



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/13/2022

File ID: TMP-2173

Department: Huntsville Utilities

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to execute a power purchase agreement with Toyota Tsusho for a 30-year term.
(Utilities: Electric)

Resolution Yes

Ordinance No

Finance Information:

Account Number: N/A

City Cost Amount: \$ N/A

Total Cost: \$ N/A

Special Circumstances:

Grant Funded: \$ N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: N/A

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments: N/A

RESOLUTION 22- _____

WHEREAS, on July 23, 2020, the City Council of the City of Huntsville, Alabama approved a Power Supply Flexibility Agreement with TVA that allows The City of Huntsville Electric Utility Board to procure a portion of its energy from solar and other allowed generation resources; and

WHEREAS, implementation of this plan will require construction of a new substation to connect the solar generation to Huntsville Utilities' 46kV sub-transmission system; and

WHEREAS, on September 29, 2022, the City of Huntsville Electric Utility Board approved an Agreement with Toyota Tsusho to construct a new substation to connect Toyota Tsusho's solar generation to Huntsville Utility's system and to purchase a portion of the output from the solar facility; and

WHEREAS, the power purchase agreement, attached to this resolution as Exhibit A, requires the consent and approval of the City Council of the City of Huntsville, Alabama;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama that the Agreement with Toyota Tsusho to construct a new substation to connect Toyota Tsusho's solar generation to our system and to purchase a portion of the output from their solar facility be, and the same is hereby approved and the written consent or approval of the City Council of the City of Huntsville is hereby granted to the City of Huntsville Electric Utility Board.

ADOPTED this the 13th day of October, 2022.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 13th day of October, 2022.

Mayor of the City of Huntsville,
Alabama



HUNTSVILLE UTILITIES
ELECTRICITY • NATURAL GAS • WATER

MEMORANDUM

To: Huntsville City Council

From: Wes Kelley, President & CEO

Date: October 7, 2022

Subject: Huntsville Utilities Item for City Council Agenda, October 13, 2022
Resolution authorizing the Mayor to execute a power purchase agreement
with Toyota Tsusho for a 30-year term. (Utilities: Electric)

Approval of the resolution authorizing the Mayor to execute a power purchase agreement with
Toyota Tsusho for a 30-year term. (Utilities: Electric)



HUNTSVILLE UTILITIES
ELECTRICITY • NATURAL GAS • WATER

MEMORANDUM

To: Huntsville City Council
From: Wes Kelley
Date: September 29, 2022
Subject: Toyota Tsusho Solar PPA

In August 2020, Toyota Tsusho, a trading company within the Toyota Group, contacted HU to discuss a significant solar project. Toyota Tsusho operates a solar development business that, among other things, is tasked with helping Toyota achieve a zero-carbon footprint. To that end, Toyota Tsusho was interested in installing around 15MW of solar to offset Toyota Motor Manufacturing Alabama's energy purchases from HU (when the sun shines).

A month prior, in July 2020, the Council approved a Power Supply Flexibility Agreement with TVA that allows HU to procure a portion of its energy from solar and other allowed generation resources. Due to this flexibility option, we began talking to Toyota Tsusho about HU purchasing the output from the solar facility and expanding the generation to take full advantage of the available land surrounding the TMMAL site. After many months of discussions and clearing several significant hurdles, the project is ready for formal consideration.

To implement this plan, HU will need to construct a new substation to connect the solar generation to our 46kV sub-transmission system. To build this substation, just over \$2.6M was included in the FY23 budget. Also, a 46kV extension is required to tie this new substation to existing facilities. The substation design is underway, and the transformer has been ordered. The City of Huntsville graciously offered to support HU by grading the land for the substation.

The term would commit HU to purchase energy from the solar project for 30 years at a starting rate of \$0.04385 per kWh. However, the rate increases annually by 1.5%. The panels are expected to produce around 64,000MWhrs of energy. This is approximately the energy consumed by over 4,000 average Huntsville homes each year. The project is expected to be completed in February 2024.

Up to this point, HU has only ever contracted with TVA to provide power to our customers. For comparison, on a kWh basis, TVA's wholesale base rate is \$0.03419, and the current fuel cost

adjustment is \$0.03175 (for a combined kWh rate of \$0.6594). The energy coming from this solar site would reduce HU's purchases from TVA. Therefore, the financial benefit of this agreement is based on an estimation of TVA's future power supply costs.

Today, the energy received from this solar deployment is approximately 33% less expensive than TVA's wholesale energy. However, this energy is only available when the sun is shining, and the 1.5% escalator will erode the savings—unless TVA raises the wholesale rate, which is very likely over the next 30 years.

If TVA were to raise its base rate an average of half a percent a year and increase the fuel cost adjustment by half a percent, the project would provide nearly \$500,000 in savings to HU each year. If TVA rates only increased by one-tenth of a percent each year over the 30 years, then the project would provide less than \$200,000 in savings each year. Many variables would change this calculation, but the significant ones are the solar panels' energy output and TVA's future rates. The more energy produced, the less power HU purchases from TVA. The higher TVA's rates rise, the better value this agreement provides.

Aside from the financial savings, this project would be the largest "flexibility" project in the Tennessee Valley. It demonstrates Huntsville's interest in renewable energy and creating green power options for HU customers. The project also provides HU with 14,000 renewable energy credits (RECs). These credits can be sold to customers interested in investing in clean energy. We are currently talking with TVA about preparing a "green rate" for commercial customers interested in such an opportunity. The revenue received from the sale of these RECs would provide additional value to HU. Identifying the value of these RECs is premature, but we have interested customers.

While the calculation is adjusted annually, HU's allotment under the flexibility agreement is around 77MW (for solar generation). Therefore, this project will utilize about 40% of HU's flexibility allocation, and we will do so in partnership with one of our community's most significant industries. Additionally, the RECs enable us to consider providing other customers with green power opportunities. Furthermore, if HU does not participate, Toyota could install the panels behind their meter, and HU will lose revenue as TMMAL's energy is offset by solar generation.

I recommend approval of the power purchase agreement with Toyota Tsusho for a 30-year term at \$43.85 per MWhrs with a 1.5% annual price escalation.

POWER PURCHASE AGREEMENT

BETWEEN

Huntsville Utilities

And

TAI Huntsville Solar LLC

Dated:

POWER PURCHASE AGREEMENT

BETWEEN

HUNTSVILLE UTILITIES

And

TAI Huntsville Solar LLC

THIS AGREEMENT, is made and entered into as of the latest execution signature date, (“Effective Date”), by and between The City of Huntsville, a municipal corporation of the State of Alabama, d/b/a Huntsville Utilities, hereinafter called “Buyer” or “HU,” and TAI Huntsville Solar LLC, a limited liability company duly organized, created, and existing under the laws of the State of Delaware, hereinafter called “Seller,” collectively “the Parties,” and each individually a “Party.”

RECITALS

WHEREAS, HU is engaged in the distribution and supply of electric power and energy in the Huntsville, Alabama region;

WHEREAS, Seller is developing and will own and operate a solar photovoltaic electric generation facility known as Huntsville Solar, located in Madison County, Alabama (the “Project”) with a capacity as measured at the Interconnection Point of up to 30 MW AC, to be interconnected at the Delivery Point;

WHEREAS, Seller desires to sell to HU, and HU desires to purchase from Seller, the entire amount of Energy Output and Other Project Attributes from the Project, subject to the terms and conditions herein;

NOW, THEREFORE, in consideration of the promises and the representations, warranties, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I: DEFINITIONS

1.1 “Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” means this agreement together with all exhibits, attachments, applications, and other included references.

1.3 “Ancillary Services” means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of HU’s transmission system in accordance with Good Utility Practice.

1.4 “Annual Net Output Requirement” has the meaning set forth in Section 8.1 and Exhibit B.

1.5 “Applicable Law” means all Federal, state, local, or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, and requirements of all regulatory, judicial, and other Governmental Authorities that legally apply in the particular situation in question.

1.6 “Bankrupt” means with respect to any Person, such Person (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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (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, or (v) is generally unable to pay its debts as they fall due.

1.7 “Price” for each Delivery Period has the meaning set forth in Section 4.5 and Exhibit A.

1.8 “Business Day” means any day except a Saturday, Sunday, or holiday observed by HU. Such holidays, subject to change, currently include New Year’s Day, Martin Luther King, Jr. Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. CPT.

1.9 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under Applicable Law and market rules or other transactional requirements applicable in the region where the Project is located.

1.10 “Certificate of Completion” means the document submitted by Seller and approved by HU indicating that the installation meets all of HU’s requirements and establishing the Initial Delivery Date.

1.11 “Claiming Party” has the meaning set forth in Section 16.1.

1.12 “Commercially Reasonable” means, with respect to any action required to be made, attempted, or taken by HU or Seller under this Agreement, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such action, including the amount of notice of the need to take such action, the duration and type of action, the competitive environment in which such action occurs, and the risk to the Party required to take such action. With respect to price or cost, Commercially Reasonable means the price or cost obtained or reasonably expected to be obtainable given good faith efforts in a competitive business environment. The price or cost obtained need not necessarily be the lowest or highest (as the case may be) price or cost available at the time so long as such price or cost can be demonstrated to have been reasonably obtained through good faith efforts in a competitive business environment. Commercially Reasonable efforts shall not generally require the payment of fees not otherwise contemplated under this Agreement nor the making of any material financial or other concessions as a condition to accomplishing the result contemplated.

1.13 “Contract Price” has the meaning set forth in Section 4.5 and Exhibit A.

1.14 “Contract Output” (CO) means the maximum instantaneous AC power output of the Project as measured at the Delivery Point, net of any station service and transmission and distribution losses, as specified in Exhibit G-1.

1.15 “Costs” means, with respect to the Non-Defaulting Party: (a) brokerage fees, commissions, financing breakage fees, and other similar third-party transaction costs (including any related make-whole costs for early prepayment provisions payable to lenders, tax equity investors and other financing parties), and necessary expenses incurred by such Party in a Commercially Reasonable manner (i) as a result of the termination of this Agreement, (ii) in entering into new arrangements that replace this Agreement, or (iii), in the case of Seller’s default, HU acquiring the Excess Environmental Attributes and related RECs provided for in Section 4.2, plus (b) all expenses or liabilities incurred in a Commercially Reasonable manner by, or imposed upon or claimed against the Non-Defaulting Party, in connection with the termination of this Agreement pursuant to Section 9.2.

1.16 “CPT” means Central Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Central Time Zone.

1.17 “Curtailement” means any reduction in whole or in part of energy production at the Project to maintain transmission or distribution system reliability pursuant to the instruction or other directive made or issued by HU, TVA, or any Regional Transmission Organization, any other affected transmission service provider, or any other entity with authority to direct such a reduction of energy production.

1.18 “Defaulting Party” has the meaning set forth in Section 9.1.

1.19 “Deficient Energy” has the meaning set forth in Section 8.1.

1.20 “Delivery Period” means the period commencing on the Initial Delivery Date and ending twelve (12) months from the Initial Delivery Date, and each twelve-month period thereafter until the end of the Term (each twelve (12) month period, a “Full Contract Year”).

1.21 “Delivery Point” is the point of interconnection to the HU system, as set forth in Exhibit I and indicated in the diagram(s) included in Exhibit G-2. .

1.22 “Early Termination Date” has the meaning set forth in Section 9.2.

1.23 “Economic Curtailment” has the meaning set forth in Section 8.4.

1.24 “Effective Date” has the meaning set forth in the first paragraph of this Agreement.

1.25 “Electric System” means the network of electric transmission or distribution facilities, equipment, and other devices owned and/or controlled by the Tennessee Valley Authority (TVA) or HU to which the Project interconnects.

1.26 “Energy Output” means the amount of energy generated by the Solar Asset and delivered to the Delivery Point from and after the Test Commencement Date, as metered by the Metering Equipment, net of parasitic or auxiliary load, and shall not exceed the Contract Output over any applicable metering interval.

1.27 “Event of Default” has the meaning set forth in Section 9.1.

1.28 “Excess Environmental Attributes” means any and all credits, including renewable energy credits (or RECs), benefits, emissions reductions, environmental air quality credits, emission reduction credits, Renewable Energy Credits in excess of 50,000 Environmental Attributes per Full Contract Year, certificates, offsets, and allowances attributable to a renewable energy resource, or otherwise attributable to the generation, purchase, sale, or use of electric energy from a renewable energy resource during the Term, without regard to the name given to such Environmental Attributes, which Environmental Attributes result from the avoidance, reduction, displacement, or offset of the emission of any gas, chemical, or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or its successor, or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency (EPA), or any Governmental Authority with jurisdiction over a program involving identification or transferability of Environmental Attributes, and any Renewable Energy Credit reporting rights under Section 1605(b) of the Energy Policy Act of 1992, or any other present or future reporting and compliance rights under a state, federal, or supranational program, to such Environmental Attributes. Environmental Attributes do not include, (i) Federal or state production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Project; or (iii) any state, Federal, or private cash payments or grants relating in any way to the construction or ownership of the Project; or (iv) any adverse wildlife or environmental impacts.

1.29 “Excused Hours” (EH) has the meaning set forth in Section 8.2.

1.30 “Expected Annual Output” means 64,642 MWH, subject to annual degradation of 0.5%, assuming installed capacity of 30 MW.

1.31 “Expected Initial Delivery Date” has the meaning set forth in Exhibit G-1.

1.32 “Final Determination” has the meaning set forth in Article VII.

1.33 “Force Majeure Event” means any event or circumstance beyond the reasonable control of the affected Party and not resulting from the fault or negligence of the affected Party claiming the Force Majeure, which wholly or partially prevents the affected Party from performing any of its obligations under this Agreement, but only if and to the extent that: the affected Party could not have prevented, avoided, or removed such circumstance, despite the exercise of reasonable diligence in accordance with and consistent with Good Utility Practice. Force Majeure Event may include, without limitation: acts of God, strikes (national and other general strikes), industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, sabotage, works to rule, go-slows and other public agitation, invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, unusually severe and damaging weather, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority, quarantine, lock-down, and failure of any subcontractor or supplier of the affected Party to perform as a result of an event that would constitute Force Majeure hereunder. The Party unable to fulfill any obligation under this Agreement by reason of a Force Majeure Event shall use its reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing itself from carrying out its obligation. Notwithstanding anything herein to the contrary, (i) a lack of or reduction in the amount of sunshine, (ii) economic hardship, (iii) increased costs to construct or operate facilities (iv) any failure to secure or maintain permits, (v) breakdown of affected Party’s equipment or subcontractor’s equipment, other than breakdown caused by a Force Majeure event; or (vi) inability to obtain or maintain any expected tax benefits shall not be considered a Force Majeure Event.

