

**SOLAR POWER PURCHASE AGREEMENT**

**BETWEEN**

**COLORADO SPRINGS UTILITIES**

**AND**

**PALMER SOLAR LLC**

**June 6, 2018**

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## EXHIBITS

- A. Facility Description
- B. Point of Common Coupling
- C. Project Milestones
- D. Operating Committee Addresses
- E. Annual Energy Production Schedule and Applicable Energy Rate
- F. Permits and Approvals
- G. Form of Letter of Credit
- H. Form of Renewable Energy Credit(s) Attestation and Bill of Sale
- I. Final Acceptance Test Procedure
- J. Monthly Operating Report
- K. Insurance Coverage
- L. Form of Corporate Guaranty
- M. Site Location and Layout
- N. Methodology for Calculating the Guaranteed Energy Production

**Solar Power Purchase Agreement between  
Colorado Springs Utilities  
and  
Palmer Solar LLC**

This Solar Power Purchase Agreement ("PPA") is entered into as of this 6th day of June, 2018, 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 Palmer Solar LLC, a Delaware limited liability company, with headquarters in Boulder, Colorado ("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 60 MW AC photovoltaic solar-powered electric generating facility (further defined below as the "Facility") known as the Palmer Solar Project at the Site (further defined below);

WHEREAS Seller desires to develop, design, construct and operate and maintain the Facility at the Site; and

WHEREAS, Seller desires to sell and deliver to UTILITIES, and UTILITIES desires to purchase and accept from Seller, all energy and associated 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, the terms of the 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.

"Actual Replacement Cost(s)" means the positive difference, if any, between (a) the costs reasonably calculated as actually incurred by UTILITIES for the Renewable Energy and RECs which are necessary to replace that which Seller, in accordance with this PPA, guaranteed to produce at the Facility and deliver to UTILITIES, but has failed to so provide, as well as 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, and (b) the sum of any payments from UTILITIES to Seller under this PPA, which are eliminated as a result of such failure.

"Affiliate" of any named person or entity 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 of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"Annual Energy Production" means the estimated yearly energy production as listed in Exhibit E.

"Applicable Energy Rate" means, for any Contract Year during the Term of this PPA, the price in US Dollars per MWh of Renewable Energy corresponding to such Contract Year as set forth in the column titled Applicable Energy Rate 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.

"Colorado Renewable Energy Standard" or "CO RES" means the renewable energy standard for qualifying retail utilities in Colorado pursuant to § 40-2-124, C.R.S., et seq., and 4 CCR 723-3-3650, et seq.

"Commercial Operation" means the Facility has satisfied the conditions set forth in Sections 4.3 and 4.4.

"Commercial Operation Date" is defined in Section 4.1(b).

"Contract Year" means any rolling twelve month period which begins on the Commercial Operation Date or any anniversary thereof and ends on the day before the next anniversary of the Commercial Operation Date.

"Day" means a calendar day.

"DC" means direct electric current.

"Delay Damages" is defined in Section 4.2(B).

"Development Period Security Amount" is defined in Section 11.2.

"Dispute" is defined in Section 13.8.

"Dispute Notice" is defined in Section 13.8.

"Effective Date" means the date first above written.

"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.

"Event of Default" is defined in Article 12.

"Facility" means 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, step-up transformer(s), 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 Rating" means the capacity of the completed Facility, expressed in MW AC as determined by the sum of the maximum AC power output ratings of the Facility inverters, which shall not be below 60 MW AC or exceed 65 MW AC.

"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 verify the Facility's capability of achieving the minimum Facility Rating at Commercial Operation, all as set forth in Exhibit I, or as otherwise agreed by the Parties in a Final Acceptance Test Procedure.

"Final Acceptance Test Procedure" means the testing procedure provided in Exhibit I.

"Force Majeure" is defined in Article 14.

"Forced Outage" means (1) any condition at the Facility that requires immediate removal of the Facility, or some part thereof, from service, (2) another outage state, or (3) a reserved shutdown state, in each case that is not the result of a scheduled maintenance outage, a Force Majeure, an Emergency or a curtailment directed by UTILITIES or a Balancing Authority.

"Forecasted 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. Forecasted Replacement Costs include the amounts reasonably forecasted to be incurred by UTILITIES for replacement renewable energy, 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.

"Good Utility Practice(s)" means the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry (or, where applicable, the

practices, methods, and acts engaged in or approved by a significant portion of the solar-power electric generation industry operating in North America) 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 Energy Production" is calculated according the procedures set forth in Exhibit N.

"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.

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

"Interconnection Agreement" means the separate agreement by and between Interconnection Provider and Seller for the Interconnection.

"Interconnection Provider" means the Colorado Springs Utilities in its capacity as the owner of its applicable Interconnection facilities.

"kW" means kilowatt.

"kWh" means kilowatt hour.

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

"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).

"Party" or "Parties" is defined in the preamble to this PPA.

"Party Representative" is defined in Section 13.8.

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

"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 Contracts" means (i) any easement(s) and rights of way under which Seller is entitled to use the Site for the development, construction and operation of the Facility; (ii) engineering, procurement and construction or similar agreement(s); (iii) contracts for the manufacture, purchase, delivery and/or installation of key components of the Facility, including the PV Modules, step-up transformer(s), and inverters; (iv); operation and maintenance agreement(s); (v) the Interconnection Agreement and (vi) other material agreements related to the development, construction and operation and maintenance of the Facility.

"Project Milestones" means the project milestones and corresponding dates as set forth in Exhibit C.

"Proprietary Information" is defined in Section 21.13.

"PV Modules" means the photovoltaic modules comprising the solar generating field for the Facility.



"Regional Transmission Organization (RTO)" means an organization formed at the approval of the FERC. The RTO coordinates, controls, and monitors the operation of the electrical power system, usually within a single US state, but sometimes encompassing multiple states.

"Renewable Energy" means all electric energy generated by the Facility (net of station

use) including any and all associated 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 Article 2.

"Replacement Cost(s)" means collectively, the Actual Replacement Costs and the Forecasted Replacement Costs.

"RFP" is defined in the Recitals.

"Rolling Period" means any two consecutive Contract Years occurring during the Term.

"SCADA" means supervisory control and data acquisition.

"Security" is defined in Section 11.1.

"Seller" is defined in the preamble to this PPA.

"Site" as defined in Exhibit M.

"Substation" means the facilities to be known as the Williams Creek Substation, located at the Substation Site and interconnected to UTILITIES' 230 kV transmission line, which Substation will include circuit breakers, switches, metering and instrumentation, relays and controls, and appurtenant facilities and equipment, in each case, to be further described in the Substation Construction Contract.

"Substation Site" as identified in Exhibit M.

"Substation Construction Contract" means the separate agreement between JSI Construction Group LLC, as general contractor, and UTILITIES regarding the procurement,

installation and commissioning of a Substation and related switching, including all required internal hardware and software, field instrumentation, and communications devices designed for remote monitoring and control of the functioning of the Substation.

