

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**EL PASO SOLAR ENERGY 1 LLC,  
(as SELLER)**

**AND**

**EL PASO COUNTY ,  
(as BUYER)**

**DATED AS OF \_\_\_\_\_, 2011**

**SOLAR ENERGY FACILITY AT EL PASO COUNTY (TEXAS)**

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**EXHIBITS:**

Exhibit A	Description of Construction of Facility and Scope of Work
Exhibit B	Site Description and locations of PV systems
Exhibit C	Description of Transfer Point

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“*Agreement*”) is entered into as of this \_\_\_\_ day of December, 2011 by and between **El Paso County Texas**, (“*Buyer*”), a political subdivision of the State of Texas, and **Cadmos Energias Renovables, S. L. d/b/a El Paso Solar Energy One, LLC**, (“*Seller*”). Each of Buyer and Seller is referred to individually in this Agreement as a “*Party*” and together they are referred to as the “*Parties*”. This Agreement is effective as of the date immediately above.

### RECITALS

WHEREAS, Buyer desires to enhance its capacity to provide solar power to Buyer-owned facilities; and

WHEREAS, Buyer desires to develop solar energy generation facilities at no less than two and no more than six locations owned by Buyer; and

WHEREAS, Seller will, in coordination with Buyer, develop from two (2) to six (6) solar energy generation facilities (the “Facilities”) on sites located in El Paso County and on land which is property of El Paso County as listed in Exhibit B, with an expected maximum - total nameplate capacity of approximately 6 MW (Six megawatts); and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, the renewable energy produced by the Facilities; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. The following terms, when capitalized in this Agreement, shall have the meaning as hereinafter specified:

“Affiliate” means, with respect to a Party, any Person which, directly or indirectly, controls, is controlled by or is under common control with such Party. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person whether through ownerships of stock, by agreement or otherwise.

“Aggregate Nameplate Capacity” means the total capacity of all the Facilities which capacity shall not exceed 6 MW.

“Agreement” means this power purchase agreement and all related exhibits as amended from time to time.

“Applicable Law” 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.

“Bankrupt” means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law; (ii) has any such petition, action or proceeding filed or commenced against it and such petition, action or proceeding is not dismissed within 60 days after filing; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

“Business Day” means any Day except a Saturday, Sunday, or a NERC recognized holiday, beginning at 8:00 a.m. and ending at 5:00 p.m. MPT. “Buyer” means EL PASO COUNTY TEXAS for the different locations and facilities listed in EXHIBIT B, and its successors and permitted assigns.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Commercially Reasonable Efforts” means a level of effort, which, in the exercise of reasonable judgment in light of facts known, can be expected to accomplish the desired result at a reasonable cost.

“Commercial Operation” means construction of the Facility has been completed and the Facility is capable of delivering Energy to the Transfer Point in accordance with the terms of this Agreement and the conditions set forth in Section 4.6 have been satisfied.



“Commercial Operation Date” or “COD” for the Facility means the date on which the Facility achieves Commercial Operation.

“Conditions” shall have the meaning set forth in Section 4.6.

“Confidential Information” means any and all information (including forecasts, components, parts, drawings, sketches, flow charts, plans, reports, handbooks, documentation, programs, data, feedback, features, techniques, processes, algorithms, inventions, financial information and analyses, marketing plans and studies, actual and projected load data, proposed and actual pricing information, and the identity of actual or potential customers) which is identified by the Disclosing Party at the time that such Party discloses such information to the Receiving Party as confidential or proprietary..

“CPT” or “Mountain Prevailing Time” means Central Standard Time or Central Daylight Savings Time, whichever is in effect on any particular date.

“Day” means the consecutive twenty-four (24) hour period beginning at the start of the hour ending 01:00 a.m. CPT on any calendar Day and ending at the completion of the hour ending 24:00 p.m. CPT on such calendar Day.

“Default” has the meaning set forth in Section 10.1 hereof.

“Disclosing Party” has the meaning set forth in Section 17.1 hereof.

“Early Termination Date” has the meaning set forth in Article 11 hereof.

“Effective Date” means the first date written above.

“Electric Interconnection Point” means the physical point at which electric energy is delivered from Seller to Buyer on every different facility.

“Electric Metering Device(s)” means all Seller-owned meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to Energy output from the Facilities. Electric Metering Devices include the metering current transformers (“CTs”) and the metering voltage transformers (“VTs”).

“Emergency” means a condition or situation that in the judgment of the Party making the claim is imminently likely to (i) endanger life or property; (ii) cause a material adverse effect on the security of, or damage to, the Facility or the Interconnection Facilities; or (iii) result in loss of Energy deliveries from the Facility in a manner that could adversely affect

the reliability of Buyer's system, or the reliability of any interconnected system, provided that no Party shall be able to declare an Emergency if the Party has not acted, or maintained relevant Facilities, in accordance with Prudent Utility Practice or has not acted in accordance with the Party's implied contractual covenant of good faith and fair dealing.

"Energy" means three-phase, 60 Hertz alternating current electricity energy, expressed in units of kilowatt-hour or megawatt-hours, net of auxiliary load and station electrical uses.

"Energy Payment" for any month means a payment in the amount that is the product of: (a) the Energy Payment Rate, multiplied by (b) the Purchased Energy with respect to such month, which will be the total energy produced by each facility.

"Energy Payment Rate" means \$ 81 per MWh escalated 2.5% annually(the first year commencing on the COD) during the term of this Power Purchase Agreement or as otherwise defined in this Agreement.

"Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, and any other environmental medium.

"Environmental Attribute" means any and all current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated, including renewable energy certificates and credits, green tags, emission credits and carbon offsets, that: (a) is created under any federal or state Law; and (b) is attributable to (i) generation of Energy by the Facilities during the Term and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of energy generation; provided, however, Tax Credits and Energy will not be construed to be Environmental Attributes.

