

**SOLAR POWER PURCHASE AGREEMENT  
BETWEEN**

**COLORADO SPRINGS UTILITIES**

**AND**

**GRAZING YAK SOLAR, LLC**

**July 10, 2018**

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## EXHIBITS

- A. Facility Description
- B. Point of Common Coupling
- C. Project Milestones
- D. Notices and Operating Committee Representatives
- E. Annual Energy Production Schedule and Applicable Rate
- F. Permits and Approvals
- G. Form of Letter of Credit
- H. Form of Renewable Energy Credit(s) Attestation and Bill of Sale
- I. Quarterly Operating Report
- J. Insurance Coverage
- K. Reserved
- L. Form of Corporate Guaranty
- M. Site

**Solar Power Purchase Agreement between  
Colorado Springs Utilities  
and  
Grazing Yak Solar, LLC**

This Solar Power Purchase Agreement is entered into as of this 10<sup>th</sup> day of July, 2018 (the “**Effective Date**”), by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 South Tejon Street, Colorado Springs, Colorado 80903 (“**UTILITIES**”) and Grazing Yak Solar, LLC, a Delaware limited liability company with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408 (“**Seller**”). UTILITIES and Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Seller’s proposal was selected under UTILITIES’ RFP-GM-129597 Request For Proposals (“**RFP**”) to develop, design, construct, operate and maintain an approximately 35MW AC photovoltaic solar-powered electric generating facility (further defined below as the “**Facility**”) known as the Grazing Yak Solar Energy Center at the Site (further defined below);

WHEREAS Seller desires to develop, design, construct and operate and maintain the Facility at the Site as described in the Facility Description (defined below); and

WHEREAS Seller desires to sell and deliver to UTILITIES; and UTILITIES desires to purchase and accept from Seller all energy and associated ancillary services, capacity attributes, and Renewable Energy Credits (RECs) produced by the Facility;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties agree as follows:

**ARTICLE 1 - Definitions and Rules of Interpretation**

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA.
- (C) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA; provided that, in the event of a conflict between the terms of any Exhibit and the terms of this PPA shall take precedence.
- (D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

1.2 Definitions. The following terms shall have the meanings set forth herein:

“**AC**” means alternating electric current.

“**Affiliate**” of any named Person means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term “control”, including the terms “controls”, “under the control of” and “under common control with”, means the possession, directly or indirectly, of the power to direct or cause the direction of the management operation, or policies of such Person, whether through ownership of voting securities or by contract or otherwise. For purposes of this definition, NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP are deemed to be Affiliates of Seller.

“**Annual Energy Production**” means the estimated yearly energy production as listed in Exhibit E.

“**Applicable Energy Rate**” has the meaning set forth in Exhibit E.

“**Applicable Laws**” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“**Balancing Authority**” means an entity that is responsible for maintaining the electricity balance within its region. The Balancing Authority does this by controlling the generation and transmission of electricity throughout its own region, and between neighboring Balancing Authorities.

“**Business Day**” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“**CCR**” means the Colorado Code of Regulations, as amended.

“**Code**” means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

**“Commercial Operation”** means the Facility has satisfied the Conditions set forth in Section 4.4.

**“Commercial Operation Date”** means the date upon which the Facility achieves Commercial Operation.

**“Commercial Operation Milestone”** is defined in Section 4.1(B).

**“Compliance Expenditures”** is defined in Section 7.5(C).

**“Conditions”** is defined in Section 4.4.

**“Construction Contract”** is defined in Section 3.5(D).

**“Contract Year”** means a calendar year commencing upon January 1 of the year following the Commercial Operation Date of the Facility; provided that, the first Contract Year shall include the period of time, if any, between the Commercial Operation Date of the System and January 1 of the year following the Commercial Operation Date of the Facility.

**“Day”** means a calendar day.

**“DC”** means direct electric current.

**“Deemed Delivered Energy”** is defined in Section 7.3(B).

**“Delay Damages”** is defined in Section 4.2(B).

**“Development Period Security”** is defined in Section 11.2(A).

**“Dispute”** is defined in Section 13.8.

**“Dispute Notice”** is defined in Section 13.8.

**“Effective Date”** is defined in the Preamble.

**“Electric Metering Device(s)”** means UTILITIES’ meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Renewable Energy output from the Facility.

**“Emergency”** means any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of UTILITIES’ load or generation supply that could adversely affect the reliability of UTILITIES’ system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

**“ERO”** means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. The certified ERO as of the date of this PPA is the Western Electricity Coordinating Council (WECC) and Peak Reliability.

**“Event of Default”** means an event of default by either Party, as further defined in Article 12.

**“Facility”** means the Seller’s solar power generating facility, as described in detail in Exhibit A hereto, including the associated equipment and systems required to produce and deliver solar energy, including the PV Modules, inverters, structural support systems, wiring, combiner boxes, monitoring systems, ancillary hardware and software, and other related facilities and equipment but excluding the Point of Common Coupling Facilities.

**“Facility Description”** means the description of the Facility attached as Exhibit A.



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

**“Final Acceptance Test”** or **“Final Acceptance Testing”** means the tests, evaluations and measurements of the Facility’s net generating output capability at the Point of Common Coupling (adjusted for standard testing conditions and site-specific design factors) to establish the Facility Rating at Commercial Operation.

**“Financing Documents”** means the agreement and other documents setting forth the financing arrangements between Seller and the Financing Party.

**“Financing Party”** means with respect to Seller any and all Persons or successors in interest thereof (A) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for construction, interim or permanent financing or refinancing of the Facility, (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility), (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility, (v) reserved; or (vi) in connection with the financing of a portfolio of projects that includes the Facility; and/or (B) an unaffiliated third party participating (directly or indirectly) as an equity investor in the Facility; and/or (C) participating as a lessor under a lease finance arrangement relating to the Facility; and/or (D) tax equity financing.

**“Fitch”** means Fitch Ratings, Ltd. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

**“Force Majeure”** is defined in Article 14.

**“Force Majeure Extension”** is defined in Section 4.3(B).

**“Forced Outage”** means any condition at the Facility that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state which condition causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Facility Rating.

**“Functional Test”** or **“Functional Testing”** means the tests, evaluations and measurements of the functional capabilities of the Facility agreed by the Parties in a testing protocol.

**“Good Utility Practice(s)”** means the practices, methods, and acts engaged in or approved by a significant portion of the power generation industry that, at a particular time, in

the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition.

**"Governmental Authority"** means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal, excluding UTILITIES for purposes of this PPA.

**"Guaranteed Production Amount"** is defined in Section 7.4(A).

**"Guaranty"** means a guaranty substantially in the form of Exhibit L, in form and substance reasonably satisfactory to UTILITIES.

**"Indemnified Party"** is defined in Section 17.1.

**"Indemnifying Party"** is defined in Section 17.1.

**"Independent Engineer"** means such independent consulting engineering firm of national repute and appropriate expertise in solar power generation, appointed by Seller after consultation with and upon the prior written consent of UTILITIES, not to be unreasonably withheld.

**"Interconnection"** means the physical connection of the Facility to Point of Common Coupling.

**"Interconnection Agreement"** means the interconnection agreement for the Facility to be executed between Seller and the Transmission Authority.

**"kW"** means kilowatt.

**"kWh"** means kilowatt hour.

**"Month"** means a calendar month unless the context requires otherwise.

**"Moody's"** means Moody's Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

**"MW"** means megawatt or one thousand kW.

**"MWh"** means megawatt hours.

**"NERC"** means the North American Electric Reliability Council or any successor organization thereto.

**"Operating Committee"** means one representative each from Seller and UTILITIES pursuant to Section 10.4(A).

**"Operating Procedures"** means those procedures developed pursuant to Section

10.4(B).

**“Outage”** means any Forced Outage or Planned Outage.

**“Party”** or **“Parties”** is defined in the Preamble.

**“Party Representative”** is defined in Section 13.8.

**“Performance Measurement Period”** is defined in Section 7.4.

**“Permitted Extension”** is defined in Section 4.3(B).

**“Permitting Delay”** is defined in Section 4.3(A).

**“Person”** means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**“Planned Outage”** means the removal of all or a portion of the Facility from service availability for inspection, maintenance or general overhaul of one or more major equipment groups, which removal causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Facility Rating.