"Test Energy" means Renewable Energy produced by the Facility continually as project circuits are energized, but prior to the defined Commercial Operation Date.

"Test Energy Rate" means an amount equal to [REDACTED]

"Term" is defined in Article 2.

"UTILITIES" is defined in the preamble to this PPA.

"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 renewable energy certificates (RECs) for this generation.

## Article 2 Term

### 2.1 Term Length.

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the twentieth (20th) 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.

Seller shall have sixty (60) Days from the Effective Date to conduct due diligence activities regarding the Site to evaluate site conditions, produce copies of the agreements or instruments evidencing Seller's ownership or control of the Site, and investigate and ensure the El Paso County land development processes is feasible (collectively, "Due Diligence Activities"). Upon completion of these activities, Seller shall promptly provide the results and reports from such activities to UTILITIES. Upon receipt of the results, UTILITIES shall have ten (10) Business Days to review the results and submit any objections in writing to Seller if in UTILITIES' reasonable determination such findings could materially impact Seller's ability to develop the Facility. Upon receipt of UTILITIES' objections, UTILITIES and Seller may negotiate a reasonable amendment to this PPA or agree to terminate this PPA and any related agreements.

Each Party shall use commercially reasonable efforts to achieve the conditions precedent listed under Sections 2.2(A) and (B) below as soon as reasonably practicable. In the event that any such condition precedent is not met in accordance with the requisite time frames then either Party shall have the right to terminate this PPA and any related agreements by provision of written

notice to the other Party within ten (10) Business Days after the deadlines provided below. In the event of termination (i) by the Parties due to the results of the Due Diligence Activities as set forth in the paragraph above, or (ii) due to failure to satisfy a condition precedent set forth below, UTILITIES will promptly return the Security to Seller and neither Party shall have any further financial or other obligation to the other, and each Party shall be fully responsible for its own costs. Notwithstanding anything provided herein to the contrary, if a Party fails to notify the other Party in writing of its intent to terminate this PPA within ten (10) Business Days after the deadline for any condition precedent, such condition precedent shall be deemed waived by the Party that failed to provide such termination notice and such Party's right to terminate in connection with that condition precedent shall cease.



### **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**

Seller will pay when due and be responsible for any sales or use tax imposed with respect to Seller's acquisition and installation of the Facility

#### **3.3 Facility Design and Construction, 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 meet the Facility Rating. Seller will develop, design, construct, own, operate and maintain the Facility and take such further actions in accordance with and as described in Exhibit A.

#### **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 approximate location of the Facility at the Site is attached as Exhibit M hereto. A description and drawing that identifies the location of the Point of Common Coupling, the Substation and UTILITIES' Electric Metering Device is attached as Exhibit B hereto.

#### **3.5 Certain Covenants Relating to the Substation.**





3.6 UTILITIES' Rights During Construction.

UTILITIES shall have the right, from time to time to review and discuss the design of the Facility, observe the construction of the Facility, and to inspect the work and the Facility, and related equipment; provided that (a) such monitoring activities are permitted under or are in compliance with the Project Contracts, (b) UTILITIES shall not unreasonably interfere with Seller's activities on the Site and (c) 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. 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.

3.7 Testing and Commissioning.

(A) Seller shall provide UTILITIES with a copy of the Final Acceptance Test protocol 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 approximate 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 in order that UTILITIES may arrange for its representatives to attend.

(C) Seller shall agree to work with UTILITIES Systems Operations department during all testing phases to ensure UTILITIES is meeting all known and applicable requirements and obligations of any Regional Transmission Organization and Balancing Authority having jurisdiction over the Facility.

3.8 Test Energy.

Seller shall coordinate with UTILITIES concerning the production and delivery of energy by the Facility during testing, commissioning and partial operation of the Facility prior to the Commercial Operation Date. All Test Energy shall be delivered and purchased at the Test Energy Rate. However, UTILITIES shall not be obligated to accept any Test Energy prior to the occurrence of: (a) initial synchronization with UTILITIES' electrical system at the Point of Common Coupling; (b) Interconnection of the Facility to the Point of Common Coupling has been completed in accordance with the Interconnection Agreement; and (c) the satisfaction of conditions set forth in Sections 4.3 (D) and (G) of this PPA.

**Article 4 Commercial Operation**

4.1 Project Milestones; Commercial Operation Date.

- (A) Seller shall meet the Project Milestones schedule set forth in Exhibit C;
- (B) The Facility shall achieve Commercial Operation on the date the conditions set forth in Section 4.3 have been satisfied (the "Commercial Operation Date"), which date shall not be later than the date set forth in Exhibit C; and
- (C) In the event that Seller should determine that any of the Project Milestone dates or the Commercial Operation Date is not feasible or impossible to achieve as expected, Seller shall promptly notify UTILITIES and shall advise UTILITIES of the new expected Project Milestone date or Commercial Operation Date, as the case may be; provided, that nothing in this provision shall be deemed to modify any required Project Milestone date or Commercial Operation Date or excuse Seller from any liability for Delay Damages.

4.2



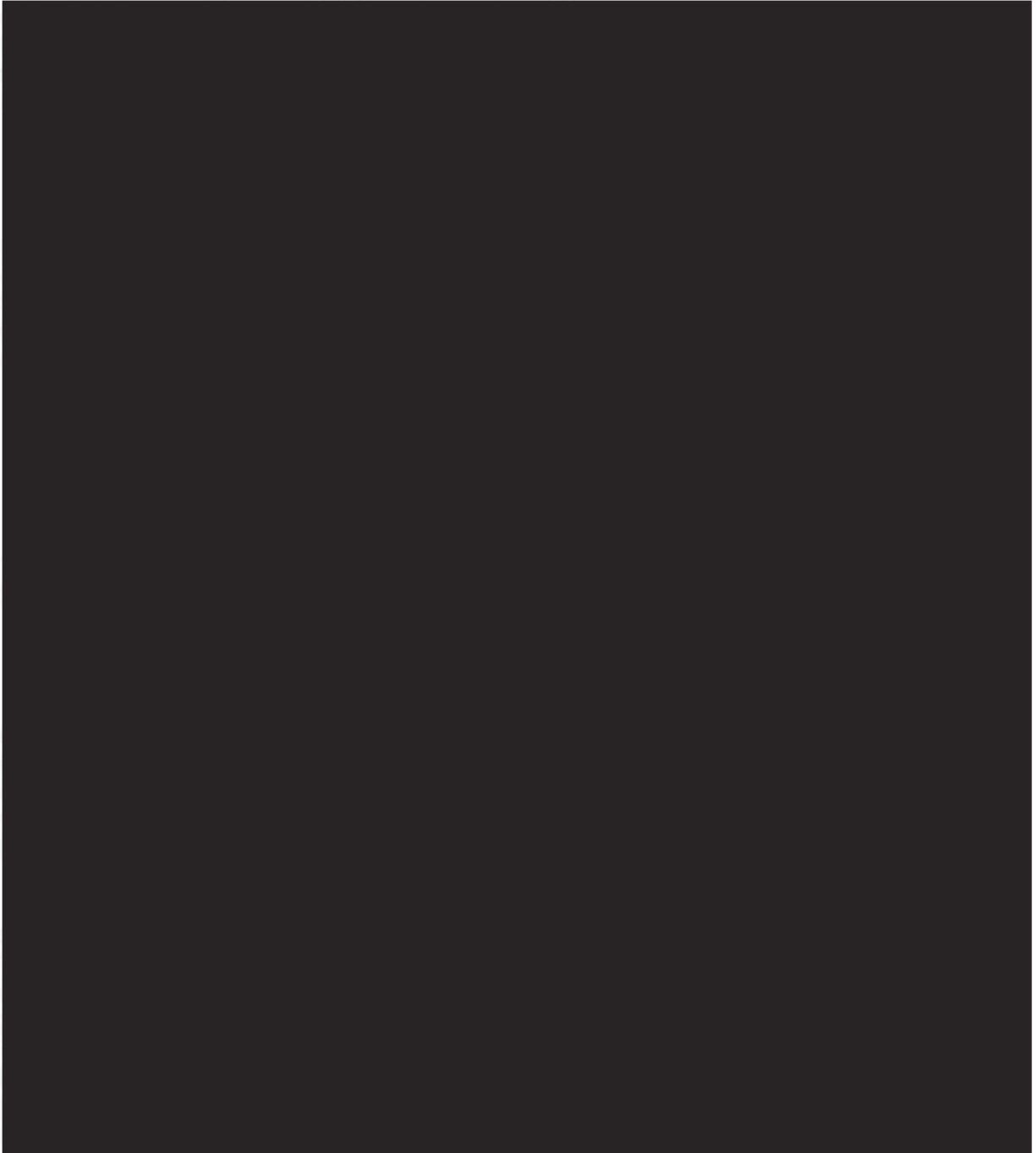
4.3 Conditions to Commercial Operation.