1.34 “Forced Project Outage” means any reduction or cessation of energy generation by the Project involving the shutdown of, and physical unavailability of generation from, Project facilities caused by any condition at the Project (as opposed to a Curtailment), other than Project Maintenance or Force Majeure Event(s).

1.35 “Full Contract Year” has the meaning set forth in the definition of “Delivery Period.”

1.36 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), that directly results from the termination of this Agreement for the remaining term of this Agreement, determined in a Commercially Reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more non-Affiliate third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable

transactions, forward price curves based on economic analysis of the relevant markets, or settlement prices for comparable transactions at liquid trading hubs in the relevant markets, all of which should be calculated for the remaining term of this Agreement and include the value of Environmental Attributes attributable to the non-defaulting Party

1.37 “Good Utility Practice” means any of the practices, methods, and acts engaged in or adopted by a significant portion of the electric utility industry during the relevant time period, or practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to any particular set of optimum practices, methods, or acts to the exclusion of all others, but rather is intended to include a spectrum of acceptable practices, methods, or acts generally accepted in the electric utility industry.

1.38 “Governmental Authority” means any nation, government, state, or other political subdivision thereof, whether foreign or domestic, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation, or any entity owned or controlled by any of the foregoing. The term “Governmental Authority” shall not include HU when acting in a non-governmental capacity.

1.39 “Governmental Charges” has the meaning set forth in Section 14.2.

1.40 “Initial Delivery Date” means the first Business Day following approval by HU of the Certificate of Completion delivered to HU by the Seller; provided that such date shall be no earlier than ninety (90) days prior to the Expected Initial Delivery Date, unless otherwise agreed to in writing by the Parties.

1.41 “Initial Delivery Date Damages” means \$1,000 per day.

1.42 “Interconnection Agreement” means an agreement entered into between Seller and HU to provide for the interconnection of the Project to HU’s electric system.

1.43 “Investment Tax Credit” or “ITC” means the investment tax credit under Section 46 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to the cost of or investment in the Project (or any part or component thereof).

1.44 “kW” means kilowatt or kilowatts, alternating current.

1.45 “kWh” means kilowatt-hour or kilowatt-hours.

1.46 “Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs) resulting from the termination of this Agreement for the remaining term of this Agreement, determined in a Commercially Reasonable manner. Factors used in determining the loss of economic loss may include reference to

information either available to it internally or supplied by one or more non-Affiliate third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, or settlement prices for comparable transactions at liquid trading hubs in the relevant markets, all of which should be calculated for the remaining term of this Agreement and include the value of Environmental Attributes attributable to the non-defaulting Party. If Seller (or Seller's owners or Affiliates, if Seller is a pass-through entity for tax purposes) loses or is required to recapture any tax benefits with respect to the Project because of a breach by HU, Losses shall include, calculated on an after-tax basis, the amount of such lost or recaptured tax benefits.

1.47 "Metering Equipment" has the meaning set forth in Section 5.1.

1.48 "Month" means a calendar month commencing at 00:00 CPT on the first calendar day of such month and ending at 24:00 CPT on the last calendar day of such month.

1.49 "Monthly Cap" has the meaning set forth in Section 3.5.

1.50 "MW" means megawatt or megawatts, alternating current.

1.51 "MWh" means megawatt-hour or megawatt-hours.

1.52 "Non-Defaulting Party" has the meaning set forth in Section 9.2.

1.53 "Other Project Attributes" means, collectively, all applicable Excess Environmental Attributes, Capacity Attributes, and Ancillary Services.

1.54 "Parties" means both HU and Seller.

1.55 "Party" means either HU or Seller, as applicable.

1.56 "Permit" means any permit, exemption, approval, license, consent, certification, authorization, concession, order, easement, or other right that is required by any applicable Governmental Authority to develop, construct, finance, operate, or maintain the Project or interconnection facilities or to generate or sell the Project electric output.

1.57 "Person" means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of legal entity.

1.58 "Product" means, on and after the Initial Delivery Date, any and all Energy Output, Capacity Attributes, Ancillary Services, and Excess Environmental Attributes.

1.59 "Project" means the Solar Asset and all related equipment, structures, electrical lines, and other facilities installed at the Site on Seller's side of the point of interconnection under the Interconnection Agreement that is used for the production, control, delivery, or monitoring of electric energy described in Exhibit G-1.

1.60 “Project Maintenance” means Seller’s planned partial or complete reduction of the Project’s generating capability for routine maintenance purposes.

1.61 “Proper Invoice” means a numbered and dated invoice with a detailed accounting of the amounts of any and all Energy Output delivered, as verified and agreed to by HU, which states this HU Contract number or purchase order number, if applicable, and contains the Contract Price for the Energy Output from the Project (as applicable), a brief statement of payment terms, or any of the foregoing, consistent with this Contract, and other details and supporting documentation, as required by this Contract issued hereunder.

1.62 “Purchase Option” has the meaning set forth in Article VII.

1.63 “Regional Transmission Organization” means a large-scale electric transmission system operator that satisfies the definition in 18 C.F.R. § 35.34(b)(1).

1.64 “Reliability Coordinator” means, as defined by the North American Reliability Council, the entity that is the highest level of authority responsible for the reliable operation of the bulk electric system where the Project is located or where Energy Output is being transmitted or scheduled, has the wide area view of the bulk electric system, and has the operating tools, processes, and procedures, including the authority, to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations.

1.65 “Renewable Energy Credit” or “Renewable Energy Certificate” or “REC” means a fungible commodity that is created when one megawatt hour (MWh) of energy is created from a renewable energy resource.

1.66 “Sale Interest” has the meaning set forth in Section 7.1.

1.67 “Seller’s Conditions” has the meaning set forth in Article III.

1.68 “Settlement Amount” means the Losses or Gains, and Costs, expressed in U.S. Dollars, which a Party incurs as a result of an early termination of this Agreement as described in Article IX.

1.69 “Site” means the land on which the Project is located, as more specifically described in Exhibit G-2.

1.70 “Solar Asset” means the photovoltaic solar generating facility to be located at the Site with a total installed capacity, as further described in Exhibit G-1.

1.71 “Substation Facility” means the 46/12/7 kV AC substation constructed and owned by the City of Huntsville, Alabama, acting by and through Huntsville Utilities at the Delivery Point for receipt of Energy Output from the Project.

1.72 “Term” has the meaning set forth in Article II.

1.73 “Termination Payment” has the meaning set forth in Section 9.3.

1.74 “Test Commencement Date” means the date prior to the Initial Delivery Date upon which the Project has been interconnected to HU’s electric system and is permitted to test the Project.

1.75 “Test Period” means that period, commencing on the Test Commencement Date and ending on Initial Delivery Date; provided, however, that the Test Period may not commence more than ninety (90) days prior to the Expected Initial Delivery Date.

ARTICLE II: TERM

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of this Agreement, shall remain in full force and effect until 24:00 CPT on the thirtieth (30th) anniversary of the Initial Delivery Date, unless otherwise extended by an amendment to this Agreement consistent with Section 17.16.

ARTICLE III: PROJECT MILESTONES, START OF CONSTRUCTION, NOTICE TO PROCEED, AND INITIAL DELIVERY DATE

Section 3.1 Project Milestones and Start of Construction. The Project Development Milestone Schedule, attached to this Agreement as Exhibit H, sets forth a detailed development plan for the Project, outlining each significant activity in the Project development process and providing a projected completion date for each step in the Project schedule. Seller shall provide HU written monthly updates of progress made toward completion of the milestones set forth in Exhibit H.

Section 3.2 RESERVED

Section 3.3 Acceptance of Completion. Upon full satisfaction of the conditions set forth below ("Buyer's Conditions"), Seller shall deliver to HU a Certificate of Completion that incorporates all necessary documentation and materials that demonstrate compliance with each of Buyer's Conditions. Buyer's Conditions are:

- (i) Solar array has met all Huntsville Utilities Interconnection, Metering, and Parallel Operations Specifications and all terms of the Interconnection Agreement and is capable of delivering energy to the grid in the form of stable 60 hertz AC.
- (ii) Seller has provided HU with a copy of written notice from EPC Contractor that system is capable of operating at not less than 90% of thirty (30) MWac.
- (iii) Commissioning of equipment has been completed in accordance with the manufacturer's specification.
- (iv) Seller has successfully completed all the testing required by prudent utility practices or any requirement of law to operate the solar array.
- (v) All applicable permits, inspections, and government approvals required for the operation of the solar array have been obtained.
- (vi) Seller has obtained all property rights.
- (vii) HU has conducted an onsite review and witnessed any required commissioning test or has waived such review or witness of test in writing.

HU shall have ten (10) days to approve and return the Certificate of Completion to Seller or to notify Seller in writing of any reason why approval is being withheld, provided that if HU fails to provide a written response to Seller within the ten (10) day period, the Certificate of Completion shall be deemed approved by HU.

Section 3.4. Substation facilities. HU shall construct the Substation Facility at the point of interconnection between the Project and the HU Electric system. HU will lease, acquire, or otherwise obtain permission to use the real property interests for the construction and placement of the Substation Facility from the City of Huntsville, Alabama.

Section 3.5 Failure to Meet the Expected Initial Delivery Date. If Seller fails to achieve the Initial Delivery Date by the Expected Initial Delivery Date, as may be extended as

set forth in the next sentence, then Seller shall pay HU, as liquidated damages, Initial Delivery Date Damages for each day thereafter until Seller achieves full commercial operation of the Project. However, if Seller's failure to achieve such Initial Delivery Date is caused primarily by HU's failure (or TVA's failure) to complete construction of interconnection facilities, by failure to complete the Substation Facility at least 60 days prior to the Expected Initial Delivery Date, or by a Force Majeure Event, then Seller shall be entitled to a corresponding day-for-day extension of the Expected Initial Delivery Date, before any required payment of Initial Delivery Date Damages is due from Seller. If Seller fails to achieve the Initial Delivery Date by twelve (12) Months after the Expected Initial Delivery Date, as may be extended by interconnection delay, Substation Facility delay, or Force Majeure Event, then HU may, in its sole discretion, immediately terminate this Agreement with no further recourse, except for any amounts accrued and owed by Seller to HU as of the date of termination. In the event that the Substation Facility is not completed at least 30 days prior to the Expected Initial Delivery Date, HU shall pay Seller, as liquidated damages, \$5,000 per day until the Substation Facility is completed, provided that Seller was otherwise capable of commencing testing of the Project but for the Substation Facility delay. HU shall not be required to pay more than \$50,000 per month ("Monthly Cap") in liquidated damages, provided that HU shall pay Seller the remaining outstanding amount of the accrued liquidated damages based on \$5,000 per day, capped at \$50,000 per month, after the Substation Facility is completed until the liquidated damages are paid in full. Notwithstanding anything herein to the contrary, delays due solely to a Force Majeure Event will toll the payment of liquidated damages by the Buyer with regard to Substation Facility delays, provided, at the time of the occurrence of such Force Majeure Event, the Buyer shall have first provided written notice to the Seller providing: (i) a description of the Force Majeure Event, (ii) an explanation of how the Buyer anticipates such event will affect the Buyer's ability to construct and develop the Substation Facility, (iii) the actions the Buyer plans to undertake in order to address and mitigate the conditions caused by the Force Majeure Event, and (iv) an estimate of how long the Buyer anticipates the Force Majeure Event will delay its efforts to construct and develop the Infrastructure Improvements.

ARTICLE IV: ENERGY OUTPUT, EXCESS ENVIRONMENTAL ATTRIBUTES, AND PRICING

Section 4.1 Energy Output. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall sell and deliver to HU, and HU shall purchase and receive from Seller, any and all right, title, and interest in and to the Energy Output at the Delivery Point. Pursuant to Section 8.1, Seller shall use commercially reasonable efforts to generate and deliver the Annual Net Output Requirement during each Delivery Period. Energy Output shall be deemed made available to HU for billing and payment purposes under Article X in the Month in which Energy Output is made available at the Delivery Point or could have been made available but for Economic Curtailment. Commencing on the Initial Delivery Date, all Energy Output delivered to HU shall be compensated at the Contract Price up to 115% of the Expected Annual Output in a Delivery Period, and any Energy Output in excess of 115% of the Expected Annual Output in a Delivery Period shall be compensated at 90% of the Contract Price. Commencing on the Test Commencement Date until the Initial Delivery Date, Seller shall sell and deliver to HU, and HU shall purchase and receive from Seller, any and all right, title, and interest in and to the Energy

Output that is made available at the Delivery Point at the Contract Price, provided HU is not obligated to purchase more than the Contract Output at any point absent the express written consent of HU.

Section 4.2 Excess Environmental Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Test Commencement Date and continuing through the end of the Term, Seller shall have any and all right, title, and interest in and to Environmental Attributes and associated RECs, as applicable, equal to the first 50,000 Environmental Attributes and associated RECs generated in a Full Contract Year. Seller shall execute all necessary documentation, bear all costs, and take all other necessary action to register, receive, authenticate, attest, and transfer to HU any and all excess RECs and other Excess Environmental Attributes generated as promptly as practicable; provided that issuance of such excess RECs shall be in accordance with a tracking or certification system selected by HU. In the event HU requires "Green-e" certification associated with the Project, Seller will cooperate in all necessary actions to achieve such certification. The Excess RECs and other Excess Environmental Attributes shall be for use and disposition as determined only by HU or any entity to whom HU may grant permission to market, transfer, or otherwise dispose of the Excess RECs or other Excess Environmental Attributes; and neither the Excess Environmental Attributes nor the associated energy shall be claimed or otherwise referenced by Seller with respect to any RES, renewable energy goal, Federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate, standard, or commitment. Seller agrees to be at all times fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, 16 Code of Federal Regulations, Part 260, in any communication concerning the Project, energy from the Project, or the RECs.

