

**EXHIBIT E****DESIGN STANDARDS, CONSTRUCTION PROCEDURES and DIA  
PERFORMANCE SPECIFICATIONS**

**Section 1. Design Standards.** The Tenant agrees to use and comply with the Denver International Airport Design Standards Manuals for design of any improvements to the facility. The Tenant further agrees to design and construct such improvements in accordance with the Denver International Airport Tenant Development Guidelines (TDGs), as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

All design drawings submitted by the Tenant to the City shall be provided in the latest release of AutoCAD format in accordance with the City's Design Standards Manual.

Approval of the City's Designated Representative (City) shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof.

**Section 2. Construction Procedures.**

**A. Compliance with standards:** All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the improvements are constructed and installed in compliance with the Plans and Specifications.

**B. Submissions required:** To assist the City in monitoring and inspecting such construction, the Tenant's contractor(s) or subcontractor(s) shall submit, or cause to be submitted to the City, for information and record purposes, copies of all the following:

- (i) field test reports;
- (ii) material certificates;
- (iii) approved shop drawings to be reviewed for compliance with the Airport design and construction standards;
- (iv) requests for payment to contractors or subcontractors;
- (v) progress reports;
- (vi) notification of substantial completion of the leased facilities and all site improvements and final acceptance thereof;
- (vii) two copies of maintenance and operation manuals in connection with building systems and all updates thereof;
- (viii) as-constructed drawings; and

- (ix) any other documents related to the construction of the improvements which may be reasonably requested by the City.

**C. SOW Changes:** No change order which materially changes the scope of the work shall be effected by the Tenant without the approval of the City, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

**D. City Inspection:** All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City.

**E. Advance Notice of Modification:** The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

**F. Compliance with Plans:** The Tenant shall cause all construction work, workmanship, materials, and installations to be in full compliance with plans and specifications. The City shall have the right to halt construction of the improvements at any time if such construction is at material variance from the Plans and Specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

**G. Utilities:** The Tenant shall perform utility location identification prior to any excavation activities. In addition, Tenant shall obtain such utility connections or hook-ups as shall be necessary and shall have the right to receive all necessary utilities and services, and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up and all other user charges of whatever nature occasioned thereby, except tap and developer fees. The Tenant further agrees to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurement of such usage and consumption.

**H. Wages:** The Tenant shall include in its agreements with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics, and laborers in accordance with the "Agreement of Fair Employment and Work Stabilization for New Denver Airport," which agreement provides for payment according to rates

and classifications established under the federal Davis-Bacon Act and Denver Revised Municipal Code Section 20-76, whichever is greater. The Tenant further agrees, if requested by the City, to fully comply with the procedural requirements of Denver Revised Municipal Code Section 20-76 by requiring its general contractors and their subcontractors of any tier to submit to the City true and correct copies of the payroll records of all workers, laborers, and mechanics employed.

**I. Expense of Alterations.** Any work necessary to make any alterations, improvements, or additions to the facility throughout the Term shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

**J. Documents on Completion:** Upon completion of such work, the Tenant shall deliver to the City revised as-constructed drawings, evidence of payment, contractor's affidavits, and full and final waivers of any liens for labor, services, or materials. The Tenant shall include in its agreement with its contractors provisions whereby such contractors shall defend and hold the City harmless from all costs, damages, liens, and expenses related to such work.

**L. As-Builts:** Within sixty (60) days after completion of construction of the improvements, the Tenant shall furnish to the City two sets of as-constructed drawings, in the latest release of AutoCAD, showing in detail all construction, including the locations of all underground and above ground utility lines.

**K. Standard of Performance:** All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

**EXHIBIT F**  
**DIA ENVIRONMENTAL REQUIREMENTS**

**Section 1. General Requirements.** Tenant, in conducting any activity on DIA property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders (Environmental Requirements) and the applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA's Environmental Guidelines, Environmental Policy, and all Rules and Regulations are available at [www.flydenver.com/biz/index.asp](http://www.flydenver.com/biz/index.asp). These Environmental Requirements address, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, solid and hazardous waste, or petroleum products; the National Environmental Policy Act (NEPA); and other federal, state, and local water, wastewater, and air quality regulations.

**A. EMS:** DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA's significant environmental aspects, and the specific environmental aspects and associated impacts for the products, goods, and/or services that will be provided by the Tenant.

**B. Permits:** Tenant shall acquire all necessary federal, state, local, and airport permits/approvals and comply with all permit/approval requirements necessary for its activities on the Lease Premises. Tenant shall prepare and update all plans and provide all information required by the City for regulatory compliance purposes.

**C. Hazardous Materials Limited:** Any hazardous materials not reasonably necessary for Tenant's operations are barred from DIA premises. Tenant shall identify all hazardous materials to be used at DIA along with a description of how these materials and any associated hazardous or other waste materials generated by Tenant will be managed while on airport property. This information is required prior to the Tenant conducting activities on DIA property.