**“Point of Common Coupling”** or **“PCC”** means the physical point at UTILITIES’ primary Electric Metering Device at which the electrical interconnection is made between the Facility and UTILITIES’ electrical system, as shown on the diagram attached as Exhibit B.

**“Point of Common Coupling Facilities”** means the facilities and equipment to be provided and owned by UTILITIES which are necessary to interconnect the Facility to UTILITIES’ electrical system at the PCC.

**“PPA”** means this Solar Power Purchase Agreement between Seller and UTILITIES, including the Exhibits attached hereto.

**“Project Milestones”** has the meaning set forth in Exhibit C.

**“Proprietary Information”** is defined in Section 20.13.

**“PV Modules”** means the photovoltaic modules comprising the solar generating field for the Facility.



**“Qualified Issuer”** means a major U.S. commercial bank or licensed U.S. branch office of a foreign bank which has a senior unsecured long term debt rating of “A-” or better by S & P or “A3” or better by Moody’s, and has assets of at least ten billion dollars (\$10,000,000,000).

**“Regional Transmission Organization”** or **“RTO”** means an organization formed at the approval of the Federal Energy Regulatory Commission (FERC). The RTO coordinates,

controls, and monitors the operation of the electrical power system within a single US state or several states.

**“Renewable Energy”** means all electric energy generated by the Facility (net of station use), including any and all associated ancillary services, capacity attributes, and Renewable Energy Credits and delivered to the Point of Common Coupling as measured by the Electric Metering Device.

**“Renewable Energy Credits”** or **“RECs”** shall have the meaning set forth in the Colorado Revised Statutes § 40-2-124(d), as amended, and 4 CCR 723-3-3652(y) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Renewable Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the Facility’s actual energy production or the Facility’s energy production capability because of the Facility’s environmental or renewable characteristics or attributes. For the avoidance of doubt, “RECs” excludes (i) any local, state or federal production tax credits, investment tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the investment tax credit expected to be available to Seller with respect to the Facility under Code Section 48 (*Energy Credits*), and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

**“Renewable Energy Resource”** means any resource that qualifies as such under 4 CCR 723-3-3652(aa).

**“Renewal Term”** is defined in Section 2.1.

**“Replacement Cost(s)”** means the costs reasonably forecasted to be incurred by UTILITIES for the renewable energy and environmental attributes which are necessary to replace that which Seller, in accordance with this PPA, is required to produce at the Facility and deliver to UTILITIES, but has or will fail to so provide, less the sum of any payments from UTILITIES to Seller under this PPA which are eliminated as a result of such failure. Replacement Costs include the amounts reasonably forecasted to be incurred by UTILITIES for replacement renewable energy and environmental attributes, and directly associated transaction costs (including reasonable attorneys’ fees suffered as result of Seller’s failure to perform) and any penalties incurred as a result of Seller’s non-performance.

**“RFP”** is defined in the Recitals.

**“S & P”** means Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

**“SCADA”** means the Supervisory Control and Data Acquisition System.

**“Security”** is defined in Section 11.1.

**“Seller”** is defined in the Preamble.

“**Seller’s WREGIS Account**” is defined in Section 10.9(B).

“**Site**” is defined in Exhibit M.

“**Term**” is defined in Article 2.

“**Test Energy**” means energy produced by the Facility prior to the Commercial Operation Date.

“**Transmission Authority**” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including (i) Public Service Company of Colorado operating under and in accordance with its Transmission Tariff, and (ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection facilities and other equipment and facilities with which the Facility interconnects at the PCC.

“**Transmission Tariff**” means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

“**UTILITIES**” is defined in the Preamble.

“**UTILITIES’ WREGIS Account**” is defined in Section 10.9(B).

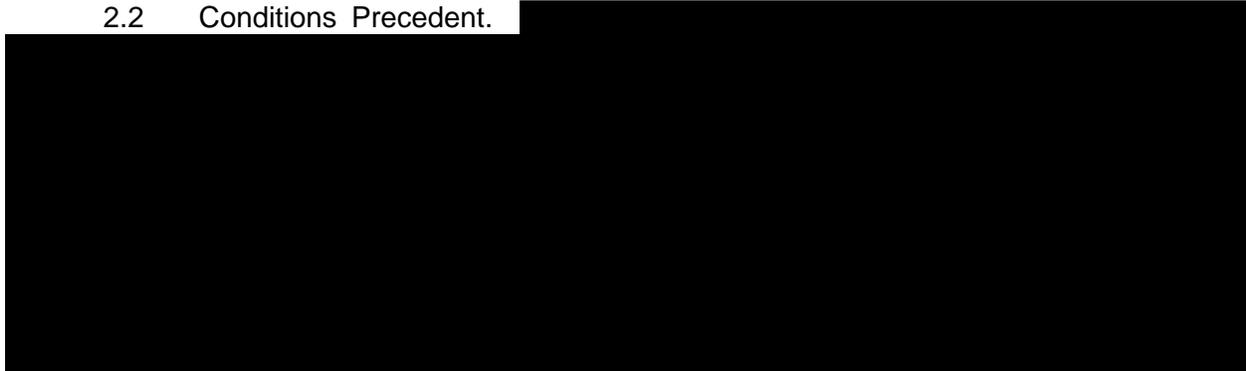
“**WECC**” means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

“**WREGIS**” means the Western Renewable Energy Generation Information System. The WREGIS is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council. WREGIS tracks renewable energy generation from units that register in the system by using verifiable data and creating RECs for this generation.

## ARTICLE 2- Term

2.1 Term. This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the twenty-fifth (25th) anniversary of the Commercial Operation Date, unless terminated earlier in accordance with Article 12 (Events of Default). After the initial term, upon written consent of both Parties, this PPA may renew for an additional five (5) years (“**Renewal Term**”). The initial term and the subsequent Renewal Term, if any, are referred to collectively as the “**Term**”.

2.2 Conditions Precedent.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 3- Ownership, Design and Construction of the Facility**

3.1 Title to Facility. Seller shall retain title to and be the legal and beneficial owner of the Facility at all times.

3.2 Taxes and Assessments. Seller will pay and be responsible for any sales or use tax imposed with respect to Seller's acquisition and installation of the Facility. Seller shall be liable for any real property taxes or assessments associated with the Site.

3.3 Facility Size and Description. The Facility will be designed consistent with the Facility Description attached as Exhibit A hereto and will, among other things, be designed to have a Facility Rating of not less than 35 MW AC and not more than 38 MW AC.

3.4 Location of Facility and Point of Common Coupling. The Facility will be located at the Site. A scaled map that identifies the Site and the location of the Facility at the Site is attached as Exhibit M hereto. The location of the Point of Common Coupling and UTILITIES' Electric Metering Device is described in Exhibit B hereto.

3.5 Design and Construction of the Facility. Seller shall engineer, design, procure, construct, test, commission, operate and maintain the Facility as described in Exhibit A in accordance this PPA, Good Utility Practices, and Applicable Laws. Seller shall, among other things, at Seller's sole expense:

(A) procure, install and commission the SCADA system, including all required hardware and software, field instrumentation, meteorological stations, and communications devices designed for remote monitoring, control and historical trending of the output of the Facility;

(B) install and establish a communication center to serve as the central point for the SCADA System and the primary point for electronic plant and communications interfaces for UTILITIES' meter recording devices, telemetering equipment, digital fault recorders and communications equipment, including appropriate panel space and AC power, suitable ambient conditions for and access to electronic equipment;

(C) install and establish one (1) meteorological station at a location to be approved by UTILITIES to measure the available solar resource, measure the ambient temperature, wind speed and direction, humidity in order to be able to estimate the quantity of Renewable Energy expected to be generated;

(D) provide UTILITIES with a memorandum of agreement executed by Seller and the contracting party related to the applicable engineering, procurement and construction contract for the Facility (the “**Construction Contract**”). Such memorandum of agreement shall set forth the basic terms of the Construction Contract, including the names of the parties thereto, the date of the Construction Contract and a summary of any products or services to be provided. Such memorandum or any Construction Contract obtained by UTILITIES shall be deemed Proprietary Information subject to Section 20.13.