"Environmental Law" means any law, regulation, rule, ordinance, guideline, criterion, mandate, order or by-law at the federal, state, or local level, relating to pollution or protection of the Environment whether existing as of the Effective Date or previously enforced. "Environmental Law" shall include, but not be limited to, any Law requiring (i) the payment of any fee or Tax for the consumption or combustion of fuel or (ii) the possession of emission credits or compliance with a Governmental approval that affects, addresses, or limits emissions to the Environment in conjunction with the generation of electricity.

"EPC Contract" means the Engineering, Procurement and Construction Agreement by and between Seller and the EPC Contractor, related to construction of the Facility.

“EPC Contractor” means Border Solar \_\_\_\_\_, a \_\_\_\_\_ corporation.

“Facility” means the Units, buildings, collection lines, substation, and other improvements related thereto owned by Seller and more particularly described on Exhibit A attached hereto for every single location described on Exhibit B also attached. In this document the term “Facility”, “Facilities”, “each Facility” have identical meaning and refers to the production units developed by the Seller aiming to supply energy to the buyer.

“Financing Parties” means any Person providing debt or equity financing in connection with the construction, ownership, operation or maintenance of the Facilities, or any part thereof (including any, extension, modification or refinancing thereof), and including any trustee, administrative agent or collateral agent acting on behalf of such Person.

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

“Force Majeure” means any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising hereunder, but only if and to the extent: (i) such event is not within the reasonable control, directly or indirectly, of and not the fault of the Party affected; (ii) such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party; (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof; and (iv) such event is not the direct or indirect result of the affected Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement. Provided that the event satisfies the requirements described in clauses (i) through (iv) above, the following shall be considered to be a Force Majeure event: (a) condemnation; (b) expropriation; (c) invasion; (d) plague; (e) drought; (f) landslide; (g) hurricane; (h) unusually severe weather, (i) tsunami; (j) flood; (k) earthquake; (l) fire; (m) explosion; (n) epidemic; (o) quarantine; (p) war (declared or undeclared), terrorism or other armed conflict; (q) material physical damage to the Facility caused by third parties; (r) strikes and other labor disputes if such strike or other labor dispute is part of a national action involving subcontractors and not specific to the Party asserting that it is relieved of its obligations due to the Force Majeure event or such Party’s subcontractors; (s) riot or similar civil disturbance; (t) other acts of God; (u) acts of the public enemy; (v) blockade; (x) insurrection, riot or revolution; (y) sabotage or vandalism; (z) embargoes. Neither the lack of money nor changes in market conditions shall constitute an event of Force Majeure.

“Forced Outage” means the removal from service availability of any of the Facilities due to an Emergency or other condition which renders any of the Facilities unavailable due to unanticipated failure.

“Governmental Authority” means any nation, state, or government, any federal, regional, state, local or political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any reliability organization or agency with oversight of Seller or Buyer.

“Governmental Charges” means all taxes, assessments or other governmental fees, costs, levies, expenses, duties, imposts and tariffs imposed by any Government Authority.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local governmental authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. §136 et seq. (7 U.S.C. §136).

“Insurance Company” means a Person satisfying the requirements of Section 15.2 or other Person acceptable to Buyer.

“Interconnection Facilities” means the facilities necessary to connect Seller’s electric system with Buyer’s Buildings and facilities using the energy produced by seller’s facilities , along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Investment Grade” means a Credit Rating of BBB- and Baa3 or higher by S&P or Moody’s, respectively, provided, that, if the Credit Ratings by S&P and Moody’s are not equivalent, then the higher of the Credit Ratings shall control for purposes of determining whether the Person’s Credit Rating is Investment Grade, unless the higher of the Credit Ratings of such Person has been placed on Credit Watch with negative implications by S&P or Watchlist (DNG) by Moody’s, in which event the lower rating shall control.

“kW” means kilowatt(s).

“kWh” means kilowatt hour(s).

“Law” means (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, or judgment which a Party is legally obligated to comply with regardless of whether the appeals process is final or not, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

“Licensed Professional Engineer” means a person mutually acceptable to Buyer and Seller, each in its reasonable discretion, who (a) has training and experience in the power industry specific to the technology of the Facility, (b) has no economic relationship, association or nexus with Seller or Buyer, or any of their respective Affiliates, other than to address the obligations of Seller pursuant to this Agreement, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development, construction or operation of the Facilities or of a manufacturer or supplier of any equipment installed at the Facilities, and (d) is licensed in an appropriate engineering discipline for the required certification being made.

“Local Provider” shall have the meaning set forth in Section 1.4.

“MW” means megawatt(s).

“MWh” means megawatt hour(s).

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“Operating Committee” means the committee provided for in Section 9.3.

“Operating Procedures” means those procedures developed pursuant to Section 9.3.

“Operating Records” means all agreements associated with the Facilities, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Facilities.

“O&M Manual” means the manual of equipment manufacturers related to the operation and maintenance of equipment in the Facility.

“O&M Provider” means the Seller

“Party (ies)” has the meaning set forth in the preamble of this Agreement.

“Person” means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, and any other form of business or legal entity.

“Prudent Utility Practice” means any of the spectrum of practices, methods, standards and acts engaged in or adopted by a significant portion of the electric power industry in the United States that, during the relevant period of 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, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facilities equipment suppliers and manufacturers, operational limits, and all Applicable Laws. Prudent Utility Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

“Purchased Energy” means 100% of the total Energy generated by the Facilities and measured at the Electric Interconnection point for each location described in Exhibit B.

“Receiving Party” has the meaning set forth in Section 16 hereof.

“RECs” means renewable energy credits or renewable energy certificates provided for in Section 19.4.

“Renewable Energy” means electrical energy produced from solar, including solar sources utilized to generate electricity, photovoltaic cells or panels

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Seller” means EL PASO SOLAR ENERGY 1 LLC, its successors and permitted assigns.

“Seller’s Back-Up Metering” shall have the meaning provided in Section 5.1.