**D. MSDSs:** Prior to operation, Tenant shall provide to the City copies of Material Safety Data Sheets (MSDSs) for all chemicals to be used in their activities, including those used for cleaning and maintenance. This obligation is continuing for the Term, and Tenant shall provide updated MSDSs and MSDSs for new chemicals, as such information is updated and as new chemicals are placed into use, as applicable.

**E. Pollution Prevention:** Tenant is encouraged to utilize the concepts of pollution prevention, energy efficiency, and waste minimization with regard to its activities at DIA.

**Section 2. Review of Environmental Documents.** Tenant, at the request of the City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Tenant has prepared pursuant to any Environmental Requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under, or about the work conducted on DIA property, Tenant shall provide a copy of such report or notice to the City.

**Section 3. Access for Environmental Inspection.** The City shall have an unimpeded right of access to the occupancy or work areas with reasonable prior notice to Tenant to inspect the same in order to confirm that Tenant is conducting its activities in accordance with this Lease. In the event the City's inspection of the Lease Premises reveals evidence of a potential non-compliance with the terms of this Lease, at the City's request, Tenant shall conduct any testing and analysis at its cost as is necessary to ascertain whether the Tenant is in compliance with this Lease. If such further testing and analysis determines that Tenant is in compliance with this Lease, the City shall be solely responsible for all costs and expenses related to such further testing and analysis.

**Section 4. Correction of Environmental Non-Compliance.** If the Tenant fails to comply with any applicable Environmental Requirement and such non-compliance continues uncorrected for thirty (30) days after written notice to Tenant, the City, in addition to its rights and remedies described elsewhere in this Lease, at its election, may enter the facility and/or work area and take such measures as may be necessary to ensure compliance with the Environmental Requirements, all at the Tenant's expense.

**Section 5. Duty to Notify City.** In the event of a release or threatened release of a substance in excess of acceptable levels established by applicable law and relating to or arising out of the Tenant's use or activities on DIA, or in the event any claim, demand, cause of action, or notice is made against the Tenant with regard to the Tenant's failure or alleged failure to comply with any requirement hereunder, the Tenant, immediately shall notify the City verbally by contacting the Airport Communications Center (303-342-4200) and the appropriate regulatory agency. Tenant shall immediately control and remediate the contaminated media and, as provided below, follow-up Tenant's verbal notice with a written report within three days of such incident. In addition, the Tenant shall provide the City, at Tenant's expense, with copies of any written claims, demands, notices or actions so made.

**Section 6. Environmental Remediation.** Tenant shall undertake all actions necessary to remedy or remove any released or spilled materials in excess of acceptable levels established by applicable law and any other contamination discovered on or under DIA property introduced by Tenant and shall restore the Access Premises to its condition immediately prior to the initiation of this Lease in compliance with all applicable local, state, federal, or airport laws, rules, regulations, or orders. This work shall be performed at Tenant's expense and the City shall have the right to review the project plan and review and inspect all such work at any time using consultants and representatives of the City's choice. Tenant shall further conduct surface and subsurface monitoring pertaining to Tenant's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits.

**Section 7. Environmental Requirements for Construction.** Tenant agrees to ensure that its premises are designed, constructed, operated, and maintained in a manner that minimizes environmental impacts through application of appropriate preventive measures and complies with Environmental Requirements. Tenant shall comply with the DIA Tenant Development Guidelines, as amended, for any alterations to existing facilities or the construction of any new facilities. In addition, the Tenant shall comply with Exhibit E of this agreement.

## **Appendix D**

# **Power Purchase Agreement Example (Denver)**

## APPENDIX NO. 3

## NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

**SOLAR POWER PURCHASE AGREEMENT**

**THIS SOLAR POWER PURCHASE AGREEMENT** (as it may be amended from time-to-time, this "Agreement"), is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City" or "Purchaser"), and **XYZ Solar**, a Colorado partnership authorized to do business in the State of Colorado ("Power Provider").

**WITNESSETH:**

WHEREAS, Power Provider desires to install electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately 1,600 kWp (the "Generating Facility") located at the City's Denver International Airport ("Airport"), in Denver, Colorado; and

WHEREAS, the City desires to purchase from Power Provider and Power Provider desires to sell to Purchaser the entire energy output of the Generating Facility;

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, Power Provider and the City agree as follows:

**1. Line of Authority**

The City's Manager of Aviation, his designee or successor in function (hereinafter referred to as the "Manager") authorizes and directs all work performed under this Agreement. Until otherwise notified by the Manager, the City's Deputy Manager of Aviation for Maintenance and Engineering ("Deputy Manager") is designated as the authorized representative of the Manager through whom services performed under this Agreement shall be directed and coordinated. Administrative reports, memoranda, correspondence and other submittals required of the Power Provider shall be processed in accordance with the Deputy Manager's directions.

