC power output of the Project will be in the region of 11,457.6 Watts

Quantity and type of Photovoltaic Modules

The proposed Project will comprise 48 photovoltaic modules rated at 310-W. the panels will be the CSUN 310-72MP Photovoltaic Panels or any manufacturer with equivalent specifications.



Figure 2 – CSUN 310W panels

Quantity and type of Inverters

The proposed inverters will be the SolarEdge SE11400A-US Grid Tied modular inverter or any manufacturer with equivalent specifications. The expected voltage output from the system will be 60-Hz, 1-Phase, 240 Volts AC system

A handwritten signature or mark in the bottom right corner of the page, consisting of a stylized, cursive-like scribble.



Figure 3 - SolarEdge SE11400A-US Grid Tied Inverter

Type of Mounting Structure

The mounting system will be fully ballasted ground mounting system .



Figure 4 – Fully Ballasted Ground Mounting System

Data Monitoring Equipment

The system will be monitored by a web-based logging system. The proposed monitoring system will be selected at the time of installation as these systems are continually being developed and the most useful system will be selected for use.

EXHIBIT F – Insurance Requirements

INSURANCE REQUIREMENTS

1. General Liability

Both Purchaser and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.

Both the Purchaser and Provider general liability insurance coverage shall:

- (ii) Be endorsed to specify that the Provider's and Purchaser's insurance is primary and that any insurance or self-insurance maintained by the Local Electric Utility shall not contribute with it.
- (iii) [determine whether required to name utility the Local Electric Utility as an additional insured pursuant to local regulations]

2. Workers' Compensation

Both Purchaser and Provider will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

3. Business Auto

Both Purchaser and Provider will have not less than one million dollars (\$1,000,000) each accident for bodily injury and property damage, and two million dollars (\$2,000,000) in the aggregate.

4. Additional Insurance Requirements

Additional insurance requirements and terms are included in the Applicable Solar Program contract.

5. Additional Insurance Provisions

Purchaser shall furnish Provider with certificates of insurance and endorsements of all required insurance, as may be reasonably requested, including for purposes of compliance with Applicable State Solar rebate program. The documentation required for the Applicable Solar Program shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Local Electric Utility. The documentation must be signed by a person authorized by the insurer to bind coverage on its behalf.

6. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

Commercial general liability insurance will be in the following amounts: \$1,000,000 for each occurrence and \$2,000,000 aggregate.

Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.

Auto coverage not less than one million dollars (\$1,000,000) each accident for bodily injury and property damage, and two million dollars (\$2,000,000) in the aggregate.

Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and two million dollars (\$2,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

EXHIBIT G – Form of Notice of Grant or Interest in Realty

FORM OF NOTICE OF GRANT OF INTEREST IN REALTY

WCP Solar Services, LLC
1057 Shore Rd
Naperville IL 60563

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [_____] , notice is hereby given of that Power Purchase Agreement dated as of [_____] for purchase and sale of electrical energy (the "Agreement"). This notice may be executed in counterparts by the parties to the Agreement.

Parties to the Agreement:

Purchaser: City of Urbana
706 S. Glover Ave.
Urbana, IL 61802
ATTN: Environmental Sustainability Manager

Provider: WCP Solar Services, LLC
1057 Shore Rd
Naperville IL 60563

Date of Execution: [_____]

Description of Premises: See Exhibit A.

TERM OF AGREEMENT:

The term of the Agreement shall be until the last day of the calendar month in which the twenty-fifth (25th) anniversary of the Commercial Operation Date (as that term is defined in the Agreement) occurs, subject to any extensions or early termination pursuant to the terms of the Agreement.

Witness the execution hereof under seal by said parties to said Agreement
this [_____] day of [_____].

Provider:

WCP Solar Services, LLC

By: _____

Name (printed): Dr. Everton Walters

Title: Member

Purchaser:

City of Urbana

By: _____

Name (printed): Laurel Lunt Prussing

Title: Mayor

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