Section 4.3 Capacity Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall deliver to HU, and HU shall receive from Seller, any and all right, title, and interest in and to all Capacity Attributes available with respect to the Project.

Section 4.4 Ancillary Services. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall transfer to HU, and HU shall receive from Seller, any and all right, title, and interest in and to all Ancillary Services available with respect to the Project.

Section 4.5 Contract Price for the Energy Output.

- (i) The Contract Price for the first Full Contract Year of the Delivery Period is set forth in Exhibit A, and escalates annually at the start of the following Full Contract Year by 1.5% of the Price for the prior Full Contract Year just-ended.
- (ii) Energy Output delivered to Buyer during the Test Period shall equal 90% of the Contract Price for the first Full Contract Year.

ARTICLE V: METERING AND ATTESTATION

Section 5.1 HU shall, prior to the Test Period, at Seller's expense, provide and install such meters and related facilities ("Metering Equipment") as in HU's commercially reasonable judgment are needed to measure the electrical output from the Project. The Metering Equipment shall conform to applicable industry standards and, during the term of this Agreement, shall be for HU's and TVA's exclusive use and control unless otherwise agreed by the Parties. The Metering Equipment shall be used to determine the amount of energy delivered to and purchased by HU at the Delivery Point under this Agreement.

Section 5.2 Upon installation of the Metering Equipment HU shall, at Seller's expense, test, calibrate, operate, maintain and, if necessary, replace all or part of the Metering Equipment in order to maintain a high standard of accuracy. If tests show that the meter(s) are accurate within an acceptable threshold, fast or slow, as set forth under the separate arrangements, no adjustment shall be made to the payments submitted by HU to Seller pursuant to Section 10.2. In case any tests show the meter(s) to exceed the acceptable threshold, fast or slow, adjustments shall be made to the payments submitted by HU to Seller pursuant to Section 10.2 for any known or agreed upon period of inaccuracy; in the absence of any such knowledge or agreement, the adjustment shall be limited to one-half the period of time from the date of the last previous test of the meter(s) and the most recent test, but in no event shall the period covered by the correction exceed one hundred eighty (180) days.

Section 5.3 Upon HU's request, Seller shall provide, at no cost to HU, routine and non-routine attestations and other verifications of the delivery of any or all of the Energy Output and Other Project Attributes from the Project to demonstrate performance under this Agreement.

ARTICLE VI: MAINTENANCE AND OUTAGES

Section 6.1 Scheduled Outages. Seller shall provide, or cause to be provided, to HU a scheduled outage schedule for Project Maintenance no later than thirty (30) calendar days before the Initial Delivery Date for the period from such date through the end of the first Delivery Period. Seller shall submit to HU a scheduled outage schedule for Project Maintenance no later than each subsequent December 1st, applicable to the following calendar year. To the extent

practicable, scheduled outages will be scheduled during the Months of October, November, March, and April, or during non-daylight hours.

Section 6.2 Forced Project Outages. As soon as practicable after commencement of a Forced Project Outage, Seller shall provide HU with notice and expected duration of such Forced Project Outage. Each such notice shall set forth, to the extent of Seller's knowledge and judgment, a detailed explanation for the cause of the Forced Project Outage, identification of the equipment impacted, the expected duration of the Forced Project Outage, and Seller's proposed course of action to remedy such event and prevent similar future events.

Section 6.3 RESERVED.

Section 6.4 Project Description and Characteristics. Exhibit G-1 provides a detailed description of the Project. Exhibit G-2 provides additional information with respect to major equipment and components expected to make up the Project. Seller shall provide advance written notice to HU at the earliest practicable time of any proposed changes to Exhibit G-1. HU may accept or reject such proposed changes, in its sole discretion, by providing written notification to Seller. Seller shall also periodically report to HU any changes to Exhibit G-2.

ARTICLE VII: PURCHASE OPTIONS

Section 7.1 Right of First Refusal. If, during the Term of this Agreement, Seller wishes to pursue a sale of its interest, or any portion thereof, in the Project to an entity other than a financing party or any Affiliate of Toyota Motor North America, Inc., Seller in good faith shall first provide to HU a written option to purchase (the "Purchase Option") such interest in the Project (the "Sale Interest") at a price specified by Seller (the "Option Price"), which Purchase Option shall remain open to HU to exercise for a period of forty-five (45) days following receipt of the Purchase Option (the "Option Period"). If HU does not exercise the Purchase Option prior to expiration of the Option Period, then Seller may pursue the sale of the Sale Interest with any third party at a sale price no less than the Option Price. If Seller wishes to pursue any subsequent or alternative sale of its interest in the Project, where the Sale Interest is different from that offered to HU in a prior Purchase Option, then Seller shall first provide a new Purchase Option to HU, subject to the terms of this Article VII, reflecting the new Sale Interest.

ARTICLE VIII: ANNUAL NET OUTPUT REQUIREMENT; DISCONNECTION OR CURTAILMENT

Section 8.1 Annual Net Output Requirement. For each Full Contract Year during the Delivery Period, Seller shall deliver to Buyer a minimum of no less than seventy-five percent (75%) of the Expected Annual Output (the "Annual Net Output Requirement"). The Annual Net Output Requirement shall be reduced by the amount of reduced MWH during Excused Hours during the Full Contract Year. Buyer's sole remedy for Seller's failure to deliver the Annual Net

Output Requirement in a Full Contract Year shall be to receive a credit from Seller against the invoice for each month during the immediately following Full Contract Year for the shortfall in MWH. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the positive difference between the Annual Net Output Requirement and the actual Energy Output (expressed in MWh) delivered by Seller to Buyer during the applicable period times (ii) 50% of the Contract Price for Energy delivered to Buyer in the previous Full Contract Year, and (b) then dividing the amount calculated by (a) above by twelve (12). In the event Seller fails to deliver at least sixty-five percent (65%) of the Annual Net Output Requirement, reduced by the amount of Excused Hours, over two consecutive Full Contract Years, it shall be subject to a one year cure period and will be deemed cured if the Annual Net Output exceeds 75% in the following Full Contract Year. In the event Seller fails to deliver at least 75% in the following Full Contract Year, it shall be an Event of Default under Section 9.1(c). An example of the annual net output and calculation of crediting mechanism is set forth in Exhibit C.

Section 8.2 Excused Hours. In determining whether Seller has met the Annual Net Output Requirement, there shall be deducted from the total number of MWH of reduced delivery in hours in said Delivery Period ("Excused Hours") during which Seller was unable to deliver and/or HU was unable to receive and utilize energy supplied from the Project due solely to one or more of the following:

- (a) a disconnection or Curtailment pursuant to Section 8.3;
- (b) an event of Force Majeure;
- (c) a suspension pursuant to Section 9.6;
- (d) an outage on the TVA transmission system or HU's System; or
- (e) Planned Maintenance not to exceed 100 hours per Full Contract Year.

Seller shall estimate the expected amount of such undelivered energy that would have been generated but for Excused Hours in a Commercially Reasonable manner, consistent with Good Utility Practice. The calculation and reporting of undelivered energy shall be as follows:

1. Report of Excused Hours and Economic Curtailment hours. Commencing with the month during which the Initial Delivery Date is achieved, and for each calendar month thereafter during the Term, Seller shall provide to HU a curtailment report consisting of; dates, start and ending times, duration of curtailment and reason(s) for the Excused Hours and/or Economic Curtailment hours. Seller shall deliver such curtailment report to HU by the tenth 10th Business Day following the close of the calendar month in question. Seller shall deliver the Curtailment Report electronically to the address provided by HU.

2. Calculation of undelivered Energy Output. Seller shall maintain a log of Excused Hours and Economic Curtailment hours that records the date, start time, and end time of all Excused Hours

and Economic Curtailment hours. The start time for each Excused Hour and Economic Curtailment hour shall be logged as the time (i) the Project receives the curtailment signal or notice from the HU System Operator or (ii) the Excused Hour commences. The end time shall be logged as the time (a) the Project receives the curtailment control signal or notice from the HU System Operator to end or modify the curtailment or the Excused Hour ends.

Calculation Guidelines. The method of calculating the calculated Excused Hour or Economic Curtailment hour shall follow the guidelines below:

- (i) calculated output shall be calculated as a function of the solar irradiance measured by the Project's meteorological instrumentation over the course of the Excused Hour or Economic Curtailment hour,
- (ii) The calculation shall utilize an industry standard irradiation to MW type software model such as Helioscope.
- (iii) The calculation shall take into account actual operating conditions during such period (for example, partial Project outages and or deratings).
- (iv) The calculation shall be adjusted for any Energy Output consumed by the Project and electric energy losses from the solar panels to the Delivery Point.

Section 8.3 Disconnection of Project or Curtailment of Deliveries. In order to remain consistent with Good Utility Practice and compliant with Applicable Law, HU may require Seller: (1) to effect a Curtailment of deliveries from the Project or (2) to temporarily disconnect the Project from HU's System, as the case may be, as necessary or appropriate to eliminate adverse impacts attributable to operation of the Project, including the following circumstances, whether such circumstances exist on the TVA transmission system, HU's System, or another system:

- (i) if a condition exists that presents an imminent physical threat to persons or property and disconnection or Curtailment appears necessary to protect such persons or property; or
- (ii) to overcome transmission or distribution system reliability problems; or
- (iii) if such disconnection or Curtailment is necessary to construct, install, maintain, repair, replace, remove, investigate, inspect, or test any affected part of the TVA transmission system or HU's System; or
- (iv) as permitted under any other express provisions of this Agreement that provide for any such disconnection or Curtailment; or
- (v) as necessary as a result of a Force Majeure event.

Section 8.4 Economic Curtailment. Notwithstanding the foregoing, HU shall have the right to curtail Project energy based on HU power system cost in order to effectively manage the economics of the overall HU power system, including reduction of load of one or more of HU's customers ("Economic Curtailment. ")¹ Upon HU's request at any time during the Term, Seller

shall install an Automatic Generation Control (“AGC”) system for the Project, at HU’s expense, in accordance with HU’s specifications and direction. Any available Project energy that is subject to Economic Curtailment, including curtailment due to AGC, shall be considered delivered energy from Seller for purposes of the Annual Net Output Requirement. For any Month in which HU has directed Economic Curtailment, HU shall pay Seller, in addition to amounts otherwise due, an amount equal to the Contract Price multiplied by the estimated amount of such curtailed energy. The calculation of such estimated amount shall be determined in the same manner as set forth in Section 8.2.

ARTICLE IX: DEFAULT; EARLY TERMINATION; REMEDIES

Section 9.1 Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”) or Seller, as specified, the occurrence of any of the following:

- (a) the failure by a Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within twenty (20) Business Days after written notice from the other Party;
- (b) any representation or warranty made by such Party in Article XV is false or misleading in any material respect at any time during the term of this Agreement, and such non-performance is not cured within thirty (30) days after the Non-defaulting Party gives the Defaulting Party notice of such non-performance;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent addressed as a separate Event of Default under another subsection of this Section 9.1, and except for the failure of Seller or HU to comply with an obligation under this Agreement for which a specific remedy has been agreed upon) if such failure is not remedied within thirty (30) calendar days after written notice from the other Party; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party may have up to an additional sixty (60) calendar days to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy and provides to the other Party a written action plan therefor;
- (d) the filing of an involuntary petition in bankruptcy or any involuntary proceeding under any other insolvency law against a Party as debtor and the failure to have the same dismissed within one hundred and twenty (120) calendar days from the date of filing;
- (e) the filing by a Party of a voluntary petition in bankruptcy or for insolvency or reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or a Party voluntarily taking advantage of any such law or act by answer or otherwise;

- (f) the failure of Seller to comply with the requirements stated in Exhibit D – Credit Annex and all of its attachments (including, without limitation, Seller’s delivery to HU of Performance Assurance) consistent with Article XI and all related provisions of this Agreement;
- (g) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger, or transfer, the resulting surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (h) the Project at any time after the Initial Delivery Date fails to generate and deliver electric power and energy exclusively from solar energy; or
- (i) Seller makes sales or transfers of energy or Excess Environmental Attributes to any third party, or makes claims that trigger retirement of any excess REC or other Excess Environmental Attribute associated with the Project; or
- (j) Seller’s failure to deliver any Other Project Attributes associated with the Project.

Section 9.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (“Non-Defaulting Party”) may (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) calendar days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, or (iii) exercise any combination or all of the remedies provided in Section 9.6. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date.

Section 9.3 Net Out of Settlement Amount. The Non-Defaulting Party shall aggregate the Settlement Amount into a single amount by: netting out (a) the Settlement Amount that is due to the Defaulting Party (if any), plus any or all other amounts due to the Defaulting Party under this Agreement against (b) the Settlement Amount that is due to the Non-Defaulting Party (if any), plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”), provided that if HU terminates this Agreement due to Seller’s default prior to the Initial Delivery Date, and HU is unable to utilize its Substation Facility for other purposes, Seller’s Termination Payment shall be equal to the cost of the unutilized Substation Facility, not to exceed \$3 million. If the Termination Payment is in favor of the Non-Defaulting Party, Defaulting Party shall pay such Termination Payment to the Non-Defaulting Party. No Termination Payment will ever be due or payable from the Non-Defaulting Party to the Defaulting Party, even if the netting calculations described herein otherwise would result in a payment due to the Defaulting Party.

Section 9.4 Notice of Payment of Termination Payment. As soon as practicable after a declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment (if any). The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. If the Termination Payment is in favor of the Non-Defaulting Party, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after such notice is effective.

Section 9.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days after receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for and extent of such dispute.

Section 9.6 Remedies for an Event of Default.

- (a) Subject to Article XIII, Seller shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to HU of, HU's Event of Default:
 - (i) suspend performance of its obligations under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 9.2; or
 - (ii) receive a Termination Payment from HU
- (b) Subject to Article XIII, HU shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to Seller of, Seller's Event of Default:
 - (i) suspend performance of its obligations under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 9.2;
 - (ii) make a written request and draw upon the Performance Assurance that Seller provided to satisfy any and all payments due and amounts otherwise owing (including any liquidated damages) under this Agreement; or
 - (iii) receive the Termination Payment from Seller.