(E) provide UTILITIES, prior to starting construction, copies of (i) any permits or other approvals, including the permits and approvals set forth in Exhibit F, that Seller is required by any Governmental Authority to obtain prior to the commencement of construction of the Facility and substation; and (ii) evidence of compliance with the insurance coverage required Exhibit J hereto;

(F) commencing thirty (30) Days following the Effective Date (i) provide UTILITIES with monthly progress reports on the development and construction of the Facility and substation, together with an updated project schedule, including a schedule showing items completed and to be completed and a best estimate time-frame within which Seller expects to complete unfinished work; and (ii) from time to time, upon reasonable advance request from UTILITIES, meet with UTILITIES to discuss the progress of the development and construction of the Facility.

3.6 UTILITIES’ Rights During Construction. UTILITIES shall have the right, from time to time, upon reasonable prior notice, and during normal business hours, to review and discuss the design, to observe the construction of the Facility, substation, and the equipment to be installed therein; provided that, UTILITIES and its authorized agents, employees and inspectors shall observe all applicable Facility safety rules. All persons visiting the Facility on behalf of UTILITIES shall comply with all of Seller’s applicable reasonable safety and health rules and requirements that have been provided to UTILITIES. In no event shall any failure by UTILITIES to exercise its rights under this Section constitute a waiver by UTILITIES of, or otherwise release Seller from, any other provision of this PPA.

3.7 Testing and Commissioning.

(A) Seller shall provide UTILITIES with a copy of the Functional Test and Final Acceptance Test protocol(s), as the case may be, at least thirty (30) Days before such test is scheduled to occur.

(B) Seller shall provide UTILITIES with at least thirty (30) Days prior written notice of the applicable tests scheduled relating to the commissioning of the Facility and at least fifteen (15) Days prior written notice of the actual test dates. Representatives of UTILITIES and the Independent Engineer shall have the right to be present at all such testing. Seller shall promptly notify UTILITIES of any changes to such test dates.

(C) The results of the Final Acceptance Test applicable to the Facility (after adjustment for standard testing conditions and site-specific design factors) shall determine the Facility Rating on the Commercial Operation Date.

(D) Seller shall work with UTILITIES’ Systems Operations department during all testing phases to ensure compliance with all requirements and obligations of any Regional Transmission Organization and Balancing Authority, as applicable.

3.8 [REDACTED]

3.9 Future Energy Storage Opportunities. In recognition of emerging energy storage technologies and opportunities that will continue to evolve throughout the Term, the Parties may cooperate to evaluate the potential development, use or incorporation of any such energy storage technologies at the Site or into the Facility, including with respect to timing and scheduling of deliveries of Renewable Energy. If the Parties determine it is mutually beneficial and otherwise appropriate to develop, incorporate, or use energy storage technologies at the Site or into the Facility, the Parties may enter into good faith negotiations with respect to any proposed amendments to this PPA, if any, to address the addition of such energy storage technologies; provided, however, that nothing in this Section 3.9 shall require or obligate either Party to agree to pursue the development, incorporation or use of any such energy storage technology unless and until UTILITIES and Seller, in their sole and absolute discretion, agree on the technical, commercial and financial terms of the development, incorporation or use thereof.

#### ARTICLE 4 – Commercial Operation

##### 4.1 Project Milestones; Commercial Operation Date.

(A) Seller shall use commercially reasonable efforts to meet the Project Milestones set forth in Exhibit C;

(B) Seller shall use commercially reasonable efforts to achieve Commercial Operation no later than the “Commercial Operation Milestone” date set forth in Exhibit C (“**Commercial Operation Milestone**”).

(C) In the event that Seller should determine that any of the Project Milestones, including the Commercial Operation Milestone, is not feasible or impossible to achieve as expected, Seller shall promptly notify UTILITIES and shall advise UTILITIES of the new expected Project Milestone or Commercial Operation Date, as the case may be; provided that, nothing in this provision shall be deemed to modify any required Project Milestone, including the Commercial Operation Milestone, or excuse Seller from any liability for Delay Damages, if applicable.

##### 4.2 Delay Damages.

(A) If Seller fails to achieve any Project Milestone by the date set forth opposite such Project Milestone on Exhibit C, Seller shall, within five (5) Business Days of such date, provide UTILITIES with a detailed written report indicating the reason for such failure and Seller’s proposed course of action to maintain the overall schedule, including any required expediting of actions.

(B) If Seller fails to achieve the Commercial Operation Date by the Commercial Operation Milestone, as extended pursuant to Section 4.3, Seller shall pay UTILITIES an amount equal to [REDACTED] of capacity below 35 MW (“**Delay Damages**”); provided that, the aggregate Delay Damages payable may not exceed an amount equal to the amount of the Development Period Security.

(C) Each Party agrees and acknowledges that (i) the damages that UTILITIES would incur due to Seller's delay or failure in achieving the Commercial Operation Date by the Commercial Operation Milestone would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore such delay damages as agreed to by the Parties set forth herein are a fair and reasonable calculation of such damages.

#### 4.3 Permitted Extensions.

(A)

[REDACTED]

[REDACTED]

Delay.

(C)

[REDACTED]

(D) Notice of Permitted Extension. Seller shall use commercially reasonable efforts provide UTILITIES with notice of the requested Permitted Extension no later than thirty (30) days prior to the Commercial Operation Milestone, which notice must clearly identify the Permitted Extension, the expected length of the Permitted Extension, and include information necessary for Buyer to verify the length and qualification of the Permitted Extension.

4.4 Conditions to Commercial Operation. No fewer than thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall notify UTILITIES in writing that the Facility is nearing Commercial Operation. Seller shall thereafter notify UTILITIES in writing upon the satisfaction or occurrence of all of the conditions applicable to Commercial Operation set forth below in this Section (the "**Conditions**"), each of which shall be fulfilled at Seller's sole cost and expense and to the reasonable satisfaction of or waived in writing by UTILITIES. Within five (5) Business Days of receipt of such notice, UTILITIES shall either (i) deliver a written acknowledgment of the satisfaction or occurrence of all of the conditions, or (ii) deliver a written notice indicating which conditions remain to be satisfied. Upon the acknowledgment of satisfaction of conditions, Seller shall promptly deliver to UTILITIES a written declaration of the achievement of Commercial Operation and the corresponding Commercial Operation Date of the Facility. In the event UTILITIES delivers a notice that certain conditions have not been satisfied, Seller shall promptly take steps to fulfill the conditions to the reasonable satisfaction of UTILITIES. The Conditions to Commercial Operation are as follows:

(A) Seller shall have delivered to UTILITIES a certificate of one of its executive officers or managers who is familiar with the Facility stating that, to his or her knowledge after due inquiry, (i) all representations and warranties of Seller set forth in Section 15.1 are true and correct as of such date; and (ii) the Seller and the Facility are in compliance with the terms and conditions of this PPA in all material respects, and with all Applicable Laws and permits and approvals;

(B) Seller shall have delivered to UTILITIES (i) a copy of its constitutional documents (certified by the Secretary of State of the State of Colorado) and (ii) an incumbency certificate authorizing one or more individuals to execute this PPA on its behalf (such copy to have been certified by an officer as true, complete and current);

(C) The Independent Engineer shall have certified that:

(i) the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) consistent with the Facility Description and this PPA;

(ii) Seller has satisfactorily completed all testing and commissioning of the Facility, including the Functional Tests, the Final Acceptance Tests and any tests required under applicable permits and approvals;

(iii) the Facility has a Facility Rating of not less than 35 MW AC; and

(iv) the Facility has achieved initial synchronization with UTILITIES' electrical system at the Point of Common Coupling and demonstrated the operation of the SCADA System.

