

RE: SECOND READING - COUNCIL BILL 2023-21– NEW POWER PURCHASE AGREEMENT FOR NIXA SOLAR FARM ENERGY

Background:

First read on March 27th, passage of this Council Bill will authorize the mayor to execute three agreements to purchase energy produced at the Nixa Solar Farm from the Missouri Joint Municipal Electric Utility Commission D/B/A the Missouri Electric Commission. New requested information (underlined) has been added to this memo which begins on page 2.

Analysis:

The Missouri Electric Commission (MEC) is the former Missouri Joint Municipal Electric Utility Commission arm of the Missouri Public Utility Alliance (MPUA). The MEC is currently in the process of purchasing numerous municipal electric solar farms from around the state which are owned by Gardner Capital and/or MC Power. This transaction necessitates that Nixa enter into a new Power Purchase Agreement (PPA) along with other supporting documents.

Documents attached to this memo include the Council Bill 2023-21, a Termination Agreement between the City of Nixa and Nixa Solar, LLC., the new PPA with MEC, an Interconnection and Operating Agreement (IA) and, a spreadsheet of anticipated revenue and expenditures for the project. The Termination Agreement is fairly straight forward and ends the current PPA between City of Nixa and Nixa Solar, LLC.

The new IA is an agreement for the connection of the two systems and how operational responsibilities are designated. Similar to other IA's we have with Southwest Power Pool on the transmission system, it provides detail of the various assets, where tie points are made which is the point of energy delivery/transfer and how operations are conducted through the life of the agreement. There is no cost related to this agreement and the term is indefinite until formally ended, usually along with the termination of the PPA.

The PPA is the main agreement for the purchase of solar energy from MEC. This agreement is similar in some ways to the previous PPA with the exception of the term and how the cost is allocated and billed. We project that this PPA will provide overall larger savings than the previous PPA (see attached Exhibit X). Under the new PPA, I have estimated that costs will exceed revenues though the first seven or eight years. Around year eight, cash flow then becomes positive and remains that way through the rest of the term in 2047. Overall positive savings begins around the year 2037 building to approximately \$2.7 million by the end of the term in 2047.

Additionally requested information includes a very rough estimate of potential revenue from the sale of Solar Renewable Energy Credits (SREC's). As reported at the last meeting, SREC's are energy credits that are used by others, typically industrial or commercial electric customers, to promote their use of renewable energy for their business. One SREC is equal to the production of one Megawatt Hour (Mwh) of energy. In the case of the Nixa Solar Farm, it has the capacity to produce over 15,000 MWh's per year. In 2022, actual production was 14,203 MWh's equal to 14,203 SREC's. Currently the owner of the facility is able to sell those providing additional revenue as specified in the PPA.

SREC's are typically sold either on a contract basis directly to an end user or by way of a renewable energy credit market. Higher rates are achieved on the east and west coast because of their environmental policies but here in the Midwest where the market is fairly saturated, prices are considerably lower. It is my understanding however that this will change as more and more areas begin to enact mandatory environmental requirements. Here in the Midwest, SREC's are currently selling on the market for roughly \$3 to \$10 each. On the coast where emission limits have been implemented, prices can get upwards of \$40 each and some contractual SREC's sales have been reported over \$300. I would be providing a wild guess as to how much revenue we could begin to realize under this new PPA but there will be some. The proposed PPA provides that all of the revenue from the sale of SREC's will be credited in our favor to offset cost. The agreement further provides that MEC will be our agent to market those along with many others they manage on behalf of other cities with similar PPA's.

Monthly billing for power will be as in the past. We will provide MEC with the revenue meter readings following the end of each month at which time, MEC will bill us for the power based on the same rate schedule as the original power purchase agreement. MEC will use these funds to pay all fixed and variable costs. Every six months, we will have a true-up of any under or over charge for the period.

Like Nixa, MEC is a not-for-profit municipal association who acts on behalf of its members. In this case, MEC will be the new owner and operator on our behalf. Because MEC can't recover any Nixa Solar Farm costs from any MEC members other than Nixa, the agreement provides the cost that we will be responsible for not previously a part of Nixa Solar, LLC. PPA. Likewise, MEC will apply other revenue or savings such as Environmental Attributes (green energy credits) as a credit to the project cost on our behalf.

The costs for the project includes 100% of the fixed and variable costs MEC incurs in connection with the project. Fixed costs include debt-service payments, land lease payments and other fixed costs associated with an operations and maintenance agreement. Variable costs include reasonable costs associated with the administration, ownership, maintenance, and decommissioning of the Solar Farm, registration, utilization, dispositions, and any other management of the Environmental Attributes and, restoration of the site in accordance with the terms of the lease upon closing the facility.

With this new PPA under ownership of the MEC, Nixa will have more input on operations of the system and may do some of the O&M to keep costs down. An Operating Committee will be formed of representatives of MEC and Nixa to plan operational functions as well as any future capital investments that may arise.

The term of the agreement is somewhat open ended but no sooner than Nixa's reimbursement of all MEC's project costs including any remaining debt service, operational or other cost associated with decommissioning and restoration of the site per the site lease. Because debt service will be 25 years, we anticipate the agreement to be at least that long and are presenting this information based on that assumption. After the term of the debt service, the project may continue as long as the parties wish to continue albeit with a new pricing schedule.

Our overall anticipated energy portfolio cost reduction, in addition to the avoidance of transmission cost, is approximately \$2.7 million for energy and capacity sales alone by the end of MEC's debt term in 2047. That total does not include any additional funds received from the sale of SREC's which we initially estimate to be somewhere between \$30,000 and \$140,000 annually. I did add a conservative example of SREC sales to the spreadsheet exhibit beginning with \$30,000 in 2023 and increasing by 3% each year. This changes the outcome of overall savings to approximately \$3.8 million. At this time, I would not consider the sale of SREC's to be a significant impact to the overall PPA as there are no guaranteed sales.

Recommendation:

Staff recommends passage of Council Bill #2023-21.

MEMO SUBMITTED BY:

Doug Colvin | Assistant City Administrator, Director Nixa Utilities and Public Works

dcolvin@nixa.com | 417-725-2353

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
1	MEC-Nixa Solar Farm Statement of Operations	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
2	Revenue																									
3	Energy and Capacity Sales	\$1,255,025	\$1,278,314	\$1,303,116	\$1,327,982	\$1,352,911	\$1,379,337	\$1,405,836	\$1,432,399	\$1,460,451	\$1,488,574	\$1,516,778	\$1,546,453	\$1,576,208	\$1,606,047	\$1,637,349	\$1,668,743	\$1,702,589	\$1,733,179	\$1,767,563	\$1,800,712	\$1,800,712	\$1,800,712	\$1,800,712	\$1,800,712	\$1,800,712
4	**Potential sale of SREC's (see note below)	\$30,000	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143	\$40,317	\$41,527	\$42,773	\$44,056	\$45,378	\$46,739	\$48,141	\$49,585	\$51,073	\$52,605	\$54,183	\$55,809	\$57,483	\$59,208	\$60,984
5	Total Annual Revenue	\$1,285,025	\$1,309,214	\$1,334,943	\$1,360,764	\$1,386,676	\$1,414,115	\$1,441,658	\$1,469,295	\$1,498,454	\$1,527,717	\$1,557,095	\$1,587,980	\$1,618,981	\$1,650,103	\$1,682,727	\$1,715,482	\$1,750,730	\$1,782,764	\$1,818,636	\$1,853,317	\$1,854,895	\$1,856,521	\$1,858,195	\$1,859,920	\$1,861,696
6	Expenses from operations																									
7	Repairs, Maintenance and Inspections	\$51,269	\$52,808	\$54,392	\$56,024	\$57,704	\$59,435	\$61,218	\$63,055	\$64,947	\$66,895	\$68,902	\$70,969	\$73,098	\$75,291	\$77,550	\$79,876	\$82,272	\$84,741	\$87,283	\$89,901	\$92,598	\$93,376	\$98,238	\$101,185	\$104,220
8	Rents	\$43,200	\$44,064	\$44,945	\$45,844	\$46,761	\$47,696	\$48,650	\$49,623	\$50,616	\$51,628	\$52,661	\$53,714	\$54,788	\$55,884	\$57,001	\$58,142	\$59,304	\$60,490	\$61,700	\$62,934	\$64,193	\$65,477	\$66,786	\$68,122	\$69,484
9	Contract Labor																									
10	Insurance	\$45,000	\$45,450	\$45,905	\$46,364	\$46,827	\$47,295	\$47,768	\$48,246	\$48,729	\$49,216	\$49,708	\$50,205	\$50,707	\$51,214	\$51,726	\$52,244	\$52,766	\$53,294	\$53,827	\$54,365	\$54,909	\$55,458	\$56,012	\$56,572	\$57,138
11	Mowing and Spraying	\$38,329	\$39,287	\$40,269	\$41,276	\$42,308	\$43,365	\$44,449	\$45,561	\$46,700	\$47,867	\$49,064	\$50,290	\$51,548	\$52,836	\$54,157	\$55,511	\$56,899	\$58,322	\$59,780	\$61,274	\$62,806	\$64,376	\$65,985	\$67,635	\$69,326
12	Monitoring and Invoicing	\$7,408	\$7,630	\$7,859	\$8,094	\$8,337	\$8,587	\$8,845	\$9,110	\$9,384	\$9,665	\$9,955	\$10,254	\$10,561	\$10,878	\$11,205	\$11,541	\$11,887	\$12,243	\$12,611	\$12,989	\$13,379	\$13,780	\$14,194	\$14,619	\$15,058
13	Total Operating Expense	\$185,206	\$189,239	\$193,370	\$197,602	\$201,937	\$206,378	\$210,930	\$215,595	\$220,376	\$225,271	\$230,290	\$235,432	\$240,702	\$246,103	\$251,639	\$257,314	\$263,128	\$269,090	\$275,201	\$281,463	\$287,885	\$292,467	\$301,215	\$308,133	\$315,226
14	Bonds and Capital Cost																									
15	Projected B&I (\$15M)	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452
16	Projected Capital Expenses	\$9,236	\$9,236	\$9,236	\$9,236				\$25,000					\$25,000					\$25,000						\$25,000	
17	Total Bond & Capital Expense	\$1,219,688	\$1,219,688	\$1,219,688	\$1,219,688	\$1,210,452	\$1,210,452	\$1,210,452	\$1,235,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,235,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,235,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,210,452	\$1,235,452	\$1,210,452
18																										
19	Total Annual Expense	\$1,404,894	\$1,408,927	\$1,413,058	\$1,417,290	\$1,412,389	\$1,416,830	\$1,421,382	\$1,451,047	\$1,430,828	\$1,435,723	\$1,440,742	\$1,445,884	\$1,476,154	\$1,456,555	\$1,462,091	\$1,467,766	\$1,473,580	\$1,504,542	\$1,485,653	\$1,491,915	\$1,498,337	\$1,502,919	\$1,536,667	\$1,518,585	\$1,525,678
20	Projects Net Cash Flow (savings over previous PPA)	(\$119,869)	(\$99,713)	(\$78,115)	(\$56,526)	(\$25,713)	(\$2,715)	\$20,275	\$18,248	\$67,627	\$91,994	\$116,353	\$142,096	\$142,827	\$193,548	\$220,635	\$247,716	\$277,150	\$278,223	\$332,983	\$361,402	\$356,559	\$353,602	\$321,528	\$341,334	\$336,018
21	Running cash flow total	(\$119,869)	(\$219,582)	(\$297,697)	(\$354,222)	(\$379,935)	(\$382,650)	(\$362,375)	(\$344,127)	(\$276,501)	(\$184,506)	(\$68,153)	\$73,943	\$216,770	\$410,318	\$630,953	\$878,670	\$1,155,820	\$1,434,042	\$1,767,026	\$2,128,428	\$2,484,987	\$2,838,589	\$3,160,117	\$3,501,451	\$3,837,469
22	Cumulative Cash Flow for PPA term Savings above original PPA	\$3,837,469																								
23	** Though included in this spreadsheet, SREC Sales Estimates are not a reliable source of income for this purpose at this time. Without SREC sales estimates, savings in line 24 above would be \$2,743,691																									

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Analysis:

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The term of the agreement is somewhat open ended but no sooner than Nixa's reimbursement of all MEC's project costs including any remaining debt service, operational or other cost associated with decommissioning and restoration of the site per the site lease. Because debt service will be 25 years, we anticipate the agreement to be at least that long and are presenting this information based on that assumption. After the term of the debt service, the project may continue as long as the parties wish to continue albeit with a new pricing schedule.