**2. Definitions**

- (a) "Commercial Operation" means the condition existing when the Generating Facility is (i) mechanically complete and operating as specified in Exhibit A, and (ii) energy is delivered through the Generating Facility's meter and to the Site's electrical system under an approved and executed Utility interconnection agreement.
- (b) "Commercial Operation Date" means the date on which Power Provider notifies Purchaser in accordance with Section 3(c) that the Generating Facility has achieved Commercial Operation.
- (c) "Energy Delivery Point" means the energy delivery point within the Site's electrical system on Purchaser's side of the Site's Utility meter, as designated in the Utility interconnection agreement described in Section 2(a).

(d) “Energy Output” means the total quantity of all actual net energy generated by the Generating Facility (measured in kWhac) and delivered in accordance with Section 10 to the Energy Delivery Point, in any given period of time. Energy Output does not include the Environmental Incentives.

(e) “Environmental Attributes” means the characteristics of electric power generation at the Generating Facility that have intrinsic value, separate and apart from the Energy Output, arising from the perceived environmental benefits of the Generating Facility of the Energy Output, including but not limited to all environmental and other attributes that differentiate the Generating Facility or the Energy Output from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the Generating Facility that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Generating Facility or the compliance of the Generating Facility or the Energy Output with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights.

(f) “Environmental Incentives” means all rights, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the Generating Facility or the Energy Output or otherwise from the development or installation of the Generating Facility or the production, sale, purchase, consumption or use of the Energy Output. Without limiting the foregoing, “Environmental Incentives” includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits (collectively, “Solar Renewable Energy Credits” or “SRECs”), the right to apply for (and entitlement to receive) incentives under the Self-Generation Incentive Program, the Emerging Renewables Program or other incentive programs offered by the State of Colorado and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

(g) “Force Majeure” has the meaning given to it in Section 29.

(h) “Generating Facility” means the electric power generation equipment, controls, meters, switches, connections, conduit, wires and other equipment connected to the Energy Delivery Point installed as a fixture on the Site by Power Provider for the purposes of providing electric power to Purchaser under this Agreement, and which shall be owned solely by Power Provider throughout the term of the Lease.

(i) “kWp” means kilowatt rated power.

(j) “kWac” means kilowatt alternating current.

- (k) “kWhac” means kilowatt-hour alternating current.
- (l) “Lease” means the Ground Lease Agreement between the Purchaser and the Power Provider of even date herewith.
- (m) “Party” means Power Provider or Purchaser.
- (n) “Parties” means Power Provider and Purchaser.
- (o) “PUC” means the Public Utilities Commission of Colorado.
- (p) “Reporting Rights” means the right of Power Provider to report to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Power Provider owns the Environmental Attributes and the Environmental Incentives associated with the Energy Output.
- (q) “Site” means Purchaser’s facility at Denver International Airport in Denver, Colorado or at such other location agreed to by Power Provider and Purchaser.
- (r) “Utility” means Public Service Company of Colorado, the electric distribution company responsible for electric energy transmission and distribution service at the Site.

### **3. Installation and Operation of the Generating Facility**

- (a) Power Provider shall install the Generating Facility in accordance with the terms and conditions of the Lease, which, upon Commercial Operation, is targeted to have a combined generating capacity rating as shown in Exhibit A. Power Provider shall provide Purchaser reasonable notice of the progress of the installation of the Generating Facility and shall provide reasonable notice to Purchaser of the Commercial Operation Date.
- (b) Power Provider shall be solely responsible for all costs and the performance of all tasks required for installation of the Generating Facility. Promptly following the execution of this Agreement, Power Provider shall commence pre-installation activities relating to the Generating Facility, which shall include, without limitation, the following:
  - (i) obtain financing for installation of the Generating Facility, and Solar Renewable Energy Credits for operation of the Generating Facility;
  - (ii) obtain all permits, contracts and agreements required for installation of the Generating Facility;
  - (iii) obtain all necessary authority from the PUC or other regulatory entities for the operation of Generating Facility and sale and delivery of Energy Output to Purchaser;