(D) Seller shall have delivered evidence that it has obtained the permits and approvals required to operate and maintain the Facility set forth on Exhibit F, including certification from the FERC that the Facility is a "qualifying facility" (QF) under the Public Utilities Policies Act of 1978, as amended, or an "exempt wholesale generator" (EWG) under the Energy Policy Act of 2005, as amended, and, if applicable, that Seller has received market-based rate (MBR) approval from the FERC;

(E) Seller shall have delivered evidence that the Security meeting the requirements set forth in Article 11 shall have been obtained and fully funded;

(F) Seller shall have obtained and delivered to UTILITIES certificates of insurance evidencing the coverage(s) required in Exhibit J;

4.5 Electricity Standards. Electricity generated by Seller shall be delivered to UTILITIES at the Point of Common Coupling in the form of 3-phase, 60 Hertz alternating current at a nominal operating voltage of 230 kV consistent with that currently being provided by Seller's Affiliate's Golden West wind project. Both projects will share the same interconnection facilities consisting of the generator step-up transformer, generation-tie and physical interconnection point with Public Service Company of Colorado at Jackson-Fuller substation. As such, any operational changes or changes in voltage control set-points will be through coordination with and at the direction of Public Service Company of Colorado.

## **ARTICLE 5 – Delivery and Metering**

5.1 Delivery Arrangements. Seller shall be responsible for all interconnection arrangements and costs required to deliver the Renewable Energy from the Facility to the Point of Common Coupling at the agreed to voltage.

5.2 Electric Metering Devices.

(A) Renewable Energy to be delivered under this PPA will be measured by Electric Metering Devices purchased, installed, owned and operated by UTILITIES or transmission owner, as applicable, and located at the Point of Common Coupling. All Electric Metering Devices used to provide data for the computation of payments and/or credits shall be sealed and the seal shall be broken only during inspection, testing or adjustment by UTILITIES.

(B) Electric Metering Devices shall be inspected, tested and, if necessary, adjusted by UTILITIES from time-to-time in accordance with Good Utility Practices. Seller will be entitled to reasonable advanced notice of, and an opportunity to witness and verify any inspections and tests, provided that, Seller shall comply with all applicable safety standards. Seller shall have the right to request additional inspections or tests of any Electric Metering Device and an opportunity to witness such inspection or testing, provided Seller shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article. Seller shall be entitled to copies of any inspection or testing reports.

(C) If any Electric Metering Devices are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

(D) Seller may install meter equipment within the Facility for Seller's informational purposes.

5.3 Adjustment for Inaccurate Meters. If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) The Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Renewable Energy from the Facility to the Point of Common Coupling during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by UTILITIES, the corrected measurements shall be used to re-compute the amount due for the period of the inaccuracy and, (i) if the difference is a positive number, the difference shall be credited to Seller; (ii) if the difference is a negative number, that difference shall be credited to UTILITIES.

5.4 RESERVED.

5.5 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information and communications required by WREGIS, and report generation to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility.

## ARTICLE 6 – Regulatory Conditions

6.1 Required UTILITIES' Approvals. This PPA is subject to the receipt of all approvals required to be obtained by UTILITIES in order to perform its obligations hereunder, as well as the assistance by UTILITIES, as necessary, in obtaining any permits or other approvals, including those set forth in Exhibit F, that Seller is required by any Governmental Authority to obtain prior to the commencement of construction of the Facility. Upon the execution and delivery of this PPA by the Parties, UTILITIES will promptly seek and diligently pursue such approvals as soon as practicable. In the event such approvals of this PPA are not obtained within ninety (90) days of the execution of this PPA, this PPA may be terminated by Seller, upon written notice, without further obligation or liability for either Party.



## ARTICLE 7 – Sale and Purchase of Renewable Energy

7.1 Sale and Purchase. Beginning on the Commercial Operation Date, Seller shall sell to UTILITIES, and UTILITIES shall purchase from Seller all Renewable Energy generated by the Facility at the Applicable Energy Rate for each kWh delivered to the Point of Common Coupling up to the Facility Rating; provided that, in no event shall UTILITIES be obligated to purchase Renewable Energy to the extent the instantaneous Facility output exceeds 38 MW AC.

7.2 Title and Risk of Loss. Title and risk of loss to the Renewable Energy shall transfer from Seller to UTILITIES at the Point of Common Coupling.

7.3 UTILITIES' Right to Curtail Renewable Energy.

(A) UTILITIES shall have the right at any time to curtail, interrupt or reduce delivery of Renewable Energy, in whole or part, to UTILITIES at the PCC, and Seller shall promptly comply with such curtailment notification. UTILITIES will provide Seller with notice of any curtailment as soon as reasonably practicable, unless curtailment is other than for the grounds listed in the next sentence. UTILITIES shall not have any purchase obligation or liability with respect to Renewable Energy curtailed (i) if UTILITIES or any transmission or interconnection provider determines, using Good Utility Practices, that curtailment, interruption, or reduction is necessary due to an Emergency; (ii) to the extent Force Majeure prevents or limits UTILITIES'

ability to accept delivery of Renewable Energy; (iii) due to the failure of Seller's PCC Facilities or any action taken by the interconnection provider under an interconnection agreement; or (iv) due to the failure of Seller to obtain or maintain or comply with any material permit or Applicable Laws.

(B) If UTILITIES' curtailment is for any reason other than those expressly enumerated in Section 7.3(A), UTILITIES will pay Seller for such curtailed Renewable Energy at the Applicable Energy Price for the quantity of Renewable Energy that the Facility would have generated and delivered to the PCC but for the curtailment ("**Deemed Delivered Energy**"). The quantity of Deemed Delivered Energy will be calculated using (i) the best available data on actual solar irradiation at the Site over the period during which the curtailment occurred; (ii) the Facility's capacity to generate and deliver Renewable Energy to the PCC at such time (taking into account applicable losses and expected degradation); and (iii) the Facility's historical production and solar irradiance data applicable during the month of such curtailment.

#### 7.4 Guaranteed Energy Production.

(A)



(B) In the event Seller delivers less than the Guaranteed Production Amount in any Performance Measurement Period, UTILITIES shall promptly invoice Seller for an amount equal to the shortfall MWh multiplied by the Replacement Costs. Invoiced amounts shall be paid within thirty (30) Days of delivery of such invoice; provided that, this Section shall not limit UTILITIES' rights and remedies under Article 12 upon the occurrence of and during an Event of Default or upon termination of this PPA.



#### 7.5 Market Changes.

(A) If at any time during the Term, the Transmission Authority changes or the facilities at the PCC cease to be subject to the Transmission Tariff, the Parties shall cooperate in good faith to facilitate the delivery of Renewable Energy from the PCC to UTILITIES' load, while attempting to preserve to the maximum extent possible, and at the lowest reasonable cost, the benefits, burdens and obligations set forth in this PPA as of the Effective Date.

(B) If at any time during the Term, the Transmission Authority, the ERO or any other Governmental Authority with jurisdiction imposes an organized market or UTILITIES elects to

join an RTO or participate in an organized market that changes the manner in which UTILITIES schedules and dispatches the Facility, the Parties shall cooperate in good faith to change their protocols for operation of the Facility accordingly, while attempting to preserve to the maximum extent possible, and at the lowest reasonable cost, the benefits, burdens and obligations set forth in this PPA as of the Effective Date.

(C) In the event Seller incurs costs, fees and expenses in making improvements to the Facility necessary to comply with this Section 7.5 (“**Compliance Expenditures**”) and such Compliance Expenditures must be capitalized by Seller under generally accepted accounting principles consistently applied, then UTILITIES shall reimburse Seller one percent (1%) of such Compliance Expenditures per month, beginning within twelve (12) months following substantial completion of such improvements and ending upon the earlier to occur of (i) the 100th month following the start of such reimbursements, or (ii) the end of the Term of this PPA.

### **ARTICLE 8 – Project Site Control Verification**

████████████████████ Seller shall provide UTILITIES a fully-executed memorandum of option agreement as recorded, evidencing that Seller has valid and enforceable Site control for the Term of the PPA. Upon the exercise of such option agreement, Seller shall provide UTILITIES with copies of the executed lease agreement or other documentation establishing Site control for the Term.