Our expected energy portfolio cost reduction, in addition to the avoidance of transmission cost, is approximately \$2.7 million by the end of MEC's debt term in 2047. As you can see from the spreadsheet, overall costs are higher initially compared to our existing rate schedule in the first year but begin to lessen, which in turn becomes greater savings each year.

Recommendation:

It is staff's intention to bring this Council Bill back for second reading with a recommendation for passage. Until then, I am available to answer any questions you may have.

MEMO SUBMITTED BY:

Doug Colvin | Assistant City Administrator, Director Nixa Utilities and Public Works
dcolvin@nixa.com | 417-725-2353

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE**
2 **EXECUTION OF SEVERAL AGREEMENTS RELATED TO A CERTAIN SOLAR**
3 **POWER ELECTRIC GENERATING FACILITY.**
4

5
6 **WHEREAS** the Missouri Joint Municipal Electric Utility Commission d/b/a the
7 Missouri Electric Commission (“MEC”) has entered into an Asset Purchase Agreement
8 with Nixa Solar, LLC and Solar Projects, LLC to acquire a certain solar power electric
9 generating facility; and

10
11 **WHEREAS** said Asset Purchase Agreement is subject to MEC negotiating and
12 entering into a Power Purchase Agreement and Interconnection Agreement with the City
13 regarding the energy produced from said facility; and

14
15 **WHEREAS** the City and Nixa Solar, LLC currently operate under a Power
16 Purchase Agreement, dated June 15, 2015, as amended, and an Interconnection
17 Agreement, dated July 18, 2015, as amended; and

18
19 **WHEREAS** the City Council desires to authorize the Mayor, and other officers of
20 the City, to execute a Termination Agreement with Nixa Solar, LLC to terminate the City’s
21 current Power Purchase Agreement and Interconnection Agreement with Nixa Solar, LLC
22 and execute a Power Purchase Agreement and Interconnection Agreement with MEC.

23
24 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
25 **NIXA, AS FOLLOWS, THAT:**

26
27 **SECTION 1:** The Mayor, or designee, is hereby authorized and directed to enter
28 into a Termination Agreement with Nixa Solar, LLC. Said Termination Agreement shall
29 be in substantially similar form as the document attached hereto, and incorporated herein
30 by this reference as “Council Bill Exhibit A.”

31
32 **SECTION 2:** The Mayor, or designee, is hereby authorized and directed to enter
33 into a Power Purchase Agreement with the Missouri Joint Municipal Electric Utility
34 Commission d/b/a the Missouri Electric Commission. Said Power Purchase Agreement
35 shall be in substantial similar form as the document attached hereto, and incorporated
36 herein by this reference as “Council Bill Exhibit B.”

37
38 **SECTION 3:** The Mayor, or designee, is hereby authorized and directed to enter
39 into an Interconnection Agreement with the Missouri Joint Municipal Electric Utility
40 Commission d/b/a the Missouri Electric Commission. Said Interconnection Agreement
41 shall be in substantial similar form as the document attached hereto, and incorporated
42 herein by this reference as “Council Bill Exhibit C.”

43
44 **SECTION 4:** The Mayor and the officers of the City are hereby authorized and
45 empowered to do all things necessary or convenient to carry out the terms and intent of
46 this Ordinance.

47 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final
48 passage by the City Council and after its approval by the Mayor, subject to the provisions
49 of section 3.11(g) of the City Charter.

50

51

52 **ADOPTED BY THE COUNCIL THIS _____ DAY OF _____ 2023.**

53

54

ATTEST:

55

56

57 _____
PRESIDING OFFICER

CITY CLERK

58

59

60 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2023.**

61

62

ATTEST:

63

64

65 _____
MAYOR

CITY CLERK

66

67

68 APPROVED AS TO FORM:

69

70

71 _____
CITY ATTORNEY

TERMINATION AGREEMENT

[Power Purchase Agreement and the Interconnection Agreement]

This TERMINATION AGREEMENT, dated as of [**CLOSING DATE**] (this “Agreement”), by and between CITY OF NIXA, MISSOURI, a home rule charter city and political subdivision of the State of Missouri (the “City”), and NIXA SOLAR, LLC, a Missouri limited liability company (the “Company”). Throughout this Agreement, the City and the Company are sometimes referred to each as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties hereto are parties to (a) that certain Power Purchase Agreement dated June 15, 2015, as amended by that certain Amendment to Power Purchase Agreement dated August 15, 2016 (collectively, the “Power Purchase Agreement”) and (b) that certain Interconnection Agreement dated July 18, 2015, as amended by that certain Amendment to Interconnection Agreement dated August 15, 2016 (collectively, the “Interconnection Agreement”); and

WHEREAS, the Parties hereto have mutually agreed to terminate the Power Purchase Agreement and the Interconnection Agreement, in each case pursuant to the terms thereof and this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the City and the Company hereby agree as follows (all capitalized terms not defined herein shall have the meanings specified in the Power Purchase Agreement and the Interconnection Agreement):

1. Termination. The Parties hereby agree to terminate the Power Purchase Agreement and the Interconnection Agreement. Effective as of the date hereof (the “Termination Date”), each of the Power Purchase Agreement and the Interconnection Agreement shall terminate and be of no further force and effect. Notwithstanding any provision of the Power Purchase Agreement or the Interconnection Agreement to the contrary, neither Party shall have any further obligation thereunder or with respect thereto, except as specifically set forth herein.

2. Effect of Termination. Effective as of the Termination Date, neither the City (or its directors, officers, employees, agents, affiliates, successors, assigns, representatives, or attorneys), on the one hand, nor the Company (or its directors, officers, employees, agents, affiliates, successors, assigns, representatives, or attorneys), on the other hand, shall have any liability or obligation to each other under the Power Purchase Agreement or the Interconnection Agreement, except that the City’s obligation to pay the Company for all power delivered pursuant to the Power Purchase Agreement through the Termination Date and the provisions of Article VIII of the Power Purchase Agreement shall survive the termination of said agreement and shall continue in full force and effect in accordance with the terms of the Power Purchase Agreement.

3. Releases. Except as provided in Section 2 hereof, effective as of the Termination Date, each of the Parties hereto, on its own behalf and on behalf of its directors, officers, employees, agents, affiliates, successors, assigns, representatives, and attorneys, hereby irrevocably, fully and unconditionally releases and forever discharges the other Party and each of its past or present directors, officers, employees, agents, affiliates, successors, assigns, representatives, attorneys, and insurers, from and against any and all present and future claims, counterclaims, demands, actions, suits, causes of action, damages, controversies and liabilities, including, without limitation, any costs, expenses, bills, penalties or attorneys’ fees, whether known or unknown, contingent or absolute, foreseen or unforeseen, and whether in law, equity or otherwise, that could have been asserted in any court or forum and relating in any way to any conduct, occurrence, activity, expenditure, promise or negotiation arising from or relating to the Power Purchase Agreement or

the Interconnection Agreement, including the performance thereof and further payment obligations of any kind in connection therewith.

4. Due Authorization. Each Party hereto hereby represents and warrants that the signature to this Agreement has been duly authorized by all necessary corporate action on its part and that the officer executing this Agreement on its behalf has the authority to execute the same and to bind it to the terms and conditions of this Agreement.

5. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of this Agreement is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner.

6. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Missouri applicable to contracts executed in and to be performed in that State.

8. Amendment. This Agreement may not be amended except by an instrument in writing signed by each of the Parties hereto.

9. Entire Agreement; Assignment. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof. This Agreement shall not be assigned by either Party (whether pursuant to a merger, by operation of law or otherwise).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

CITY OF NIXA, MISSOURI

(SEAL)

By: _____
Name: Brian Steele
Title: Mayor

ATTEST:

By: _____
Name: Rebekka Coffey
Title: City Clerk

NIXA SOLAR, LLC

By: Gardner Nixa Solar, LLC, Manager

By: GCMC Solar Power, LLC, Managing Member

By: _____
Mark E. Gardner, Manager

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2023 (the “Effective Date”), by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri (“City”), and the Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission, a body public and corporate of the State of Missouri (“MEC”). City and MEC each may be referred to as a "Party" or collectively as the “Parties.”

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

RECITALS

WHEREAS, MEC is a joint municipal utility commission formed and operated in accordance with Sections 393.700 to 393.770 of the Revised Statutes of the State of Missouri (“RSMo”); and

WHEREAS, by contract, City and various other Missouri municipalities have caused the formation of MEC for the purpose of procuring electric Energy and Capacity for the benefit of, and pursuant to the governance and direction of, MEC’s members; and

WHEREAS, MEC is engaged in negotiations to acquire ownership interest of that certain solar power electric generating facility located in the City of Nixa (“Project”); and

WHEREAS, the Project entered commercial operation on November 13, 2017 and has a remaining useful service life of at least twenty (20) years; and

WHEREAS, MEC’s ownership of the Project (if obtained) will enable MEC to make sales of Capacity and Energy from the Project to City; and

WHEREAS, City desires to enter into an agreement for a long-term, cost-based purchase from MEC of all of the Capacity and Energy to be provided from MEC’s ownership of the Project, and MEC desires to make such a sale to City, all pursuant to the terms and conditions set forth herein;

WHEREAS, in exchange for the opportunity to make purchases hereunder on terms that provide benefits similar to those of ownership of the Project, City agrees to equitably share, pursuant to the terms and conditions set forth herein, in risks (including the reasonably-incurred up-front costs) that MEC must bear in connection with its efforts to purchase the Project; and

WHEREAS, MEC will rely on the commitment entered into by City herein in going forward with MEC’s efforts to purchase and finance the Project.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, MEC and City agree as follows:

AGREEMENT

ARTICLE I

Definitions

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Article I.

AAA. The meaning ascribed to such term in Section 9.5.1 hereof.

Agreement. This contract, including all annexes, for the sale and purchase of the Product, entered into between MEC and City, and as amended by the Parties from time to time.

Business Day. Means any day except Saturday, Sunday, or a Federal Reserve Bank holiday.

Calendar Month. One of the twelve (12) full months named in the calendar, (i.e. January, February, March, etc.).

Calendar Year. The period of time beginning on January 1 and ending on December 31 of each year.

Capacity. The output potential a generator can produce under specific conditions. The Capacity of generating equipment is generally expressed in kilowatts (“kW”) or megawatts (“MW”) and reflects the actual number of kW generated by the Project during the period being considered less any generating output in kW used for generation production.

City. The meaning ascribed to such term in the preamble hereof.

Demand. The meaning ascribed to such term in Section 9.5.1 hereof.

Effective Date. The meaning ascribed to such term in the preamble hereof.

Emergency. Any condition or situation requiring actions or inactions that are reasonably necessary in order to (i) preserve public health and safety, (ii) limit or prevent damage, or (iii) expedite restoration of service.

Energy. The actual number of kilowatt hours (“kWh”) generated by the Project during the period being considered less any generating output in kWh used for generation production.

Environmental Attributes. All attributes (environmental or other) that are created or otherwise arise from the Project's generation of electricity using sunlight as a fuel in contrast to the generation of electricity using nuclear or fossil fuels or non-renewable resources, including, but not limited to, renewable energy credits, solar renewable energy credits, tags, certificates or similar products or rights associated with solar as a “green” or “renewable” electric generation resource. These attributes include all local, state or federal credits, allowances, offsets and similar rights issued, recognized, created or otherwise arising from the photovoltaic Project, Energy, or the delivery of the Capacity and Energy to City, which can be used to claim

responsibility for any avoidance or reduction of emissions or pollutants, including, but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other program.

Environmental Law. Any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process wastewater or otherwise relating to the environment or hazardous substances as amended from time to time.

Fixed Costs. The meaning ascribed to such term in Section 2.3.1 below.

Force Majeure. The meaning ascribed to such term in Section 6.1 hereof.

Good Utility Practice. Practices, methods, and acts which, 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 of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts relevant to the activity and facts in question.

Governmental Authority. Any nation or government, any state or other political subdivision thereof, whether foreign or domestic, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation, municipal electric system or agency or other entity owned or controlled by any of the foregoing, but excluding, for purposes of this Agreement, City and MEC.

kW. Kilowatt and shall have the meaning ascribed to such term in the definition of Capacity.

MEC. The meaning ascribed to such term in the preamble hereof.

MW. Megawatt and shall have the meaning ascribed to such term in the definition of Capacity.

Non-Peak Season. Defined as October to April.

Off-Peak Hours. Defined as the hours between 9:00pm and 5:00am, local time.

Outage. A physical state in which all or a portion of the Project is unavailable to provide the Product, or in which any other system, facility or equipment is unable to perform its intended function.

Parties. City and MEC, and their respective successors and permitted assignees.

Party. City or MEC, and their respective successors and permitted assignees.

Permits. All state, federal, and local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, operation, and maintenance of the Project.