- (iv) effect the execution of all agreements required for Utility interconnection of the Generating Facility; and
  - (v) enter into contract(s) for installation of the Generating Facility, subject to the terms of the Lease and any proposed financing.
- (c) Power Provider shall (i) use commercially reasonable efforts to cause installation of the Generating Facility to be completed and to cause the Generating Facility to begin Commercial Operation on or before **December 31, 2008**; or (ii) on such date, notify Purchaser of the actual or estimated Commercial Operation Date. Successful completion of parts (i) - (vi) of Section 3(b) shall be conditions precedent to Power Provider's obligations to install and operate Generating Facility and otherwise perform its obligations under this Agreement. If the activities contemplated in parts (i) - (v) of Section 3(b) are not completed by **December 31, 2007**, Power Provider shall have the option to terminate the Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and the term of this Agreement.
- (d) Power Provider shall prevent activities associated with installation, operation and maintenance of the Generating Facility from disrupting or interfering with Purchaser's operation of the Airport.
- (e) Power Provider shall be solely responsible for operation and maintenance of the Generating Facility and shall, at all times during the term of this Agreement, maintain the Generating Facility in good operating condition. Power Provider shall bear all risk of loss with respect to the Generating Facility, and shall have full responsibility for its operation and maintenance in compliance with all laws, regulations and governmental permits. In accordance with the Lease, Purchaser shall provide adequate and secure storage space at the Site to store the spare parts inventory for the Generating Facility for the term of this Agreement.
- (f) The Power Provider and the Purchaser hereby agree and acknowledge that notwithstanding the Generating Facility's presence on the Site, Purchaser shall have no ownership interest in the Generating Facility and no responsibility for its operation or maintenance. Neither Purchaser nor any party related thereto shall have the right or be deemed to operate the Generating Facility for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.
- (g) All property taxes related to the Generating Facility shall be the responsibility of Power Provider.
- (h) Power Provider shall provide general and umbrella liability insurance coverage as set forth in the Lease between the Parties.
- (i) Notwithstanding any other provision of this Agreement, the effectiveness of this Agreement, including the obligations and responsibilities of the Parties, is contingent upon the arrangement and entering into of a Lease for the length of this Agreement between Purchaser and Power Provider. Notwithstanding the Generating Facility's presence on the Site, except as required by the Federal Aviation Administration or as required for air navigation purposes,

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Purchaser shall not cause or permit any interference with the Generating Facility's insolation and access to sunlight, as such access exists as of the effective date of this Agreement.

(j) Purchaser represents to Power Provider that there are no circumstances known to Purchaser and no commitments to third parties that may damage, impair, or otherwise adversely affect the Generating Facility or its function by blocking sunlight to the Generating Facility.

(k) The Parties share a common desire to generate favorable publicity regarding the Generating Facility and their association with it. The Parties agree that they will, from time-to-time, issue press releases regarding the Generating Facility and that they shall cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the Generating Facility without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

(l) Power Provider shall use commercially reasonable efforts to cause Purchaser to maintain the area in the immediate vicinity of the Generating Facility in a reasonably neat and clean condition.

#### **4. Purchase and Sale of Power; Term**

(a) Purchase and Sale. Beginning on the Commercial Operation Date, and continuing for the term of this Agreement, Purchaser shall purchase and accept delivery from Power Provider at the purchase price set forth in Section 4(b) below, and Power Provider shall sell and deliver to Purchaser the entire Energy Output (in such amount of output as the Generating Facility produces from time to time). Purchaser shall not resell any of the Energy Output except for any net-metering.

(b) Purchase Price. Purchaser shall pay Power Provider an amount equal to the Energy Output multiplied by the Purchase Price per kWhac (pursuant Exhibit B). Such amount shall be paid in accordance with the terms of Section 11.

(c) Taxes. In the event that any taxes are assessed against the generation, sale, delivery or consumption of Energy Output, Purchaser shall pay for all such amounts due.

(d) Term. The purchase and sale obligation under Section 4(a) with respect to Energy Output from the Generating Facility shall commence on the Commercial Operation Date and expire at the time and date of expiration of the Lease ("Expiration Date"). Notwithstanding the foregoing sentence, subject to termination contemplated in Section 3(c) or following a default by a Party as described in Section 17, the term of this Agreement shall commence on the date first written above and expire at the Expiration Date.

(e) Early Termination by Power Provider. Power Provider shall have the right, but not the obligation, to terminate this Agreement prior to expiration of its term only upon the occurrence of:

- (i) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices;

- (ii) elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Power Provider;
- (iii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site; or
- (iv) the termination of the Lease prior to the Expiration Date for any reason other than Power Provider's breach of the Site Lease.

#### **5. Maximum Contract Payment Obligation**

Any other provision of this Agreement notwithstanding, in no event shall the City's payment obligation for the services provided hereunder be any amount in excess of the sum of *(sum of estimated power payments)* (\$x,xxx,xxx) over the term of this Agreement, unless this Agreement is amended to increase such amount.

#### **6. Contract Funding**

All payments under this Agreement shall be paid from the City and County of Denver Airport System Operations and Maintenance Fund and from no other fund or source. The City is under no obligation to make payments from any other source.

The City is under no obligation to make any future encumbrances or appropriations for this Agreement nor is the city under any obligation to amend this Agreement to increase the Maximum Contract Liability stated above.

It is expressly understood and agreed that the obligation of the City to make payments to the Power Provider shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City and encumbered for the purposes of this Agreement. The Power Provider acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

#### **7. The Power Provider's Project Manager**

(a) The Power Provider shall provide a Project Manager who is trained, qualified and acceptable to the Airport's Contract Administrator. The Project Manager shall have full authority to act for the Power Provider at all times to carry out the provisions of this Agreement.