“Seller’s Interconnection Facilities” means the equipment, including all related relaying protection and physical structures as well as all transmission facilities required to access the Buyer’s energy distribution system at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. “Site” means those real property interests described in Exhibit B.

“Tax Credits” means the investment tax credits available under Section 48 of the Internal Revenue Code, any credits and sales tax exemptions available under the State of Texas programs if any for renewable energy, and any other credits or tax benefits available under any similar Federal or state programs.

“Term” has the meaning set forth in Section 2.1 hereof.

“Unit” means each of the solar energy units, as further described in Exhibit A hereto, forming a part of the Facilities.

“United States Bankruptcy Code” means Title 11, United States Code or any successor statute.

1.2 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Prudent 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:

1.2.1 The masculine shall include the feminine and neuter.

1.2.2 References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.

1.2.3 The Exhibits attached hereto are incorporated in and are intended to be part of this Agreement. In the event of a conflict between the terms of any Exhibit and the terms of Articles 1 through 21 of this Agreement, the terms of Articles 1 through 21 of this Agreement shall take precedence.

1.2.4 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.2.5 Unless expressly provided otherwise in this Agreement, (i) where the Agreement 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 Agreement 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.

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

1.2.7 Use of the words “herein”, “hereof” or “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection thereof.

1.2.8 References to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented or restated from time to time.

1.2.9 Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, and surcharges imposed or levied by a Governmental Authority.

1.3 Interpretation with FERC. Each Party conducts its operations in a manner intended to comply with FERC’s Standards of Conduct.



## ARTICLE 2

### TERM

**TERM. THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE AND SHALL BE BINDING ON THE PARTIES SUBJECT TO THE TERMS HEREOF. THE TERM (THE “TERM”) OF THIS AGREEMENT SHALL BEGIN AT THE START OF THE HOUR ENDING 01:00 (MPT) ON THE COMMERCIAL OPERATION DATE AND SHALL TERMINATE AT THE COMPLETION OF THE HOUR ENDING 24:00 (MCPT) ON THE DAY IMMEDIATELY PRECEDING THE 25TH ANNIVERSARY OF THE DAY ON WHICH THE TERM COMMENCED, UNLESS EARLIER TERMINATED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. WITH NO LESS THAN A 30 DAY WRITTEN NOTICE TO SELLER, BUYER SHALL HAVE THE OPTION TO EXTEND THE TERM OF THIS AGREEMENT UPON MUTUALLY AGREEABLE TERMS FOR UP TO AN ADDITIONAL 4 TERMS CONSISTING OF FIVE YEARS EACH.**

### FACILITIES DESCRIPTION

2.1 Facility. Seller represents that it has performed a review and analysis of Buyer’s current and anticipated power demands and facilities in order to assure that the services being offered to Buyer pursuant to this Agreement will meet or exceed Buyer’s stated objectives. Such review and analysis have been performed at a commercially reasonable level of effort, practice, and standard no less than that which Seller would use in its own business affairs. Furthermore, based on such analysis, Seller will provide Buyer with advice and guidance on the number, size, location, and timing of construction of Facilities in order to achieve Buyer’s objectives. Buyer shall have the final decision as to whether, where, when, and at what capacity the Facilities shall be built.

2.2 In coordination with Buyer, Seller shall design and construct, or cause to be designed and constructed, at a minimum, two Facilities. Based on Seller’s review, analysis, and advice, it is anticipated that Facilities Number One and Number Two shall be constructed at the El Paso County Sheriff’s Headquarters and at the El Paso County Jail Annex respectively with a combined total maximum nameplate capacity of 3.64MW AC.

2.3 A license, or similar use agreement, shall be provided by Buyer to Seller, and executed by Buyer and Seller, for each Facility. The license shall grant the necessary authorization and access to construct, install, maintain, operate, inspect, repair, replace or remove the Units, PV systems, and other improvements installed by Seller for the sole purpose of fulfilling its obligations to Buyer under this Agreement. The license terms shall run concurrently with this Agreement and any obligations under the Agreement. The license shall not be used for third party purposes or benefit without the express written permission of Buyer.

2.4 In coordination with Buyer as stated in this Agreement, Seller may design and construct, or cause to be designed and constructed up to FOUR additional Facilities according to Exhibits A and B with a total maximum nameplate capacity of 2.35 MW AC. The location

of the additional four facilities, capacity commencement of operation date, and similar are subject to final authorization by Buyer.

2.5 All Facilities shall be designed and constructed in accordance with Applicable Law and Prudent Utility Practices. A description of the manner in which the Facilities, including identification of certain of the equipment and components which make up the Facilities are to be constructed is set forth in Exhibit A.

2.6 Location. The Facilities shall be located on the Sites owned by EL PASO COUNTY Exhibit B contains a legal description of the real property interests comprising the Sites.

### ARTICLE 3

#### COMMERCIAL OPERATION

3.1 Commercial Operation. Seller shall use, and cause to be used by the EPC Contractor, Commercially Reasonable Efforts to cause all the Facilities requested by Buyer to achieve Commercial Operation no later than 31<sup>st</sup> June 2012, with the COD being different for each single facility, but in any case all of the Facilities reaching COD before the above mentioned date or within months after obtaining City and County licenses, and permits required to develop the PV systems and the interconnection approval from El Paso Electric Company. Seller shall review and analyze Buyers power demands and resources and related aspects to assist Seller in making a determination as to the best means and manners to achieve maximum efficiency in generating and/or obtaining power to meet Buyer's needs at each of the facilities. Seller shall reasonably provide sufficient information so that Buyer may make an informed decision as to the need for additional Facilities, the size and capacity of generating equipment, the rate at which each of the Facilities should be built, if at all, and any other information which could be proffered in a reasonable time period, in order for Buyer to make an informed and well advised decision.