The remedies set forth in this Section 9.6 and the receipt of the Termination Payment shall constitute the Non-Defaulting Party's sole and exclusive remedies for an Event of Default.

ARTICLE X: BILLING AND PAYMENT

Section 10.1 Based on recorded meter data provided by the Metering Equipment installed per Section 5.1 ("Meter Readings"), and after receipt of a Proper Invoice, HU shall pay the Contract Price for the Energy Output from the Project (as applicable) to Seller each Month of the Term.

Section 10.2 Seller must provide a Proper Invoice to HU based on said meter readings and in accordance with this Agreement, within (10) Business Days following the Month of actual energy delivery. Unless Seller requests early payment as specified below, upon receipt of a Proper Invoice HU shall promptly pay Seller within thirty (30) calendar days or if the thirtieth (30th) calendar day is not a Business Day, then on the next Business Day. Each payment to Seller shall be made electronically through the Automated Clearing House (ACH) network to Seller's account as designated by Seller.

Section 10.3 Seller may request early payment by stating such request both in a Proper Invoice and in an accompanying transmittal message (e.g., email). Upon receipt of such request for early payment, HU shall apply a three (3) percent early payment discount to the total monthly invoice payment and shall promptly pay Seller within ten (10) calendar days or if the tenth (10th) calendar day is not a Business Day, then on the next Business Day.

Section 10.4 Seller shall submit all invoices, including supporting documentation, electronically to HU at Chris.Key@hsvutil.org and APInfo@hsvutil.org.

Section 10.5 Amounts owed by each Party to the other Party during a Monthly billing period under this Article X shall be offset against each other so that only one Party shall pay a net amount to the other Party. Any liquidated damages owed by Seller to HU pursuant to Article VIII and Exhibit C ordinarily will be applied as a credit toward amounts owed Seller by HU under the monthly amount calculated under Section 10.2.

ARTICLE XI: PERFORMANCE ASSURANCE AND ASSIGNMENT

Section 11.1 Seller shall provide and maintain the Performance Assurance in compliance with Exhibit D for the duration of the Term of this Agreement. Buyer has no obligation to provide Performance Assurance as long as it maintains an Investment Grade rating. In the event Buyer's credit rating falls below Investment Grade, Exhibit D will apply to Buyer.

Section 11.2 Except as otherwise expressly set forth in this Section, neither Party will assign this Agreement, nor any of its rights or obligations hereunder (excluding any collateral assignment of its rights or interest in connection with any financing related to the construction, operation or maintenance of the Project) without the prior, notification of the other Party. For purposes of this section, a direct or indirect change of control of a Party constitutes an assignment unless such change of control is a result of the exercise of remedies by secured lenders due to a default of Seller under financing documents. Without such notification, Seller may not assign, transfer or pledge its interest in the revenues and payments to be made under this

Agreement. In the event Seller's rights, interests, or obligations under this Agreement are assigned or assumed as a matter of law to an entity with which Seller is merged or consolidated ("Successor Seller"), any such assignment or assumption shall be contingent upon Seller and Successor Seller furnishing HU with adequate assurances that the Successor Seller is financially capable of performing Seller's obligations under this Agreement. No assignment, transfer, or pledge of Seller's or a Successor Seller's interests in the Agreement shall release the assignor, pledger, or transferor from any of its obligations under this Agreement to accrue prior to such assignment, transfer, or pledge. Except as stated above, either Party's purported assignment of this Agreement, in whole or in part, without the prior, written approval of the other Party is null and void. Buyer agrees to execute a consent to collateral assignment substantially in the form contained in Exhibit K, as may be reasonably modified in consultation with Seller's lenders. Buyer also agrees to execute an estoppel certificate in connection with Seller's tax equity financing.

Section 11.2 Buyer will not assign the PPA without Seller's consent unless Buyer's assignee has an Investment Grade rating and has the legal and technical capacity to use or resell the Energy Output.

ARTICLE XII

[RESERVED]

ARTICLE XIII: LIMITATIONS

Section 13.1 Limitations of Liability.

UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT OR CONTRACT, UNDER ANY PROVISION OF THIS AGREEMENT.

THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION ARE IMPOSED WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE.

Section 13.2 Liquidated Damages.

WHERE THIS AGREEMENT SPECIFIES THAT SELLER OR HU WILL BE LIABLE, DUE TO SELLER OR HU FAILURE(S) OR ACTION(S), TO PAY HU MONETARY DAMAGES IN CONNECTION WITH SUCH FAILURE(S) OR ACTION(S), THE PARTIES AGREE THAT THESE ARE LIQUIDATED DAMAGES, AND AS SUCH, THESE DAMAGES ARE: (A) REASONABLE APPROXIMATIONS OF AND STATE ADEQUATE

REMEDIES FOR THE SUBJECT HARM OR LOSSES, (B) IN LIEU OF ACTUAL DAMAGES, WHICH WOULD BE DIFFICULT OR IMPOSSIBLE TO QUANTIFY, AND (C) NEITHER PENAL NOR PUNITIVE.

ARTICLE XIV: GOVERNMENTAL CHARGES

Section 14.1 Cooperation. Each Party shall use Commercially Reasonable efforts to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

Section 14.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. HU shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise, or income taxes that are related to the sale of the Product and are, therefore, the responsibility of Seller). In the event Seller is required by Applicable Law to remit or pay Governmental Charges that are HU's responsibility hereunder, HU shall promptly reimburse Seller for such Governmental Charges. If HU is required by Applicable Law to remit or pay Governmental Charges that are Seller's responsibility hereunder, HU may offset the amount of any such Governmental Charges against sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Law. Each Party shall cooperate with the other Party in order to qualify for or take advantage of any available reduction in or exemption from such Governmental Charges and to otherwise minimize the amount of such Governmental Charges that must be paid under Applicable Law.

ARTICLE XV: REPRESENTATIONS AND WARRANTIES

Section 15.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except those authorizations which Seller reasonably expects to receive in the ordinary course, e.g., those required to be obtained from or with the cooperation of HU;
- (iii) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Applicable Law;

- (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it that would result in it being or becoming Bankrupt;
- (vi) there is no pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vii) nothing which would constitute an Event of Default with respect to it 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;
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement;
- (ix) the parties intend for this Agreement to be a “forward contract” as defined in Section 11 U.S.C. § 101(25);
- (x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;
- (xi) with respect to this Agreement involving the purchase or sale of a Product, it is a producer, processor, commercial user, or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such; and
- (xii) it is an “eligible contract participant” within the meaning of the United States Commodity Exchange Act.

EXCEPT AS SET FORTH EXPLICITLY IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

ARTICLE XVI: FORCE MAJEURE

Section 16.1 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure Event from performing, in whole or in part, its obligations under this Agreement (other than the obligation to pay money unless the cause of the inability to pay is an event that would otherwise constitute a Force Majeure Event) or from complying with, in whole or in part, conditions under this Agreement, such Party (the "Claiming Party") shall give notice and details of the Force Majeure Event to the other Party as soon as practicable. In addition, any completion milestones or deadlines or time periods by which performance is due will be extended for a period of time equal to the time period during which such Force Majeure Event actually prevents the Claiming Party's performance. The Claiming Party shall use Commercially Reasonable efforts to remedy the Force Majeure Event and mitigate any adverse effects on the performance of its obligations under this Agreement. The Claiming Party shall promptly notify the non-Claiming Party when it is able to resume performance of its obligations and compliance with such conditions under this Agreement, if it is able to do so. Until the non-Claiming Party is so notified, it shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by a Force Majeure Event. No Party will be relieved or excused by operation of this Article XVI of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event. If the Force Majeure Event reduces the amount of generation but does not prevent entirely Seller from generating and delivering available Energy Output and Other Project Attributes, then Seller shall generate and deliver available Energy Output and Other Project Attributes. If deliveries of Energy Output or Other Project Attributes are prevented in whole or in part by a Force Majeure Event, the deliveries in question shall not be made up and the Term shall not be extended to permit any makeup or offset of the lost deliveries.

ARTICLE XVII: MISCELLANEOUS

Section 17.1 Title. Delivery of any and all Energy Output being purchased by HU shall be deemed completed at the Delivery Point, and title to such Energy Output shall pass to HU upon delivery thereto.

Section 17.2 Waiver. The non-exercise of, or delay in exercising, any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

Section 17.3 Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of Alabama and the Federal laws of the United States of America.

Section 17.4 Exhibits Made Part of this Agreement. The Exhibits identified in this section and attached to this Agreement are made a part of this Agreement. The various prices are specified in the attached Exhibit A. The manner of calculating the Annual Net Output

Requirement is attached as Exhibit B. The manner of calculating liquidated damages payable by Seller is attached as Exhibit C. A Credit Annex is attached as Exhibit D. Insurance requirements for Seller are attached as Exhibit E. A description and characteristics of the Project is attached as Exhibits G-1 & G-2. The Project development milestone schedule is attached as Exhibit H. A standard form of consent to collateral assignment is attached as Exhibit K.

Section 17.5 Approvals. Each Party hereto shall use Commercially Reasonable efforts and shall cooperate with the other to obtain any Permit. HU, however, shall not be obligated to obtain any Permit or have financial responsibility for obtaining any Permit.

Section 17.6 Severability. In the event that any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such term, covenant, or condition shall be held invalid by any court or administrative body having jurisdiction, it is the intention of the Parties that in lieu of each such term, covenant, or condition that is held invalid, the Parties shall negotiate a valid term, covenant, or condition as similar in effect as possible to such invalid term, covenant, or condition. The Agreement shall not otherwise be affected thereby and shall remain in full force and effect.

Section 17.7 Integration. The terms and provisions contained in this Agreement between HU and Seller constitute the entire agreement between HU and Seller, and supersede all previous communications and representations, either oral or written, between HU and Seller with respect to the subject matter of this Agreement.

Section 17.8 Notices and Payments.

- (a) Notices and Invoices. Except as otherwise expressly provided under this Agreement, any notice or invoice provided for in this Agreement must be in writing and shall be effective on the day on which it is actually received (provided that such day is a Business Day, otherwise it shall be deemed to be received on the first Business Day immediately following such day), in person, by U.S. Mail, by other nationally recognized delivery service, or by e-mail or facsimile transmission at the addresses provided set forth below:

If to HU:

Huntsville Utilities
PO Box 2048
Huntsville, AL 35804
Attention: Chris Key
256-535-1474
256-535-1200

If to Seller:

TAI Huntsville Solar LLC
2995 Wall Triana Highway
Suite B2and3
Huntsville, Alabama 35801
Attention: John Maraia
Phone: 212 355 3225
Fax: 212 355 3499

- (b) Payments. All payments required to be made to HU under this Agreement shall be made by Automated Clearing House (ACH) to the following account (or to other account as may subsequently be designated by HU), with the amounts deemed received as of the date the electronic fund transfer to the recipient's account is deemed effective:

TBD

All payments required to be made to Seller under this Agreement shall be made by wire to:

TBD

Section 17.9 Audit.

- (a) The Parties shall maintain accurate records and books of account. Said books and records shall present fairly all costs and expenses utilized in computing any charges or payments to the other Party under this Agreement.
- (b) Each Party shall have the right at its own expense, upon two Business Days' advance notice and during normal business hours, to have its own personnel or its independent auditors inspect the books and records of the other Party hereto pertaining solely to the performance of this Agreement at the offices of the other Party, to the extent necessary to verify the amounts of energy delivered, the amounts owed to Seller by HU, and any amount owed to HU by Seller. The Party conducting the inspection shall use its best efforts to minimize any disruptions of the other Party's operations that might result from any such inspection. Nothing in this Section 17.9(b) shall diminish the rights of HU to conduct any audit or inspection related to the Agreement.
- (c) Upon at least ten (10) Business Days' prior written notice from HU, and no more than once per Delivery Period, Seller shall make the Project, including records relating to its operations, maintenance, and warranty repairs, available to HU for inspection during normal business hours.

Section 17.10 Dispute Resolution. Unless otherwise provided in this Agreement, the Parties agree to use their best efforts to resolve disputes related to this Agreement informally at

the lowest possible levels of decision making. Disputes not resolved at the working level will be referred to higher levels of management of both Seller and HU for consideration, as necessary, and resolution, if possible. Any legal or equitable action related to this Agreement shall be brought in the United States District Court for Alabama and THE PARTIES HEREBY WAIVE (a) ANY OBJECTION TO THAT COURT'S JURISDICTION OVER THEM, OR THAT VENUE IS PROPER IN SUCH COURT, and (b) ANY RIGHT TO A JURY TRIAL.

Section 17.11 Indemnity and Insurance.

- (a) Seller shall indemnify, defend, save, and hold harmless HU and its directors, officers, employees, contractors, and agents from any and all claims for injury to persons or damage to property or the environment, including any adverse wildlife or environmental impacts, to the extent caused by Seller's negligent, reckless, or intentional acts or omissions in conducting activities within the scope of this Agreement. Seller is solely responsible for the risk of loss of, or damage to, the Project, except to the extent that the loss or damage results from the grossly negligent, reckless or intentional acts or omissions of HU and its directors, officers, employees, contractors, or agents.
- (b) Seller shall maintain or cause to be maintained the insurance required by Exhibit E. Failure of Seller to do so shall be deemed a failure to perform a material covenant or obligation set forth in Section 9.1(c). Seller shall provide insurance as outlined in Interconnection Agreement. Insurance shall remain current and documentation shall remain on file with Buyer for the entire term of contract. If Seller lapses coverage for any reason, Buyer has the right to obtain similar coverage. Any costs related to Buyer obtaining insurance coverage will be deducted from any monthly payments due to Seller.