(b) The Project Manager shall make sufficient regular inspections, or otherwise as necessary, either in person or by a designated representative, to ensure the work is performed as specified. The Project Manager shall provide a copy of all inspection reports to the Airport's Contract Administrator.

(c) The Power Provider agrees that it shall obtain the approval of the Airport's Contract Administrator of the Power Provider's proposed Project Manager. The Power Provider shall

submit a resume of the proposed Project Manager, along with other information reasonably requested by the City, in order to obtain such approval.

#### **8. Environmental Attributes**

(a) **Delegation of Attributes.** Notwithstanding the Generating Facility's presence on the Site, Power Provider shall own, and may assign or sell in its sole discretion, all right, title and interest associated with or resulting from the development and installation of the Generating Facility or the production, sale, purchase or use of the Energy Output including, without limitation:

(i) all Environmental Incentives and all Environmental Attributes; and

(ii) the Reporting Rights and the exclusive rights to claim that: (A) the Energy Output was generated by the Generating Facility; (B) Power Provider is responsible for the delivery of the Energy Output to the Energy Delivery Point; (C) Power Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Energy Output and the delivery thereof to the Energy Delivery Point; and (D) Power Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

(b) **Impairment of Solar Renewable Energy Credits.** Following notice by Power Provider of actions or omissions which could impair or jeopardize either the sale of SRECs to the Utility or the production of power hereunder, except as required by the Federal Aviation Administration or as required for air navigation purposes, Purchaser shall not take any such action or suffer any such omission at the Site. To the fullest extent Purchaser is able to comply, Purchaser shall take such action or suffer such omission as necessary to assist Power Provider in qualifying for receipt of SRECs payment.

#### **9. Metering**

(a) Power Provider shall install and maintain a standard revenue quality meter with electronic data acquisition system ("DAS") capabilities at the Generating Facility. The meter shall measure the alternating current output of the Generating Facility on a continuous basis. Power Provider shall be responsible for maintaining the metering equipment in good working order and, if Purchaser so requests, for testing at Purchaser's sole expense the same once per calendar year and certifying the results of such testing to Purchaser. In the event of a failure of the electronic meter reading system and until such failure has been corrected, Power Provider shall be responsible for conducting monthly on-site readings of the standard electricity meter to determine the output of the Generating Facility delivered to Purchaser. Data retrieved from any such meter shall serve as the basis for invoicing Purchaser for all delivered energy.

(b) Power Provider shall maintain all DAS data and shall provide to Purchaser a report of the Site's individual metered energy, as read and collected on a monthly basis, once each month within fourteen (14) business days after the last day of the preceding month. Power Provider shall verify and adjust all DAS data at least once per calendar year based on readings from the foregoing standard meter. Subject to Section 9(a), such data, as verified and adjusted, shall serve as the basis for invoicing Purchaser for all delivered energy. Power Provider shall preserve all data compiled hereunder for a period not less than three years.

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(c) Not more than twice per calendar year, Purchaser shall have the right to audit all such DAS data upon reasonable notice, and any such audit shall be at Purchaser's sole cost (unless an audit reveals at least a ten percent (10%) overcharge to Purchaser, in which case Power Provider shall bear the cost of that audit). Purchaser shall have a right of access to all meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations. If the metering equipment is found to be inaccurate, it shall be corrected and past readings shall be promptly adjusted in an equitable manner.

#### **10. Delivery**

(a) Title and risk of loss of the Energy Output shall pass from Power Provider to Purchaser upon delivery of the Energy Output at the Energy Delivery Point. All deliveries of Energy Output hereunder shall be in the form of three-phase, sixty-cycle alternating current or similar to properly integrate with the Site's electrical system. Purchaser shall purchase and accept delivery of metered Energy Output at the Energy Delivery Point.

(b) Power Provider shall ensure that all energy generated by the Generating Facility conforms to Utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of Utility testing and verification, and all related costs.

(c) Purchaser shall be responsible for arranging delivery of Energy Output from the Energy Delivery Point to Purchaser's facilities and any installation and operation of equipment on Purchaser's side of the Energy Delivery Point necessary for acceptance and use of the Energy Output. The Parties acknowledge that adjustments in the terms and conditions of this Agreement may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, that could not be anticipated at the date of execution of this Agreement or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith, subject to the approval of City Council with respect to Purchaser.

#### **11. Invoices and Payment**

Power Provider shall deliver to Purchaser an annual invoice on December 31 of each calendar year during the term of this Agreement, stating the Energy Output delivered to Purchaser during the preceding calendar year and calculating the purchase price therefor. The Power Purchaser's annual invoice shall be in form satisfactory to the City. The Power Purchaser agrees that the Airport's Contract Administrator may from time to time require changes to the format and content of the annual invoice to be submitted by the Power Purchaser.