3.2 Permits. Seller shall use Commercially Reasonable Efforts to obtain, and shall pay for, all applicable environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws to perform its obligations under this Agreement. All permits shall be held in Sellers name and Seller shall be responsible for complying with any and all terms, restrictions, or conditions of any and all permits. Buyer shall have the right to inspect and obtain copies of all permits held by Seller. At Seller's request, Buyer shall, at Buyer's discretion, use Commercially Reasonable Efforts, at Seller's expense, to assist Seller in obtaining all such permits, licenses and approvals.

3.3 Facilities EPC Contracts. Upon reasonable notice and request by Buyer, Seller shall provide Buyer with a copy of the EPC Contract, other Facility construction contracts, if any, and major engineering drawings, provided that, in each case: (a) Seller is permitted to disclose a copy of such agreements pursuant to its terms (or, with respect to such drawing, pursuant to the terms of the agreement governing its disclosure by Seller), and (b) Buyer complies with all confidentiality and non-disclosure requirements related thereto.

3.4 Buyer's Rights During Construction. Buyer, at its own expense, and upon reasonable advance notice to Seller, shall have the right to monitor the construction, start-up and testing of each Facility, and Seller shall comply with all reasonable requests of Buyer with respect to the monitoring of these events, provided that Buyer does not interfere with the construction, testing and operations activities at the Site. Seller shall cooperate in such physical inspections of the Facilities as may be reasonably requested by Buyer during and after completion of construction. All persons visiting the Facilities on behalf of Buyer shall comply with all of Seller's and EPC Contractor's applicable safety and health rules and requirements. Buyer's technical review and inspection of the Facilities shall not be construed as endorsing the design or construction thereof nor as any warranty of safety, durability, or reliability of the Facilities or its suitability for its intended purpose.

Upon Buyer's reasonable request, after commencement of the construction of the Facilities and prior to the Commercial Operation Date, Seller shall provide Buyer with copies of reports, construction timelines and status reports which will include such information as Buyer may reasonably request regarding the development, design, engineering, installation, construction, and testing of the Facilities.

3.5 Conditions to Commercial Operation. Twenty (20) Days prior to the date that Seller expects the Commercial Operation Date for each Facility to occur, Seller shall provide written notice thereof to Buyer. During the period between delivering such notice and the Commercial Operation Date, Seller shall provide Buyer evidence reasonably acceptable to Buyer of the satisfaction or occurrence of all of the conditions set forth in this Section 4.6 ("Conditions"), unless any such Conditions are waived by in writing by Buyer. The Parties agree that review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any dispute, as such Conditions are satisfied. The Conditions are:

3.5.1 an officer of Seller, familiar with each Facility, has provided a list of the Facility's equipment, showing the make, model, serial number and nameplate capacity of each Unit and has certified the designed maximum output of the entire Facility as at least the MW according to Exhibit B which is summarized in the following chart

Facility Name	MWAC installed
Jail Annex	3
Sheriff headquarters	0.64
Juvenile Probation	1.00
Court House	0.75
Ysleta Annex	0.15
Down Town Detention Center	0.45

3.5.2 each Facility has demonstrated the reliability of its communications and control systems and the meters are correctly calibrated and the NET METERING protocol, documents and conditions required by El Paso Electric which assuring that the NET METERING agreements between the County facilities and El Paso Electric are fulfilled.

3.5.3 a Licensed Professional Engineer's certification has been obtained by Seller stating that each Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with the requirements hereunder;

3.5.4 Seller has made all arrangements and executed all agreements necessary to deliver Energy from each Facility to each Transfer Point in accordance with the provisions of this Agreement;

3.5.5 Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility stating that after due inquiry, all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Facility in compliance with Applicable Law and this Agreement have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this Agreement in all material respects;

Certificates of insurance evidencing the coverages required by Article 17 have been obtained and submitted to Buyer.

3.6 Test Energy. Seller shall coordinate the production and delivery of Test Energy with Buyer, with such prior notice as Buyer may reasonably request. Buyer shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.6

## **ARTICLE 4**

### **METERING**

#### **4.1 Electric Metering Devices.**

4.1.1 Except as provided in Section 5.1.3, as between the Parties, Seller shall be responsible for installing and monitoring all Electric Metering Devices used to measure Energy sold by Seller to Buyer under this Agreement and to monitor and coordinate operation of each Facility. Except as provided in Section 5.2, readings of the Electric Metering Devices shall be conclusive as to the amount of Energy sold by Seller to Buyer under this Agreement. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and only Seller, or Seller's designee, shall break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article.

4.1.2 Seller, at its expense, shall inspect and test all Electric Metering Devices upon installation and at least biennially thereafter. Seller shall, with respect to all such inspections and tests and at its own expense, deliver a certification to Buyer from a Licensed Professional Engineer confirming the accuracy of the Electric Metering Devices. Seller shall

provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests; provided, however, that Buyer shall not interfere with or disrupt the activities of Seller and shall comply with Seller's safety standards.

4.1.3 Buyer may elect to install and maintain, at its own expense, backup metering devices ("Buyer's Back-Up Metering"), which installation and maintenance shall be performed in a manner acceptable to Seller. Buyer, at its own expense, shall inspect and test Buyer's Back-Up Metering upon installation and at least biennially thereafter. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests; provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. Upon request by Seller, and at Seller's expense, Buyer shall perform additional inspections or tests of Buyer's Back-Up Metering and shall permit a qualified representative of Seller to inspect or witness the testing of Buyer's Back-Up Metering; provided, however, that Seller shall not interfere with or disrupt the inspection and calibration activities of Buyer and shall comply with all of Buyer's safety standards applicable to such activities.

If any Electric Metering Devices, or Buyer's Back-Up Metering, are found to be defective or inaccurate outside of 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.

4.2 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Buyer's Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Buyer's Back-Up Metering, is found upon testing to not be accurate within a tolerance limit of two (2) percent, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Buyer's Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

4.2.1 In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Buyer's Back-Up Metering, if installed, to determine the amount of the inaccuracy. The Parties shall mutually agree upon the necessary adjustment of the amount of Energy delivered during such period on the basis of the amount of Energy delivered from the Facility with defective meter and to the Transfer Point 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.