### **ARTICLE 9 – Billing and Payment**

9.1 Billing. This PPA shall be considered a “Take and Pay” agreement; under no circumstances will UTILITIES be required to pay for energy that is not delivered to UTILITIES at the PCC except as provided in Section 7.3. The billing period under this PPA shall be the calendar month, payable within thirty (30) Days of receipt of invoice. No later than fifteen (15) Business Days after the end of each month, Seller shall provide to UTILITIES, by email at ElectricAccounting@csu.org, a billing statement for deliveries of Renewable Energy during the previous month, as measured in accordance with Article 5, which statement shall show (a) (i) the quantity of Renewable Energy delivered, (ii) the Applicable Energy Rate for each kWh of Renewable Energy delivered during the previous month and the total amount due for that Month or, Billing Disputes, and (b) the amount of curtailed energy for which payment is due pursuant to Section 7.3.

9.2 Billing Disputes. If UTILITIES disputes any amount in the statement provided by Seller, UTILITIES shall notify Seller in writing, identifying the items in dispute. Seller will provide a detailed response in writing within fifteen (15) Business Days, including all supporting documentation for Seller’s position. Any adjustment of credits based on resolution of the billing dispute shall be made in the next billing statement. In the event the Parties cannot resolve the dispute within fifteen (15) Business Days, such dispute shall be resolved in accordance with Section 13.8.

### **ARTICLE 10 – Operations and Maintenance**

10.1 Facility Operation. Seller shall control, operate, and maintain the Facility in accordance with Good Utility Practices, Applicable Laws, and any Operating Procedures developed pursuant to Section 10.4. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair as may be required under the Interconnection Agreement.

## 10.2 Forecasted Operations.

(A) Seller shall be responsible for providing the forecast of Renewable Energy to the Point of Common Coupling during the Term in accordance with the mutually-developed Operating Procedures developed pursuant to Section 10.4.

(B) By August 1 of each year, Seller shall provide, or cause to be provided, UTILITIES with a good faith estimate of each Month's average-day deliveries of Renewable Energy, by hour, for the following calendar year.

(C) Ten (10) Business Days before the beginning of each Month, Seller shall provide, or cause to be provided to UTILITIES, a good faith estimate of each Day's projected deliveries of Renewable Energy, by hour, for the following Month.

(D) Seller shall provide, or cause to be provided to UTILITIES, by 8:00 a.m. Mountain time on each Day, a good faith estimate of the hourly quantities of Renewable Energy for the immediately succeeding Day.

If, at any time following submission of a good faith estimate as described in sub-sections 10.2 (B) or (C), Seller becomes aware of any change that materially alters the values previously provided to UTILITIES, Seller shall notify UTILITIES of such change or predicted change as soon as reasonably practicable.

10.3 Outage Reporting. Seller shall promptly notify UTILITIES of the existence, nature, and expected duration of any Outage and any changes in the expected duration of the Outage.

## 10.4 Operating Committee and Operating Procedures.

(A) UTILITIES and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Operating Committee, and shall be specified on Exhibit D. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this PPA.

(B) Prior to the Commercial Operation Date, the Operating Committee may develop mutually agreeable written Operating Procedures which shall include methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable UTILITIES and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

10.5 Maintenance. Seller shall be responsible for all required maintenance of the Facility and the Site, and shall maintain all Facility equipment or cause the same to be maintained at all times in accordance with the, manufacturers' recommendations, Good Utility Practices, and Applicable Laws.

10.6 Repair and Replacement. Seller shall repair or replace any hazardous equipment or any damaged or defective equipment at the Facility as soon as reasonably

practicable, including PV Modules, as required in accordance with the manufacturers' recommendations, and Good Utility Practices.

10.7 Disposal. Seller shall, at its sole expense and cost, dispose of or cause the disposal of all PV Modules and other Facility equipment at the end of its useful life in accordance with the manufacturer's recommendations, Good Utility Practices and Applicable Laws. In the event PV Modules are taken out of service during the Term, Seller shall, at its sole cost and expense and to the extent commercially practicable, provide for the collection and recycling of PV Modules under a collection and recycling program protective of the environment, consistent with manufacturer's recommendations, Good Utility Practices and Applicable Laws and as approved by UTILITIES.

10.8 Access and Inspection. Seller shall provide UTILITIES and its authorized agents, employees and inspectors with reasonable access to the Facility for the purposes set forth herein; provided that, UTILITIES and its authorized agents, employees and inspectors shall observe all applicable Facility safety rules; and, all persons visiting the Facility on behalf of UTILITIES shall comply with all of Seller's applicable reasonable safety and health rules and requirements that have been provided to Utilities. No inspections of the Facility by UTILITIES shall relieve Seller of its obligation to maintain the Facility and operate the same in accordance with Good Utility Practices or be construed as endorsing the design, fitness or operation of the Facility equipment.

#### 10.9 Environmental Credits.

(A) The Parties acknowledge that existing legislation creates and future legislation or regulation may create value in the ownership, use or allocation of RECs. To the full extent allowed by such law or regulation, UTILITIES shall own or be entitled to claim all RECs to the extent such credits are sold and delivered to UTILITIES during the Term or as they may accrue following the Term by virtue of Renewable Energy generated during the Term.

(B) Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain through the Term. Seller shall create a sub Account for UTILITIES. Seller shall transfer the WREGIS certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS sub account(s) of UTILITIES or the account(s) of designee that UTILITIES identifies by written notice ("**UTILITIES' WREGIS Account**") and, if applicable, use a form substantially similar to Exhibit H. Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establish and maintaining Seller's WREGIS Account, paying WREGIS certificate issuance and transfer fees, and transferring WREGIS certificates from Seller's WREGIS Account to UTILITIES' sub Account or UTILITIES' WREGIS Account.

### **ARTICLE 11 – Security**

11.1 Security Form. As security for Seller's obligations under this PPA, Seller shall deliver to UTILITIES on or before the tenth (10th) Day following the execution of this PPA, any combination of the following, totaling the amounts specified in Section 11.2 (the "**Security**"): (i) an irrevocable, transferable standby letter of credit from a Qualified Issuer, in form and substance satisfactory to UTILITIES or in the form set forth in Exhibit G; (ii) a Guaranty from a Qualified Guarantor; or (iii) evidence that cash collateral has been deposited in an escrow account for the benefit of UTILITIES for the purposes of securing such obligations,

subject to draw conditions mutually agreed between Seller, UTILITIES and the mutually agreed institution holding such account. All costs related to the issuance, maintenance and administration of the Security shall be borne by the Seller. [REDACTED]

11.2 Amount of Security. The Security shall be [REDACTED]

[REDACTED] The Security shall remain in place for the entire Term (except to the extent drawn upon, or applied, upon which Seller shall, within seven (7) Business Days, replenish or replace the Security in the required amount, provided that, Seller will not be required to replenish the Security to the extent that the sum of (a) the amount of Security drawn upon, and (b) the aggregate replenished amount exceeds the limitation on liability set forth in Section 12.8(A).

11.3 Draw on Security. UTILITIES may draw on all of any part of the Security for Seller's failure to meet any of its obligations under this PPA; provided, however, that any failure to draw upon the Security for any damages or other amounts due to UTILITIES shall not prejudice UTILITIES' rights to recover such damages or amounts in any other manner to the extent provided in this PPA. Upon any draw of the Security by UTILITIES, Seller shall be required to replenish or replace the Security within seven (7) Days; provided that, Seller will not be required to replenish the Security to the extent that the sum of (a) the amount of Security drawn upon, and (b) the aggregate replenished amount exceeds the limitation on liability set forth in Section 12.8(A).

11.4 Release of Security. Within thirty (30) Days following the expiration or termination of this PPA and the satisfaction of all of Seller's obligations hereunder, UTILITIES shall return any remaining Security to Seller and Seller shall be entitled to immediately cancel such Security.