The City shall process all invoices for payment received from the Power Provider on a timely basis in accordance with the City's Prompt Payment Ordinance, Section 20-107, et. seq. of the Denver Revised Municipal Code ("DRMC"). The Power Provider agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

**12. Disputes**

Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered or adjust any invoice for any arithmetic, computational or meter-related error within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the disputed and undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If the Parties do not resolve such a dispute within such thirty (30) days, then such dispute, or any other disputes arising under or related to this Agreement, shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver. The Parties hereto agree that the Manager of Aviation's determination resulting from said administrative hearing shall be final, subject only to the Power Provider's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

**13. Title to Generating Facility and other Property Rights**

- (a) Notwithstanding the Generating Facility's presence on the Site, Power Provider shall at all times retain title to and be the legal and beneficial owner of the Generating Facility, and the Generating Facility shall remain the property of Power Provider or Power Provider's assigns. Power Provider shall be entitled to, and is hereby authorized to, file one or more precautionary financing statements or fixture filings in such jurisdictions as it deems appropriate with respect to the Generating Facility in order to protect its rights in the Generating Facility.
- (b) The Parties specifically acknowledge and agree that Power Provider shall be the owner of the Generating Facility for federal income tax purposes, and in that connection, shall be entitled to the depreciation deductions associated with the Generating Facility as well as any tax credits or other tax benefits provided under the Code to which such Generating Facility may be entitled.
- (c) Nothing in this Agreement shall be construed to convey to Purchaser a license or other right to trademarks, copyrights, technology or other intellectual property of Power Provider.

**14. Representations and Warranties**

Each Party represents and warrants to the other Party that (a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary company action; (c) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); and (d) neither the execution and delivery of this Agreement

by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents or any state statutes as applies to such Party. Power Provider further represents and warrants to the Purchaser that to Power Provider's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Purchaser) is required in connection with the due authorization, execution and delivery of this Agreement by Power Provider or the performance by Power Provider of its obligations hereunder which Power Provider has reason to believe that it will be unable to obtain in due course. Purchaser further represents and warrants to the Power Provider that to the Purchaser's Department of Aviation's knowledge, except for building permits and approval by the City Council, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Power Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Purchaser or the performance by Purchaser of its obligations hereunder which Purchaser has reason to believe that it will be unable to obtain in due course.

#### **15. Covenants and Liens**

Notwithstanding the Generating Facility's presence on the Site, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Generating Facility or any interest therein. Purchaser also shall pay promptly before a fine or penalty may attach to the Generating Facility any taxes, charges or fees of whatever type of any relevant governmental authority for which Purchaser is responsible. If Purchaser breaches its obligations under this Section, it shall immediately notify Power Provider in writing, shall promptly cause such liens to be discharged and released of record without cost to Power Provider.

#### **16. Loss**

If the Generating Facility is (i) materially damaged or destroyed, or suffers any other material loss or (ii) condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of energy, to the extent there are sufficient insurance or condemnation proceeds available to Power Provider, Power Provider shall either cause (A) the Generating Facility to be rebuilt and placed in Commercial Operation at the earliest practical date or (B) another materially identical Generating Facility to be built in the proximate area of the Site and placed in Commercial Operation as soon as commercially practicable.

#### **17. Default and Remedies**

- (a) Event of Default. With respect to a Party, there shall be an event of default if:
- (i) such Party fails to pay any amount within thirty (30) days after such amount is due, or as otherwise provided by the City's Prompt Payment Ordinance;

- (ii) except as otherwise set forth in this Section 17(a), such Party is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within sixty (60) days after notice from the non-defaulting Party; provided, however, that the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely by Force Majeure if the defaulting Party had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action;
  - (iii) such Party admits in writing its inability to pay its debts generally as they become due;
  - (iv) such Party files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;
  - (v) such Party makes an assignment for the benefit of creditors;
  - (vi) such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;
  - (vii) such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 days after the filing thereof;
  - (viii) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within 90 days from the date of entry thereof;
  - (ix) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within 90 days from the date of assumption of such custody or control; or
  - (x) Purchaser or Power Provider materially breaches the Lease.
- (b) Remedies. Upon default by one Party, the other Party shall have the right, but not the obligation, to terminate or suspend this Agreement with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations arising prior to such termination or suspension). The Parties agree that in the event of a default under this contract that leads to termination, the non-defaulting Party may pursue all remedies available to it in law and in equity.
- (c) No Waiver. Any waiver at any time by either Party of its rights with respect to an event of default under this Agreement, or with respect to any other matters arising in connection with

Solar Power Purchase Agreement  
Denver International Airport

this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Agreement must be in writing signed by the waiving Party.

(d) Notwithstanding any provision to the contrary under this Agreement, neither Purchaser nor any party related to Purchaser shall bear or be deemed to bear any significant financial burden if there is nonperformance by Power Provider under this agreement, as the phrase “any significant financial burden if there is nonperformance” is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

(e) Notwithstanding any provision to the contrary under this Agreement, neither Purchaser nor any party related to Purchaser shall be deemed to receive any significant financial benefit if the operating costs of the Generating Facility are less than the standard of performance and/or operation set forth in this Agreement, as the phrase “significant financial benefit if the operating costs of [the Generating Facility] are less than the standards of performance or operation” is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

#### **18. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

#### **19. Agreement Subordinate to Agreements with United States**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system. The provisions of the attached Appendices 1 and 3 are incorporated herein by this reference.