No fewer than thirty (30) Days prior to the anticipated Commercial Operation Date of the Facility, 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, 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 ten (10) 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.





4.4 Electricity Standards.

Electricity generated by Seller shall be delivered to UTILITIES in the form of 3-phase, 60 Hertz AC at a nominal operating voltage of 230 kV with a maximum limit of 242 kV and a minimum limit of 218 kV or such change in standards as the parties mutually agree. The actual operating voltage will be under the control of UTILITIES' system operator, subject to the above limits. Seller's equipment will remain connected during short term voltage excursions experienced during contingency grid events to a maximum voltage of 253 kV and minimum of 207 kV.

**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 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, that 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 Renewable Energy Credit Metering.

RECs to be delivered under this PPA will be measured by Electric Metering Devices installed, owned and operated by UTILITIES and located at the Point of Common Coupling.

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 Conditions**

6.1 Reserved

6.2 Compliance with Colorado Springs City Charter.

Notwithstanding any other provision of this PPA, each of the Parties acknowledges and agrees that the obligations of UTILITIES under this PPA are subject to the provisions of the Charter of the City of Colorado Springs.

**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 60 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.

UTILITIES shall have the right at any time to notify Seller 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 consistent with Good Utility Practices.

In the event (i) the Balancing Authority directs UTILITIES to notify Seller or (ii) the Balancing Authority notifies Seller directly, by any method established by the Balancing Authority, to curtail the delivery of Renewable Energy, in whole or in part, to UTILITIES at the PCC, Seller shall promptly comply with such notification consistent with Good Utility Practices.

UTILITIES shall not have any purchase obligation or liability with respect to Renewable Energy curtailed: (A) if UTILITIES or Interconnection Provider determines, using Good Utility Practices, that curtailment, interruption, or reduction is necessary due to an Emergency; (B) to the extent Force Majeure prevents or limits UTILITIES' ability to accept delivery of Renewable Energy; (C) due to the failure of Seller's PCC Facilities or any action taken by the Interconnection Provider in accordance with its rights under the Interconnection Agreement; (D) due to the failure of Seller to obtain or maintain or comply with any permit or Applicable Laws that expressly require

the Facility to cease operating as a result of such failure; (E) due to any notification from the Balancing Authority requiring Seller to curtail or cease deliveries of Renewable Energy to achieve load balancing in the Balancing Authority area; or (F) due to any curtailment of any UTILITIES owned transmission services arranged by either Party to provide transmission of Renewable Energy to or from the PCC.

7.4 Guaranteed Energy Production.



7.5 Market Changes.





**Article 8 RESERVED**

**Article 9 Billing and Payment**

**9.1 Billing Invoices and Payment.**

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. The billing period under this PPA shall be the calendar Month, payable within 30 Days of receipt of invoice. No later than fifteen (15) Business Days after the end of each month, Seller shall provide to UTILITIES, email at ElectricAccounting@csu.org, a billing statement and attestation for deliveries of Renewable Energy during the previous Month, as measured in accordance with Article 5, which statement shall show (i) the quantity of Renewable Energy delivered, (ii) the Applicable Energy Rate for each kWh of Renewable Energy delivered during the previous month and (iii) the total amount due for that Month.

**9.2 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.

**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), (C) and (D), 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 forced or planned 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, including routine maintenance of the grounds at 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 promptly repair or replace any hazardous equipment or any damaged or defective equipment at the Facility, including PV Modules, as required in accordance with the manufacturers' recommendations, and Good Utility Practices.

10.7 Disposal.

Upon the cessation of operations or the replacement of equipment, Seller shall, at its sole cost and expense, dispose of all Facility equipment no longer in use in accordance with Applicable Law and Good Utility Practice.

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. 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.







**Article 11 Security**





**Article 12 Default and Remedies**

**12.1 Events of Default.**





**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 five (5) Business Days' written notice to Seller, and 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 five (5) Business Days' written notice to UTILITIES, and shall be entitled to pursue all of its legal and equitable rights and remedies.

**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.



- (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 and 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, within thirty (30) Days of the end of each Month commencing with the Month containing the Commercial Operation Date and continuing through the Term, provide UTILITIES, in electronic format, with an operating report in accordance with Exhibit J.

#### **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 (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) 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 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, for any reason (the risk of which is assumed by Seller), (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 Seller's supplies, or that affect demand or price for power and/or RECs; (vi) any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; or (vii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns at the Site based on National Oceanic and Atmospheric Administration data.

#### 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 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 inception (with respect to Force Majeure occurring after the Commercial Operation Date), UTILITIES may, at any time following the end of such period, terminate this PPA upon written notice to Seller, without further obligation, except as to the obligations and liabilities provided hereunder, which shall survive such termination.

In the event that any delay or failure of performance caused by Force Majeure affecting UTILITIES continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after the Commercial Operation Date), Seller may, at any time following the end of such period, terminate this PPA upon written notice to UTILITIES, without further obligation, except as to the obligations and liabilities provided hereunder, which shall survive such termination.