4.2.2 In the event that the Parties cannot agree on the actual period during which inaccurate measurements were made, the period during which the measurements are to be adjusted shall be (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, whichever period is less.

4.2.3 To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Buyer for this period for such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller. If the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset against future payments due to Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset. All adjustments made pursuant to this Section 5.2 shall be made in accordance with the filed tariff of the Transmission Provider.

## **ARTICLE 5**

### **PURCHASE AND SALE**

Sale and Purchase of Energy. Beginning on the Commercial Operation Date for each Facility, Seller shall generate from each Facility, deliver to the Transfer Point, and sell to Buyer, and Buyer shall accept and purchase from Seller, at the applicable price set forth in Section 8.1, the Purchased Energy. All Purchased Energy shall be of a power quality of 60 Hertz, three-phase alternating current and that is compliant with the requirements set forth in the LGIA. Buyer shall purchase all such Purchased Energy in accordance with the terms of this Agreement. Except as provided for in Section 8.2 of this Agreement, Buyer shall have no obligation to pay for any energy that has not actually been generated by the Facility, measured by the Electric Metering Device(s), and delivered for Buyer's account at the Transfer Point.

Sale and Purchase of Equipment. At any time during the term of this Agreement, Buyer shall have the option to purchase any part or all of the Facilities. The purchase price shall be determined based upon an appraisal performed by an independent appraiser mutually agreed upon by both parties. The terms and conditions of any such sale shall be determined at the time of sale and upon terms and conditions mutually agreeable to both parties.

## **ARTICLE 6**

### **PRICING AND PAYMENT CALCULATIONS**

7.1 Energy Payment. In consideration for the Purchased Energy delivered to Buyer pursuant to this Agreement, Buyer shall pay Seller the Energy Payment. The price will be obtained by multiplying the total energy produced and delivered by each facility according to the meter installed at the transfer point by the price agreed (81\$ per MWh ). The energy payment price shall be increased on an annual basis based upon the lesser of: 1) an annual 2.5% compounded increase of the price paid on the COD, or 2) the average increase for each preceding calendar year as applied by El Paso Electric Company under the applicable Schedule 41 for County facilities effective July 1, 2010 and as may be amended as allowed by the Texas Public Utility Commission, or other similar rate schedules which may supplant Schedule 41 as allowed by the Texas Public Utility Commission or successor agencies.

7.2 Sale of REC's. Seller shall make good faith efforts to trade REC's for reasonable value with first-line REC trading companies or other entities acquiring such credits. Seller shall provide Buyer with a quarterly statement showing trades made including total REC's traded, the value of the trade, and the entity with whom traded. County shall be credited with 70% of the gross value of the trade and Seller shall retain 30% of the remaining value.

## ARTICLE 7

### BILLING AND PAYMENT

#### 7.1 Invoices and Payment Schedules.

7.1.1 On or before the tenth (10<sup>th</sup>) Day of each month (or if the tenth (10<sup>th</sup>) Day is not a Business Day, then the next Business Day), Seller shall prepare and deliver to Buyer a statement detailing the amounts owed by Buyer to Seller pursuant to this Agreement for the immediately preceding calendar month. The statement shall include a summary of Purchased Energy delivered to Buyer in each hour of the preceding calendar month and Seller's calculation of the payments due Seller for each facility. All payments shall be due and payable on or before the later of the twenty-fifth (25<sup>th</sup>) Day of each month, or the fifteenth (15<sup>th</sup>) Day after receipt of the invoice. If such Day is not a Business Day, then the payment shall be due on the next Business Day.

7.1.2 Each Party will make payments by wire transfer of funds, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest in accordance with the Texas Prompt Payment Act, Texas Government code 2251.01 et seq.

7.2 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or date of adjustment to an invoice. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within fifteen (15) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Any overpayments shall, at the option of the Party making the overpayment, be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 9.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made.

7.3 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest calculated in accordance with the provisions of the Texas Prompt Pay Act, Texas Government Code Section 2251 et seq., as amended; provided, however, that no adjustment for any invoice or payment will be made unless the objection to the accuracy thereof is made within twenty-four (24) months after the date of the invoice which is the subject of the dispute, and thereafter any objection shall be deemed waived.

## **ARTICLE 8**

### **OPERATION, MAINTENANCE AND OUTAGES**

8.1 Maintenance. Seller shall maintain the Facility in accordance with Prudent Utility Practice(s) and manufacturer's recommendations, including those set forth in the O&M Manual. Sixty (60) Days prior to the commencement of each calendar year, Seller shall deliver to Buyer a maintenance schedule for the next year and the maintenance schedule shall comply with the terms of this Agreement.

8.2 Facility Operation. Seller shall staff, control, and operate the Facility consistent at all times with Prudent Utility Practice(s) and any Operating Procedures developed pursuant to Section 10.4. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility within 15 minutes and capable of being at the Facility with no more than 120 minutes notice. In all cases, at least one member of Seller's personnel who is capable of starting, operating and stopping the Facility shall be continuously reachable by phone or pager.

8.3 Operating Committee and Operating Procedures.

8.3.1 Buyer and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of Energy hereunder. Such representatives shall constitute the Operating Committee. 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 and conditions of this Agreement.

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



8.4 Access to Facility. Appropriate representatives of Buyer shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility to read meters, to perform all inspections, to perform review of maintenance, service, and operations as may be appropriate to facilitate the performance of this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

8.5 Reliability Standards. Seller shall operate the Facility in manner that complies with all national and regional reliability standards, including standards set by NERC, FERC, and any other Governmental Authority, or any successor agencies setting reliability standards for the operation of generation facilities. To the extent that Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by NERC or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse Buyer for its share of such monetary penalties.