Person. An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

Planned Outage. The prescheduled removal of all or any portion of the Project from service to perform routine maintenance or improvement including, but not limited to, periodic cleaning, repair or replacement of photovoltaic panels, inspections, and testing where such removal reduces or eliminates the ability of the Project to generate and deliver the Product to the Point of Delivery or the ability to transmit the Product to City.

Point of Delivery. The Point of Delivery set forth in the single-line diagram attached hereto in Annex B.

Product. All of the Capacity and Energy generated by the Project together with all of the Environmental Attributes associated with the Project.

Project. The meaning ascribed to such term in the Recitals hereof and as described in Annex A.

Requirements of Law. The statutes of the State of Missouri and bylaws or charter or other organizational or governing documents of MEC or City, respectively, and any material United States federal, state, county or local law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon MEC or City, respectively or to any of its respective property.

MEC. The meaning ascribed to such term in the preamble hereof.

Site. The real property located in Christian, County, Missouri on which the Project is located, including all related easements.

Site Lease. That certain Ground Lease Agreement made and entered into as of January 6, 2014 between EFB, LLC (as landlord) and Solexus Development LLC, which was subsequently assigned by Solexus Development LLC to Nixa Solar, LLC (as tenant) as of April 6, 2015 and amended by that certain Amendment to Ground Lease Amendment dated as of September 27, 2016, and as further assigned and amended by the parties from time to time, and to include any other or subsequent Lease that may be entered into by MEC for the specific real estate the Project is located on.

Station Auxiliary. Energy used by MEC to operate the Project.

SWPPP. The meaning ascribed to such term in Section 4.1.3 hereof.

Term. The meaning ascribed to such term in Section 2.1 hereof.

Variable Costs. The meaning ascribed to such term in Section 2.3.2 below.

ARTICLE II

Purchase and Sale of the Product

2.1 Term.

2.1.1 The Term of this Agreement shall commence on the date when executed by both Parties as reflected on the signature page below.

2.1.2 This Agreement shall remain in effect until, and shall terminate upon, MEC's receipt of City's payment in full of the final invoice properly rendered by MEC to City under Section 3.10 for MEC's Project costs, including amounts owed under any operation and maintenance agreements, any amounts owed with respect to MEC's bonds (including obligations under any related bond indenture or similar document) or other arrangements entered into to finance the pursuit and/or acquisition of the Project, and all amounts MEC reasonably determines will be required to decommission the Project and restore the Project Site in accordance with the Site Lease. Provided, however, that MEC may, in its sole discretion, elect to terminate this Agreement without requiring from City payment of a final invoice under Section 3.10, where the Agreement is terminated pursuant to Section 10.1 or as a result of an Event of Default by City, and MEC agrees to assume, after termination, ongoing responsibility for and rights to the Project Capacity and Energy; in such event, City shall only be required to make payment to MEC of invoices for charges incurred under Sections 2.3 related to the period prior to the termination of this Agreement. Upon termination, each Party shall be released from all of its obligations under this Agreement other than those obligations arising prior to such termination and those obligations which survive termination of this Agreement pursuant to Section 10.14.

2.2 Sale and Purchase. City agrees to purchase the entire output Product of the Project during the Term and to accept delivery of the Product at the Point of Delivery during the Term, subject to the terms of the Agreement. MEC agrees to sell to City the entire output Product of the Project during the Term and to deliver the entire output Product from the Project to City at the Point of Delivery during the Term. The Product will be provided on a unit-contingent basis. MEC shall not contract to sell any portion of the Project output or Project capability (whether or not that output or capability is defined by law or tariff or for which there is a market at the time this Agreement is entered into) to any Person other than City at any time during the Term, and MEC acknowledges that City is entitled to receive all output Product from the Project during the Term. Title to and risk of loss for the Product from the Project shall transfer to City at the Point of Delivery. MEC warrants that it will deliver to City the Product at the Point of Delivery free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

2.3 Price. It is the Parties' intention that City will be responsible for 100% of (a) the Fixed and Variable Costs MEC incurs in connection with the Project, including decommissioning the Project and restoration of the Site in accordance with the Site Lease, and (b) MEC's administrative and other reasonable costs associated with its operation of the Project. City's obligation to pay for such costs shall be effective upon the Effective Date and continue until all amounts due hereunder are paid in full.

2.3.1 The Fixed Costs shall include, but are not limited to, MEC's debt-service payments (both principal and interest) and other reasonable obligations incurred by MEC in financing any or all of its ownership in the Project, including deposits to any funds or accounts established pursuant to any financing documents or by the MEC Board of Directors (with due consideration of any input from the City related to the Project) in such amounts as are required by such financing documents or approved by MEC's Board of Directors by inclusion in MEC's annual budget, MEC's costs of the Project's capital projects (replacements, improvements, etc.) undertaken after MEC acquired ownership of the Project, and any other Fixed Costs that MEC is obligated to bear under any operation and maintenance agreement, Site Lease, or other lease. Not less than sixty (60) days prior to the vote by the MEC Board of Directors to establish the Fixed Costs, MEC shall provide City with documentation supporting the Fixed Costs. MEC shall also provide such additional workpapers as City may reasonably request.

2.3.2 The Variable Costs shall include, but are not limited to, MEC's reasonable costs associated with the administration, ownership, maintenance, and decommissioning of the Project, registration, utilization, dispositions, and any other management (collectively, "management") of the Environmental Attributes, and restoration of the Site in accordance with the terms of the Site Lease. The Variable Costs for each year shall be initially billed as an estimate in accordance with the annual budget established by the MEC's Board of Directors with due consideration of any input from City (or, if action by the Board of Directors is not reasonably achievable in a timely manner, by the MEC's Executive Committee). MEC shall provide budgets and cost information to support the determination of such cost allocations to the Project and to City. Budgeted items shall include, but are not limited to, MEC's reasonable administrative and other related costs that are (1) directly assigned to the Project because they relate solely to MEC's ownership of the Project or (2) allocated to the Project from the more general pool of MEC's costs generally associated with its role as a power supplier to City and others. In addition, budgeted items include anticipated costs for operation and maintenance of the Project, management of the Environmental Attributes, as well as decommissioning of the Project and Site restoration, whether those costs relate solely to MEC's ownership of the Project or are allocated to the Project from the more general pool of MEC's operation and maintenance costs associated with MEC's role as an owner of power projects. Additional budgeted items include, to the extent such items relate to MEC's ownership and operation of the Project, all taxes, all costs for Permits or compliance with Environmental Laws or other Requirements of Law, compliance with the Storm Water Pollution Prevention Plan (as defined in Section 4.1.3) and any modification thereof, and Station

Auxiliary power. Not less than sixty (60) days prior to the vote by the MEC Board of Directors, or the Executive Committee as applicable, to establish the estimated Variable Costs, MEC shall provide City with documentation supporting the estimated Variable Costs. MEC shall also provide such additional workpapers as City may reasonably request.

2.3.3 Annual Meeting. Not less than thirty (30) days prior to the vote by the MEC Board of Directors, or the Executive Committee as applicable, unless the Parties agree in writing to a different date, representatives of MEC and City shall meet to discuss the Fixed Costs and estimated Variable Costs. Each Party shall be deemed to have vested in their respective representatives the authority to agree to the recommendation of Fixed Costs and estimated Variable Costs to be submitted to the MEC Board of Directors, or the Executive Committee. To the extent representatives of MEC and City do not agree to the recommendation, the MEC recommendation shall control.

2.4 MEC Conditions Precedent. MEC's obligations to deliver Capacity and Energy to City under this Agreement shall be subject to the satisfaction or waiver of the conditions precedent listed below. MEC shall make reasonable efforts to ensure that all such conditions precedent are satisfied by _____. In the event any of the conditions listed below are not satisfied or waived in writing by MEC by such date, MEC shall have the right to terminate this Agreement, without any liability or further obligation to City as a result of such termination, by notice to City at any time within ten (10) Business Days following such failure to satisfy the condition. If no termination notice has been provided to City within the applicable time, any unsatisfied condition shall be deemed to have been waived by MEC.

2.4.1 MEC executing, in its sole discretion, purchase agreements for ownership of the Project;

2.4.2 MEC obtaining, in its sole discretion, satisfactory financing for the purchase of the Project; and,

2.4.3 MEC receiving all Permits in form and substance satisfactory to MEC that MEC requires in order to purchase, own, and operate the Project.

2.5 Environmental Attributes. City is entitled to all Environmental Attributes at any time allocated to the Project and/or associated with Capacity and Energy produced from the Project. MEC shall be City's agent with respect to the management of the Environmental Attributes. MEC's management of the Environmental Attributes shall be for the sole benefit of City and shall be consistent with MEC's management of Environmental Attributes on behalf of MEC's other members.

2.6 Environmental Attribute Accreditation. City agrees to cooperate with MEC in taking such actions as are necessary to obtain accreditation of Environmental Attributes associated with the Project. To the extent City fails to cooperate with MEC, MEC shall have no

obligation to obtain accreditation of Environmental Attributes and MEC shall have no further obligation with respect to the management of the Environmental Attributes.

- 2.7 Operating Committee. The Parties shall form a committee to exchange information and coordinate with respect to matters relating to the performance of this Agreement ("Operating Committee"). Each Party shall appoint two representatives to serve on the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement. Either MEC or City may request a meeting of the Operating Committee at a mutually agreeable time and place, but the Operating Committee shall meet no less frequently than annually. Matters to be reviewed by the Operating Committee shall include, without limitation, (1) Seller's annual budgets for costs that are included in the Price; (2) MEC's schedules for planned maintenance of the Project and forced or scheduled maintenance Outages; (3) Fixed Costs; (4) Variable Costs; and, (5) disposition of Environmental Attributes. The Parties agree that together they will maintain an ongoing two (2) years maintenance plan to be adjusted annually as needed. Meetings of the Operating Committee may be conducted in person or by telephone, and each Party may elect to have one or more individuals attend any such meeting on behalf of the Party in addition to the Party's appointed representatives. Within a reasonable time after the conclusion of each meeting of the Operating Committee, MEC shall provide a written summary or summaries of such meeting, including a description of issues discussed and decisions agreed upon by the Parties.

ARTICLE III

Metering and Payment

- 3.1 Metering Equipment. MEC shall, at its own expense, provide, own, operate, and maintain revenue-quality meters that measure the power at the Point of Delivery and associated telecommunications equipment necessary for accurately determining the Capacity and Energy delivered under this Agreement. Except as provided in Sections 3.2 and 3.3, MEC's meter(s) shall be used for quantity measurements under this Agreement. City, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Capacity and Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the maintenance, and operation of MEC's meter(s), and must meet the technical specifications provided by MEC. City and MEC shall each provide to the other (a) real-time power generation data obtained from City's and MEC's metering equipment; and (b) consistent with Section 3.3, reasonable access to test the other Party's metering equipment.
- 3.2 Measurements. Readings of MEC's meter(s) made by MEC shall be conclusive as to the amount of Capacity and Energy delivered to City hereunder; provided, however, that if any of MEC's meter(s) is out of service or is determined, pursuant to Section 3.3 hereof, to be registering inaccurately, measurement of Capacity and Energy delivered hereunder shall be determined by, in the following order: (a) City's check meter, annually tested

and registering accurately; or (b) in the absence of an installed, annually tested and accurately registering check meter belonging to City, making a mathematical calculation if, upon a calibration test of MEC's meter, a percentage error is ascertainable; or (c) in the absence of an installed, annually tested and properly registering check meter belonging to the City, and an ascertainable percentage of error in MEC's meter, estimating by reference to quantities measured during periods of similar conditions when MEC's meter was registering accurately. If no reliable information exists as to the period over which MEC's meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

- 3.3 Testing and Correction. The accuracy of MEC's meter(s) shall be tested and verified by MEC annually. In addition to the foregoing, City shall have the right, at its own expense, to test and verify MEC's meter(s) upon reasonable notice, provided such testing shall not exceed one test during a Calendar Year, or more frequently if there is just cause. If City has installed check meters in accordance with Section 3.1 hereof, City shall test and verify such meters annually. Except as provided herein, each Party shall bear the cost of the annual testing of its own meters. Each meter shall meet Southwest Power Pool requirements for metering accuracy and shall be accurate to within a one percent (1 %) variance. All metering shall be MV-90 compatible and if City installs a check meter, the check meter will be specified by MEC. If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter. Should the meter be found to be registering within the permitted one percent (1 %) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, the cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond the permitted variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount exceeding the permitted one percent (1 %) variance, such meter shall be promptly adjusted to record properly or replaced, any previous recordings by such meter shall be adjusted in accordance with Section 3.2, any prior payments made for Capacity and Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 3.2. If the difference of the payments actually made by City minus the payment based upon the corrected measurements is a positive number, MEC shall pay the difference to City; if the difference is a negative number, City shall pay the difference to MEC. In either case, the Party paying such difference shall also pay interest as described in Section 3.5.5 for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

3.4 Maintenance and Records. Each Party shall have the right to be present whenever the other Party tests and/or calibrates the equipment used in measuring or checking the measurement of the Capacity and Energy delivered hereunder. Each Party shall endeavor to give five (5) days', but in no event less than forty-eight (48) hours', notice to the other Party in advance of taking any such actions. The records from the measuring equipment shall remain the property of MEC or City, respectively. Upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify the accuracy of bills. Each Party shall be permitted to audit such records of the other Party no more frequently than once each Calendar Year.