### **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 K to this PPA. Seller shall, on or before the Commercial Operation Date and promptly after the renewal of each policy of insurance coverage required in Exhibit K, provide UTILITIES with one copy of insurance certificates evidencing the insurance coverages required to be maintained in accordance with Exhibit K to this PPA. The Commercial General Liability policy certificates shall (A) name UTILITIES as an additional insured; (B) provide that the applicable insurer shall endeavor to provide UTILITIES with thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies; and (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.



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 Indemnifying Party must obtain the Colorado Springs City Attorney's prior written consent, on behalf of Indemnified Party, to the settlement. Such consent will not be unreasonable withheld. Indemnifying Party shall be relieved of its indemnification obligations to the extent Indemnified Party withholds its reasonable consent to settle a claim related to such obligations, provided that such settlement does not require Indemnified Party to incur any expense for which 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.

Each Party 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, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of the Party or its ability to fulfill its commitments under 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 Other Transfer Restrictions**

#### 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.

#### 19.2 Transfer Without Consent is Null and Void.

Any sale, transfer, or assignment made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

#### 19.3 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 Good Utility

Practice 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 Reserved

## Article 21 Miscellaneous

### 21.1 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.

### 21.2 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 due to the ownership or operation or maintenance of the Facility, or any components or appurtenances thereof, and (ii) all *ad valorem* taxes assessed against Seller or the Facility. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) Consistent with Applicable Law, 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 Renewable Energy delivered by Seller to UTILITIES hereunder shall be sales for resale, with UTILITIES reselling such Renewable Energy.

### 21.3 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) (aka the "Mobile-Sierra doctrine").

### 21.4 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.

### 21.5 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.

#### 21.6 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.

#### 21.7 Entire Agreement

This PPA constitutes the entire agreement between UTILITIES and Seller with respect to the Facility and the Revocable License 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.

#### 21.8 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.

#### 21.9 Binding Effect

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

#### 21.10 Headings

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

#### 21.11 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.

#### 21.12 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.

#### 21.13 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.

#### 21.14 Forward Contract

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


#### 21.15 Counterparts

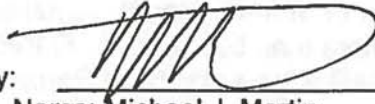
This PPA may be executed in counterparts, each of which shall have the same force and effect as an original instrument.

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

**COLORADO SPRINGS UTILITIES:**

**PALMER SOLAR LLC:**

By:   
Name: Eric Tharp  
Title: Acting CEO

By:   
Name: Michael J. Martin  
Title: President

Approved as to form:  
By:   
City Attorney's Office - Utilities Division

[Signature Page to Solar Power Purchase Agreement (Palmer Solar)]

**EXHIBIT A  
FACILITY DESCRIPTION**

**PALMER SOLAR PHOTOVOLTAIC PROJECT**

The Facility shall be a new solar photovoltaic generating facility. The Facility area will utilize a portion of the more than 500 acres in El Paso County, State of Colorado, identified by the El Paso County Assessor as a portion of Parcels 56000-00-122, 56000-00-137, 56000-00-159, and 56000-00-036.

The Facility will consist of photovoltaic modules from a tier one module manufacturer, inverters manufactured by TMEIC, SMA or a comparable inverter manufacturer, and a single-axis tracking system manufactured by JSI Equipment Solutions LLC, Array Technologies Inc. or a comparable racking manufacturer.

The Facility will interconnect to the metering structure, which is the Point of Common Coupling, at the Substation.

Seller shall engineer, design, procure, construct, test, commission, operate and maintain the Facility in accordance with 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 three meteorological stations consisting of instruments to measure the meteorological parameters including suitable solar irradiation meters and other instrumentation of types necessary to measure the available solar resource, measure the ambient temperature, PV Module 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 all Project Contracts as required by this PPA or any attachment to this PPA; provided that Seller may redact from the copies of any Project Contracts provided to UTILITIES any pricing or other information which Seller reasonably considers confidential;

(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 K hereto;



(F) upon request by UTILITIES, provide UTILITIES all other Facility design and construction documents and drawings, including as-built drawings relating to the design and construction of the Facility within a reasonable time after such drawings are available; and

(G) commencing thirty (30) days following the Effective Date (i) provide UTILITIES with monthly progress reports on the development and construction of the Facility, 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.

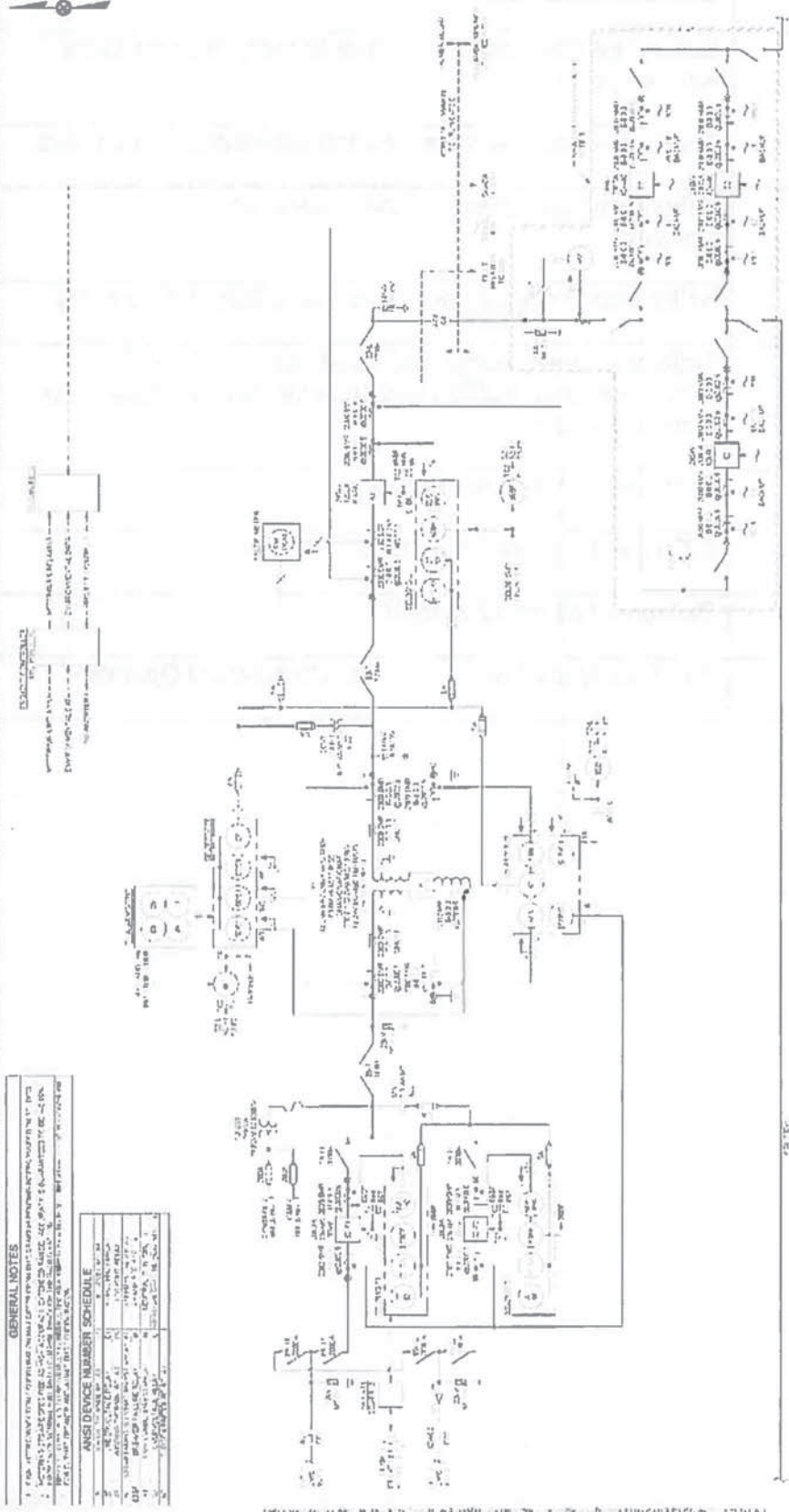
**EXHIBIT B**  
**POINT OF COMMON COUPLING**