#### **20. Airport Security**

(a) It is a material requirement of this Agreement that the Power Provider at its sole expense and without reimbursement by the City shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Power Provider shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Division of the City's Department of Aviation. Violation by the Power Provider or any of its employees, subcontractors or vendors of any rule, regulation or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Agreement for cause.

(b) The Power Provider, promptly upon notice of award of this Agreement, shall meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for Power Provider's operations under this Agreement. The Power Provider shall obtain the proper access authorizations for all of its employees, subcontractors and vendors who will enter

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the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Power Provider or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

(c) The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Agreement, the Power Provider shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Power Provider may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Power Provider's operations at the Airport.

(d) The Power Provider shall return to the City at the expiration or termination of this Agreement, or upon demand by the City, all access keys or access badges issued to it or any subcontractor for any area of the Airport, whether or not restricted. If the Power Provider fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Power Provider under this Agreement.

#### **21. Nondiscrimination**

In connection with the performance of work under this Agreement, Power Provider agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Power Provider further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **22. Bond Ordinances; Governing Law; Venue**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado.

#### **23. Inspection of Records**

(a) In connection with any services performed hereunder on items of Work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the Power Provider which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions.

The Power Provider further agrees that such records will contain information concerning the specific tasks performed along with the applicable federal project number.

(b) The City and the Auditor of the City or any of his duly authorized representatives, until the expiration of three years after the final payment under this Agreement, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Power Provider which are related to Work performed under this Agreement without regard to whether the Work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

(c) In addition to the foregoing, Each Party hereto shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

#### **24. Assignment**

(a) Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may upon written notice, without the need for consent from the other Party (and without relieving itself from liability hereunder), (i) transfer, pledge or assign this Agreement as security for any financing or to an affiliated special purpose entity created for the financing or tax credit purposes related to Generating Facility; (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; (iii) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (iv) transfer or assign this Agreement to one or more affiliates, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Notwithstanding, and in addition to, the foregoing, Purchaser may not assign this Agreement to an entity with a Credit Rating lower than that of Purchaser at the time without the following matching credit support provisions, as implemented by Purchaser:

If at any time Power Provider has a concern about Purchaser's obligations hereunder, including its ability to pay, Power Provider shall require Purchaser to provide Performance Assurance (as defined below) within ten (10) days of receipt of notice from Power Provider that such Performance Assurance will be required. "Performance Assurance" shall mean collateral in the form of either cash or letter(s) of credit for six (6) months of payment, or other security reasonably acceptable to Power Provider. "Credit Rating" shall mean, with respect to an entity on any date of determination, the respective rating then assigned to its unsecured and senior long-term debt or deposit obligations (not supported by third-party credit enhancement) by Standard & Poor's Ratings Services (a division of McGraw-Hill), Moody's Investors Service, Inc., or their respective successors.

(b) With respect to a transfer, pledge or assignment by Power Provider pursuant to clause (i) in the second sentence of Section 24(a), Purchaser and Power Provider acknowledge and agree

that, upon receipt of written notice and direction by any financing-transaction assignee ("Lender") of Power Provider that Power Provider is in default under its financing agreements with Lender, and notwithstanding any instructions to the contrary by Power Provider, Purchaser, as directed in writing by Lender, will recognize such Lender, or any third party to whom such Lender has reassigned the rights of Power Provider under this Agreement, as the proper and lawful provider of power under this Agreement and fully entitled to receive payments with respect thereto so long as such Lender (or its assignee) performs the obligations of Power Provider hereunder. Purchaser shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Purchaser shall in good faith believe (a) to be genuine and (b) a copy of which shall have been delivered to Power Provider. Purchaser shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

(c) Purchaser agrees to notify Lender in writing, at the address to be designated by Lender upon not less than five (5) business days' written notice to Purchaser prior to any notice by Purchaser hereunder, of any act or event of default of Power Provider under the Agreement of which Purchaser has knowledge that would entitle Purchaser to cancel, terminate, annul, or modify the Agreement or otherwise proceed with enforcement remedies against Power Provider, and Lender shall have the same amount of time as Power Provider, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Power Provider under the Agreement; provided that in no event shall Lender be obligated to cure any such default.

#### **25. No Third Party Beneficiaries**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Power Provider, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Power Provider that any person other than the City or the Power Provider receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

#### **26. Independent Contractor**

Power Provider shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Nothing in this Agreement shall be construed to mean or imply that Power Provider is a partner, joint venturer, agent or representative of the City. Neither the City nor Power Provider shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party.