8.5.1 Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the energy of each facility from it to Buyer at the Transfer Point.

8.5.2 Buyer shall be responsible for all electric losses and cost after the Transfer point.

## **ARTICLE 9**

### **DEFAULT**

9.1 Default. Except as otherwise excused under this Agreement, the occurrence of any of the following shall constitute an event of default (“Default”):

9.1.1 Seller fails to perform any of its obligations under this Agreement and such failure is not corrected within thirty (30) Days after written notice thereof; provided, that such period shall be extended for an additional reasonable period if a cure cannot be reasonably effected within thirty (30) Days and if corrective action is instituted by Seller within the thirty (30) Day period and so long as such action is diligently pursued until such default is corrected; provided, further that the cure period shall in no event exceed sixty (60) Days from receipt of the notice of the performance failure;

9.1.2 Except for disputed charges arising under Section 8.3, if either Party fails to pay any amounts due hereunder, which failure continues for a period of five (5) Business Days after the date on which written notice of a failure to pay is received by the Party failing to pay;

9.1.3 Either Party breaches any material contractual obligation, not otherwise provided for as a separate Default under this Agreement, and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is received by the breaching Party;

9.1.4 Any representation or warranty confirmed or made by either Party proves to have been incorrect or misleading in any material respect when made, or deemed to be made, or repeated, and the circumstances that rendered such representation or warranty false or misleading continue, or are not otherwise addressed to the satisfaction of the other Party for more than thirty (30) Days after a representative of the Party making such representation or warranty has knowledge or receives notice thereof; or

9.1.5 Either Party becomes Bankrupt.

9.1.6 Remedies. Unless otherwise limited by the terms of this Agreement, each of the Parties shall have the right to pursue all of its rights and remedies available to it at law or in equity.

9.2 No Waiver in Event of Default. Pursuit by either Party of any remedy for Default pursuant to Article 10 shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Agreement. No waiver of any Default or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or conditions of this Agreement. Forbearance to enforce one or more of the remedies available upon the occurrence of an event of Default shall not constitute a waiver of that or any subsequent Default or breach.

## **ARTICLE 10**

### **EARLY TERMINATION**

If a Default occurs with respect to a defaulting Party at any time during the Term, and the non-defaulting Party elects to terminate this Agreement, such non-defaulting Party:

(a) shall: (i) establish a date no earlier than the date that such Default has occurred (and all applicable cure periods have expired) and no later than twenty (20) Days after the date that such Default has occurred (and all applicable cure periods have expired) on which this Agreement shall terminate (the "Early Termination Date"); and (ii) determine all amounts owing between the Parties as of such Early Termination Date pursuant to the terms of this Agreement and including damages to the extent incurred by the non-defaulting Party, subject to the limitations set forth in Section 12.3; and

(b) may suspend performance of any obligations and withhold any payments due in respect of this Agreement from the date that the Default occurred (and all applicable cure periods expired) and the Early Termination Date.

## **ARTICLE 11**

### **INDEMNIFICATION; LIMITATION OF LIABILITY**

11.1 Seller Indemnification. Seller agrees to and shall indemnify, defend, and hold harmless Buyer and all of its Affiliates, respective officers, directors, employees, servants, and agents, from and against all Claims, including Claims for (i) personal injury or death or (ii) damages to property of Persons other than the Parties or their Affiliates, arising out of or related Seller's acts or omissions in connection with Seller's performance under this Agreement. For the avoidance of doubt, Seller shall not be obligated to indemnify Buyer for any Claims arising out of Buyer's (or Buyer's representative's) gross negligence or willful misconduct.

## **ARTICLE 12**

### **FORCE MAJEURE**

If either Party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such Party gives written notice and full details of the event to the other Party as soon as practicable after the occurrence of the event, then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments for amounts due at the time of the occurrence of the Force Majeure) shall be suspended to the extent required. The Party affected by the Force Majeure shall use Commercially Reasonable Efforts to remedy the Force Majeure and to mitigate any delays caused by such Force Majeure.

## **ARTICLE 13**

### **REPRESENTATIONS**

13.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

13.1.1 Such Party has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement have been duly authorized by such Party.

13.1.2 This Agreement constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity.

13.1.3 Neither the execution nor delivery of this Agreement results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any law, regulation, administrative or judicial order or

process or decision to which such Party is a party or by which it or its properties are bound or affected.

13.1.4 It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

13.1.5 It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing.

13.1.6 All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or other document relating hereto or thereto to which it is a party have been obtained and are in full force and effect or have been submitted and all conditions of any such obtained authorizations, approvals, consents, notices and filings have been complied with.

13.1.7 No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or other document relating hereto or thereto to which it is a party.

13.1.8 There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement, or other document relating hereto or thereto to which it is a party nor its ability to perform its obligations under the same.

## **ARTICLE 14**

### **INSURANCE**

14.1 Seller's Insurance. Seller shall obtain, and maintain at its own expense, the following insurance to cover all of Seller's activities in connection with the performance of this Agreement throughout the term of this Agreement, unless otherwise specified for a longer coverage period:

14.1.1 Comprehensive general liability insurance covering Seller's operations, including products, completed operations and contractual liability coverage in limits of not less than [one million dollars (\$1,000,000)] per occurrence and [two million dollars (\$2,000,000)] annual aggregate combined single limit for bodily injury and property damage per location;

14.1.2 Statutory worker's compensation insurance and employers' liability insurance in limits of not less than [one million dollars (\$1,000,000)], covering Seller's employees;

14.1.3 Comprehensive automobile liability insurance covering all owned and non-owned and hired vehicles used by Seller in connection with performance of this Agreement in limits of not less than [one million dollars (\$1,000,000)] per occurrence combined single limit

for bodily injury and property damage, including all statutory coverage for all states of operation; and

14.1.4 Excess or umbrella liability insurance excess of employers' liability, general liability and automobile liability with a limit of not less than [\$5,000,000] per occurrence. The Scope of coverage must be as broad or broader than the underlying coverages.