3.5 Invoicing and Payment.

3.5.1 City shall read the meter or cause the meter to be read as soon as practicable after the last day of the previous Calendar Month and shall report such reading for the Capacity and Energy delivered for the previous Calendar Month to the MEC.

3.5.2 Fixed Costs and Variable Costs will be due in full even if the Project is unavailable or operating at reduced output levels for all or part of a month. City shall be obligated to continue paying all invoiced costs to MEC until MEC has fully discharged its Project-related debt obligations (or until City pays its final invoice pursuant to Section 3.10), even if the Project is prematurely retired.

3.5.3 Charges will be billed to City each Calendar Month, based on projected Fixed Costs and Variable Costs, to be incurred in the following month. MEC shall prepare and render such monthly invoices using the most currently available budgets prepared by MEC and payment schedules for repayment of borrowed funds associated with the Project. Such invoices shall also reflect credits to City in connection with MEC's management of the Environmental Attributes on the monthly invoice as, and only to the extent that, MEC has received payment for Environmental Attributes at least ten (10) Business Days prior to the issuance of the invoice. MEC shall provide each monthly invoice by e-mail and fax to City on or before the fifth Business Day of the month.

3.5.4 City shall pay the invoiced amount by the 15th day of the month (provided, however, that City shall not have less than seven (7) Business Days after issuance of the invoice in which to make its payment), via a bank wire transfer or ACH debit to MEC's bank account in accordance with the instructions provided in writing by MEC.

3.5.5 Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to an annual rate of two percent (2%) calculated daily plus the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of the Wall Street Journal, for the days of the late payment period multiplied by the number of days elapsed from and including the due date, but excluding the payment date. In the event this index is

discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

- 3.6 True-Ups. MEC shall prepare and issue true-up statements no less frequently than every six (6) months, reconciling amounts invoiced and paid pursuant to cost projections against actual costs. Any overpayments by City shall be credited on the next invoice provided to City, and any underpayments shall be added to the next invoice provided to City.
- 3.7 Disputes. If City disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to MEC. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, together with interest as provided in Section 3.5.5, based upon the actual number of days elapsed from the date paid until the date refunded or offset.
- 3.8 Audits. Not more than once a year after MEC acquires the Project, the City may conduct an audit of (i) records maintained by MEC in conjunction with Project power sales and purchases, and (ii) all costs charged to the City. The costs of such audits shall be borne by the City. MEC shall cooperate with one such audit in a given year, by making available documents and other information reasonably requested in connection therewith, during normal business hours.
- 3.9 Pass-Through of Refunds. If, pursuant to any operation or maintenance agreements, MEC receives any refunds (as opposed to credits against its monthly bills, which will simply reduce MEC's costs to be passed through to City hereunder) of any of its Project costs, it shall promptly pay to City an appropriate share of such refunds.
- 3.10 Final Invoice and Payment.
- 3.10.1 Within ten (10) Business Days after MEC has determined its total costs relating to the Project following the decommissioning of the Project and the date the Site is fully restored in accordance with the terms of the Site Lease, MEC shall prepare and present to City a final invoice for City's Purchase Percentage of MEC's Project costs incurred but not reimbursed, plus all costs of the decommissioning of the Project and all Site restoration costs. City shall submit payment of its final invoice within ten (10) Business Days. MEC shall provide as much advance notice as practicable as to the amount (or estimate thereof) and timing of the final invoice.
- 3.10.2 If, subject to the provisions of any applicable bond indenture, MEC elects to terminate this Agreement prior to the end of the Term, for any of the reasons permitted herein or under law or equity, and it does not elect to waive payment by City of a final invoice pursuant to Section 2.1.1, MEC shall prepare a final invoice reflecting its good-faith estimate of the City's share of the Fixed Costs that it would have paid through the remaining Term if the Agreement had not

been terminated. MEC shall further elect whether to receive payment from the City of such amount in a lump sum or through a payment schedule to be established by MEC.

- 3.11 Unconditional Nature of Payment Obligation. All amounts payable by City under this Agreement shall be due whether or not the Project is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of MEC or any other Person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE IV

MEC's Obligations

- 4.1 Operation and Maintenance of the Project. MEC shall:
- 4.1.1 Maintain and operate, provide security for, and repair the Project and all related facilities in accordance with Good Utility Practice and requirements provided herein.
 - 4.1.2 Maintain compliance with and, as necessary, renew, and modify from time to time the Permits and all other permits, certificates or other authorizations which are required by any Requirement of Law or Governmental Authority as prerequisites to engaging in the sale of Capacity and Energy at the Point of Delivery as envisioned by the Agreement and to meeting MEC's obligation to operate the Project consistently with the terms of the Agreement.
 - 4.1.3 Comply with the existing Site-specific Storm Water Pollution Prevention Plan ("SWPPP"). MEC shall be responsible for obtaining any revisions to the SWPPP.
 - 4.1.4 Obtain and maintain policies of general liability insurance in the minimum amount of Two Million Dollars (\$2,000,000), and property insurance in the minimum amount of the total value of the Project assets, throughout the Term of the Agreement. The insurance policies shall (i) be obtained from insurers rated at least A-VII by AM Best (or a comparable rating agency), (ii) at City's election, list City as an additional insured and additional party for the receipt of all notices, provided that City shall reimburse MEC for any increase in premiums that result solely from adding City to the policy; and (iii) not be cancelable without ten (10) days prior written notice for nonpayment of premium or thirty (30) days prior written notice for all other events, such notice to be provided by the insurer to City. MEC's insurance shall in all cases be primary and non-contributory. Any insurance proceeds received with respect to the destruction of all or any part of the Project will be applied to the reconstruction of the Project or the affected portion unless MEC can demonstrate to City that it is not commercially reasonable to do so.

- 4.1.5 Comply with all reasonable requests by City relating to City's compliance with any such directives relating to deliveries of Capacity and Energy from the Project. The Parties recognize that MEC's compliance with any directives of City due to conditions on City's distribution system or due to an Emergency that in either event requires curtailment or interruption of Capacity and Energy deliveries will result in reduced deliveries of Energy hereunder, without liability of either Party.
- 4.1.6 Use reasonable efforts to schedule Planned Outages in conjunction with City and make reasonable efforts to schedule Planned Outages for Off-Peak Hours and the Non-Peak Season; provided, however, MEC's reasonable efforts shall not include MEC altering its planned or scheduled maintenance if making such alterations would cause MEC to (i) violate any operating guidelines of the generator manufacturer for solar panels or inverters included in the Project; or (ii) take an action inconsistent with Good Utility Practice with respect to the care of any of the equipment comprising the Project. All Planned Outages shall have an estimated duration and be communicated by MEC to City in a monthly or weekly notification. MEC shall also provide to City, as soon as practicable, information relating to full or partial unplanned Outages of the Project, including MEC's estimate of the duration of any such Outages.
- 4.1.7 Allow City reasonable access to the Project, subject to reasonable advance notice and City's compliance with MEC's safety and security measures.

4.2 General Obligations.

- 4.2.1 MEC, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to MEC, or the Project, or by reason of the sale of Energy to City up to the Point of Delivery under the Agreement.
- 4.2.2 MEC shall obtain in its own name any and all pollution or environmental credits or offsets necessary to operate the Project in compliance with Environmental Laws.
- 4.2.3 MEC shall purchase from City all Station Auxiliary power not provided by the Project itself, at rates generally applicable to all other commercial uses of City's system.
- 4.2.4 MEC shall continue to (i) preserve, renew and keep in full force and effect, to the extent applicable, its organizational existence and good standing, and take all reasonable action to maintain all Permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all Requirements of Law applicable to MEC; and (iii) comply with all material agreements, instruments and undertakings related to this Project, except to the extent that any failure to so comply has not had, or is not reasonably likely to have, a material adverse effect on MEC's performance of its material obligations under this Agreement.

- 4.2.5 MEC shall make available for City's review such other information in MEC's possession regarding the Permitting, engineering, construction, condition, and operations of the Project, as City may, from time to time, reasonably request.
- 4.3 Interconnection. The Project shall be interconnected with the City's distribution system.
- 4.4 Modification of Site Lease. Prior to executing a modification to the Site Lease that would alter MEC's obligations under the Site Lease and result in additional costs to MEC and which costs MEC would recover from City, MEC shall provide City with as much prior written notice of the modification as practicable. If City does not object in writing within ten (10) Business Days of receipt of the notice, City shall be deemed to have consented to the modification.

ARTICLE V

City's Obligations

- 5.1 Distribution Service. City shall, at its expense, be responsible for obtaining service over distribution to the extent such service is necessary for delivery of the Capacity and Energy of the Project from the Point of Delivery.
- 5.2 Cooperation. City agrees to cooperate with MEC in any applications for Permits, certificates or other authorizations as described in Section 4.1.2. City's obligation under this section shall consist only of providing nonproprietary information in its possession, custody or control necessary to complete any applications and responding to requests from the relevant Governmental Authorities or other Person.
- 5.3 MEC Membership. City is and shall remain throughout the Term of this Agreement a member of MEC.
- 5.4 Political Subdivision. City is and shall remain throughout the Term of this Agreement a "political subdivision" of the State of Missouri within the meaning of Section 103(a) of the Internal Revenue Code.
- 5.5 Rates. City will establish, maintain and collect such rates, fees and charges for the electric service of its electric utility system so as to provide revenues at least sufficient to enable City to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.
- 5.6 Operating Expense. The obligations of City to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by City pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The City shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement.

- 5.7 Good Utility Practice. The City covenants to maintain its electric system in good repair in accordance with Good Utility Practice, to cooperate with MEC, and to keep accurate records and accounts.
- 5.8 Sale of System. The City shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the City assign all or any part of its entitlement to the Product or any or all of its interests under this Agreement, except upon the approval of MEC pursuant to Article 10, such approval not to be unreasonably withheld or delayed.
- 5.9 Tax-Exempt Financing. The City shall not use or permit to be used any of the electric Capacity and Energy acquired under this Agreement, or to operate its system in any manner or for any purpose, or take or omit to take any action which could, either alone or in conjunction with any other similar actions by the City, result in loss of the exclusion from gross income for federal income tax purposes of the interest on any bonds issued or thereafter issuable by MEC for the Project.
- 5.10 Financial Disclosures. City shall provide such financial information and operating data as MEC is required to obtain from City under the continuing disclosure requirements of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

ARTICLE VI

Force Majeure

- 6.1 Force Majeure. The performance of each Party under the Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, which, by exercise of reasonable diligence and foresight, could not reasonably have been avoided, including, but not limited to, an Emergency, flood, earthquake, storm, fire, lightning, hurricanes, heavy rains, tornadoes, ice storms, landslides, mudslides, epidemic, pandemic, war, riot, civil disturbance, sabotage, strike, and act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Payment of money shall not be excused by Force Majeure.
- 6.2 Remedial Action. A Party shall not be liable to the other Party to the extent it is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practices.

- 6.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:
- 6.3.1 Inclement weather affecting construction, start-up, or operation of the Project or related facilities that does not otherwise meet the definition of "Force Majeure."
 - 6.3.2 Changes in market conditions, governmental action, or weather conditions that affect the cost of producing Energy at the Project or affect the price of Energy that could be obtained from sources other than the Project.
 - 6.3.3 Unavailability of sunlight, except to the extent due to a qualifying event of Force Majeure.
 - 6.3.4 Unavailability of equipment, repairs or spare parts for the Project, except to the extent due to a qualifying event of Force Majeure.
 - 6.3.5 Inability to obtain, maintain or renew any Permit or any undue delay in obtaining, maintaining, or renewing any Permit, in either case, due to MEC's failure to diligently pursue obtaining, maintaining or renewing such Permit.
 - 6.3.6 Scheduled maintenance on the distribution system.
- 6.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE VII

Termination/Default/Remedies

- 7.1 Events of Default by City. The following shall each constitute an Event of Default by City:
- 7.1.1 City fails to make a payment when due under the Agreement.
 - 7.1.2 Any other material breach of the Agreement by City not specifically enumerated in this Section 7.1, which is not cured within thirty (30) days after notification by MEC of the breach by City; *provided, however*, that if such default cannot be cured within such 30-day period, no Event of Default shall occur for so long as City is diligently pursuing a cure, and such non-performance is curable.
 - 7.1.3 The commencement, with respect to City, by City or by another Person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for City's winding-up or liquidation.