## ARTICLE 12 – Default and Remedies

12.1 Events of Default.

(A) Any of the following shall constitute an Event of Default by Seller:

- (1) Seller dissolves or liquidates;
- (2) Seller makes a general assignment for the benefit of creditors;
- (3) Seller files a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise;
- (4) an involuntary bankruptcy or insolvency proceeding is filed against Seller and not stayed or dismissed within sixty (60) Days;
- (5) Seller breaches any material term of this PPA, and such breach is

not cured within thirty (30) Days after receipt of UTILITIES' written notice of such breach; provided that, if such cure cannot reasonably be effected with thirty (30) Days, such cure period shall be extended so long as Seller diligently attempts to cure such breach and completes said cure within ninety (90) Days of receipt of UTILITIES written notice; or

(6) [REDACTED]; provided that, this Event of Default shall be deemed cured if (i) within thirty (30) Days following the end of such Performance Measurement Period, Seller initiates remedial measures to cure such default which are approved by UTILITIES, such approval not to be unreasonably withheld, conditioned or delayed, which measures may include the replacement or addition of PV Modules; and (ii) during the Contract Year following the implementation of such remedial measures, [REDACTED]

(B) Any of the following shall constitute an Event of Default by UTILITIES:

- (1) UTILITIES fails to pay Seller any undisputed amount due to Seller under this PPA within thirty (30) Days from receipt of notice from Seller of such past due amount;
- (2) UTILITIES dissolves or liquidates; provided that, division of UTILITIES into multiple entities shall not constitute dissolution or liquidation);
- (3) UTILITIES makes a general assignment for the benefit of creditors;
- (4) UTILITIES files a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or voluntarily takes advantage of any such law or act by answer or otherwise;
- (5) an involuntary bankruptcy or insolvency proceeding is filed against UTILITIES and not stayed or dismissed within sixty (60) Days; or
- (6) UTILITIES breaches any material term of this PPA, and such breach is not cured within thirty (30) Days after UTILITIES' receipt of Seller's written notice of such breach; provided that, if such cure cannot

reasonably be effected within thirty (30) Days, such cure period shall be extended so long as UTILITIES diligently attempts to cure such breach and completes said cure within ninety (90) Days for receipt of Seller's notice.

## 12.2 Remedies Upon Default.

(A) Upon the occurrence of an Event of Default by Seller at any time, UTILITIES shall have the right to suspend performance of, or terminate this PPA upon ten (10) Business Days' written notice to Seller, and, subject to the limitations set forth in Sections 12.6 and 12.8(A), shall be entitled to pursue all of its legal and equitable rights and remedies including the right to draw from the Security or otherwise seek damages for Replacement Costs.

(B) Upon the occurrence of an Event of Default by UTILITIES at any time, Seller shall have the right to suspend performance of, or terminate this PPA upon ten (10) Business Days' written notice to UTILITIES, and shall be entitled to pursue all of its legal and equitable rights and remedies, subject to the limitations set forth in Sections 12.6 and 12.8(B).

## 12.3 [Reserved].

12.4 Specific Performance. In addition to the other remedies specified in this PPA, in the event of any Event of Default occurring after the Commercial Operation Date, the Parties shall have the right to specific performance, without the necessity of posting of a bond or other security as would otherwise be required under any Applicable Laws.

12.5 Remedies Cumulative. Each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.6 No Consequential Damages. Anything in this PPA to the contrary notwithstanding, in no event shall either Party be liable to the other Party for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided that, this Section shall not apply to liquidated damages payable under this PPA.

12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA.

## 12.8 Limitation of Liability.

(A) Seller's limitation of liability shall exclude UTILITIES' access to the minimum required types and limits of insurance in Exhibit J. Except as otherwise provided in this Section 12.8, Seller's aggregate liability to UTILITIES under this PPA for Replacement Costs and other damages, excluding Delay Damages, shall not exceed [REDACTED] the limitations on damages set forth in this Section shall not apply to damages arising out of: (i) fraud or any material intentional misrepresentation or misconduct by, or at the direction of, Seller in connection with this PPA and/or the operation

of the Facility; (ii) the sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy committed to UTILITIES under this PPA; (iii) any claim for indemnification under Article 17; and (iv) any violation of Applicable Laws by Seller, including any environmental contamination caused by Seller or its contractors, subcontractors, agents, representatives, and employees on the Site, and provided, further, that Seller's aggregate liability to UTILITIES under this PPA prior to the Commercial Operation Date shall not exceed an amount equal to the amount of the Development Period Security.

(B) Nothing in this PPA shall be interpreted to limit or prevent the protections afforded to UTILITIES under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

### **ARTICLE 13 – Contract Administration and Notices**

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

13.2 Representative for Notices. Each Party shall maintain a designated representative(s) to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this PPA.

#### 13.4 Operating Records and Reports.

(A) Seller shall each keep complete and accurate records and all other data required by UTILITIES for the purposes of proper administration of this PPA, including such records as may be required by state or federal regulatory authorities, WREGIS, and WECC in the prescribed format.

(B) Seller shall provide UTILITIES, in electronic format, with an operating report in accordance with Exhibit I no later than ten (10) Days after the end of each calendar quarter, commencing with the quarter containing the Commercial Operation Date and continuing through the Term.

13.5 Operating Log. Seller shall maintain an accurate and up-to-date operating log, in electronic format, with records of production for each clock hour; changes in operating status; and Forced Outages for the purposes of proper administration of this PPA, including such records as may be required by state or federal regulatory authorities, WREGIS, and WECC in the prescribed format.

13.6 Billing and Payment Records. To facilitate payment and verification, Seller shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and shall grant UTILITIES reasonable access to those records.

13.7 Exhibits. Either Party may change the information for their notice addresses in Exhibit D at any time without the approval of the other Party.

13.8 Dispute Resolution.

(A) In the event of any dispute arising under this PPA (a “**Dispute**”), within ten (10) Days following the delivered date of a written request by either Party (a “**Dispute Notice**”), (i) each Party shall appoint a representative (individually, a “**Party Representative**”, together, the “**Parties’ Representatives**”), and (ii) the Parties’ Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties’ Representatives cannot resolve the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (1) shall independently prepare a written summary of the Dispute describing the issues and claims, (2) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (3) shall submit a copy of both summaries to a senior officer of the Party Representative’s Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal and equitable remedies.

(B) SELLER AND UTILITIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

## **ARTICLE 14 – Force Majeure**

14.1 Definition of Force Majeure.

(A) The term “**Force Majeure**”, as used in this PPA, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including Acts of God, vandalism beyond that which could reasonably be prevented; terrorism; war; riots; fire; explosion; blockades; insurrection; and sudden actions of the elements, such as floods, earthquakes, hurricanes, tornadoes, lightning, fire, or ice storms; strike at a national or regional level; and slow-down or labor disruptions at a national or regional level (even if such difficulties could be resolved by conceding to the demands of a labor group). Force Majeure includes actions by any Governmental Authority taken after the date hereof

(including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority.

(B) Notwithstanding the foregoing, the term Force Majeure does not include (i) inability by Seller to procure equipment or any component parts therefor, (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure, (iii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishaps, events or conditions attributable to normal wear and tear or flaws, unless caused reason of Force Majeure, (iv) failure to abide by Good Utility Practices; (v) changes in market conditions that affect the cost of UTILITIES' or Seller's supplies, or that affect demand or price for UTILITIES' or Seller's products; (vi) any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller's contractors, subcontractors, or vendors; or (vii) weather events or sudden actions of the natural elements

[REDACTED]

#### 14.2 Applicability of Force Majeure.

(A) Neither Party shall be responsible or liable for any delay or failure in its performance under this PPA, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by Force Majeure, provided that:

- (1) the non-performing Party gives the other Party prompt written notice (but in any event no longer than ten (10) days after the commencement of the Force Majeure event) describing the particulars of the occurrence of the Force Majeure;
- (2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- (4) when the non-performing Party is able to resume performance of its obligations under this PPA that Party shall give the other Party written notice to that effect.

(B) Except as otherwise expressly provided for in this PPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this PPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event.

14.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by Force Majeure extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by Force Majeure affecting Seller continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception,

as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty five (365) Day period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for additional time at its sole discretion, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

## **ARTICLE 15– Representations and Warranties**

15.1 Seller's Representations and Warranties. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in Colorado and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary corporate action, and do not and will not: (i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to UTILITIES upon its request); (ii) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or (iii) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Seller.