#### 14.2 Seller's Builder's Risk Insurance.

14.2.1 Seller shall obtain and maintain (or cause the EPC Contractor to obtain and maintain), at Seller's expense, "Builder's Risk" insurance for Seller's Facility on an "all-risk" replacement-cost basis in a completed value form with extended coverage until the COD, providing:

(a) property coverage for the Facility, which insurance shall include coverage for removal of debris and shall insure the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Facility, in a minimum amount equal to the total constructed value;

(b) off-site coverage including transit for property described in Section 17.2(a) to insure values at risk, but with a limit not less than [\$0.5 million] per occurrence; and

(c) identical coverage for operational ("Hot") testing and other operation of the Facility prior to the Commercial Operation Date.

Such insurance shall be maintained with reputable insurance companies with a Best Rating of A IX ("Insurance Company"). The policies maintained by Seller pursuant to this Section 17.2 shall (i) include Buyer and its Affiliates as additional insured entity, (ii) provide that such insurance is primary with respect to perils insured thereunder without right of contribution from any other insurance which might otherwise be available to an insured Party, and (iii) provide that, in the event of a rescission or refund of a payment under the policy, the insurer shall waive any rights of subrogation against an insured Party. Loss deductibles applicable to insured perils under Seller's insurance policies shall be the responsibility of Seller.

14.3 Insurance Requirement. Each of Seller and Buyer shall cause their respective insurers to waive any right of subrogation against the other Party. [Buyer and Seller shall assume responsibility for their own deductible amounts and losses in excess of policy limits for an insured loss, subject in all respects to the indemnification obligations set forth in Article 14.]

14.4 Certificates of Insurance. Seller shall cause each insurance policy to name Buyer as a certificate holder and require that the insurer provide Buyer with certificates of insurance: (a) evidencing Buyer as an additional insured of all of the above mentioned coverage, except workers compensation, and employers liability insurance, for events required to be insured by Seller pursuant to this Agreement; (b) stating that the above insurance is primary coverage to any other insurance that may be available to Seller and (c) providing at least thirty (30) calendar days' prior written notice to Buyer of cancellation, modifications or material change to any policy. The purchase of appropriate insurance coverage by a Party (or

the furnishing of the certificate(s) of insurance by Seller) shall not release such Party from its respective obligations or liabilities under this Agreement.

## ARTICLE 15

### NOTICES

All notices and other communications required or permitted by this Agreement or by Law to be served upon or given to a Party by the other Party may be delivered by hand, by reputable overnight courier, by courier service, or sent by certified mail, return receipt requested, postage prepaid, to the following address.

To Buyer: El Paso County Judge  
500 East San Antonio  
El Paso Texas 79901

With a copy to:

El Paso County Attorney  
500 E. San Antonio St. Suite 503  
El Paso Texas 79901

To Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall, unless otherwise specified herein, be in writing. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by courier shall be effective on the next Business Day after it was sent. Notice by mail shall be effective when received. A Party shall provide notice of a change of address in accordance herewith.

## ARTICLE 16

### CONFIDENTIALITY

16.1 Confidential Information. Any Confidential Information of a Party (“Disclosing Party”) which is disclosed to or otherwise received or obtained by the other Party (“Receiving Party”) incident to this Agreement shall, to the extent permitted by law including but not limited to the Texas Public Information Act, be held in confidence, and the Receiving Party shall not publish or otherwise disclose any Confidential Information to any Person for any reason or purpose whatsoever, except as described in Sections 19.2.2 and 19.3, or use any Confidential Information for its own purposes or for the benefit of any Person except in connection with the performance of its duties hereunder, without the prior written approval of the Disclosing Party. Without limiting the generality of the foregoing, each Party shall observe

the same safeguards and precautions with regard to Confidential Information, which such Party observes with respect to its own information of the same or similar kind.

## 16.2 Associated Parties.

16.2.1 Each Party agrees that, to the extent that it discloses Confidential Information received from the other Party to any of its Affiliates, it will do so only on a need-to-know basis, and that all recipients to whom such Confidential Information is made available will be made aware of the confidential nature of such Confidential Information, and will be required to agree to hold such Confidential Information in confidence under terms substantially identical to the terms hereof.

16.2.2 Notwithstanding the foregoing or anything else to the contrary in this Agreement, a Receiving Party may provide any Confidential Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided that such Governmental Authority orders such Confidential Information be provided or such information is required to be disclosed to the Governmental Authority or a third party pursuant to the Texas Public Information Act or other statute. To the extent permitted by Applicable Law, the Receiving Party shall promptly advise the Disclosing Party of any request for such information by such Governmental Authority and shall cooperate, at Disclosing Party's expense and to the extent permitted by Applicable Law (including requirements regarding timing, such as compliance deadlines), in giving the Disclosing Party an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

16.3 Exceptions. Seller and Buyer may, without violating this Article 19, disclose matters that are made confidential by this Agreement:

16.3.1 to its legal advisors and accountants;

16.3.2 to actual or prospective Financing Parties, investors, purchasers, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for Seller, Buyer, or their respective Affiliates, if the disclosure is subject to a confidentiality agreement with the Person to whom the disclosure is being made and

16.3.3 to governmental officials and parties involved in any proceeding in which Seller or Buyer are seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement,.

16.4 Remedies. In the event of a breach or threatened breach of the provisions of Section 19.1 by any Receiving Party, the Disclosing Party shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available at Law or in equity for such breach or threatened breach of this Agreement.

16.5 Exclusions. Confidential Information shall exclude information falling into any of the following categories:

16.5.1 Information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement;

16.5.2 Information that was already known by either Party prior to this Agreement without violation of Law or a confidentiality agreement; or

16.5.3 Information that becomes available to either Party from a source other than the other Party if such source was not known by the receiving Party to be subject to any prohibition against disclosing the information to such Party.