Section 17.12 Interpretation. Unless otherwise expressly stated, references in this Agreement to "Sections" are to Sections of this Agreement, references to "Articles" are to Articles of this Agreement, and references to "Exhibits" are to the Exhibits attached to this Agreement. All references to Sections in the Exhibits to this Agreement are to the Sections in the Exhibits in which they appear unless otherwise noted. All titles, headings, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement. Words defined in the singular have the corresponding meaning in the plural and vice versa. Use of "including" means including without limitation. References to one gender include all others. Any capitalized terms used in the Exhibits to this Agreement that are not specifically defined in such Exhibits shall have the meanings ascribed to them in this Agreement. Such Exhibits shall constitute a material part of this Agreement, and the provisions of such Exhibits shall be interpreted and enforced as if such provisions were directly set forth in this Agreement.

Section 17.13 No Partnership. Nothing in this Agreement shall be treated as creating a partnership or joint venture between the Parties under Applicable Law and, except as specifically

provided in this Agreement, neither Party may act or have any authority to act as agent of or in any way bind or commit the other Party to any obligation.

Section 17.14 Costs and Expenses. Each Party shall bear and is responsible for its own costs (including attorney fees) in connection with the negotiation, preparation, execution, completion, implementation, and ongoing administration of this Agreement.

Section 17.15 Rights Cumulative. Except as specifically provided in this Agreement, the rights and remedies provided in this Agreement are cumulative with and do not exclude any rights or remedies provided by law.

Section 17.16 Amendment. This Agreement may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

Section 17.17 Survival of Obligations. Except as specifically provided in this Agreement, cancellation, expiration, or early termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including warranties, remedies, and promises of indemnity.

Section 17.18 Counterparts. This Agreement may be executed in two or more counterparts, each of which is signed by one of the Parties but all of which together shall constitute but one and the same agreement.

Section 17.19 Confidentiality. A Party may not disclose the terms of this Agreement or any confidential information provided hereunder that is conspicuously marked as confidential (together, "Confidential Information") to a third party (other than to the Party's parents, TVA Affiliates, potential or existing investors, consultants, potential or existing lenders, counsel, or accountants, or specific HU customers receiving the benefit of Excess Environmental Attributes associated with the Project, or prospective assignees permitted pursuant to Section 11.2 to the extent required for the consideration of an assignment, that have agreed in writing to keep the Confidential Information confidential and said written agreement has been provided to and is reasonably acceptable to the other Party prior to disclosure of any of the Confidential Information), except to comply with Applicable Law or with the other Party's prior written approval. A Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure consistent with its obligations with respect to such disclosure required by Applicable Law. The Parties acknowledge and agree that disclosure or unauthorized use of information described in this Section 17.19 could damage the other Party and that said other Party, therefore, has an interest in protecting that information by all legal means, and further that breach of the promises set forth above could cause irreparable damage to the Party possessing proprietary rights in Confidential Information wrongfully disclosed, and still further that in the event of such breach, said Party shall have the right to an injunction, specific performance, or other equitable relief to prevent the violation of the promises mentioned above. Under 18 U.S.C. Section 1905, officers and

employees of HU are subject to criminal liability in the event Confidential Information is disclosed unless such disclosure is authorized by law. Accordingly, Seller agrees that, in addition to the equitable relief identified above, Seller shall only be entitled to recover from HU, its officers, agents, and employees any and all gains wrongfully acquired, directly or indirectly, from unauthorized disclosure of any Confidential Information.

Section 17.20 Project Communications. Seller will, when communicating publicly about the Project and associated RECs, identify HU (by name or through the use of the HU logo) in promotional efforts and materials associated with the Project. Use of the HU logo must follow HU's logo use guidelines. If Seller intends to include language in addition to HU's name and/or logo, Seller must provide such language to HU in advance for approval. Seller will notify HU of public events in advance to enable reasonable efforts to participate.

Section 17.21 Project Collaboration. Parties will endeavor to find mutually agreeable opportunities for education and research that benefit the Parties, and/or specific HU customers Excess Environmental Attributes.

Section 17.22 Service Contract. Each Party intends this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

Section 17.23 Waiver of Sovereign Immunity. HU warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside its jurisdiction), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

Section 17.24 Mobile-Sierra. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S. Ct. 2733 (2008).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed below by their duly authorized representative.

TAI HUNTSVILLE SOLAR LLC

By: _____

Name: _____

Title: _____

Date _____

HUNTSVILLE UTILITIES

By: _____

Name: _____

Title: _____

Date: _____

City of Huntsville, Alabama

By: _____

Name: _____

Title: Mayor _____

Date: _____

EXHIBITS

Exhibit A	Prices
Exhibit B	Annual Net Output Requirement
Exhibit C	Liquidated Damages - Example
Exhibit D	Credit Annex
Exhibit E	Insurance
Exhibit F	Legally Required Clauses
Exhibit G-1	Project Description
Exhibit G-2	Project Characteristics
Exhibit H	Project Development Milestone Schedule
Exhibit I	Huntsville Utilities Interconnection, Metering, and Parallel Operation Specifications
Exhibit J	Reserved
Exhibit K	Form of Consent and Agreement

EXHIBIT A

PRICES

In accordance with Section 4.5, the first Full Contract Year “Price” is \$43.85 per MWH, and the Contract Year Price escalates by 1.5% from each preceding Full Contract Year.

EXHIBIT B

EXPECTED ANNUAL OUTPUT AND ANNUAL NET OUTPUT REQUIREMENT

A. Annual Net Output Requirement.

For each Full Contract Year of the Delivery Period the Annual Net Output Requirement shall be as provided in the following Table A. Table A includes the Expected Annual Output in addition to the Annual Net Output Requirement to provide the basis for the calculation (e.g. Annual Net Output Requirement is equal to 75% of Expected Annual Output). For purposes of determining the Net Output delivered to Buyer, Seller shall receive credit for all MWH of Energy Output delivered to the Delivery Point and that has been curtailed due to Economic Curtailment.

To be further reduced by non-delivery during Excused Hours and proportionally reduced if installed capacity is less than 30 MW.

Table A: Expected Annual Output and Annual Net Output Requirement

First Year Expected Annual Output	64,642
75% of First Year Production	48,482
Annual degradation	0.50%

Contract Yr	Expected Annual Output	Annual Net Output Requirement
1	64,642	48,482
2	64,319	48,239
3	63,997	47,998
4	63,677	47,758
5	63,359	47,519
6	63,042	47,282
7	62,727	47,045
8	62,413	46,810
9	62,101	46,576
10	61,791	46,343
11	61,482	46,111
12	61,174	45,881
13	60,868	45,651
14	60,564	45,423
15	60,261	45,196
16	59,960	44,970
17	59,660	44,745
18	59,362	44,521
19	59,065	44,299
20	58,770	44,077
21	58,476	43,857
22	58,183	43,638
23	57,893	43,419
24	57,603	43,202
25	57,315	42,986
26	57,028	42,771
27	56,743	42,558
28	56,460	42,345
29	56,177	42,133
30	55,896	41,922

EXHIBIT C
LIQUIDATED DAMAGES

LIQUIDATED DAMAGES						
Example Calculation for Payments for Reduced Output per Section 8.1						
	A	B	C	D	E	F
						G
Contract Yr	Expected Annual Output (MWhrs)	Annual Net Output Requirement (MWhrs)	Excused Hours (MWhrs)	Adjusted Annual Net Output Requirement (B - C) (MWhrs)	Contract Price \$/MWhr	Actual Output (MWhrs)
						Penalty (Y/N)?
Year X	64,642	48,482	-	48,482 \$	50.00	60,500
Year X+1	64,319	48,239	2,000	46,239 \$	50.63	44,000
						Y
	Annual Net Output Requirement is 75% of the Expected Annual Output					
	The example above includes 0.5% degradation					
	Year X Actual Output Exceeded the Adjusted Annual Net Output Requirement. No penalty applies					
	Year X+1 Actual Output Falls Short of the Adjusted Annual Net Output Requirement. Penalty applies					
	Sample Penalty Calculations for Year X+1					
	Step 1	Adjusted Annual Net Output Requirement Less Actual Output in Contract Yr				
						2,239
	Step 2	Calculate 50% of Contract Price				
		Contract Price in Year X+1				
		50% of Contract Price in Year X				\$ 50.63
						\$ 25.31
	Step 3	Multiply Step 1 result by Step 2 result				
						\$ 56,677
	Step 4	Divide Step 3 by 12				
						\$ 4,723
	Step 4 result is issued as a monthly credit over the 12 months of Contract Year X+2					

[Example]

The Parties shall estimate the undelivered MWh associated with the Excused Hours that would have been generated but for the Excused Hours, in a Commercially Reasonable manner, consistent with Good Utility Practice, based on measured solar irradiance for each hour during the Excused Hours.

EXHIBIT D

CREDIT ANNEX

Credit Annex Definitions.

- (a) “Cash” means money denominated in United States Dollars.
- (b) “Downgrade Event” means either (a) Seller’s or its Guarantor’s credit rating fails to meet the Ratings Limit or (b) Seller’s Guarantor fails to be a Qualified Guarantor.
- (c) “Guaranteed Party” means HU.
- (d) “Guarantor” means the Person providing the Guaranty on behalf of Seller in substantially the same form attached hereto as Attachment 1 to this Exhibit D.
- (e) “Guaranty” means a guaranty from a Qualified Guarantor in substantially the form attached hereto as Attachment 1 to this Exhibit D.
- (f) “Investment Grade means a credit rating on its senior unsecured debt of (a)(1) “Baa3” or higher from Moody’s or (2) “BBB-” or higher from S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).
- (f) “Letter of Credit” means an irrevocable standby letter of credit from a Qualified Bank in substantially the form attached hereto as Attachment 2 to this Exhibit D, naming the Guaranteed Party as the beneficiary.
- (g) “Material Credit Event” means any event that results in Seller’s failure to meet the Performance Assurance Requirements. If Seller has provided or caused to be provided a Letter of Credit or Guaranty in satisfaction of its Performance Assurance Requirements, then any of the following shall be deemed to be a Material Credit Event: (a) a representation or warranty made by a Qualified Bank or a Guarantor is false or misleading in any material respect at any point during the term of this Agreement with regard to the Qualified Bank’s or Guarantor’s financial information; (b) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Letter of Credit or Guaranty made in connection with this Agreement and such failure is not remedied within ten (10) calendar days after written notice; (c) a Downgrade Event has occurred; (d) a Qualified Bank or the Guarantor becomes Bankrupt; (e) the failure of the Letter of Credit or the Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all of Seller’s obligations under this Agreement without HU’s written consent; or (f) the Qualified Bank or the Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Letter or Credit or Guaranty.
- (h) “Moody’s” means Moody’s Investors Service, Inc. or its successor.

(i) “Performance Assurance” means collateral in the form of Cash, Letter(s) of Credit from Qualified Bank(s), or a Guaranty from a Qualified Guarantor, in the amounts indicated in this Exhibit D, which shall secure Seller’s payment obligations under this Agreement.

(j) “Performance Assurance Requirements” means Seller’s provision and maintenance of the applicable Performance Assurance, or causing such Performance Assurance to be provided and maintained.

(k) “Qualified Bank” means a U.S. commercial bank or a U.S. branch of a foreign bank, with such bank having a credit rating on its senior unsecured debt of (a)(1) “A3” or higher from Moody’s or (2) “A-” or higher from S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

(l) “Qualified Guarantor” means a Person who satisfies the Ratings Limit and who is mutually agreed to by the Parties.

(m) “Ratings Limit” means, with respect to any Person, such Person has a long-term credit rating on its corporate or long-term senior unsecured debt rating (not supported by third party credit enhancements) of (a)(1) “Baa2” or higher by Moody’s or (2) “BBB” or higher by S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

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

Section 1 Amount of Performance Assurance and Notice.

(a) Performance Assurance. Seller shall provide and maintain throughout the Term of this Agreement or cause to be provided Performance Assurance as follows based on the Contract Output of the Project:

Milestone	\$/kW
Within 30 days of the Effective Date	\$40
Initial Delivery Date:	
Years 1-30	\$75

For the purpose of determining the amount of the required Performance Assurance, the Contract Output of the Project will be rounded up to the nearest whole kW.

(b) Buyer has an Investment Grade rating as of the Effective Date and no Performance Assurance is required. In the event Buyer’s rating falls below Investment Grade

during the term, Seller may require Buyer to provide Performance Assurance in the amount of \$100 per kW of Contract Output within thirty (30) days of such ratings downgrade.

(c) Notice of Material Credit Event. Seller shall notify HU in writing of the occurrence of any event that, with notice or the passage of time or both, would constitute a Material Credit Event with respect to Seller, which notice shall be given by Seller within five (5) Business Days of the occurrence of such event. If at any time there shall occur a Material Credit Event with respect to Seller, and such Material Credit Event is not cured or replacement Performance Assurance is not provided within ten (10) calendar days' notice of such event, then an Event of Default shall be deemed to have occurred pursuant to Section 9.1(f) of the Agreement to which this Exhibit D is attached.

Section 2 Letter of Credit as Performance Assurance. If Performance Assurance consists of a Letter of Credit, such Letter of Credit shall:

- (a) be issued by a Qualified Bank;
- (b) permit the Guaranteed Party to draw up to the then current "Available Amount" as defined in the Letter of Credit for the purpose of paying any and all amounts owing to the Guaranteed Party under the Agreement to which this Exhibit D is attached following the occurrence and during the continuation of an Event of Default; and
- (c) permit the Guaranteed Party to draw the entire "Available Amount" thereunder to hold as Cash collateral for any and all amounts owing to the Guaranteed Party under the Agreement to which this Exhibit D is attached if (i) the Letter of Credit will expire in fewer than forty-five (45) calendar days and (ii) the Seller has not provided the Guaranteed Party with alternative Performance Assurance.

Section 3 Substitution, Return, and Handling of Performance Assurance.

(a) Election to Change Form of Performance Assurance. Seller shall have the right to, at any time and from time to time, request replacement of any or all of the Performance Assurance provided by it (the "*Outstanding Performance Assurance*") with one or more alternative forms of Performance Assurance, whereupon the Guaranteed Party shall cooperate with the Seller in obtaining the concurrent release, termination, or return (as many as may be applicable) of the Outstanding Performance Assurance in favor of or held by the Guaranteed Party.