**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 station(s).

- Utility Side: UTILITIES is responsible for the purchase, design, installation, operation and maintenance of all equipment up to the primary meter station including the metering cabinet and the bushings.
- Owner Side: Seller is responsible for the purchase, design, installation, operation and maintenance of all equipment up to the cable connected to the primary meter station(s) including the cable termination(s).
- Seller recognizes that UTILITIES assumes no responsibility in the installation or operation of any equipment located on the owner side of the PCC

[See attached drawing]

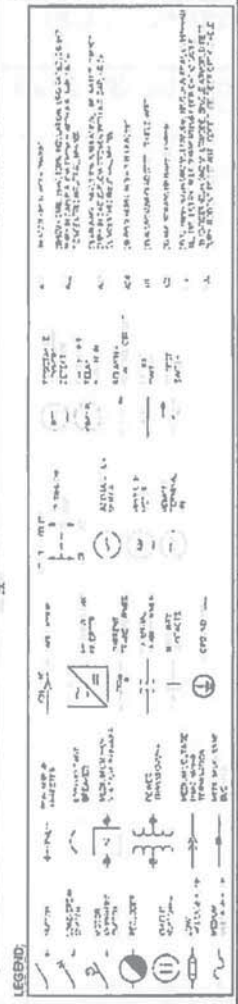
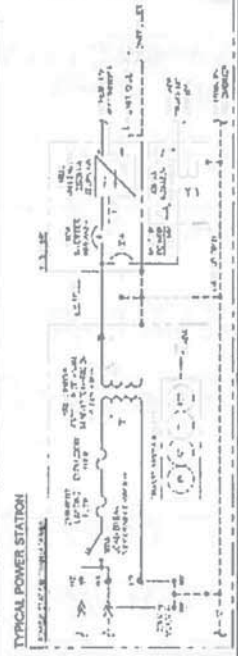


**GENERAL NOTES**

1. FOR THE CONTRACTOR TO VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO ANY EXCAVATION WORK.
2. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND ALL LOCAL CODES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
4. ALL ELECTRICAL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
5. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL UTILITIES AND STRUCTURES AT ALL TIMES.
6. ALL ELECTRICAL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
8. ALL ELECTRICAL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
10. ALL ELECTRICAL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.

**ANSI DEVICE NUMBER SCHEDULE**

ANSI SYMBOL	DESCRIPTION
1	RESISTOR
2	INDUCTOR
3	CAPACITOR
4	TRANSFORMER
5	RELAY
6	SWITCH
7	FUSE
8	DIODE
9	TRIODE
10	TRANSISTOR
11	SCR
12	DIAC
13	TRIAC
14	IGBT
15	MOSFET
16	BJT
17	OPAMP
18	COMPARATOR
19	LOGIC GATE
20	MULTIPLEXER
21	DEMUX
22	REGISTER
23	COUNTER
24	ALU
25	MEMORY
26	CONTROL SIGNAL
27	GROUND
28	POWER SUPPLY
29	UNDEFINED
30	UNDEFINED
31	UNDEFINED
32	UNDEFINED
33	UNDEFINED
34	UNDEFINED
35	UNDEFINED
36	UNDEFINED
37	UNDEFINED
38	UNDEFINED
39	UNDEFINED
40	UNDEFINED
41	UNDEFINED
42	UNDEFINED
43	UNDEFINED
44	UNDEFINED
45	UNDEFINED
46	UNDEFINED
47	UNDEFINED
48	UNDEFINED
49	UNDEFINED
50	UNDEFINED



**EXHIBIT C  
PROJECT MILESTONES**



**EXHIBIT D  
OPERATING COMMITTEE ADDRESSES**

**PALMER SOLAR PHOTOVOLTAIC PROJECT**

UTILITIES	Seller
<p>Notices:</p> <p>Colorado Springs Utilities Attn: Procurement and Contract Services Manager PO Box 1103, Mail Code 920 Colorado Springs, CO 80947-0920 Phone: 719-668 -3862 Fax: 719-668-3867</p> <p>with a copy to:</p> <p>Colorado Springs Utilities Deputy City Attorney - Utilities Division PO Box 1103, Mail Code 940 Colorado Springs, CO 80947- 0920 Phone: 719-668-8050 Fax: 719-668-8048</p>	<p>Notices:</p> <p>Palmer Solar LLC c/o juwi Inc. 1710 29<sup>th</sup> Street; Suite 1068 Boulder, Colorado 80301 Attn: John Tembrock VP, Operations Phone: 720-838-2296</p> <p>with a copy to:</p> <p>Palmer Solar LLC c/o juwi Inc. 1710 29<sup>th</sup> Street; Suite 1068 Boulder, Colorado 80301 Attn: Jay Sonnenberg General Counsel Phone: 720-838- 2290</p>
<p>Operating Committee Representative:</p> <p>Matt Wells Phone: 719-668-4130 Mobile: 719-210-6009 mwells@csu.org</p> <p>Alternate:</p> <p>Warren Rust Phone: 719-668-4128 Mobile: 719-964-2216 rrust@csu.org</p>	<p>Operating Committee Representative:</p> <p>Name: John Tembrock Phone: 720-838-2296</p> <p>Alternate:</p> <p>Name: Mark Marion Phone: 720-838-2291</p>

**EXHIBIT E**  
**ANNUAL ENERGY PRODUCTION SCHEDULE AND APPLICABLE ENERGY RATE**  
**PALMER SOLAR PHOTOVOLTAIC PROJECT**



**EXHIBIT F  
PERMITS AND APPROVALS**

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.

