POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT, (the "Agreement"), effective as of the last date of signature provided below, is by and between _____ ("Owner") as a (**Select one)** ☐"SP3 Class I" – under 100kW or ☐"SP3 Class II" - 100 to 1000kW generator, and the City of Fort Collins, Colorado ("Utilities").

RECITALS:

WHEREAS, Utilities owns, directly or indirectly, an electric power distribution network within the municipal growth management area of the City of Fort Collins, Colorado, (the "Network"); and

WHEREAS, Platte River Power Authority ("Platte River"), a Colorado political subdivision, Platte River provides wholesale power and energy to Utilities under an all-requirements agreement dated September 1, 2010; and

WHEREAS, Utilities desires that Owner install, maintain and operate, and Owner desires to install, maintain and operate, the "feed-in tariff" system to be interconnected (fed-into) into the Network on property owned or leased by Owner, as more fully described in Exhibit A hereto, (the "Site"); and

WHEREAS, Utilities and Platte River have entered into a Memorandum of Understanding ("MOU") in order to support development of a local solar energy purchase program, which MOU describes the administrative activities to be undertaken by Utilities; and

WHEREAS, to preserve the rights and obligations contained in the all-requirements agreement between Platte River and Utilities, Platte River will accept title to all electric energy ("Energy") generated by Owner, which Energy will be sold by Platte River to Utilities under terms described in the MOU; and

WHEREAS, Owner desires to sell, and Utilities desires to purchase, the Environmental Attributes (as defined herein) generated by the System and other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

1. **Definitions**. Unless otherwise required by the context in which any term appears:

(a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections" and "Exhibits" shall be to sections and exhibits hereof; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" shall have the meaning set forth in the recitals.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

"Budget Non-Appropriation Event" shall have the meaning set forth in Section 7.2.

"Commercial Operation" shall mean the production of Energy by Owner which is available for purchase pursuant to the terms of the Agreement, including satisfaction of all Conditions, as set forth in Section 3.3.1.

"Commercial Operation Date" shall mean, subject to verification by Utilities, the date on which Owner notifies Utilities of Owner's declaration that all conditions set forth in Section 3.3 have occurred or otherwise been satisfied.

"Contractor" shall mean Owner and any third party contractor, subcontractor, or assignee.

"Delivery Point" shall mean the point of electrical interconnection of the Site and the Network, as shown on Exhibit A.

"Energy" shall have the meaning set forth in the Recitals.

"Environmental Attributes" means the characteristics of electric power generation of the System that have intrinsic value, separate and apart from the Energy, arising from the environmental benefits of the System or the Energy, including but not limited to all environmental and other attributes that differentiate the System or the Energy from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or compliance with laws or regulations involving or

administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights, including all RECs; provided, however, that "Environmental Attributes" shall not include any investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the System or the output generated by the System (including, without limitation, accelerated and/or bonus depreciation).

"Estimated Annual Production" shall mean the annual estimate of Energy, based on PVWatts® (NREL) or similar as set forth in Schedule 1 to Exhibit B hereto.

"Expiration Date" shall have the meaning set forth in Section 8.1.

"Force Majeure Event" shall have the meaning set forth in Section 7.1.

"Governmental Authority" shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including the City of Fort Collins.

"Installation Work" shall mean all work performed by Owner in connection with the furnishing, installation, testing and commissioning of the System.

"kWh Rate" shall have the meaning set forth in Section 5.1.

"Monthly Period" shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

"Monthly Production" shall mean, for each Monthly Period, the amount of Energy from the System delivered during such Monthly Period to the Delivery Point.

"Network" shall have the meaning as set forth in the Recitals.

"O&M Work" shall have the meaning set forth in Section 4.1.

"Owner" shall have the meaning set forth in the Recitals. For purposes of access rights and other rights necessary for Owner to perform its obligations hereunder, the term "Owner" shall include Owner's authorized agents, contractors and subcontractors.