- 7.2 Events of Default by MEC. The following shall each constitute an Event of Default by the MEC:
- 7.2.1 Any material breach of the Agreement by MEC not specifically enumerated in this Section 7.2, which is not cured within thirty (30) days after notification by City of the breach by MEC; *provided, however*, that if such default cannot be cured within such 30-day period, no Event of Default shall occur for so long as MEC is diligently pursuing a cure, and such non-performance is curable.
- 7.2.2 The commencement, with respect to the MEC, by the MEC or by another Person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for the MEC's winding-up or liquidation.
- 7.3 Remedies. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity (except as limited in Section 7.4). The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.
- 7.4 No Termination by City. In response to any Event of Default by MEC, City shall not have the right to terminate this Agreement, until such time as all amounts owed under any operation and maintenance agreements, any amounts owed with respect to MEC's bonds (including obligations under any related bond indenture or similar document) or other arrangements entered into to finance the pursuit and/or acquisition of the Project, and all amounts reasonably required to decommission the Project and restore the Project Site in accordance with the Site Lease are paid in full.
- 7.5 Suspension of Scheduling Rights. If City has committed a Payment Default that has not been cured within five (5) days after notice of such default has been provided by MEC, MEC may temporarily suspend all deliveries of Product to City and sell Product to a replacement City. Notwithstanding such action by MEC, City shall remain responsible for all Fixed Costs and Variable Costs, all as set forth in section 2.3 above, to the extent MEC is unable to mitigate its losses through such actions. Such suspension and disposition of City's Energy entitlement shall continue until the earlier of (i) City shall have cured such default or (ii) City's entitlement share has been permanently transferred or sold in accordance with Section 7.7.
- 7.6 Termination of Entitlement. If at any time City fails to cure a Payment Default within sixty (60) days, its entitlement to both Capacity and Energy from the Project shall immediately and permanently be terminated; provided, however, City's obligation to make payments under this Agreement shall not be eliminated or reduced except to the extent provided in Section 7.7.

7.7 Disposition of Entitlement. In the event the City's rights to Capacity and Energy under this Agreement are terminated pursuant to Section 7.6, MEC shall use its reasonable best efforts to sell the City's rights under this Agreement for the remaining Term of the Agreement or the Energy associated therewith on such terms and conditions as are acceptable to MEC to any Person, firm, association or corporation, public or private; provided, however, that MEC shall make no such sales in such amounts, for such periods of time and under such terms and conditions as will cause the interest on any tax-exempt bonds to lose their exclusion from gross income for federal income tax purposes.

7.7.1 City shall remain liable under this Agreement in all events absent outright termination of this Agreement by MEC in its sole discretion and subject to the provisions of any applicable bond indenture, except that City's obligation to pay MEC shall be reduced to the extent that payments shall be received by MEC for that portion of City's share disposed of as provided in this Section 7.7.

ARTICLE VIII

Liability and Indemnification

8.1 General Indemnification of MEC. City expressly agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend MEC against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage or injury to Persons or property in any manner directly or indirectly connected with or growing out of MEC's ownership of the Project and/or the generation, transmission or distribution of Project Capacity and Energy, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of MEC or its employees acting within the course and scope of their employment.

8.2 Waiver of Indirect Damages. To the fullest extent permitted by law, neither Party shall be liable to the other for special, punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement.

ARTICLE IX

Dispute Resolution

9.1 Dispute Resolution. It is the intent of the Parties that all breaches of this Agreement or disputes arising out of this Agreement shall be resolved in accordance with the dispute resolution procedure set forth in this Article 9.

9.2 Dispute Notice. If a dispute arises between the Parties, to pursue a dispute, the aggrieved Party shall provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute.

9.3 Informal Negotiations. Representatives of the Parties shall in good faith attempt to resolve such dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under Section 9.2.

- 9.4 Senior Executives. If informal negotiations under Section 9.3 do not resolve the dispute identified in the dispute notice issued pursuant to Section 9.2, then each Party shall promptly designate a senior executive who shall have authority to resolve the dispute through negotiations. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute, provided that no document discovery or depositions shall be required during negotiation and any document exchange shall be voluntary. The negotiation and any documents exchanged in connection with the negotiation shall be confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law, evidentiary rules or doctrines. The senior executives shall meet within twenty (20) Business Days of the notice, at a time and place mutually acceptable to the senior executives.
- 9.5 Arbitration. If the dispute is not resolved within twenty (20) Business Days, or such later date as the senior executives may mutually agree, after the referral of the dispute to senior executives, then the dispute shall, subject to Section 9.6, be resolved solely and exclusively by binding arbitration, using the following procedures (absent agreement of the Parties to different procedures).
- 9.5.1 The arbitration shall be conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the “Demand”), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.
- 9.5.2 Arbitration shall be held in Springfield, Missouri. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.
- 9.5.3 The Party asserting a claim for relief and the Party opposing such relief shall each select one arbitrator within ten (10) days of the receipt of the Demand, or if such Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment.
- 9.5.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

- 9.5.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.
- 9.5.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 8.2, or any other multiple or enhanced damages, whether statutory or common law.
- 9.5.7 Each Party understands that it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 9.5 or an arbitration award.
- 9.6 Agency Jurisdiction. Notwithstanding anything to the contrary in Section 9.5, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE X

Miscellaneous

10.1 Assignment; Transfers.

- 10.1.1 General Limitations on Transfers. Except as otherwise provided in this Section 10.1, neither Party may sell, lease, assign, transfer, convey or otherwise dispose of in any manner, directly or indirectly (collectively, "Transfer") all or any part of its rights, obligations, benefits, advantages, titles and interest in this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, and any such Transfer in contravention of this Article X shall be null and void *ab initio*.
- 10.1.2 Notice of Proposed Transfer. If a Party desires to Transfer its interest in this Agreement, then no less than ninety (90) days prior to such proposed Transfer, the Transferor shall provide written notice thereof to the other Party. The notice shall identify the proposed Transferee and the date on which the Party proposes to effect the Transfer.
- 10.1.3 Transfers by MEC. In connection with any transfer by MEC of its Project ownership interest to any successor or assignee entity, MEC shall assign this Agreement and Transfer all of its rights and obligations hereunder to such entity. MEC shall obtain City's consent for any such Transfer unless City is in default in which case MEC may assign this Agreement and Transfer all of its rights and obligations to such entity without City's consent. MEC may also assign its interest in this Agreement to a trustee or other Person as is necessary in connection with the financing of MEC's undivided ownership interest in the Project and shall not be required to provide advance notice to City of, or obtain City's consent to, any such assignments made for financing purposes.

- 10.1.4 Transfers by City. If City proposes to Transfer its interest in this Agreement, City shall provide notice to MEC as soon as practicable prior to the effective date of the Transfer. Upon receipt of such notice, MEC shall, subject to the provisions of any applicable bond indenture, have the right to terminate this Agreement effective as of the proposed Transfer date, with the result that MEC re-acquires the rights to the Product sold to City hereunder, and that City is released from its obligations hereunder, effective as of the date of termination pursuant to Section 3.10.2. If MEC chooses to exercise this right, it shall provide notice of its election to City no later than fifteen (15) Business Days after receiving the notice provided by City pursuant to this Section. If MEC chooses not to exercise this right, the proposed Transfer may go forward if MEC consents. The Parties acknowledge and agree that any such consent may reasonably be conditioned on such matters as the Transferee's creditworthiness and/or the City's agreement to pay off all of MEC's obligations related to the Project, including but not limited to any of MEC's obligations under any financing arrangements related to the Project, decommissioning of the Project, and any obligations under the Site Lease.
- 10.1.5 Conditions Required for Permitted Transfers. As a condition precedent to any permitted Transfer hereunder: (a) at the time of the Transfer, either (i) the Transferor must not be in default of any of its material obligations under this Agreement or (ii) such default must be cured on or prior to the date of the Transfer; and (b) the Transferor shall deliver to the other Party documents satisfactory to it evidencing Transferee's acceptance of the Transfer and assumption of all of the Transferor's obligations under this Agreement.
- 10.1.6 Prohibited Transfers. Notwithstanding anything to the contrary in this Section 10.1, no Transfer of this Agreement will be permitted if it would jeopardize the tax-exempt status of MEC's Project financing.
- 10.2 Private Use Restrictions. Under no circumstances may any sales of Project Energy be made by City to any third party(ies) if such sales would cause MEC to violate the "private business use" provisions of Sections 103 or 141 of the Internal Revenue Code, and applicable regulations promulgated thereunder. City's scheduling and sales arrangements under Section 2.2 must be made in a manner that comports with this limitation. In making any sales of Project Energy to third parties, MEC shall ensure that it does not violate the "private business use" provisions of Sections 103 or 141 of the Internal Revenue Code as applicable to its Project financing arrangements.
- 10.3 Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, electronically, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to MEC:

John Grotzinger
COO of MEC
2200 Maguire Blvd.
Columbia, MO 65201
Telephone: (573) 445-3279
FAX: (573) 445-0680
E-mail: jgrotzinger@mpua.org

With a copy to E-mail: contractnotices@mpua.org

If to City:

City of Nixa, Missouri
P.O. Box 395
Nixa, MO 65714
Attn: Jimmy Liles, City Administrator
Telephone: (417) 725-3785
E-mail: jliles@nixa.com

The designation and titles of the Person to be notified or the address of such Person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand and on deposit by the sending Party if delivered by courier, U.S. mail, or sent electronically to all E-mail addresses designated by the other Party.

- 10.4 No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.
- 10.5 No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of City as a body public and corporate or MEC as an independent individual or entity and not a public utility.
- 10.6 Integration; Amendment. The Agreement, together with all Annexes attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification, or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties. The Parties acknowledge that the documents to be entered into by MEC in connection with the

financing of its ownership of the Project may contain provisions restricting the right of the Parties to amend, modify or alter this Agreement.

10.7 Governing Law. The Agreement is made in the State of Missouri and shall be interpreted and governed by the laws of the State of Missouri and/or the laws of the United States, as applicable.

10.8 Relationship of Parties

10.8.1 This Agreement does not create any ownership rights on the part of City with respect to the Project.

10.8.2 The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between MEC and City or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. MEC and City shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

10.8.3 The relationship between City and MEC shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, City shall have no general right to prescribe the means by which MEC shall meet its obligations under the Agreement.

10.8.4 MEC shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of Persons employed by MEC to perform MEC's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the Persons employed by MEC shall be considered employees of City for any purpose; nor shall MEC represent to any Person that he or she is or shall become a City employee, or agent.

10.9 Relationship to Financial Contracts. MEC may sell bonds, notes or other evidence of indebtedness and may enter into other financial contracts to finance its share of the costs of acquisition of the Project. Bonds may be sold in one or more series and may be based on a fixed or variable rate of interest in accordance with a bond indenture. MEC may include various covenants in the bond indenture that are deemed in the beneficial interest of the City. Additional bonds may be sold and issued by MEC in accordance with the provisions of the indenture at any time and from time to time for the purpose of funding expenditures for additional facilities, enhancements, betterments, or improvements related to the Project. MEC may incur other obligations, including interest rate hedge agreements, pursuant to the indenture, to achieve purposes deemed beneficial to the City. In the event that the Board of Directors may deem it advantageous to refund any bonds, MEC may issue and sell refunding bonds in accordance with the indenture. Any such bonds, notes, additional bonds, refunding bonds or other financial contracts may be

secured by the pledge made pursuant to the indenture of the payments required to be made by City hereunder and of other MEC revenues attributable to the Project. City and MEC acknowledge and agree that the terms of this Agreement, and the actions of the Parties pursuant thereto, must at all times be consistent with MEC's binding obligations under its financing documents.