(b) Return of Original Performance Assurance Documents. Without limitation to the generality of the foregoing, the Guaranteed Party shall return to the Seller all original Letter of Credit and Guaranty Performance Assurance documents, and all amendment, extension, and other related documents, within sixty (60) days of the termination, cancellation, or replacement thereof.

Section 4 Financial Statements.

(a) HU's Financial Statements. If requested by Seller, HU shall deliver (i) within 190 days following the end of each fiscal year, a copy of HU's annual report containing audited consolidated financial statements for such fiscal year r. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as HU diligently pursues the preparation, certification, and delivery of the statements.

(b) Seller's Financial Statements. If requested by HU, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for Seller, and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for Seller. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification, and delivery of the statements.

FORM OF GUARANTY

This Guaranty is made by _____ (“Guarantor”), a corporation created and existing under the laws of the _____, in favor of the City of Huntsville Utilities (“HU”), to guarantee the obligations and liabilities (the “Guaranteed Obligations”), of _____ (“Debtor”) pursuant to that certain _____ Agreement dated as of _____, 20__ (the “Agreement”) by and between HU and Debtor. The obligations which are covered by this Guaranty are all Guaranteed Obligations, whether billed or unbilled, of Debtor arising under or related to the Agreement, whether currently existing or hereafter created, including but not limited to: (1) the design, construction, operation, and maintenance of solar electric generation systems, (2) the purchase and sale of electricity, natural gas, or other energy commodities (including damages for non-performance), (3) the purchase of transmission service and (4) any liability incurred under an interconnection or keep-whole agreement.

For one dollar and other valuable consideration, receipt of which is hereby acknowledged, Guarantor absolutely and unconditionally guarantees, as a compensated guarantor, the payment when due, by acceleration or otherwise, as well as the performance of all of Debtor’s Guaranteed Obligations, direct or indirect, now existing or hereafter created, arising under or related to the Agreement, together with all interest and charges accruing thereon.

The liability of Guarantor under this Guaranty is primary, unlimited and unconditional. This Guaranty shall be enforceable before, concurrently or after any Claim is made or suit is filed against Debtor, and before, concurrently with or after any proceeding by HU against any collateral or other security for the Guaranteed Obligations. This Guaranty shall be effective regardless of the solvency or insolvency of Debtor at any time, the extension or modification of any of the Guaranteed Obligations by operation of law or the subsequent reorganization, merger or consolidation of Debtor or any change in its composition, nature, ownership, personnel or location. This Guaranty shall be a continuing guaranty of any and all agreements given in extension or renewal of the Guaranteed Obligations. Guarantor acknowledges, agrees and confirms that this is a guaranty of payment and performance and not of collection only and that demand for payment may be made hereunder on any number of occasions in the amount of all or any portion of the Guaranteed Obligations then due and no single demand shall exhaust the rights of HU hereunder. This Guaranty shall continue in full force and effect until the date the Agreement is terminated or expires; provided Guarantor agrees that the Guaranteed Obligations and liabilities hereunder shall continue in full force and effect with respect to any and all Guaranteed Obligations accrued or contracted for prior to or arising in connection with such expiration or termination.

HU shall provide written notice to the Guarantor for payment of amounts due at the address set forth in this Guaranty. The notice shall summarize the Guaranteed Obligation for which HU is seeking payment from the Guarantor and shall state the amount to be paid or the services to be

provided. Guarantor shall pay the amount or provide the services specified in the notice within ten (10) Business Days after its receipt of the notice.

Guarantor's obligations are unconditional and irrevocable irrespective of any other circumstances which might otherwise constitute an effective waiver or defense. It is expressly understood and agreed that this is a continuing guarantee and that the obligations of the Guarantor under this Guaranty are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Agreement. Without limiting the foregoing sentences, Guarantor expressly waives: (a) notice of acceptance of this Guaranty, (b) notice of changes or amendments to the Agreement, (c) notice of changes of Debtor's Guaranteed Obligations under the Agreement, (d) notice of the acceptance, surrender, release, exchange or alteration of any other security held by HU for Debtor's Guaranteed Obligations, (e) any requirement that suit be brought or that remedies be pursued against Debtor or any other entity or security as a condition of enforcement of this Guaranty, (f) any other notice or demand, and (g) any right to trial by jury in any action relating to this Guaranty.

Guarantor's liability hereunder shall not be released or reduced by the insolvency, bankruptcy, reorganization, release, receivership, or discharge of Debtor. Any payment made by Debtor to HU which is rescinded or must otherwise be returned to the Debtor because of insolvency, bankruptcy, reorganization, or otherwise, shall be deemed a payment which was never made by Debtor.

Guarantor consents without the requirement of any notice to or further assent by Guarantor, to the fullest extent permitted by Applicable Law, that (i) the time of payment of any Guaranteed Obligation may be extended, (ii) any provision of the Agreement may be amended, waived or modified, (iii) any collateral or other property now or hereafter securing the Guaranteed Obligations may be released, exchanged, substituted, compromised or subordinated in whole or in part or any security may be added, and (iv) HU may proceed against any other Person without proceeding against Guarantor.

Guarantor has the right and power and has taken all necessary action to authorize it to guarantee the Guaranteed Obligations hereunder and to execute, deliver and perform this Guaranty in accordance with its terms. This Guaranty has been duly executed and delivered by the duly authorized officers of the Guarantor and is a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms.

The obligations of Guarantor hereunder are irrespective of and shall not be dependent upon or affected by (i) the existence, value or condition of any collateral or other security for the Guaranteed Obligations, (ii) the validity, perfection or priority of any security interest in any collateral or other security, or (iii) any other dealings between HU and Debtor.

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, or overnight courier service to the addresses specified below. Notices sent by 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. Notices sent by overnight courier shall be effective on the next Business Day after it was sent. Notices sent by United States mail shall be effective ten (10) Business Days after it was sent. A Party may change its address by providing notice of same in accordance herewith.

To: Guarantor

To: Buyer

Huntsville Utilities
Attn:
112 Spragins ST, SW
Huntsville, AL 35801

No amendment of this Guaranty shall be effective unless consented to in writing by HU. Guarantor may revoke this Guaranty by delivering written notice to HU at the above address, that this Guaranty will not apply to obligations under the Agreement arising after the effective revocation date specified in the notice, which date shall be at least sixty (60) calendar days after the delivery date of such notice. Any such revocation shall apply only to obligations created after the effective revocation date; such revocation shall not apply to payment obligations created prior to the effective revocation date even when such obligations may become due and payable after such revocation.

The validity, interpretation, performance and enforcement of the Guaranty shall be governed by the Federal laws of the United States, including but not limited to, Federal Bankruptcy Code; provided that the laws of the State of Alabama may be applied to the extent not inconsistent with, or duplicative of, the Federal laws of the United States. Guarantor agrees to jurisdiction and venue in the United States District Court for the Northern District of Alabama in any action to enforce this Guaranty. Should HU be the prevailing party in any action to enforce this Guaranty, Guarantor agrees to pay, in addition to the Guaranteed Obligations, any and all reasonable legal fees, costs, and other expenses incurred by HU in enforcing this Guaranty.

Terms capitalized but not defined in this Guaranty shall have the meaning given such terms in the Agreement.

If HU determines that Guarantor's financial condition has materially changed, (such change shall hereinafter be called a "Downgrading Event"), and notifies Guarantor of the Downgrading Event, Guarantor shall, within three (3) Business Days of HU's notification of the Downgrading Event, provide to HU, Cash or a letter of credit in an amount, in a form, and from a financial institution all as reasonably acceptable to HU.

This Guaranty may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and permitted assigns.

IN WITNESS WHEREOF, as shown by the signature below, Guarantor, acting by and through its duly authorized officer has executed this Guaranty this _____ day of ____, 20__.

GUARANTOR

By: _____

As: _____

FORM LETTER OF CREDIT

[LETTERHEAD]

[DATE]

Irrevocable Standby Letter of Credit No.2

Beneficiary:

Applicant:

[Huntsville Utilities
112 Spragins Street SW
Huntsville, AL 35801]

Attn: HU contact
title

Dear Madam or Sir:

We hereby establish for the account of _____ (Seller) (“Seller’s name” or “Applicant”), our irrevocable standby letter of credit in your favor for an amount of USD _____ (_____ Dollars United States currency) (the “LC Amount”). Applicant has advised us that this letter of credit is issued in connection with the _____ Agreement dated as of _____, 20____, between Applicant and Beneficiary (as amended and as may be further amended, supplemented, or otherwise modified, the “_____ Agreement”). This letter of credit shall; (i) become effective immediately for the term of one (1) year and shall expire on _____ (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized representative of Beneficiary, dated the date of presentation and (b) the original of the letter of credit (the “Accompanying Documents”) and presented at our office located at _____, attention _____ (or at any other office that may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after

2 Note: Will not be required for HU unless HU’s credit rating falls below Investment Grade. See Article XI.
46050048.5

presentation. Within five Business Days after payment of any draw of the letter of credit, we shall provide you with a new letter of credit in the LC Amount.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized representative of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the following Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for periods of one (1) year from the present or any future expiration date, unless at least forty-five (45) days prior to any such expiration date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for any such additional period.

4. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98).

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement referred to herein, except for Annexes 1, 2, and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except as otherwise provided in this paragraph 5.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. _____.

Very truly yours,

[LOC Issuer]

Authorized signature

ANNEX 1
TO LETTER OF CREDIT NO. _____

Draft under Letter of Credit No. _____

[Month, Day , Year]

On [*third Business Day next succeeding date of presentation*]

Pay to City of Huntsville Utilities U.S. \$ _____ [not to exceed amount available to be drawn]

112 Spragins St, SW
Huntsville, AL 35801

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. _____ of _____

By: _____

Title: _____

ANNEX 2
TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

The undersigned, a duly authorized representative of the **City of Huntsville Utilities**, (“Beneficiary”), hereby certifies on behalf of Beneficiary to _____ with reference to irrevocable standby Letter of Credit No. _____ (the “Letter of Credit”) issued for the account of _____, (“ X ”), that:

1) [pursuant to the _____ Agreement between Beneficiary and X , as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;]

--or--

[Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit and, as such, as of the date hereto Beneficiary is entitled to draw under the Letter of Credit;]

2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$_____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;

3) the amount specified on the sight draft accompanying this certificate does not exceed the amount to which Beneficiary is entitled to draft under said _____ Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized representative as of the date and year written below.

Date: _____

By: _____

Title: _____

ANNEX 3
TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

Attention: Letter of Credit Department

Re: Letter of Credit No. _____ issued for the account of (Seller)

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

By: _____

Title: _____

EXHIBIT E

INSURANCE

A. Seller Insurance Coverages. Seller shall maintain or cause to be maintained the types of insurance coverages described in this Part A, provided that Seller shall be required to maintain the insurance coverages described in this Part A only to the extent that such coverages are available on Commercially Reasonable terms in the commercial insurance markets. All insurance coverages described herein shall be placed with Acceptable Insurance Companies. An “Acceptable Insurance Company” means an insurance company that, at the applicable time, is legally permitted to write the applicable insurance coverage and that (i) has a Credit Rating of A- or better from Standard & Poor’s at such time or (ii) has an insurance company rating of A- or better from A.M. Best at such time.

1. Workers’ Compensation Insurance. Seller shall maintain or cause to be maintained workers’ compensation insurance in compliance with Applicable Law.

2. Commercial General Liability Insurance. Seller shall maintain or cause to be maintained commercial general liability insurance, including coverage for bodily injury, property damage, personal injury, death, premises/operations, explosion, collapse and underground hazards, broad form property damage and blanket contractual liability for written contracts, with primary coverage limits of not less than \$1,000,000 for injuries or death to one or more Persons or damage to Property per occurrence and an aggregate limit of not less than \$5,000,000.

3. Automobile Liability Insurance. Seller shall maintain or cause to be maintained automobile liability insurance for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

4. Excessive Liability Insurance. Seller shall maintain or cause to be maintained bodily injury and property damage combined umbrella form coverage, with minimum combined limits of not less than \$5,000,000 and waiver of subrogation.

5. All-Risk Property Insurance. Seller shall maintain or cause to be maintained all-risk property coverage for the Project with Commercially Reasonable limits, sub-limits and deductibles.

B. Seller Insurance General Terms. To the extent available on Commercially Reasonable terms in the commercial insurance markets:

1. Evidence of Coverage. Seller shall deliver to HU certificates or other evidence of all insurance policies maintained (or caused to be maintained) by Seller no later than

twenty (20) days before the Seller issues a notice to proceed for construction of the Project Execution Date and each time thereafter when there is any renewal of such insurance policies.

2. Termination of Coverage. Seller shall provide HU prior written notice of any cancellation or non-renewal of any insurance policy required to be maintained (or caused to be maintained) by Seller pursuant to this Exhibit E.

C. Self Insurance. Notwithstanding the foregoing, Seller may self-insure to meet the minimum insurance requirements of this Exhibit E to the extent it maintains a self-insurance program, provided that Seller's senior secured debt meets the Ratings Limit and its self-insurance program meets the minimum insurance requirements of this Exhibit E. For any period of time that Seller's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, Seller shall comply with the insurance requirements applicable to it under this Exhibit E. In the event that Seller is permitted to self-insure pursuant to this section, it shall notify HU that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in this Exhibit E.

EXHIBIT F

[Reserved]

EXHIBIT G-1

PROJECT DESCRIPTION

The Project comprises the Solar Asset, and associated equipment and facilities, together known as HUNTSVILLE SOLAR PROJECT, located in Madison County, Alabama, including the real property, fixtures, and land rights associated with the Solar Asset. The coordinate location of the Project is: Latitude 34°49'48.50"N and Longitude: 86°37'42.08 W".

The Solar Asset at all times will generate and deliver electric power and energy exclusively from solar energy, which may be either ground- or structure-mounted. Unless approved in advance by HU in writing, the Solar Asset will not generate or deliver electric power or energy by means of batteries or other energy storage or non-solar generation technologies.

The Project will be interconnected at the "Delivery Point," which is which is located on land owned by the City of Huntsville and identified in the map below as HU Substation which is located on land owned by the City of Huntsville and identified in the map below as HU Substation.

The maximum instantaneous AC power output of the Project ("Contract Output") as measured by Metering Equipment at the high side of the Delivery Point transformer is 30 MWac.