15.2 UTILITIES' Representations and Warranties. UTILITIES hereby represents and warrants as follows:

(A) UTILITIES is an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation under the laws of the State of Colorado. UTILITIES has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) Subject to the conditions identified in Article 6, the execution, delivery, and performance of its obligations under this PPA by UTILITIES have been duly authorized by all necessary action, and do not and will not: (i) require any further consent or approval; (ii) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of UTILITIES to perform its obligations under this PPA; or (iii) result in a breach or constitute a default under UTILITIES' charter or bylaws, or under any agreement relating to the management or affairs of UTILITIES, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which UTILITIES is a party or by which UTILITIES or its properties or assets may be bound or affected, the breach or default of which could reasonably

be expected to have a material adverse effect on the ability of UTILITIES to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of UTILITIES, subject to the conditions identified in Article 6.

## ARTICLE 16– Insurance

16.1 Evidence of Insurance. Seller shall maintain, during the Term, insurance coverage for the Facility in compliance with the specifications and limits set forth in Exhibit J to this PPA. Seller shall, on or before (Commercial Operation Date – day and month) of each year during the Term, provide UTILITIES with one copy of the insurance certificate evidencing the insurance coverage for the Facility. The Commercial General Liability policy certificates shall (A) name UTILITIES as an additional insured; (B) provide that UTILITIES shall receive thirty (30) Days prior written notice of non-renewal or cancellation of any of the corresponding policies; (C) provide a waiver of any rights of subrogation against UTILITIES, its Affiliates and their officers, directors, agents, subcontractors, and employees. All policies shall contain an endorsement that Seller's policy shall be primary in all instances.

16.2 Insurance No Longer Commercially Available. If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to UTILITIES, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds it receives or to which it is entitled relating to a casualty event to the repair and, if necessary, reconstruction of the Facility, including the replacement of or installation of additional PV Modules, such that the Facility is able to meet the performance standards required under this PPA.

## ARTICLE 17– Indemnity

17.1 Scope. Each Party (provided that, with respect to UTILITIES, to the extent UTILITIES is specifically authorized under Applicable Law) (each an “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, officers, employees, agents, representatives, and contractors (each an “**Indemnified Party**” and, collectively, “**Indemnified Parties**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default under this PPA, violation of any Applicable Laws, or by the negligent or intentional acts, or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, representatives, contractors, and subcontractors; provided that, an Indemnified Party shall not be indemnified to the extent of injury or damages resulting from its negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 Notice. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. Indemnifying Party may settle the claim at its own expense, but, if Seller is the Indemnifying Party, Seller must obtain the Colorado Springs City Attorney's prior written consent, on behalf of UTILITIES, to the settlement. Such consent will not be unreasonable withheld, conditioned, or delayed. The Indemnifying Party shall be relieved of its indemnification obligations to the extent the Indemnified Party withholds its reasonable consent to settle a claim related to such obligations, provided that, such settlement does not require the Indemnified Party to incur any expense for which the Indemnified Party is not indemnified or make an admission of guilt.

17.3 Settlement. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 Net of Insurance Proceeds. Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following an effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 18 – Legal and Regulatory Compliance**

18.1 Compliance with Applicable Laws. Seller shall at all times comply, and shall cause its employees, agent, representatives, contractors and subcontractors to comply with all Applicable Laws in connection with its performance of this PPA.

18.2 Cooperation with Legal Requirements. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting or auditing requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

## **ARTICLE 19 – Assignment and Financing Accommodations**

19.1 No Assignment Without Consent. Neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, no consent will be required for an assignment of this PPA by Seller to (i) any Financing Parties as collateral security for

obligations under the financing documents entered into with such Financing Parties, subject to compliance with the provisions of Section 19.2 hereof; and [(ii) an Affiliate, provided that such Affiliate (a) has operating experience at least equal to that of Seller, (b) has a creditworthiness that is least equal to that of Seller and (c) shall assume and be fully capable of performing Seller's obligations hereunder, including Seller's obligations in connection with the Security under Article 11.]

[REDACTED]



19.4 Contractors and Subcontractors. Seller may rely on one or more contractors and subcontractors in the performance of its duties or obligations under this PPA with respect to the construction or operation of the Facility; provided that (i) all contractors and subcontractors shall at all times comply with UTILITIES' security and safety requirements while performing work at the Site; and (ii) no contract or subcontract shall relieve Seller of any of its duties or obligations under this PPA.

**ARTICLE 20– Miscellaneous**

20.1 Waiver. Subject to the provisions of Section 13.8(B), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes.

(A) Utilities is a tax exempt entity. Seller shall be solely responsible for (i) any and all present or future taxes and other impositions of Governmental Authorities relating to the ownership or operation or maintenance of the Facility, or any components or appurtenances thereof, and (ii) all *ad valorem* taxes relating to the Facility. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to UTILITIES hereunder shall be sales for resale, with UTILITIES reselling such electric energy.

20.3 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy

Regulatory Commission acting *sua sponte* shall be the “public interest” standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), as clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008) (aka the “Mobile-Sierra doctrine”).

20.4 Disclaimer of Third Party Beneficiary Rights. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the persons employed by Seller shall be considered employees of UTILITIES for any purpose; nor shall Seller represent to any person that he or she is or shall become a UTILITIES employee.

20.6 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that UTILITIES and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.7 Entire Agreement; Amendments. This PPA constitutes the entire agreement between UTILITIES and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between UTILITIES and Seller with respect to the sale of Renewable Energy from the Facility.

20.8 Amendments. This PPA may be amended, modified, or supplemented only by a writing signed by both Parties hereto; provided that, Exhibit D may be changed in accordance with Section 13.7.

20.9 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

20.10 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.11 Governing Law; Jurisdiction; Venue. This PPA shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties hereby submit to

the exclusive jurisdiction of the courts of the State of Colorado, and venue is hereby stipulated as El Paso County, Colorado.

20.12 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the nature of this PPA, and other relevant factual information about the relationship of the Parties.

20.13 Open Records Act; Confidentiality. Seller acknowledges that UTILITIES is a public entity subject to the provisions of the Colorado Public Records Act, Colorado Revised Statutes Sec. 24-72-201 et seq. Subject to the foregoing requirements, each Party agrees not to disclose to a third party (other than a Party's outside counsel, consultants, accountants, lenders and prospective lenders, investors and prospective investors, prospective purchasers and other agents having a need to know, who agree to maintain the confidentiality of the information) or use for purposes other than related to this PPA, any non-public information of the other Party, including the terms of this PPA, proprietary information provided by one Party to the other pursuant to the terms of this PPA, proprietary information obtained pursuant to a Party's audit or inspection of the other Party's assets and/or records; and any other information which has been designated in writing as confidential by the disclosing Party (collectively, "**Proprietary Information**"), unless the receiving Party obtains the prior written consent of the disclosing Party. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Proprietary Information of the other Party, which such Party observes with respect to its own information of the same or similar kind.

Each Party agrees that it will make Proprietary Information available to its own employees, officers and directors who may include the employees, officers, and directors of a Party's Affiliates, only on a need-to-know basis, and that all persons to whom such Proprietary Information is made available will be required to maintain the confidentiality of the information. Notwithstanding the foregoing, either Party may disclose any Proprietary Information that (a) becomes public information through no wrongful act of the receiving Party; or that is provided to the receiving Party by a third party without restriction known to the receiving Party and without breach of this PPA, or (b) the receiving Party is required to disclose to comply with an applicable legal requirement. To the extent such Proprietary Information is required to be provided pursuant to Applicable Law, including in connection with any regulatory proceeding, the Party required to provide such Proprietary Information shall use commercially reasonable efforts to notify the other Party as soon as practicable.

20.14 Forward Contract. The Parties acknowledge and agree that this PPA constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

20.15 Counterparts. This PPA may be executed in counterparts, each of which shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first above written.

**COLORADO SPRINGS UTILITIES:**

**GRAZING YAK SOLAR, LLC:**

By:   
\_\_\_\_\_  
JOE AWAD  
CHIEF ENERGY SRVS OFFICER

By: \_\_\_\_\_  
Michael O'Sullivan  
Vice President

Approved as to form:

By:   
\_\_\_\_\_  
City Attorney's Office - Utilities Division

IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first above written.