- 10.10 Communication, Generally. MEC shall communicate information regarding the Project to City and will provide City the opportunity to advise the MEC Board of Directors and staff regarding Project matters. All decisions of the MEC Board of Directors regarding the Project shall give due weight to recommendations made by the City.
- 10.11 MEC Budgets. MEC's projected costs of Project ownership and its reasonable costs associated with its role as power supplier shall be included in MEC's annual budgets. As a member of MEC, City shall have the right to review and vote on MEC's budgets.
- 10.12 Good Faith and Fair Dealing; Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of the Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- 10.13 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.
- 10.14 Survival. Except for Articles Seven, Eight, Nine, Sections 2.2, 2.3, 5.5, 5.8, 5.90, and 10.17, and Article Three (to the extent applicable to obligations arising prior to termination), which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement either in its entirety or as to a particular Party in accordance with its terms.
- 10.15 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the Effective Date:
- 10.15.1 it is duly organized, validly existing and in good standing under the laws of the State of Missouri;
- 10.15.2 it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary actions to authorize such execution and delivery and performance of such obligations;

- 10.15.3 its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;
- 10.15.4 except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;
- 10.15.5 all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Governmental Authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and
- 10.15.6 this Agreement constitutes the Party's legal, valid, and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law).
- 10.16 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.
- 10.17 Assent Not Waiver of Future Breach. No assent, express or implied, by either Party to any breach of the Agreement by the other Party shall be deemed to be a waiver of any subsequent breach.
- 10.18 Confidentiality. The Parties recognize that some or all of the Project information provided by MEC to City hereunder, either orally or in writing, will be deemed confidential. City hereby agrees to abide by all such restrictions on the use of confidential Project information it obtains hereunder. The Parties recognize that any confidentiality restrictions hereunder must be consistent with their obligations under the Missouri open-meeting laws and open-records laws, Sections 610.010 *et seq.*, RSMo.
- 10.19 Waiver of Sovereign Immunity. City acknowledges and agrees that its performance of the actions contemplated by this Agreement, constitute private and commercial acts rather than public or governmental acts, and it has no immunity from suit as to its contractual obligations, including its obligations under this Agreement. City expressly and irrevocably covenants that, in the event of any change in law that would permit City to

assert a defense of sovereign or governmental immunity with respect to its contractual obligations hereunder, City will not assert such immunity with respect to itself.

10.20 Electronic Transactions. The transactions described in this Agreement may be conducted, sent, received, executed, and stored, by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION
d/b/a MISSOURI ELECTRIC COMMISSION

By: _____
Name: John Twitty
Its: President and CEO

CITY OF NIXA, MISSOURI

By: _____
Name: Brian Steele
Its: Mayor

ANNEX A

DESCRIPTION OF SOLAR PROJECT

MEC's Project consists of 37,924 panels rated at 305 watts AC manufactured by Yingli (or of like-kind equipment), 9 -inverters manufactured by SMA (or like-kind equipment). More specifically, the Project includes:

A. Manufacturer's Nameplate Data:

Solar Panels

Manufacturer: Yingli (or like-kind equipment)

Model: 305

Power rating (Watts AC@ STC): 305

Number of Modules: 37,924

Number of Modules per string: 19

Module warranty (year 10) (% of new): 90%

Module warranty (year 25) (% of new): 80%

Inverters

Manufacturer: SMA (or like-kind equipment)

Model: 800CP

Inverter Rating (AC, kW): 880kW

Number of Inverters: 9

Inverter Efficiency at Full Power Rating(%): 98.5%

Inverter Capacity for Site (AC, kW): 7,920kW

Operation Voltage (Volts): 1000

Maximum System Design Voltage – 1000 (Volts)

Number of Phases: 3

Mounting

Fixed tilt

Proposed Module orientation (landscape, portrait):

Tilt Angle (Degrees): 25

Azimuth (Degrees): 180

Pitch (Row Spacing) (Feet): up to 32ft for northern sloping sections

PV Array Characteristics:

Rated Output (kW): 7,920 Rated Output (kVA): 7,920

Rated Voltage (line to line): 12,470

Maximum kW Output: 7,920 kW Maximum kVA Output: 7,920 kVA

Transformation

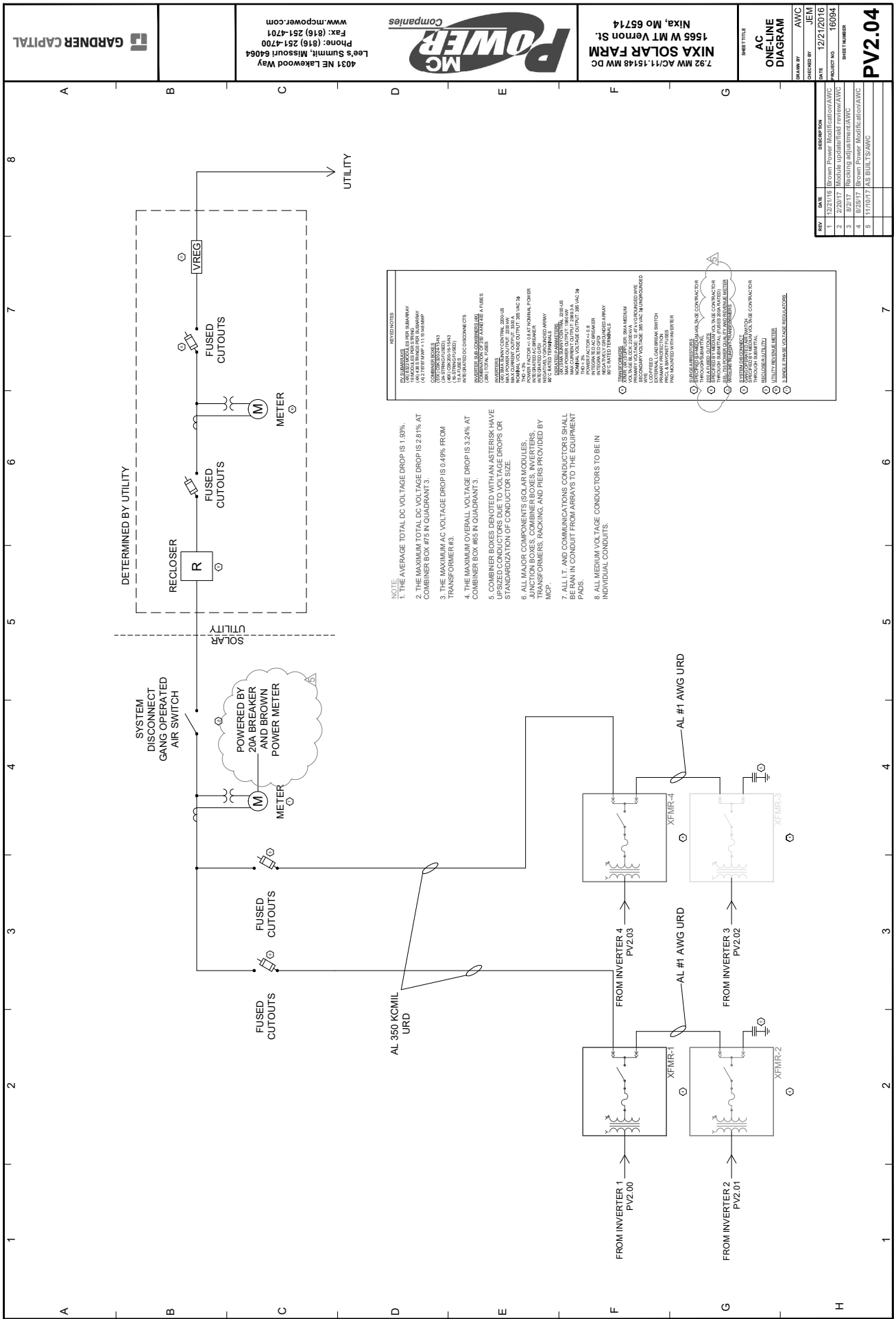
Number of Step-up transformers: 9

Size of Step-up Transformers (kV A): 880kVA

Low Side voltage of Step-up transformer (volts): 360V

High Side voltage of Step up transformer (volts): 12,470V

Total land required: 72 acres



NOTE:

1. THE AVERAGE TOTAL DC VOLTAGE DROP IS 1.08%.
2. THE MAXIMUM TOTAL DC VOLTAGE DROP IS 2.81% AT COMBINER BOX #65 IN QUADRANT 3.
3. THE MAXIMUM AC VOLTAGE DROP IS 0.48% FROM TRANSFORMER #4.
4. THE MAXIMUM OVERALL VOLTAGE DROP IS 3.24% AT COMBINER BOX #65 IN QUADRANT 3.
5. COMBINER BOXES DENOTED WITH AN ASTERISK HAVE UP-SIZED CONDUCTORS DUE TO VOLTAGE DROPS OR STANDARDIZATION OF CONDUCTOR SIZE.
6. ALL MAJOR COMPONENTS (SOLAR MODULES, JUNCTION BOXES, COMBINER BOXES, INVERTERS, TRANSFORMERS, RACKING, AND PIERS) PROVIDED BY MCP.
7. ALL LIT. AND COMMUNICATIONS CONDUCTORS SHALL BE RAN IN CONDUIT FROM ARRAYS TO THE EQUIPMENT PADS.
8. ALL MEDIUM VOLTAGE CONDUCTORS TO BE IN INDIVIDUAL CONDUITS.

KEYNOTES

○ **CALL OUTS:** ALL CALL OUTS ARE TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **COMPONENTS:** ALL COMPONENTS ARE TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **CONDUCTORS:** ALL CONDUCTORS ARE TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **GROUNDING:** ALL GROUNDING IS TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **INSULATION:** ALL INSULATION IS TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **TERMINALS:** ALL TERMINALS ARE TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **WIRING:** ALL WIRING IS TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

○ **OTHER:** ALL OTHERS ARE TO BE MAINTAINED PER THE CONTRACTOR'S RESPONSIBILITY.

GARDNER CAPITAL

Lee's Summit, Missouri 64064
 Phone: (816) 251-4700
 Fax: (816) 251-4701
 WWW.MCPOWER.COM

MC POWER Companies

NIXA SOLAR FARM
 1565 W MT Vernon St.
 Nixa, Mo 65714

7.92 MW AC/1.15148 MW DC
 SHEET TITLE: AC ONE-LINE DIAGRAM

REV	DATE	DESCRIPTION
1	12/21/16	Brown Power Modification/AVDC
2	2/20/17	Module up adjustment review/AVDC
3	8/27/17	Revolting adjustment/AVDC
4	8/29/17	Brown Power Modification/AVDC
5	11/07/17	AS BUILT/AVDC

DATE: 12/21/2016
 DRAWN BY: JEI
 SHEET NUMBER: 10094

PV2.04

ANNEX B

SINGLE LINE DIAGRAM SHOWING POINT OF DELIVERY

INTERCONNECTION AND OPERATING AGREEMENT
By and Between the City of Nixa, Missouri
And the Missouri Joint Municipal Electric Utility Commission
d/b/a Missouri Electric Commission
For The Nixa Solar Project

This INTERCONNECTION AND OPERATING AGREEMENT ("Agreement") is entered into this ____ day of _____, 2023, by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri, ("City") and the Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission, a body public and corporate of the State of Missouri ("MEC"). City and MEC each may be referred to as a "Party" or collectively as the "Parties."

WHEREAS, City owns, operates and maintains a municipal electric utility system in Nixa, Missouri ("Distribution System"), and is a member of the MEC; and

WHEREAS, Nixa Solar, LLC, a Missouri limited liability company ("Nixa Solar") owns the assets (excluding the Power Purchase Agreement ("PPA")) related to the 9.5 Megawatt solar power generation project located within the City's Distribution System ("Project"); and

WHEREAS, Solar Projects, LLC, a Missouri limited liability company ("SP") owns the PPA related to the Project; and

WHEREAS, MEC intends to purchase all the assets, rights and properties from Nixa Solar, and SP, and to own and operate the Project; and

WHEREAS, MEC and City have agreed to enter into this Agreement for the purpose of interconnecting the Project with City's Distribution System and to establish the Parties' respective operating requirements, responsibilities, and protocols; and

WHEREAS, City previously entered into a Power Purchase Agreement with SP, the current owner of the PPA, for the sale and purchase of all output, capacity, and net energy from the Project; and

WHEREAS, in connection with the transfer of ownership of the Project from Nixa Solar, LLC to MEC, it is intended that City and MEC will enter into a Power Purchase Agreement ("MEC PPA") relating to the Project, substantially in the form attached hereto as Annex A, which will supersede and terminate the PPA previously entered into between City and SP solely as it relates to the Project.

NOW, THEREFORE, in consideration of and subject to the mutual covenants set forth herein, the Parties agree as follows:

1.0 **Purpose; Definitions.**

1.1 The Parties have entered into this Agreement to govern the terms and conditions under which the Parties will interconnect and MEC will operate the Project in parallel with the City's Distribution System. The technical requirements for interconnection are described in Annex C.

All capitalized terms used herein shall have the meaning set forth in the attached Glossary of Terms at Annex B, or if not defined therein, the meaning set forth in the PPA.