**EXHIBIT G  
FORM OF LETTER OF CREDIT**

PALMER SOLAR PHOTOVOLTAIC PROJECT

**[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**

**[Date of issuance]**

**[BENEFICIARY] ("Beneficiary")**

**[Address]**

**Attention: [Contact Person]**

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "you") this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") for the account of [Seller] on behalf of [Seller project entity], located at [Address] ("Account Parties"), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [describe the underlying agreement which requires this LC].

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [written dollar amount] United States Dollars (US\$[dollar amount]) (such maximum amount referred to as the "Stated Amount").

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the "Draw Certificate"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the "Draft"), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). ). If presentation is made by facsimile transmission, you must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.



3. **Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [ ] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [ ] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the "**Initial Expiration Date**"). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, "**Business Day**" shall mean any day on which commercial banks are not authorized or required to close in the State of Colorado, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

\* \* \*

Sincerely,

[ISSUING BANK]

\_\_\_\_\_

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

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

Address:

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] ("Issuer"), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by Issuer in favor of the undersigned ("Beneficiary"), as follows:

- (1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Certificate, for payment of \_\_\_\_\_ U.S. dollars (US\$ \_\_\_\_\_), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary are pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

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

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

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

**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_**

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

PAY TO: [BENEFICIARY]

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

[BENEFICIARY]

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

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

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

**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, being authorized by the undersigned ("**Beneficiary**"), hereby certifies on behalf of Beneficiary to [**ISSUING BANK**] ("**Issuer**"), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ issued by Issuer to Beneficiary (the "**Letter of Credit**"), that all obligations of [PROJECT ENTITY], under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer's receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[**BENEFICIARY**]

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

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

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

**EXHIBIT H  
FORM OF RENEWABLE ENERGY CREDIT(S) ATTESTATION AND BILL OF SALE**

**PALMER SOLAR PHOTOVOLTAIC PROJECT**

Palmer Solar LLC ("Seller") hereby sells, transfers and delivers to Colorado Springs Utilities ("UTILITIES") the Renewable Energy Credits associated with the generation of Renewable Energy (Photovoltaic) at the Facility, as detailed in the Power Purchase Agreement (PPA) between the Parties dated \_\_\_\_\_ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of generation facility: \_\_\_\_\_

Commercial Operation Date: \_\_\_\_\_

Name plate size of the facility: \_\_\_\_\_

Number of renewable energy credits being transferred: \_\_\_\_\_

Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Number of Renewable Energy Credits (RECs) generated during the time period: \_\_\_\_\_

One (1) REC represents the REC reporting rights associated with one (1) MWh generated from the Facility.

Seller further attests, warrants and represents on the date hereof as follows:

- i. each REC is free and clear of any liens, encumbrances and/or defects of title;
- ii. none of the RECs have been retired by Seller, claimed by Seller or represented by Seller as part of the electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- iii. its sale to UTILITIES is its one and only sale of the RECs with respect to the Renewable Energy and no third party has claimed any interest in such RECs;
- iv. the Facility identified above produced the number of MWh above during the period indicated above;
- v. Seller has title to and ownership of the RECs sold hereunder; and
- vi. Seller owns the RECs at:

\_\_\_\_\_  
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to UTILITIES all of Seller's right, title and interest in and to the RECs associated with the generation of the above referenced Renewable Energy.

Contact Person: \_\_\_\_\_  
phone: \_\_\_\_\_; email: \_\_\_\_\_

[Seller]

Signed: \_\_\_\_\_  
Name:  
Title:  
Date:

## EXHIBIT I Final Acceptance Test Procedure

### 1. General

The following is an overview of the procedure and requirements for the performance of the Final Acceptance Test.

#### 1.1 Final Acceptance Test Objective

The Final Acceptance Test is designed to verify that the Facility will achieve a minimum threshold of performance. Specifically, through measurements of the plane-of-array irradiance, PV Module temperature, and AC power output at the point of interconnection, the Final Acceptance Test will determine whether the Tested Facility Capacity is equal to or greater than the Minimum Facility Rating.

#### 1.2 Minimum Facility Rating

The Minimum Facility Rating is 60 MW AC.

### 2 Test Guidelines

#### 2.1 Test Period

The Final Acceptance Test shall be performed over the course of one day. A minimum of 120 minutes of "Qualifying" data, as defined below, must be obtained for the Final Acceptance Test results to be considered valid. The Test Period shall consist of all Qualifying minutes between sunrise and sunset on the day on which the Final Acceptance Test is performed. If sufficient Qualifying data are not collected during a single day, the Test Period may be extended on a day-by-day basis until the minimum data requirements are met.

#### 2.2 Test Instrumentation and Measurements

Prior to commencing the Final Acceptance Test, Seller shall provide to the UTILITIES current calibration certificates for all instruments used to collect Final Acceptance Test data. During the Final Acceptance Test, Seller shall use the Facility's SCADA system to measure and record the data necessary to calculate the Measured Facility Rating. The Final Acceptance Test shall utilize the following instrumentation located on-site at the Facility to make the measurements described below:

**2.2.1 AC Power:** A revenue-grade power meter compliant with the ANSI C12 standard shall be located at the Facility's Point of Common Coupling and used for AC power measurements. AC power measurements shall be collected at an interval of one minute.

**2.2.2 Irradiance:** A minimum of two ISO secondary standard pyranometers mounted in the same plane as the PV Modules of the Facility's arrays shall be used to provide plane-of-array ("POA") irradiance measurements. Each pyranometer shall collect irradiance measurements at an interval of one minute.

**2.2.3. Module Temperature:** A minimum of three RTD sensors mounted on the backs of representative modules near the midpoints of representative Facility arrays shall be used for module temperature measurements. Each module temperature sensor shall collect measurements at a minimum interval of one minute.

### 2.3 Data Qualifying Conditions

Data collected under the following conditions shall be considered "Non-Qualifying" and excluded from the Final Acceptance Test calculations:

- Low Irradiance. Average plane-of-array irradiance less than 200 W/m<sup>2</sup>.
- Inverter Clipping. Facility AC power output higher than 97% of the Facility Rating.
- Snow and Ice: Periods when snow or ice covers any portion of the PV arrays shall be considered Non-Qualifying.
- Cloud Coverage: The Final Acceptance Test should be performed under clear-sky conditions. Data collected during partial or complete coverage of the arrays by clouds shall be considered Non-Qualifying. Any individual pyranometer irradiance reading differing by more than 5% from each of the other plant pyranometers shall be considered indicative of partial cloud coverage, and all data recorded while such a condition persists shall be Non-Qualifying. To allow for cloud passage, all data recorded within two minutes of a Non-Qualifying period caused by such an irradiance difference will also be deemed Non-Qualifying.
- Tracker Safety Stow: Periods when more than 10% of tracker motor blocks are in a safety stow position for high winds, snow, or other reason shall be considered Non-Qualifying.
- Measurement Device Malfunction. Periods of greater than 15 minutes when data from the AC power meter, a majority of pyranometers, a majority of temperature sensors, and/or a majority of the array tracking position sensors are missing or faulty.
- Internal Forced Outages. Periods when equipment malfunctions or failures within the plant reduce the energy production of the Facility may be considered Non-Qualifying at the discretion of Seller.
- External Forced Outages. Periods when events originating outside the plant reduce the energy production of the Facility, including but not limited to UTILITIES-caused outages, grid outages, grid power anomalies, curtailment, and utility ancillary service requests.
- Force Majeure. Periods when Force Majeure events beyond the control of Seller reduce the energy production of the Facility.