**COLORADO SPRINGS UTILITIES:**

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

**GRAZING YAK SOLAR, LLC:**

By:   
Michael O'Sullivan  
Vice President

Approved as to form:

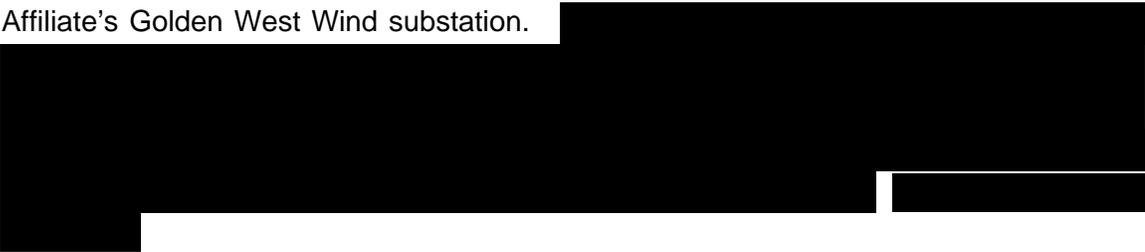
By: \_\_\_\_\_  
City Attorney's Office - Utilities Division

**EXHIBIT A  
FACILITY DESCRIPTION  
GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT**

Seller's Facility is described below:

- 1. Facility name: Grazing Yak Solar Energy Center
- 2. [REDACTED]

The Facility is being developed at the site shown in the map below, Exhibit M. The Facility will utilize solar photovoltaic panels, which will be mounted on structures with horizontal single axis trackers in order to track the sun on a daily basis. The output of the panels will be combined in strings, and the strings will be aggregated at inverters, where the energy will be converted at each inverter pad from direct current to alternating current and stepped up to 34 kV. Output from each inverter pad will be aggregated, delivered, and metered through a 34kV circuit breaker, switch and line to Seller's Affiliate's Golden West Wind substation.



7. Description of Land:

The Facility will be within the Assessor Parcel Number listed below.

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

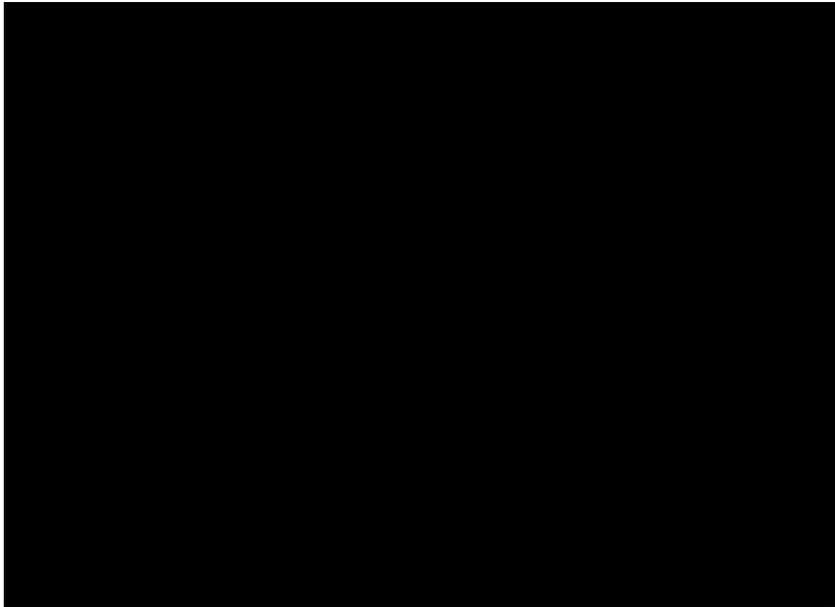
**EXHIBIT B  
POINT OF COMMON COUPLING  
GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT**

**Point of Common Coupling Definition**

The Point of Common Coupling (“PCC”) is defined as the customer connections on the load side (a.k.a. “owner” side) of the primary meter stations(s).

- [REDACTED]
- [REDACTED]
- [REDACTED]

**Grazing Yak Solar Proposed Metering Arrangement**



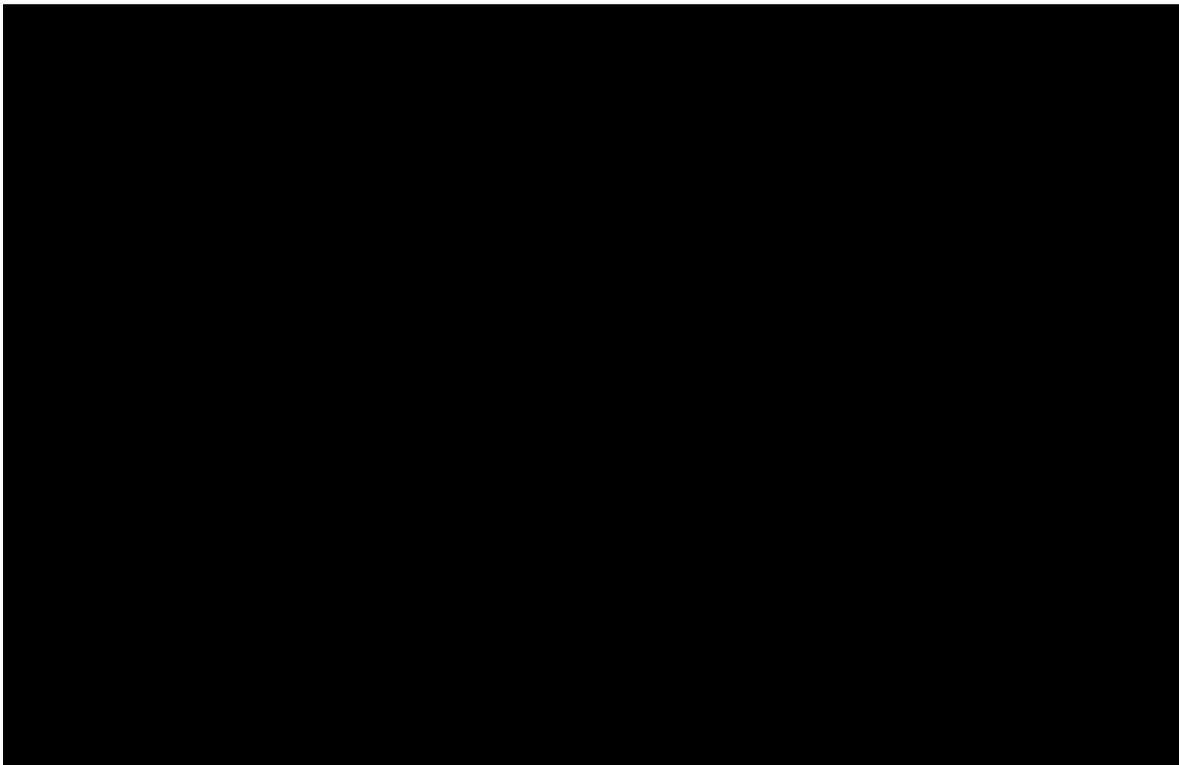
**Notes:**

1. All metering is bidirectional
2. Solar delivered and received energy, calculated at the POI, is net of incremental losses
3. Meters represented will be the property of Interconnecting Utility (PSCo)
4. Retail energy for backfeed provided by Mountain View Electric Cooperative

**EXHIBIT C  
PROJECT MILESTONES  
GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT**

MILESTONE	DATE
[REDACTED]	[REDACTED]
Commercial Operation Milestone	December 31, 2019

**EXHIBIT D  
NOTICES AND OPERATING COMMITTEE REPRESENTATIVES  
GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT**



<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



**EXHIBIT F**  
**PERMITS AND APPROVALS**  
**GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT**

Seller shall be responsible for securing applicable zoning and permit requirements including, but not limited to, El Paso County Wind and/or Solar Energy Generation Overlay District (“WSE- 0”), Guidelines and Regulations for Areas and Activities of State Interest (“1041”) land use approval, and Site Development Plan approval, which includes applicable El Paso County Commissioner and Planning Commission review and approval.

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4.

[REDACTED]

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[ISSUING BANK]

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

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

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

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[Redacted]

Name of the Renewable Energy Facility

[REDACTED]

**EXHIBIT K  
RESERVED**

[Redacted]

■ [Redacted]

4. [Redacted]

[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(a)

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[Redacted]

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# EXHIBIT M SITE GRAZING YAK SOLAR PHOTOVOLTAIC PROJECT