"Owner Default" shall have the meaning set forth in Section 9.1

"Parallel generation services" refers to the production and delivery of Energy to Utilities directly by customers, or third parties on behalf of customers.

"Party" shall mean each of Utilities and Owner.

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Platte River" shall have the meaning set forth in the Recitals.

"Renewable Energy Credits (RECs)" shall mean a tradable, non-tangible energy commodity in the United States that represents proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource towards compliance with the Colorado renewable energy standard as set forth in C.R.S. § 40-2-124, as may be amended from time to time.

"Replacement Costs" means an amount equal to the present value of the economic loss to a Party, attributable to early termination of the Agreement, limited to the twelve months following the Termination Date, determined in a commercially reasonable manner.

For Utilities, commercially reasonable Replacement Costs include incremental costs suffered by Utilities to replace the Estimated Annual Production and/or Environmental Attributes that Owner fails to deliver under this Agreement, including the amounts paid or incurred by Utilities for replacement capacity, replacement energy, transmission and ancillary services associated with delivery of replacement capacity and energy and directly associated transaction costs. As a point of reference for current estimated Replacement Costs, the rate charged by Utilities' wholesale energy provider (Platte River Power Authority) under Tariffs 1 and 7 ("Resale Power" and "Renewable Energy Premium") for all such costs is $0.0837 per kWh. In the event of Owner termination prior to Commercial Operation Date, Replacement Costs for the Utilities shall be limited to the following flat fee:

i) Class I systems, $250 per City solar power generation account ("Account");

ii) Class II systems, a fee per Account calculated as $5 per rated kilowatt- DC from 100 to 1000 kW.

For Owner, commercially reasonable Replacement Costs include the amounts Utilities would have paid over the subsequent twelve months for the Estimated Annual Production and Environmental Attributes, had the same been delivered as reflected on Exhibit C.

For either Party, Replacement Costs may include reasonable attorneys' fees suffered as a result of the early termination of the Agreement.

"Reporting Right" means the right to report ownership of Environmental Attributes (including RECs) in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal,

state, or local law, regulation or bill, and international or foreign emissions trading program.

"Solar Generator Interconnection Agreement" shall mean the Solar Generator Interconnection Agreement between Utilities and Customer authorizing the interconnection of the System and available for contribution to the Network.

"Site" shall have the meaning set forth in the Recitals and depicted on the attachments hereto.

"SP3 Class I" shall mean a solar generation system with a rated capacity less than 100kW dc.

"SP3 Class II" - shall mean a solar generation system with a rated capacity between 100kW dc and 1000 kW dc.

"State" shall mean the State of Colorado.

"System" shall mean the solar photovoltaic generating system designed and installed pursuant to this Agreement at the Site and more fully described in Exhibit B hereto.

"Term" shall have the meaning set forth in Section 8.1.

"Termination Date" shall have the meaning set forth in Section 8.1.

"Utilities" shall have the meaning set forth in the Recitals.

2. **Purchase and Sale of Energy and Environmental Attributes**. During the Term of this Agreement, Owner shall sell, and Utilities shall purchase on behalf of Platte River, all Energy of the System delivered by Owner to the Delivery Point. During the term of this Agreement, Owner will also provide the Environmental Attributes associated with all Energy generated by the System to Utilities and Utilities will accept all such Environmental Attributes, all in accordance with the terms and conditions set forth herein. Owner shall provide Utilities with access to the Site in accordance with the terms of the separate Solar Generator Interconnection Agreement, executed contemporaneous to this Agreement.

3. **Construction, Installation and Testing of System**. With respect to the Site on which the System is to be installed:

3.1 **Detailed Engineering**. Owner shall prepare and submit to Utilities engineering drawings showing the plan and array configuration for the Site, detailed plans of all structures, electrical systems, interfaces with the grid electricity supply and any necessary facility or utility infrastructure improvements and/or modifications.