2.0 **Facility Specifications.** Attached as Annex C are Specifications for: a) the Project that MEC proposes to purchase, own, and to interconnect with the City's Attachment Facilities to the Distribution System, including all equipment needed to make such connection; and b) the Attachment Facilities to be purchased and owned by City that will interconnect the Project to City's Distribution System to ensure the Distribution System's receipt of power from the Project. MEC represents and warrants that it will own, control, and operate the Project identified in the Specifications attached hereto. City represents and warrants that it will own or control the Distribution System as well as the Attachment Facilities. The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations and Good Utility Practice.

3.0 **Maintenance and Repair.** Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the Project and Facilities that it now owns or subsequently may own. Each Party shall be responsible for the safe maintenance, repair, and condition of its Project and Facilities, lines and appurtenances on its side of the point of change of ownership, the Point of Delivery. The City shall provide, at its expense, Attachment Facilities and/or other interconnection facilities that adequately protect the Distribution System, personnel, and other persons from damage and injury. MEC shall maintain the Project or contract maintenance duties to include without limitation mow all grass and weeds six (6) times per year, fencing to be kept in good repair, and the property generally maintained in full compliance with all City property maintenance ordinances now or hereafter in effect.

4.0 **Effective Date; Term.**

4.1 This Agreement shall become effective on the date MEC takes ownership of the Project, and the interconnection service shall continue thereafter with MEC as the Interconnection Customer.

4.2 This Agreement shall continue and remain in effect until terminated by the mutual agreement of City and MEC (or until terminated by either City or MEC in the event of default).

- 4.3 Upon termination of this Agreement due to default, the Parties will take all appropriate steps to disconnect the Project from the Distribution System. All costs required to effectuate such disconnection shall be borne by the defaulting Party. If the Parties mutually agree to terminate this Agreement and to disconnect the Project, the Parties shall work together in establishing the cost responsibility for disconnection.
- 4.4 Upon termination of this Agreement, if MEC is not in default and intends to continue operating the Project, City shall work with MEC to develop reasonable, non-discriminatory rates, terms, and conditions for interconnection and Wheeling Service over the facilities owned by City to permit MEC to deliver energy from the Project to points outside of the City's Distribution System.
- 4.5 The termination of this Agreement shall not relieve the Parties of their liabilities and obligations owed or continuing at the time of the termination.
- 4.6 The provisions of this Section 4 shall survive termination or expiration of this Agreement. More generally, this Agreement shall continue in effect after termination to the extent necessary to provide for any final billings and payments for costs incurred hereunder; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the property or realty owned by the other Party to enable it to disconnect, remove or salvage its own facilities and equipment, to the extent permitted hereby.
- 5.0 [Intentionally omitted]
- 6.0 **Provision of Interconnection Service.**
- 6.1 It is understood and agreed that the interconnection service provided hereunder is limited to the Distribution System, and that if MEC wishes to obtain interconnection and/or transmission service on any transmission facilities owned by third parties, additional studies and/or facilities may be required, and MEC shall bear all related costs.
- 6.2 The City represents that its Distribution System has the capacity and ability to accept all power generated by the 9.5 Megawatt (AC) Project.

7.0 Facilities Design.

- 7.1 The City represents that the Attachment Facilities are designed and constructed to receive the total output of the Project as contemplated in the MEC PPA.
- 7.2 The City represents that it has analyzed its Distribution System, and the Distribution System has the capacity to accept the total output of the Project, as contemplated by the MEC PPA and this Agreement.
- 7.3 Each Party warrants that its respective Project and facilities will be operated and maintained in accordance with Good Utility Practice.
- 7.4 If limitations on the Distribution System, arising from an intentional act or omission by the City, its employees, contractors or authorized agents, including, but not limited to, disconnecting the Project from the Distribution System or taking any other action to prohibit, limit, reduce or diminish the transfer of energy deliveries from the Project to City (other than those actions necessary to complete repairs or upgrades to the Distribution System or to address an Emergency Condition), result in reductions or interruptions of energy deliveries to City under the MEC PPA, the City shall pay MEC the difference between the amount actually due from City and the amount that would have been due from City under the MEC PPA but for the City's actions to prohibit, limit, reduce or diminish the capability of the Distribution System to deliver output of the Project to City.

8.0 Construction and Cost Responsibility.

- 8.1 City shall pay all costs associated with the interconnection of the Project to the Attachment Facilities at the Point of Delivery. Subject to Section 14.2, City shall be responsible for and pay all costs from the Point of Delivery to the Distribution System.
- 8.2 Upon reasonable notice to and supervision by a Party, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Project with the Distribution System; (ii) operate and maintain the Project, the Interconnection Facilities and the Distribution System; and (iii) disconnect or remove the Access Party's facilities and equipment, to the extent permitted hereunder, upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere

with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

- 8.3 The Parties will keep each other advised periodically as to the progress of their respective efforts and responsibilities. Either Party may, at any time, request a progress or status report from the other Party.

9.0 Interconnection Specifications.

9.1 Point of Interconnection. The point of interconnection between MEC and the City shall be at the point on the Project Site where electric power from the Project is received by the Attachment Facilities as identified on the one-line diagram attached as Annex D to this Agreement. This is the Point of Delivery (also referred to as the Delivery Point) specified and defined in the PPA.

9.2 List and Ownership of Interconnection Facilities. The respective Interconnection Facilities and associated ownership of the components thereof are identified in the Specifications attached to this Agreement as Annex C.

9.3 Applicable Technical Standards. The technical requirements and standards that apply to (a) the Project and (b) the associated Interconnection Facilities are identified in the Specifications attached to this Agreement.

10.0 **Metering.** City shall be responsible for the reasonable and necessary cost for the operation, maintenance, testing, repair, and replacement of revenue-quality metering that measures the power at the Point of Delivery and data acquisition equipment necessary for accurately determining the Capacity and Energy delivered under Agreement. The metering and data acquisition equipment shall be installed at the Point of Delivery pursuant to Article III of the PPA. City shall permit MEC to install check metering equipment if it elects to do so pursuant to Section 3.1 of the PPA. The metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements and shall be subject to the duties and obligations relating to metering equipment contained in the PPA.

11.0 Equipment Testing and Inspection.

11.1 City shall bear the cost of all testing and modifications with respect to its own facilities.

11.2 City shall bear the cost of all routine inspection and testing of the Project, facilities, and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Project with the

Distribution System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's Project or facilities, as may be required by Good Utility Practice.

11.3 Each Party shall notify the other Party in advance of its performance of tests of its Project or Interconnection Facilities. The other Party shall have the right, at its own expense, to observe such testing.

12.0 **Temporary Disconnection.** Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

12.1 Under Emergency Conditions, the City may immediately suspend interconnection service and the Party whose equipment is experiencing an Emergency Condition may temporarily disconnect the affected equipment.

12.2 Each Party shall notify the other Party promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect service under this Agreement or the PPA. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of the Parties' Project, facilities, and operations, its anticipated duration, and the necessary corrective action. The Party making the claim shall use Reasonable Efforts to coordinate with the other Party and minimize any reduction or temporary disconnection of the Project.

12.3 Each Party may in accordance with Good Utility Practice and in coordination with the other Party remove from service any of its respective Interconnection Facilities, the Distribution System, or the Project as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies), system(s) or Project from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. To the extent feasible, routine maintenance requiring disconnection should occur between sunset and sunrise. In all circumstances, a Party planning to remove such facility(ies), system(s) or Project from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

13.0 **Assignment/Joinder.** This Agreement may be assigned upon prior written notice to and obtaining the consent of the other Party, provided that all permitted successors and assigns shall be subject to all rights and obligations contemplated herein:

13.1 Notwithstanding the foregoing, the MEC shall have the right to assign this Agreement, without the consent of the City, for collateral security purposes to aid in providing financing for the Project as provided in Section 10.1 of the

PPA, provided that the MEC will promptly notify the City of any such assignment.

- 13.2 Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the MEC. Where required, consent to assignment will not be unreasonably withheld, conditioned, or delayed.

14.0 **Modifications After Commercial Operation.**

- 14.1 If a Party seeks to undertake a modification to its Project or facilities that reasonably may be expected to affect the other Party's Project or facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Project. Unless action is required more expeditiously to address an Emergency Condition or otherwise for reliable operation of the Distribution System, the Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.
- 14.2 In the case of Project modifications, City shall provide, within thirty (30) days (or such other time as the Parties may agree), an estimate of any additional modifications to the Distribution System or City's Interconnection Facilities, or other modifications or upgrades necessitated by such proposed modifications to the Project, and a good faith estimate of the costs thereof. City shall be responsible for costs of all such modifications or upgrades due to Project modifications identified after approval of the Final Design of the Project and Interconnection Facilities by both Parties.
- 14.3 Any additions, modifications, or replacements made to a Party's Project or facilities shall be designed, constructed and operated in accordance with this Agreement and Good Utility Practice.
- 15.0 **Indemnity.** City expressly agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend MEC against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage, or injury to persons or property in any manner directly or indirectly connected with or growing out of MEC's ownership of the Project and/or the generation, transmission or distribution of Project Capacity and Energy, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of MEC or its

employees acting within the course and scope of their employment. Liability under this provision is exempt from the general limitations on liability found in Section 16.0.

- 15.1 Promptly after receipt by MEC of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, MEC shall notify the City of such fact. Any failure of or delay in such notification shall not affect the City's indemnification obligation.
- 15.2 Each Party shall obtain insurance from a financially reputable insurer licensed to do business in the State of Missouri or the City may self-insure through MIRMA in the forms and amounts listed in Annex E. Each Party shall name the other Party as an "Additional Insured" on such policies and provide each other with certificates of insurance evidencing that all of the required coverages are in force and have been endorsed to provide that no policy will be cancelled or materially altered without first giving the Additional Insured thirty (30) days' advance notice.
- 15.3 In addition to indemnification, the City acknowledges that the MEC has relied on the Project being exempt from all real or personal property taxes and agrees not to take any action challenging such claimed exemption.
- 15.4 Waiver of Sovereign Immunity. City acknowledges and agrees that its performance of the actions contemplated by this Agreement, constitute private and commercial acts rather than public or governmental acts, and it has no immunity from suit as to its contractual obligations, including its obligations under this Agreement. City expressly and irrevocably covenants that, in the event of any change in law that would permit City to assert a defense of sovereign or governmental immunity with respect to its contractual obligations hereunder, City will not assert such immunity with respect to itself.

16.0 Waiver of Indirect Damages. To the fullest extent permitted by law, neither Party shall be liable to the other for special, punitive, indirect, exemplary, consequential, or incidental damages arising in connections with this Agreement.

17.0 Third Party Beneficiaries. No third-party beneficiary rights are created under this Agreement.

18.0 Waiver. No waiver by a Party of one or more defaults by the other Party in performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character. Any waiver by a Party of any of its rights or remedies hereunder shall be valid only as and to the extent expressly stated in a written notice of waiver provided to the other Party.

19.0 Force Majeure.

- 19.1 A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or part due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of Force Majeure shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed.
- 19.2 Notwithstanding anything in the Agreement to the contrary, Force Majeure shall not mean:
- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the Project or related facilities.
 - (b) Changes in market conditions, governmental action, or weather conditions that affect the cost of producing energy at the Project or affect the price of energy that could be obtained from sources other than the Project.
 - (c) Unavailability of sunshine.
 - (d) Unavailability of equipment, repairs, or spare parts for the Project, except to the extent due to qualifying event of Force Majeure.
 - (e) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit.
 - (f) Litigation or administrative or judicial action pertaining to the Agreement, the site, the Project, the acquisition, maintenance or renewal of financing or any permits, or the design, construction, maintenance, or operation of the Project.
- 19.3 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

20.0 Breach and Default.

- 20.1 A Party shall be considered in breach of this Agreement upon:
- (a) The failure to comply with any material term or condition of this Agreement.
 - (b) The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit

of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator.

- (c) The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement.
- (d) The failure of the Party to provide access rights, or the Party's attempt to revoke or terminate such access rights, as provided under this Agreement.
- (e) The failure of the Party to provide information or data to the other Party as required under this Agreement, provided that the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

20.2 Upon the occurrence of an event of breach, the Party not in breach may give written notice of the breach to the breaching Party. Such notice shall set forth, in reasonable detail, the nature of the breach, and where known and applicable, the steps necessary to cure such breach. Upon an occurrence described in part (b) of Section 20.1 of this Agreement, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Business Days after the commencement of such occurrence. Upon receiving written notice of a breach hereunder, or providing notice pursuant to the previous sentence, the breaching Party shall immediately commence in good faith all steps as are reasonable and appropriate to cure the breach and shall thereafter diligently pursue such action to completion. In the event the breaching Party fails to cure a breach described in Section 20.1 (a) (c) (d) or (e) within thirty (30) days of notification or fails to cure a breach described in Section 20.1(b) within fifteen (15) days of notification, the breaching Party shall be in Default of this Agreement.