### 2.4 Outline of Test Procedures

**2.4.1 Collect Measurements:** On the day of the Final Acceptance Test, measure and record AC power output, module temperature, tracker position and plane-of-array irradiance at an interval of one minute or less. At each time interval, calculate the average module temperature and average plane-of-array irradiance.

**2.4.2 Filter Data Set:** Remove any data collected during Non-Qualifying conditions.

**2.4.3 Apply Temperature Correction:** Correct each power measurement to 25 °C using the module power temperature coefficient:

$P_{stc}$  = AC power corrected to 25 °C (MW)

$P_m$  = Measured AC power at the revenue meter (MW)

$C_t$  = Module temperature coefficient from data sheet (-0.[ ]%/°C)

$T_m$  = Measured back-of-module temperature (°C)



**2.4.4 Perform Linear Regression:** Using computational software, plot the temperature-corrected power readings (y) versus irradiance (x) in a scatter plot format. Generate a linear regression curve with the software using the equation  $y = mx + b$ .

y = Pstc power corrected to 25 °C (MW)

m = Measured slope

x = Plane-of-array irradiance (W/m<sup>2</sup>)

b = y intercept

**2.4.5 Minimum Coefficient of Determination (R<sup>2</sup>):** The resulting linear regression must have a coefficient of determination (R<sup>2</sup> value) of 0.9 or greater. If the regression does not achieve this minimum R<sup>2</sup>, then Seller shall filter out all data points for which the measured Pstc value differs from the regression prediction by more than 20% and recalculate the regression. If the recalculated regression still does not achieve the minimum R<sup>2</sup>, then either Seller or UTILITIES may request that the Final Acceptance Test be repeated.

**2.4.6 Calculate Tested Facility Capacity:** The Tested Facility Capacity is then determined by solving the linear curve fit equation at an irradiance value of 1000 W/m<sup>2</sup>.

**2.4.7 Test Results:** If the Tested Facility Capacity is greater than the Minimum Facility Rating, the Facility will be deemed to have passed the Final Acceptance Test.

**2.5 Test Report:** Seller shall prepare and submit to UTILITIES for review and approval a written report describing the results of the Final Acceptance Test. All raw data and calculations shall be made available upon request to the UTILITIES in Microsoft Excel format following the conclusion of any Final Acceptance Test run.

**EXHIBIT J**  
**MONTHLY OPERATING REPORT**

**PALMER SOLAR PHOTOVOLTAIC PROJECT**

A Monthly Operating Report shall be submitted to UTILITIES within thirty (30) Days of the end of the Month commencing with the Month containing the Commercial Operation Date and continuing through the Term of the Power Purchase Agreement. Items to be included in the Monthly Operating Report are:

- a. Monthly actual energy output MWh.
- b. Monthly projected energy output MWh.
- c. Contract Year aggregate energy output MWh.
- d. Projected yearly energy output MWh for the Contract Year.
- e. Monthly average hourly temperature and irradiation values by the hour.
- f. Monthly lost energy generation MWh – Lost energy generation shall be estimated for all inverter-level and site-wide outages.
- g. Monthly Facility Availability - Monthly Facility Availability will be determined as the quotient of the monthly actual energy output MWh and the sum of the monthly actual energy output MWh and the monthly lost energy generation. The Monthly Facility Availability will be reported as a percentage (%).
- h. Contract Year (CY) Facility Availability - CY Facility Availability will be determined as the quotient of the Contract Year aggregate energy output MWh and the sum of the Contract Year aggregate energy output MWh and the Contract Year aggregate lost energy generation MWh. The CY Facility Availability will be reported as a percentage (%).
- i. Monthly Facility Energy Production Ratio - Ratio of Monthly Actual Energy Output to the expected Renewable Energy for such Month during the respective Contract Year.
- j. Contract Year Facility Energy Production Ratio (CY FPR) = Simple average of the Monthly Facility Performance Ratios for each Contract Year.
- k. Corrective Action Report - If the CY Facility Energy Production Ratio in any Month falls below ninety percent (90%), Seller shall provide UTILITIES with an explanation of what caused such ratio to fall below ninety percent (90%) and the proposed corrective action(s), if any, and the timing of any corrective actions required to improve the Monthly Facility Energy Production Ratio to a value greater than ninety percent (90%) after adjusting for the effects of temperature and solar irradiance.
- l. Forced Outage Report - All Forced Outages involving inverters or other
- m. components that convert or handle AC power occurring during the Month will be reported.
- n. Scheduled Maintenance Report - All scheduled maintenance outages and any other outages occurring during the Month will be reported.
- o. Curtailment Report - All periods of curtailment and reasons for such curtailment and the estimated amount of Renewable Energy curtailed during the Month will be reported.
- p. Summary Report - All significant events and other material information not reflected in the foregoing shall be reported.

**EXHIBIT K  
INSURANCE COVERAGE**

**PALMER SOLAR PHOTOVOLTAIC PROJECT**

Nothing in this PPA shall preclude access to the minimum required types and limits of insurance of this Exhibit K.

**Commercial General Liability ("CGL"):** Commercial General Liability ("CGL") insurance covering personal injury, bodily injury, premises, operations, products, completed operations, contractual liability and any work of Seller's independent contractors. That insurance shall provide coverage for the contractual liability assumed by Seller and shall afford immediate protection at the Effective Date, and at all times during the term of the PPA with limits of

\$1,000,000 each occurrence and \$2,000,000 aggregate.

**Business Automobile Liability:** A business auto policy covering bodily injury and property damage arising from use an operation of any owned, non-owned or hired auto, with limits of at least \$1,000,000 each occurrence Combined Single Limit ("CSL").

**Workers Compensation: Statutory Requirements.** Seller may comply with these requirements through the use of a qualified self-insurance plan if approved and authorized as a Self-Insured Employer in the state in which the facility and/or operations will be conducted.

**Employer's Liability:** \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease.

**Commercial Umbrella or Excess Liability:** \$5,000,000 each occurrence. The Commercial Umbrella or Excess insurance shall provide coverage in excess of the coverage and limits provided by the CGL insurance, the Business Automobile Liability Insurance, and the Employers Liability insurance.

**Pollution Liability:** \$5,000,000 each occurrence and annual aggregate.

**Builders Risk and Operational All Risk Property insurance** covering physical loss or damage to the Facility during construction (Builder Risk) and after completion and throughout operation (Operational All Risk Property insurance). Valuation and policy limits shall be for the full Replacement Cost of the Facility.