## **ARTICLE 17**

### **ASSIGNMENT**

Except as provided otherwise in this Agreement, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party, (a) collaterally assign such Party's rights in this Agreement, and/or pledge or otherwise encumber such Party's rights in the accounts, revenues or proceeds hereof, in each case, in connection with any financing or other financial arrangements; or (b)(i) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness at the time of such assignment is equal to or superior to that of such Party; or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the assignor if the assignee's creditworthiness at the time of such assignment is equal to or superior to that of the assignor; further provided, however, that in either case described in clause (b)(i) or (b)(ii), any such assignee shall agree in writing to be bound by the terms and conditions hereof.

## **ARTICLE 18**

### **GOVERNMENTAL CHARGES AND CREDITS**

18.1 Governmental Charges. Except as otherwise provided in this Article 21, Seller shall pay or cause to be paid all Governmental Charges on or with respect to Energy arising prior to or at the Transfer Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Energy at and from the Transfer Point (other than ad valorem, franchise or income taxes which are related to the sale of Energy and are, therefore, the responsibility of the Seller). Each Party shall use Commercially Reasonable Efforts to mitigate and minimize the costs to the other Party of Governmental Charges. In the event Seller is required by Law to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Seller shall include a charge for such amounts in the next invoice provided under Article 9. If Buyer is required by Law to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement, provided that Buyer has delivered to Seller advance written notice thereof in reasonable detail. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.



18.2 Transfer of Environmental Attributes to Buyer. Seller and Buyer hereby acknowledge and agree that seller is entitled to all Environmental Attributes, including all RECs, whether such attributes are now existing or come into existence.

18.3 Tax Credits. Seller and Buyer hereby acknowledge and agree that Seller is entitled to all Tax Credits (whether authorized under a Federal or state statute), whether such Tax Credits are now existing or come into existence at a later date.

18.4 Environmental Credits. The Parties acknowledge that existing and future legislation or regulation may create value in the ownership, use or allocation of RECs and other Environmental Attributes. To the full extent allowed by such law or regulation, seller shall own or be entitled to claim all Environmental Attributes and RECs to the extent such certificates or credits may exist during the Term (including Environmental Attributes and RECs generated in connection with facilities test).

## ARTICLE 19

### MISCELLANEOUS

19.1 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

19.2 Applicable Law. This Agreement is governed by and shall be construed under the Laws of the State of Texas excluding any conflict of laws rules. The Parties submit to the non-exclusive jurisdiction of the state and federal courts in Texas in connection with any litigation arising hereunder. Venue for any and all actions and proceedings shall be exclusively in El Paso, El Paso County Texas.

19.3 Waiver. No waiver of any breach of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

19.4 Nature of Obligations. This Agreement is intended only for the Parties' benefit. Nothing in this Agreement may be construed to create any duty to, any standard of care concerning, or any liability to any person not a Party to this Agreement.

19.5 Modification; Fixed Rate Contract. The provisions of this Agreement, including any exhibits, may only be modified by written agreement duly executed by each Party. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arms'-length negotiations between the Parties. Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, rendered inapplicable, or invalid or if an Intervening Illegality shall occur that lasts longer than

thirty (30) Days, such condition or Intervening Illegality shall in no manner operate to render any other provision of this Agreement unenforceable, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition or Intervening Illegality invalidates the purpose or intent of this Agreement. In the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction or rendered inapplicable, invalid or if an Intervening Illegality shall have occurred that lasts longer than thirty (30) Days, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment to the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision(s) that is unenforceable, void, or contrary to Law or that constitute an Intervening Illegality with a valid provision the economic effect of which comes as close as practicable to that of the provision that has been found to be unenforceable, void, contrary to Law, or constituting an Intervening Illegality.

19.6 Entirety. Except where the Agreement specifically references the LGIA, or other agreements, it is the intention of the Parties that this Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of Energy as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral.

19.7 Captions, Titles and Headings. Captions, titles and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

19.8 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder.

19.9 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Agreement shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Agreement, and shall apply whether in contract, equity, or otherwise. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Agreement or either Party's performance hereunder is not extended by the provisions of this Section 21.

19.10 Cooperation with Financing Efforts. To the extent permitted by law, Buyer shall cooperate with Seller's efforts in obtaining and maintaining financing on a non-recourse (or other) basis for the Facility. Without limiting the generality of the foregoing, Buyer shall: (a) execute such documents (including consent agreements and legal opinions) as Seller or any Lender may reasonably request in connection with such financing including: (i) certifying to the Lender(s) that this Agreement is in full force and effect and has not been modified or amended and that there are no defaults under this Agreement to Buyer's knowledge (except, in each case, as specifically stated in such certification) (ii) representing and warranting to the Lender(s) that this Agreement is enforceable against Buyer, (iii) consenting to the collateral assignment of this Agreement to the Lender(s) as security for the debt relating to the Facility, (iv) agreeing not to enter into amendments or modifications of this Agreement without the consent of the Lender(s), (v) agreeing to give the Lender(s) notice of and an opportunity to

cure any Event of Default by Seller, and (vi) reasonably modifying or clarifying provisions of this Agreement as reasonably requested by the Lender(s) so long as such modifications or clarifications do not increase Buyer's risk or liability hereunder; and (b) provide information (including financial information) about Buyer as the Lender(s) may reasonably request.

19.11 Seller acknowledges that no tax, nor interest, nor sinking fund has been set, adopted, or established by Buyer for the payment of any indemnity or obligations which may be created or implied in any way by this agreement.

(Remainder of Page Left Blank Intentionally)

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers.

**SELLER**

**BUYER**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

EXHIBIT A  
DESCRIPTION OF CONSTRUCTION OF  
FACILITY AND SCOPE OF WORK

EXHIBIT B  
SITE DESCRIPTION



## EXHIBIT D

DESCRIPTION OF THE TRANSFER POINT for each facility