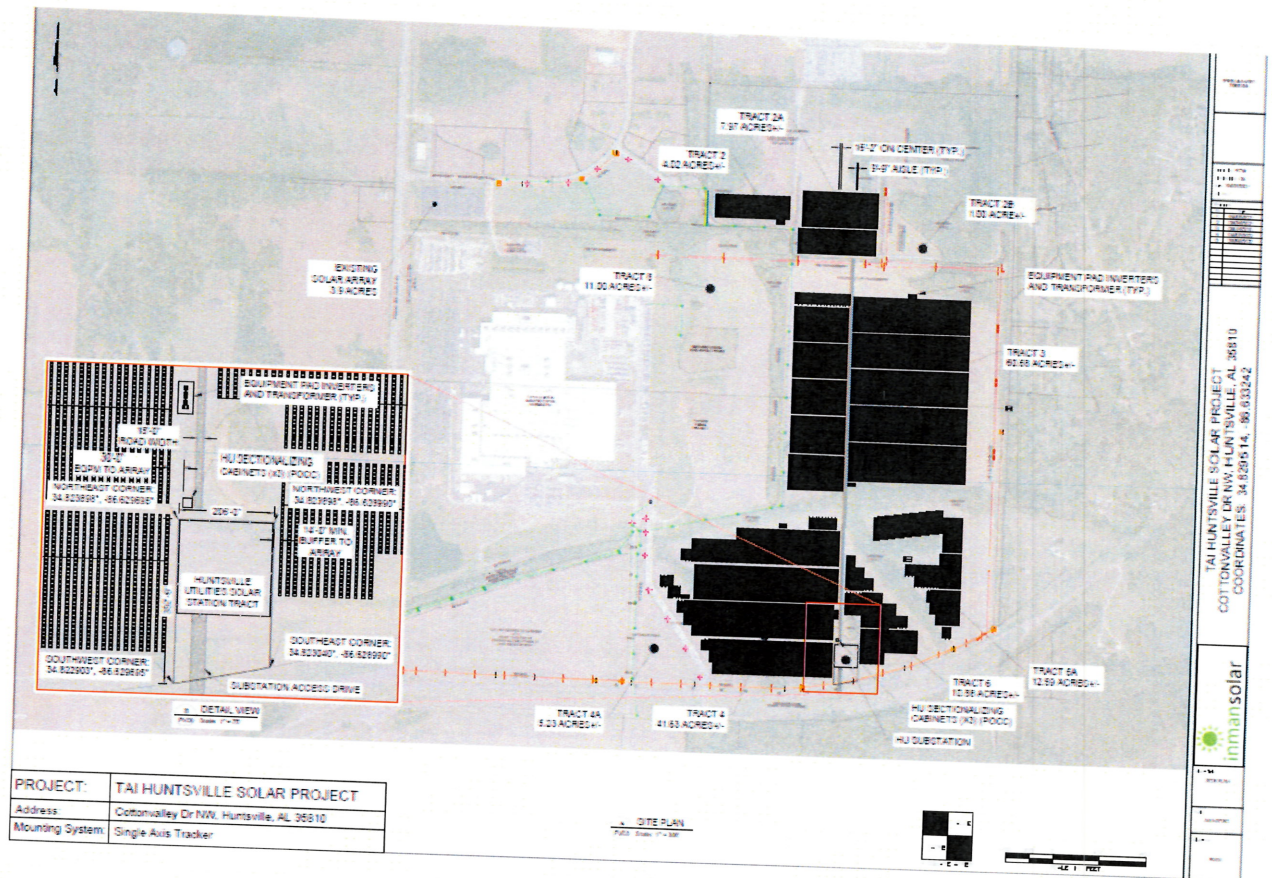
The Expected Initial Delivery Date is February 1, 2024

EXHIBIT G-2

PROJECT CHARACTERISTICS

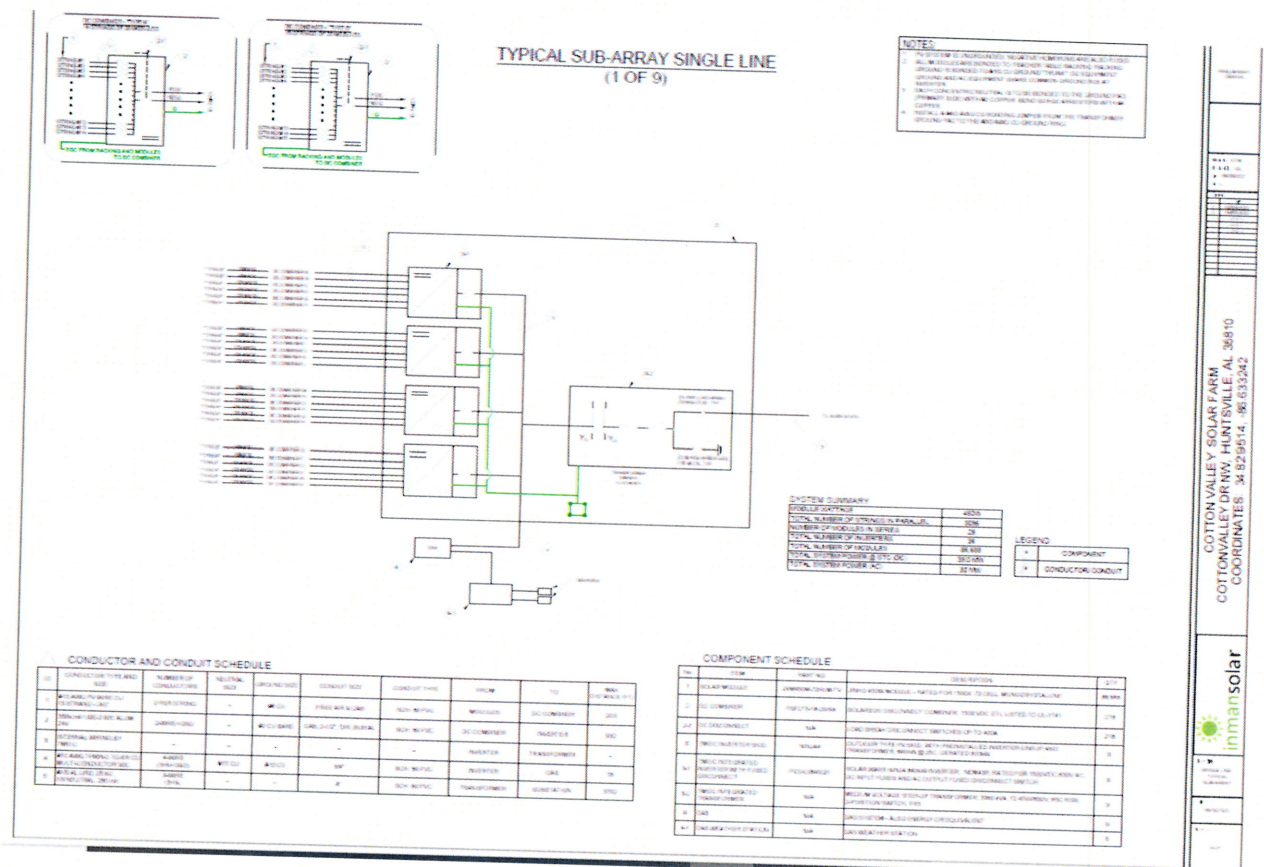
The facility is a 39 MW DC and 30 MW AC solar energy system. The PV system will be ground mounted and will utilize single axis trackers. The proposed inverters are configured to feed nine (9) transformers, each rated to output 12.47kV, 3.4 MVA. The transformers will be distributed throughout the solar array, which occupies approximately 140 acres. The nine transformers will feed three sectionalizing cabinets, owned by Huntsville Utilities, that will serve as the Point of Common Coupling (POCC) and the change of ownership. The sectionalizing cabinets (POCC) are adjacent to the Substation Facility, being installed by Huntsville Utilities, that will step up from 12.47 kV to 46 kV to tie into the Northwest Primary line with a normally open connection to Charity La

PROJECT LAYOUT



SINGLE LINE DIAGRAM -1

46050048.5



SINGLE LINE DIAGRAM-2

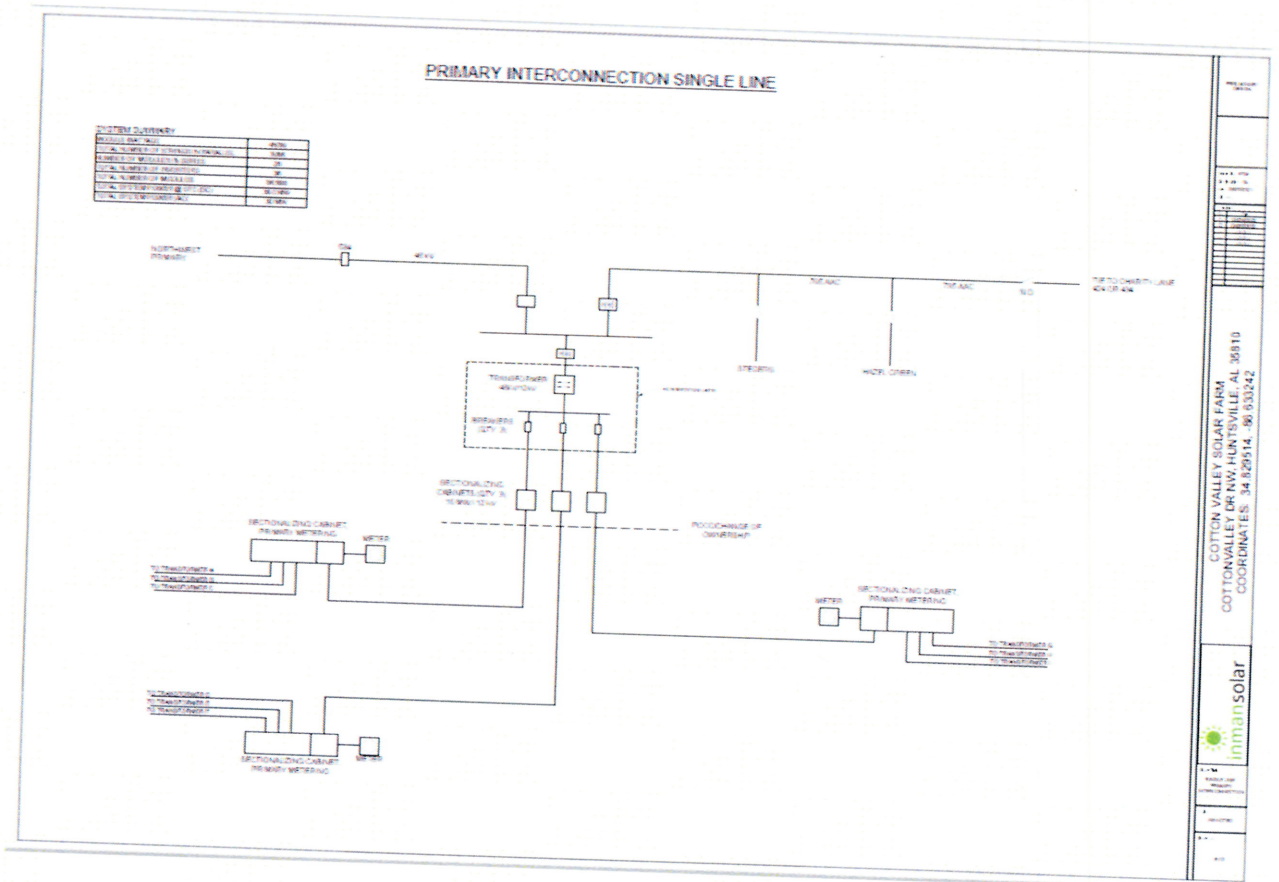


EXHIBIT H

PROJECT DEVELOPMENT MILESTONE SCHEDULE

Milestone Description/Responsible Party	Estimated Completion Dates
Land Survey	TAI Huntsville Solar completed
Phase I Environmental Study	TAI Huntsville Solar completed
TVA System Impact Study	TAI Huntsville Solar/ Huntsville Utilities completed
Huntsville System Impact Study	Huntsville Utilities completed
Interconnection Agreement	TAI Huntsville Solar/ Huntsville Utilities _____ 2022
Purchase Order for Substation	Huntsville Utilities completed
Notice to Proceed	TAI Huntsville _____ 2022
Expected Initial Delivery Date	Solar TAI Huntsville Solar February 1, 2024 [estimated]

EXHIBIT I

HUNTSVILLE UTILITIES INTERCONNECTION, METERING, AND PARALLEL OPERATION SPECIFICATIONS

These Interconnection, Metering, and Parallel Operation Specifications (“Interconnection Specifications”) define the functional and operational requirements pertaining to the electrical interconnection necessary between the Parties.

1. Scope of Agreement

Execution of this Agreement allows the Seller to proceed with procurement and installation of the Project. However, Seller is not allowed to proceed with parallel operation until HU has approved the Certificate of Completion.

2. Establishment of Delivery Point

- 2.1.** The Delivery Point is the point where the electric energy first leaves the wires or facilities owned by Seller and enters the wires or facilities provided by HU. HU and Seller agree to interconnect the Project at the Delivery Point (as indicated in Exhibit “G-1” attached hereto and incorporated herein), in accordance with this Agreement, HU’s and TVA’s rules, regulations, bylaws, standard terms and conditions, company policies, and rates (the “Rules”), which are incorporated herein by reference, and the Seller and the Project shall comply with HU’s Rules.

3. General Responsibilities of the Parties

- 3.1. Approval of Project.** HU has reviewed the proposed Project as described in the attached Application for compliance with the Rules and has approved the Project for interconnection based on one of the following conditions:

- 3.1.1.** The Project has been reviewed by HU based on the applicable codes and standards and has passed any applicable screening process, or
- 3.1.2.** HU, in agreement with Seller, has conducted additional engineering evaluations or detailed system impact studies at Seller’s expense, and any necessary System upgrades or changes identified by these additional studies have been implemented and Seller has paid for such upgrades or changes where necessary.