20.3 Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) terminate this Agreement as of a date set forth in notice to the Defaulting Party; (ii) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; and/or (iii) exercise such other rights and remedies as it may have in equity or at law including but not limited to damages arising out of the Default.

21.0 **Disputes.**

21.1 Any claim or dispute that a Party may have against the other Party arising out of the Agreement shall be submitted in writing ("Notice of Dispute") to such other Party. The submission of a Notice of Dispute shall include a concise statement of the question or issue in dispute, together with relevant facts and documentation to fully support the claim.

21.2 The Parties shall attempt to resolve through informal means any dispute for which a Notice of Dispute is provided. Failing such informal resolution, a Party may initiate mediation to resolve the dispute. If the Parties fail to reach a resolution through mediation, either Party may initiate binding arbitration

to resolve the dispute. For so long as the PPA is in effect, the arbitration shall be conducted in accordance with the terms in Section 9.5 of the PPA.

22.0 **Amendment.** This Agreement, or any part thereof, may not be amended or modified other than by a written document signed by the Parties.

23.0 **Notices.** Any permissible notice or request made by a Party regarding this Agreement shall be made to the representative of the other Party as indicated below:

City:

City of Nixa
715 W. Mt. Vernon St.
Nixa, Missouri
Attention: Doug Colvin
Phone: 417-725-3785

MEC:

Missouri Electric Commission
2200 Maguire Blvd.
Columbia, Missouri 65201
Attention: John Twitty
Phone: 573-445-3279

With a copy to:

Healy Law Offices
3010 East Battlefield, Suite A
Springfield, Missouri 65804
Attention: Doug Healy

24.0 **Conflict and Inconsistencies with Agreement.** Nothing in this Agreement is intended to contradict the terms of the PPA. To the extent a conflict arises between this Agreement and the PPA, the terms of the PPA shall prevail. The parties to the PPA may decide to amend the PPA at any time, and from time to time, as they determine; provided, however, that in the event that any such amendment to the PPA materially impacts the City in a negative manner, such amendment will not be binding upon the City unless the City has consented in writing to such amendment.

- 25.0 **Governing Law.** The Agreement is made in the State of Missouri and shall be interpreted and governed by the laws of the State of Missouri and/or the laws of the United States, as applicable.
- 26.0 **Relationship of Parties.** The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between City and MEC or to impose any partnership obligation, or liability, or any trust or agency obligation, or relationship upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 27.0 **Good Faith and Fair Dealing; Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of the Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- 28.0 **Severability.** Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.
- 29.0 **Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement, including such reasonable actions as necessary to assist MEC to obtain Project financing. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

IN WITNESS WHEREOF, City and MEC have caused this Agreement to be executed by their respective authorized officials.

City of Nixa, Missouri

Mayor, City of Nixa, Missouri

Date:

Attest

City Clerk, City of Nixa, Missouri

Date:

Missouri Electric Commission

President and CEO

Date:

Attest

Date:

Annex A

Form of Power Purchase Agreement

Between

Missouri Joint Municipal Electric Utility Commission
d/b/a Missouri Electric Commission

And

City of Nixa, Missouri

For The

Nixa Solar Project

Annex B

GLOSSARY

Applicable Laws and Regulations - All duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Attachment Facilities - All facilities needed to connect the Project to the Distribution System, in order to be capable of receiving the total output of the MEC's Facility.

Default - The failure of a breaching Party to cure its breach under the Agreement, as provided in Section 20.0.

Distribution System - The City's facilities and equipment used to receive and transmit electricity from its points of receipt (including the interconnection with the Project) to the ultimate usage points such as homes and industries within the City of Nixa, Missouri, including any Attachment Facilities that are necessary to physically and electrically interconnect and receive electricity from the Project pursuant to this Agreement.

Emergency Condition - A condition or situation requiring actions or inactions deemed necessary by the sole but reasonable judgment of the Party in order to (i) comply with any order issued by the applicable Reliability Coordinator under NERC reliability standards, (ii) preserve public health and safety, (iii) limit or prevent damage, or (iv) expedite restoration of service. For purposes of this definition, ability of a Party to purchase energy at a price lower than the Guaranteed Price shall not be considered as a condition or situation that would impact public health or safety or create damage.

Facilities - The Distribution System, the Interconnection Facilities, and/or the Project, as applicable.

Project - The MEC's 9.5 Megawatt AC photovoltaic generating facility located within the Distribution System and equipment used to generate and transmit electricity through the Attachment Facilities to the Distribution System.

Interconnection Facilities - The Attachment Facilities owned by the City and the facilities or equipment owned by the MEC that connect the Project to the City's Distribution System.

MJMEUC - Missouri Joint Municipal Electric Utility Commission, d/b/a Missouri Electric Commission (“MEC”).

Party or Parties - The City, the MEC or both.

Point of Delivery (or Delivery Point) - The point of interconnection on the Project Site between the Project and the City's Attachment Facilities, as depicted and labeled by a dashed line of demarcation in the one-line drawing attached as Annex D hereto.

Project Site - The specific location of the Project as shown in Annex C.

Reasonable Efforts- With respect to an action required to be attempted or taken by a Party, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Wheeling Service - The transfer of electric power generated by MEC through the City Distribution System to service areas outside the City's Distribution System.

Annex C

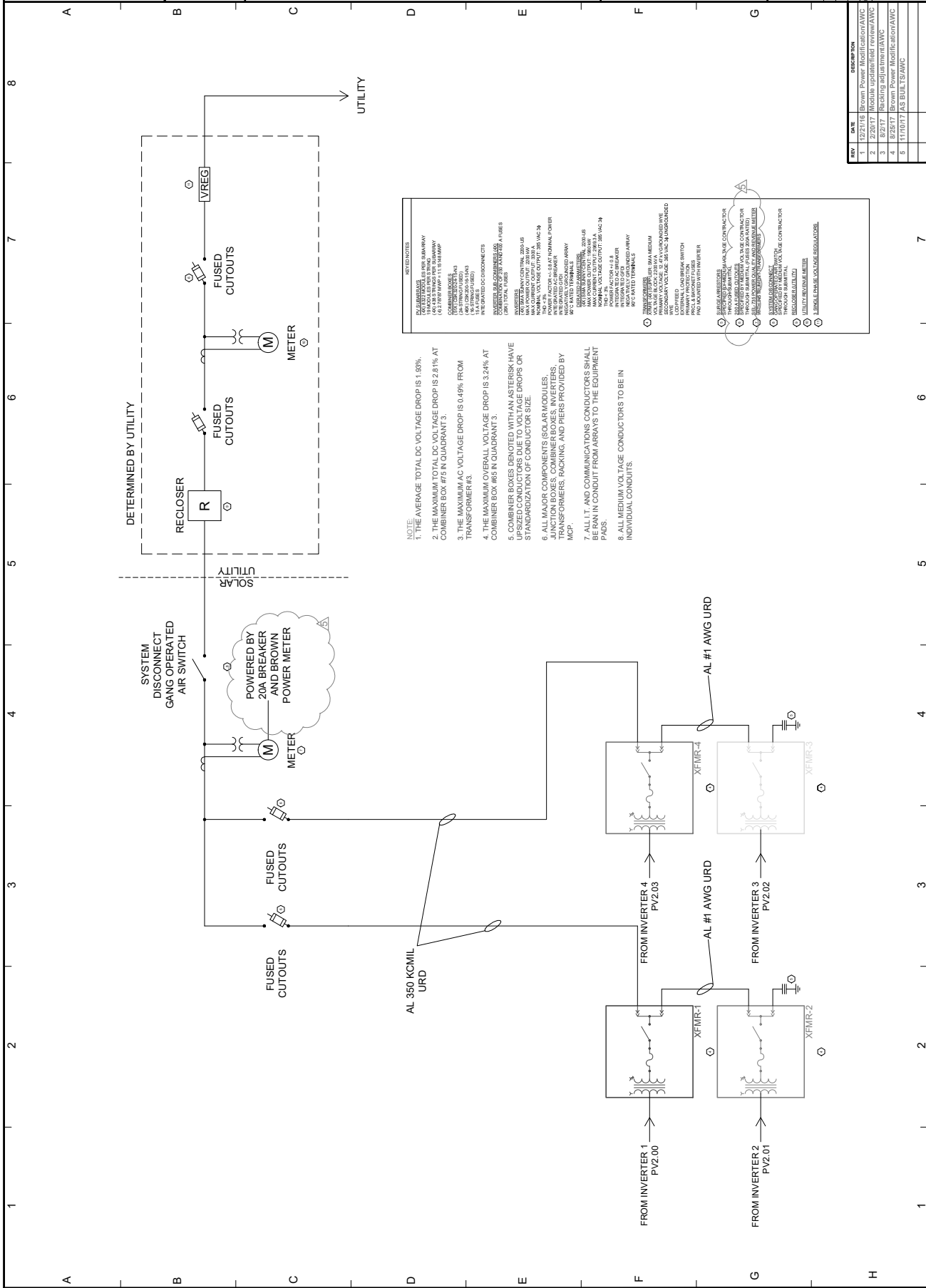
**PROJECT SITE DESCRIPTION, SPECIFICATIONS FOR THE PROJECT
AND DESCRIPTION OF THE TECHNICAL REQUIREMENTS OF THE
INTERCONNECTION FACILITY**

[TO BE PROVIDED]

Annex D

**ONE-LINE DIAGRAM DEPICTING THE FACILITIES
Project, Interconnection Facilities, Point of Delivery, and Metering Equipment**

REV	DATE	DESCRIPTION
1	12/21/16	Brown Power Modification/AVC
2	2/20/17	Module up adjustment review/AVC
3	8/27/17	Revolving adjustment review/AVC
4	8/29/17	Brown Power Modification/AVC
5	11/07/17	AS BUILT/AVC



- NOTES:**
1. THE AVERAGE TOTAL DC VOLTAGE DROP IS 1.08%.
 2. THE MAXIMUM TOTAL DC VOLTAGE DROP IS 2.81% AT COMBINER BOX #45 IN QUADRANT 3.
 3. THE MAXIMUM AC VOLTAGE DROP IS 0.49% FROM TRANSFORMER #2.
 4. THE MAXIMUM OVERALL VOLTAGE DROP IS 3.24% AT COMBINER BOX #65 IN QUADRANT 3.
 5. COMBINER BOXES DELIMITED WITH AN ASTERISK HAVE UPSIZED CONDUCTORS DUE TO VOLTAGE DROPS OR STANDARDIZATION OF CONDUCTOR SIZE.
 6. ALL MAJOR COMPONENTS (SOLAR MODULES, JUNCTION BOXES, COMBINER BOXES, INVERTERS, TRANSFORMERS, RACKING, AND PIERS) PROVIDED BY MCP.
 7. ALL LT. AND COMMUNICATIONS CONDUCTORS SHALL BE RAN IN CONDUIT FROM ARRAYS TO THE EQUIPMENT PAIDS.
 8. ALL MEDIUM VOLTAGE CONDUCTORS TO BE IN INDIVIDUAL CONDUITS.
- KEY NOTES:**
- CALIBRATION: ALL METERING SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - CONDUCTORS: ALL CONDUCTORS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - COMBINER BOXES: ALL COMBINER BOXES SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - INVERTERS: ALL INVERTERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - TRANSFORMERS: ALL TRANSFORMERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - RACKING: ALL RACKING SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - PIERS: ALL PIERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - JUNCTION BOXES: ALL JUNCTION BOXES SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - SOLAR MODULES: ALL SOLAR MODULES SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - SYSTEM DISCONNECT: ALL SYSTEM DISCONNECTS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - GANG OPERATED AIR SWITCH: ALL GANG OPERATED AIR SWITCHES SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - RECLOSER: ALL RECLOSERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - METER: ALL METERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - POWERED BY 20A BREAKER AND BROWN POWER METER: ALL POWERED BY 20A BREAKERS AND BROWN POWER METERS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - VREG: ALL VREGS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - UTILITY: ALL UTILITY CONNECTIONS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.
 - INDIVIDUAL CONDUITS: ALL INDIVIDUAL CONDUITS SHALL BE PERFORMED BY AN IEC QUALIFIED PERSONNEL.

Annex E

LIST OF INSURANCE POLICIES

Policy	Carrier	Insured
General Liability	TBD	City of Nixa
Property Damage All Risk	TBD	MEC
Solar Energy Coverage (Property Damage)	TBD	MEC
Solar Energy Business Income Endorsement	TBD	MEC
General Liability	TBD	MEC

**General Liability Insurance shall not be less than the applicable sovereign immunity limits as adjusted annually.