## 27. Notices

All notices required to be given to the City or Power Provider hereunder shall be in writing and sent by certified mail, return receipt requested, to:

City: Manager of Aviation  
Denver International Airport  
8500 Pena Boulevard, 9<sup>th</sup> Floor  
Denver, Colorado 80249-2065

With a copy to:

Airport Property Office  
Denver International Airport  
8500 Pena Boulevard, 9<sup>th</sup> Floor  
Denver, Colorado 80249-2065

|                 |                       |
|-----------------|-----------------------|
| Power Provider: | XYZ Solar             |
|                 | Address               |
|                 | Contact Phone Numbers |

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be three days after the date such notice is mailed to Power Provider or Manager.

## 28. Final Approval

This Agreement is expressly subject to and shall not be or become effective or binding on either Party until it is approved by Denver's City Council and fully executed by all signatories hereto, including all signatories of the City and County of Denver.

## 29. Force Majeure

Power Provider shall not be liable to Purchaser for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement to the extent such failure, delay or interruption is due to causes which were not reasonably foreseeable and are beyond the control of Power Provider, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which Power Provider is not responsible or which is not in its power to control.

### 30. Set-Off

Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other.

### **31. Binding Effect**

The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

### **32. Amendments**

No modification of this Agreement shall be effective except by written amendment executed by the Parties; provided, however, if Purchaser has been notified that Power Provider has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

### **33. Counterparts**

Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

### **34. Other Agreements**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the Parties concerning such subject matter (other than the Lease and the Utility interconnection agreement referred to in Section 2(a) above). In the event of an irreconcilable conflict between a provision of this Agreement and a provision of the Lease, such that it is impossible to give effect to both, the Lease shall control to resolve such conflict.

### **35. Severability**

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

### **36. Survival**

Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**37. Legal Effect of Contract**

(a) The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

(b) The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the Purchaser of electric energy produced at an alternative energy facility.

**38. Cooperation**

Upon the receipt of a written request from the other Party and without further consideration, each Party shall provide materials, information, assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

**39. Waiver**

The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Solar Power Purchase Agreement as of the day and year first above written.

**ATTEST:**

**CITY AND COUNTY OF DENVER**

\_\_\_\_\_  
STEPHANE Y. O'MALLEY, Clerk and  
Recorder, Ex-officio Clerk of the  
City and County of Denver

By \_\_\_\_\_  
Mayor

**RECOMMENDED AND APPROVED:**

**APPROVED AS TO FORM:**

DAVID R. FINE, Attorney for the  
City and County of Denver

By \_\_\_\_\_  
Manager of Aviation

**REGISTERED AND COUNTERSIGNED:**

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Manager of Finance

Contract Control Number: \_\_\_\_\_

By \_\_\_\_\_  
Auditor-Contract Control No. \_\_\_\_\_

**"CITY" or "PURCHASER"**

**POWER PROVIDER**

Oak Leaf Energy Partners

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

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

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

Title: Chief Executive Officer

**"POWER PROVIDER"**

**Exhibit A****Estimated Annual Production for First Year***Purchaser PV Projects*

| <b>Location</b>  | <b>Size</b> | <b>Est. Annual 1<sup>st</sup><br/>Year<br/>Production</b> | <b>Type</b>                   | <b>Number and<br/>Type of Module</b> |
|------------------|-------------|-----------------------------------------------------------|-------------------------------|--------------------------------------|
| Denver, Colorado |             |                                                           | Fixed Tilt<br>Ground<br>Mount |                                      |

**Exhibit B****Purchase Price**

| Year of Contract <sup>1</sup> | Rate | Price Escalator |
|-------------------------------|------|-----------------|
| 1                             |      | 0%              |
| 2                             |      | 0%              |
| 3                             |      | 0%              |
| 4                             |      | 0%              |
| 5                             |      | 0%              |
| 6                             |      | 0%              |
| 7                             |      | 0%              |
| 8                             |      | 0%              |
| 9                             |      | 0%              |
| 10                            |      | 0%              |
| 11                            |      | 0%              |
| 12                            |      | 0%              |
| 13                            |      | 0%              |
| 14                            |      | 0%              |
| 15                            |      | 0%              |
| 16                            |      | 0%              |
| 17                            |      | 0%              |
| 18                            |      | 0%              |
| 19                            |      | 0%              |
| 20                            |      | 0%              |
| 21                            |      | 0%              |
| 22                            |      | 0%              |
| 23                            |      | 0%              |
| 24                            |      | 0%              |
| 25                            |      | 0%              |
| Thereafter                    |      |                 |

**Annual Price Escalator:** Each year<sup>1</sup> during the term of the Agreement, the purchase price shall be adjusted upward by the price escalator listed in this Exhibit B.

<sup>1</sup> Each year starts at 0000 hours on the Date of Commercial Operation (or anniversary) and runs through 2400 hours on the date before the following anniversary (e.g., 0000 hours on January 1 through 2400 hours on December 31).

## APPENDIX NO. 1

## STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City."

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.