- 3.2. Compliance Standards.** Seller shall comply with all applicable laws, regulations,

zoning codes, building codes, safety rules, and environmental restrictions, including the latest version of the National Electrical Safety Code, the National Electric Code, and codes issued by Underwriters Laboratories ("UL"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the American National Standards Institute ("ANSI") that are applicable to the design, installation, operation, and maintenance of its Project.

- 3.3. **Metering Installation.** The Metering Installation shall conform to applicable industry and TVA standards.
- 3.4. **Building Code Inspection.** The Seller shall provide the local building code official inspection and certification of installation forms to HU. The certification shall reflect that the code official has inspected and certified that the installation was permitted, has been approved, and has met all electrical and mechanical qualifications.
- 3.5. **Commencement of Parallel Operation.** After installation of the Project, the Seller shall submit the Certificate of Completion to HU for approval. Prior to parallel operation, HU may, at Seller's expense, review the Project for compliance with standards which may include testing the Project in the presence of a witness selected by HU. Seller shall not begin parallel operation before HU returns the Certificate of Completion with approval indicated on the Certificate of Completion in writing by HU.
- 3.6. **Operation Standards.** Seller shall operate its Project in compliance with all aspects of the Rules, this Agreement, and in accordance with industry standard prudent engineering practice, and must comply with the latest version of IEEE 519, UL 1741, IEEE 1547, and any other applicable codes and standards of ANSI, IEEE, and UL as well as any regulations or requirements of the authority having jurisdiction.
- 3.7. **Maintenance and Testing.** The Seller shall use commercially reasonable efforts to protect its renewable generation equipment, inverters, protective devices, and other Project components from damage from the normal and abnormal conditions and operations that occur on the Electric System in delivering and restoring power; and Seller shall be responsible for ensuring that the Project is inspected, maintained, and tested on an ongoing basis in accordance with the manufacturer's instructions to ensure that it is operating correctly and safely. HU has the right to request and receive copies of the test results which, if requested, shall be provided to HU within two (2) days following the request. If at any time HU reasonably determines, either from tests or any other reasonably reliable source of information, that the renewable generation equipment, inverters, protective devices or other Project components are not operating correctly and safely, HU may isolate and disconnect the Project from the Electric System without prior notice or approval and at Seller's expense.

- 3.8. Excess Generation.** The Seller shall not deliver excess electricity into the Electric System. The Seller shall provide any and all necessary protections approved by HU in order to prevent excess electricity from flowing back into the Electric System

4. Inspection and Ongoing Compliance

- 4.1.** HU shall provide Seller with as much advance written notice as reasonably practicable (but in no event less than five (5) days' prior written notice), either in writing or email, as to when HU may review the Project and/or review Seller's associated documents. However, HU shall have access to the Seller's premises for the purpose of accessing the manual disconnect switch, performing an inspection or disconnection, or, if necessary, to meet HU's legal obligation to provide service to its customers.

5. Manual Disconnect Switch

- 5.1.** Seller must install a manual, lockable, visible load break disconnect switch between the Project and the Electric System that is visibly marked "Seller Generation Disconnect." The disconnect switch shall be mounted separate from but adjacent to HU's meter socket. The Seller shall ensure that such manual disconnect switch shall remain readily accessible to HU and be capable of being locked in the open position with a single HU utility padlock. A permanent, weatherproof single-line diagram of the facility must be located adjacent to the disconnect switch. Names and current telephone numbers of at least two persons authorized to provide access to the facility that have authority to make decisions regarding the interconnection and operation of the Project shall be included with the diagram.

6. Disconnection/Reconnection

- 6.1.** HU has the right to disconnect the Project at any time; including but not limited to, the following situations:
- 6.1.1.** Emergencies or maintenance requirements on the Electric System;
 - 6.1.2.** Hazardous conditions existing on the Electric System due to the operation of the Seller's Project, including without limitation protective equipment, as reasonably determined by HU;
 - 6.1.3.** Adverse electrical effects, such as power quality problems, on the electrical equipment of HU's other electric consumers caused by the Project as reasonably determined by HU; and

- 6.2.** The Seller is responsible for the protection of the Project by providing the local protection scheme necessary to isolate the Project from the Electric System for system line interruptions and when the power source is lost. Accordingly, the Seller must provide and install, at its expense, any necessary protection and control devices for the Project so that the Project detects an islanding condition (a condition in which an inverter continues to provide power to a location even though power from the electric grid is no longer present) and trips or disconnects the Project from the Electric System in less than four (4) cycles. .

EXHIBIT J

[RESERVED]

EXHIBIT K

[FORM OF] CONSENT AND AGREEMENT

This Consent and Agreement (“Consent”), is made as of the following date: _____ (“Effective Date”) and, is among City of Huntsville Utilities, [COMPANY NAME] (“Seller”), and [BANK NAME], as collateral agent (in such capacity and together with its successors in such capacity, the “Collateral Agent”). The parties hereto are sometimes referred to herein as a “Party” or “Parties.”

The Seller is a party to that certain credit agreement, dated as of the date hereof, among the Seller, the Collateral Agent, the lenders, note holders, and issuing banks party thereto from time to time, and the other parties named therein (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”), pursuant to which, among other things, subject to the terms therein, such lenders have committed to extend loans to the Seller and such issuing banks have committed to issue certain letters of credit for the account of the Seller.

The Seller and HU are parties to a Power Purchase Agreement dated [Month, Day, Year] (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”). Unless defined otherwise, capitalized terms used in this Consent shall have the meanings assigned to them in the Assigned Agreement.

ARTICLE I: CONSENT TO ASSIGNMENT

Section 1.1 Consent to Assignment. The Seller gives notice to HU of the collateral assignment by the Seller of all of its right, title, and interest in, to, and under (but not its obligations, liabilities, or duties with respect to) the Assigned Agreement, including, without limitation, the right to receive payment thereunder, under the terms of that certain security agreement, as amended, amended and restated, supplemented, or otherwise modified from time to time, between the Seller and the Collateral Agent (the “Security Agreement”), and HU acknowledges receipt of such notice and irrevocably consents to such collateral assignment. HU has no notice of, and has not consented to, any previous assignment or collateral assignment by the Seller of all or any part of its rights under the Assigned Agreement.

ARTICLE II: NOTICE AND CURE RIGHTS

Section 2.1 Notice to Collateral Agent. HU shall, concurrently with the delivery to Seller of any notice of an Event of Default (“Default Notice”) or notice of early termination (“Termination Notice”) under the Assigned Agreement, provide a copy of such Default Notice or Termination Notice to Collateral Agent pursuant to Section 6.5 of this Consent. In addition, Seller shall provide a copy of the Default Notice or Termination Notice to Collateral Agent the next

business day after receipt from HU, independent of any agreement of HU to deliver such Default Notice or Termination Notice.

Section 2.2 Cure Period Available to Collateral Agent Prior to Declaration of Early Termination.

(i) Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 2.1 above, HU shall not declare an Early Termination Date pursuant to Section 9.2 of the Assigned Agreement unless it or the Seller provides Collateral Agent with Default Notice and affords Collateral Agent a Cure Period, as defined below, to cure the Event of Default.

(ii) For the purposes of this Agreement, “Cure Period” shall mean (i) with respect to a payment default as defined in Section 9.1(a) of the Assigned Agreement, ten (10) days in addition to the cure period provided to Seller in the Assigned Agreement; and (ii) with respect to all other Events of Default specified in Section 9.1 of the Assigned Agreement, thirty (30) days in addition to the cure period provided to Seller in the Assigned Agreement.

Section 2.3 Failure by HU to Deliver Default Notice. If neither HU nor Seller delivers a Default Notice to the Collateral Agent as provided in Section 2.1, the Collateral Agent’s applicable cure period shall begin on the date on which Default Notice is delivered to Collateral Agent by either HU or Seller, whichever is delivered earliest. Except for a delay in the commencement of the cure period for the Collateral Agent and a corresponding delay in HU’s ability to declare an Early Termination Date, failure of HU to deliver any Default Notice shall not waive HU’s right to take any action under the Assigned Agreement and will not subject HU to any damages or liability for failure to provide such notice.

Section 2.4 Extension for Foreclosure. If possession of the Project is necessary for the Collateral Agent to cure an Event of Default and the Collateral Agent commences foreclosure proceedings against Seller within the Cure Period provided in Section 2.2(ii) above, the Collateral Agent shall, with HU’s consent, be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed one hundred eighty (180) days; provided, however, that the Collateral Agent shall provide a written notice to HU that it intends to commence foreclosure proceedings with respect to Seller within thirty (30) days of receiving Default Notice from HU or Seller, whichever is received first. In the event the Collateral Agent succeeds to Seller’s interest in the Project as a result of foreclosure proceedings, the Collateral Agent or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 11.2, regarding successors and assigns, of the Assigned Agreement.

Section 2.5 Remedies for Event of Default and Annual Net Output Requirement.

(i) It is understood and agreed that, should HU elect to pursue one or more of the remedies available under Section 9.6(b) of the Assigned Agreement, the Collateral Agent shall have no right to cure the Event of Default and the Cure Period defined in Section 2.2 above shall not apply.

(ii) Neither the failure of the Seller to satisfy the Annual Net Output Requirement provided for in Article VIII and Exhibit B of the Assigned Agreement nor payment of liquidated damages to HU pursuant to Section 8.1 of the Assigned Agreement shall constitute an Event of Default under Section 9.1 of the Assigned Agreement.

Section 2.6 Disconnection of Project or Curtailment of Deliveries. Nothing in this Consent Agreement shall limit HU's ability to disconnect the project or curtail deliveries for safety, reliability, or any other reason provided for in Section 8.3 of the Assigned Agreement.

ARTICLE III: LIMITATION ON ASSIGNMENT

Section 3.1 Limitation on Assignment. If the Collateral Agent or a designee or transferee succeeds to the interests of the Seller, whether by foreclosure or otherwise, the Collateral Agent or such designee or transferee, as the case may be (any such Person, an "Assuming Party"), shall assume liability for the Seller's obligations only to the extent such obligations are expressly set forth in the Assigned Agreements. Except to the extent that the Collateral Agent or its designee or transferee expressly becomes an Assuming Party hereunder, the Collateral Agent or its designee shall not be liable for the performance or observance of any of the obligations or duties of the Seller under the Assigned Agreements.

ARTICLE IV: REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Parties that:

- (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Consent;
- (iii) the execution, delivery, and performance of this Consent are within its powers, have been duly authorized by all necessary action, and do not violate any Applicable Law;
- (iv) it is not Bankrupt and there are no proceeding pending or being contemplated by it or, to its knowledge, threatened against it that would result in it being or becoming Bankrupt;
- (v) it is acting for its own account, has made its own independent decision to enter into this Consent and as to whether this Consent is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Consent; and

(vi) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

Section 4.2 Seller's Right, Title, or Interest. Seller and Collateral Agent each recognizes and acknowledges that HU makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement. Collateral Agent is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Collateral Agent releases HU from any liability resulting from the assignment of the Assigned Agreement.

ARTICLE V: PAYMENTS, SETOFFS, AND DEDUCTIONS

Section 5.1 Payments. HU shall, as of the date hereof, make all payments due to the Seller under the Assigned Agreement directly to [] for the benefit of the Collateral Agent and any other secured parties, to ABA No. [], Account No. [], or such other account as to which the Collateral Agent shall notify HU in writing. Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, HU, and the Collateral Agent agrees that each such payment by HU to such depository agent of the amount due to Seller from HU under the Assigned Agreement shall satisfy HU's corresponding payment obligation under the Assigned Agreement.

Section 5.2 Setoffs and Deductions. Each of Seller and Collateral Agent agrees that HU shall have the right to set off or deduct from payments due to Seller each and every amount due to HU from Seller pursuant to Section 10.3 of the Assigned Agreement. Collateral Agent further agrees that it takes the assignment for security purposes of the Assigned Agreement subject to any defenses or causes of action HU may have against Seller.

ARTICLE VI: MISCELLANEOUS

Section 6.1 Waiver. The non-exercise of, or delay in exercising, any power or right of any Party to this Consent does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

Section 6.2 Choice of Law. This Consent shall be construed and interpreted in accordance with the laws of the state of Alabama. Any legal action arising out of or related to this Consent shall be brought in the United States District Court for Alabama, and the Parties hereby waive any right to a jury trial in any such action.

Section 6.3 Successors and Assigns. No Party shall assign this Consent or its rights hereunder without the prior written consent of the other Parties, such consent not to be unreasonably withheld.

Section 6.4 Severability. In the event that any term, covenant, or condition of this Consent or the application of any such term, covenant, or condition shall be held invalid by any court or administrative body having jurisdiction, it is the intention of the Parties that in lieu of each such term, covenant, or condition that is invalid, the Parties shall negotiate a valid term, covenant, or condition as similar as possible to such invalid term, covenant, or condition. This Consent shall not otherwise be affected thereby and shall remain in full force and effect.

Section 6.5 Notices and Invoices. Except as otherwise expressly provided under this Consent, any notice or invoice provided for in this Consent must be in writing and shall be effective on the day on which it is actually received (provided that such day is a Business Day, otherwise it shall be deemed to be received on the first Business Day immediately following such day), in person by U.S. Mail or other nationally recognized delivery service, or by facsimile transmission. Notices and invoices sent to HU or Seller shall be made at the addresses provided in the Cover Sheet to the Assigned Agreement. Notices and invoices sent to Collateral Agent shall be made at the address provided below:

For Collateral Agent
Mail Notices to: [Name]
[Address]

Section 6.6 Costs and Expenses. Each Party shall bear and is responsible for its own costs (including attorney's fees) in connection with the negotiation, preparation, execution, completion, implementation, and ongoing administration of this Consent.

Section 6.7 Amendment. This Consent may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by all Parties hereto.

Section 6.8 Counterparts. This Consent may be executed in more than one counterpart, each of which is signed by one or more of the Parties but all of which together shall constitute the same agreement.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed
as of the date first above written.

By: _____

Name: _____

Title: _____

Huntsville Utilities

By: _____

Name: _____

Title: _____

[BANK NAME]

By: _____

Name: _____

Title: _____

City of Huntsville, Alabama

By: _____

Name: _____

Title: Mayor _____