Builders Risk and Operational All Risk Property insurance coverage shall, in addition to the usual and customary hazards and property perils, include but not be limited to (i) coverage for flood and earth movement with respect to facilities similar in construction, location and occupancy to the Facility, with sub-limits of no less than \$10,000,000 each for flood and earthquake; and (ii) electrical and mechanical breakdown of equipment in an amount equal to their full replacement value.

**Business Interruption and/or Extra Expense Insurance:** Amount required covering Seller's continuing or increased expenses, resulting from interruption, for a period of twelve (12) calendar months.

Business Interruption and/or Extra Expense insurance shall cover loss of revenues and/or the increased expense to resume and/or continue operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a

result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by UTILITIES, subject to a reasonable deductible which shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption and/or Extra Expense insurance until the Commercial Operation Date.

**Deductibles:** Any dollar, megawatt or waiting period deductibles or self-insured retentions applicable to policies of insurance required herein shall be of an amount that is usual and customary for the property and operations of the size, scale and type of the Facility to which this PPA is subject. The responsibility for any such deductibles or self-insured retentions shall be the sole responsibility of Seller.

All policies of insurance which this Exhibit requires shall be underwritten by insurers approved or authorized in the state where the Facility is located (or otherwise approved by UTILITIES), and which have a rating of at least A- by the most recent edition of Best's Key Rating Guide.

UTILITIES shall be named an Additional Insured in each of the CGL, Business Auto Liability and Commercial Umbrella or Excess Liability policies and shall be an Additional Insured in the Builders Risk I Construction All Risk and Operational All Risk Property policies for its interest in, but not limited to, the Site and any personal property of UTILITIES included thereon. Each policy shall provide:

that no cancellation, in coverage shall be effective until at least thirty (30) Days after receipt by UTILITIES of written notice;

that the insurer shall have no right of subrogation against UTILITIES;

that each insurance policy of Seller in which UTILITIES is an Additional Insured shall be specifically primary and shall not require contribution as respects any other insurance which may be maintained by UTILITIES; and

shall be reasonably satisfactory to UTILITIES in all other respects, including, without limitation, the coverage limits and deductibles from time to time. In no circumstances will Seller be entitled to assign to any third party rights of action that Seller may have against the UTILITIES. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) Days' written notice to UTILITIES.

Seller understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Seller shall constitute a failure to comply with its terms, and UTILITIES shall have the right to terminate this PPA upon receipt of any such cancellation notice, if Seller fails to cure such noncompliance (or fails to diligently commence with the cure of such noncompliance) within fifteen (15) Business Days from the receipt of UTILITIES' written notice regarding noncompliance with the terms of this Exhibit.

EXHIBIT L  
FORM OF CORPORATE GUARANTY  
GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of \_\_\_\_\_, \_\_\_\_\_ (the "**Effective Date**"), is made by [Seller corporate entity] ("**Guarantor**"), in favor of COLORADO SPRINGS UTILITIES ("**Counterparty**").

**RECITALS:**

- A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary Palmer Solar, LLC ("**Obligor**"), have entered into, or concurrently herewith are entering into, that certain Power Purchase Agreement dated as of \_\_\_\_\_, 2018 (together, the "**Agreement**"); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the "**Guaranteed Obligations**"). This Guaranty shall constitute a guarantee of payment and not merely of collection. The liability of Guarantor under this Guaranty shall be primary to the Guarantor and unconditional subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed \_\_\_\_\_ U.S. Dollars (U.S. \$\_\_\_\_\_) exclusive of Counterparty's costs of collection and enforcement under Section 1(b) (the "**Maximum Recovery Amount**"). This Guaranty is a continuing guaranty of payment and shall apply to all Obligations whenever arising.
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Guaranteed Obligation to Counterparty when such Obligation is due and owing under the Agreement (a "**Guaranteed Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Guaranteed Obligation pursuant to this Guaranty (a "**Payment Demand**").
- (b) Guarantor's obligation hereunder to pay any particular Guaranteed Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from

Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Guaranteed Obligation(s) covered by such demand, the specific date(s) upon which such Guaranteed Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Guaranteed Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Guaranteed Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Guaranteed Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Guaranteed Obligation(s) specified in that Payment Demand within three (3) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Colorado or the State of New York.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of \_\_\_\_\_ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. NO COUNTERCLAIMS OR SETOFFS; DEFERRAL OF DEFENSES.** The obligations of the Guarantor to the Counterparty hereunder shall not be subject to any counter-claim, set-off, withholding, or deduction unless required by applicable law, and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor other than the satisfaction of the Guaranteed Obligations. A separate action or actions may be brought against the Guarantor whether or not any action is brought against the Obligor under the Agreement and whether or not the Obligor is joined in any such action or actions. The Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor, any lack of power or authority of Obligor to enter into and/or perform the Agreement, and other defenses expressly waived by in this Guaranty; provided that the Guarantor shall not exercise any such defenses until after payment has been made pursuant to Section 2.

**5. AMENDMENTS OF AGREEMENT AND GUARANTY.** Guarantor agrees that the Counterparty and the Obligor may modify, amend and supplement the Agreement and that the Counterparty may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, waive, exercise or refrain from exercising any rights against the Obligor, or

subordinate any obligation or liability of the Obligor to the Counterparty including any security therefor, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Counterparty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; provided, however, that an amendment to this Guaranty increasing the Maximum Recovery Amount and/or extending the termination date of this Guaranty may be executed solely by Guarantor.

**6. WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Guarantor hereby expressly waives diligence, presentment, protest, notice, acceleration, dishonor and acceptance of this Guaranty and demand concerning the liabilities of Guarantor, and any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof or to subrogate to any claims the Counterparty may have against the Obligor or the Obligor may have against the Counterparty..
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

**8. TERMINATION.** This Guaranty shall remain in full force and effect until the earlier of (i) such time as all of the Guaranteed Obligations have been fully discharged; (ii) the satisfaction of all obligations of the Obligor under the Agreement; (iii) the Guarantor causes this Guaranty to be replaced with one or a combination of cash, a fully effective letter of credit and/or another fully effective guaranty otherwise meeting the requirements of Article 11 of the Agreement, or (iv) the twenty-fifth (25th) anniversary of the first day of the first month following the Commercial Operation Date under the Agreement; provided that no such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice

provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR:	TO COUNTERPARTY:
[Contact information]	_____ _____ _____ Attn: _____
[Tel: ( ) - -- for use in connection with courier deliveries]	[Tel: (____) ____-____ -- for use in connection with courier deliveries]

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

#### 10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Colorado.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor; provided that the Counterparty may, without prior notice to Guarantor or Obligor, make such an assignment, in conjunction with the grant or enforcement of a security interest or if otherwise required to do so under the terms of a mortgage or indenture to which Counterparty is or becomes a party.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such



prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

- (f) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_\_\_, but it is effective as of the Effective Date

[Seller Corporate Entity]

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

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

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

**EXHIBIT M  
SITE LOCATION AND LAYOUT**

See Attached



**EXHIBIT N**

**METHODOLOGY FOR CALCULATING GUARANTEED ENERGY PRODUCTION**