3.2 **Installation**. Owner will cause the System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and in compliance with local building codes and utility standards, including but not limited to the Solar Generator

Interconnection Agreement. Owner shall organize the procurement of all materials and equipment for the Installation Work and maintain the same at the Site as necessary.

3.3 **Conditions to Commercial Operation**. Owner shall notify Utilities in writing when the System is ready for commercial production of Energy under this Agreement and interconnection with the Network. This notification is contingent upon verification of the satisfaction or occurrence of the all of the conditions set forth in this Section ("Conditions") and Owner's providing evidence of such satisfaction or occurrence reasonably acceptable to Utilities. The parties agree that review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any disputes, as such Conditions are satisfied.

3.3.1 The Conditions are as follows:

(a) Owner has successfully completed that testing of the System that is required by any financing documents, government permits, the City's parallel generation interconnection standards (as applicable), the Solar Generator Interconnection Agreement, and manufacturers' warranties for the commencement of commercial operation of the System;

(b) The System has operated continuously for a period of at least seventy two (72) hours without experiencing any abnormal operating conditions, and has generated continuously for a period of not less than six (6) hours while synchronized to the Network at a net output of at least ninety percent (90%) of solar resource adjusted net capacity without experiencing abnormal operating conditions;

(c) The System has met the interconnection requirements for Utilities and has achieved initial synchronization with the Network, and has demonstrated reliable communications within the System and with Utilities' interconnection monitoring equipment;

(d) If required by Utilities field engineering staff, an independent professional engineer's certification has been obtained by Owner stating the System has been completed in all material respects, including compliance with applicable parallel generation interconnection standards;

(e) Certificates of insurance evidencing appropriate coverage have been obtained and submitted to Utilities; and

(f) Owner has made all necessary governmental filings and/or applications for Environmental Attributes and other system accreditations.

3.4 **Utility Approvals**. System interconnection with the Network must comply with Utilities' interconnection protocols as set forth in the Fort Collins City Code and interconnection standards, including applicable parallel generation interconnection standards. Owner will be responsible to have current licenses and all permits to do the work indicated. Owner shall be responsible for any taxes or fees involved in constructing the System.

4. **Operation and Maintenance of System**.

4.1 **O&M Work**. Owner, at its sole cost and expense, shall provide all spare parts, System operation, repair, monitoring and maintenance services for Owner-installed equipment for the Term of this Agreement, excluding any monitoring and maintenance of metering equipment placed by Utilities to determine the quantity of electricity produced by the System (collectively, the "O&M Work").

4.2 **Metering**.

4.2.1 **Maintenance and Testing**. Utilities shall install and maintain a utility-grade kilowatt-hour ("kWh") meter ("Meter") on the Site for the measurement of Energy generated by the System at the Site, which shall measure the kWh output of the System on a continuous basis for purposes of determining the Monthly Production. Owner shall be allowed to observe any Meter test, and Utilities shall provide notice of the testing to Owner at least ten (10) business days prior to the test date. Owner shall reimburse Utilities for the cost of the additional tests requested by Owner, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or an adjustment is required under Section 4.2.2.

4.2.2 **Adjustments**. If testing of a Meter pursuant to Section 4.2.1 indicates that such Meter is in error by more than two percent (2%), then Utilities shall promptly repair or replace such Meter. Utilities shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined by Utilities, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3 **Title to System**. Owner, or Owner's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Owner or Owner's assigns. Owner shall not transfer title to another entity without prior written notification to Utilities and written Utilities approval, which approval shall not be unreasonably withheld, or except as provided in Section 11.3.

4.4 **Compliance with Utility Specifications**. The Owner agrees to furnish, install, operate and maintain its interconnection as required by the City of Fort Collins interconnection standards, available at the City offices and incorporated by this reference, and agrees to meet the requirements of such policies and procedures, as amended from time to time.

4.5 **Title and Risk of Loss**. Title to and risk of loss related to the Energy shall transfer from Owner to City at and after the Delivery Point. Title and risk of loss related to the Environmental Attributes associated with Energy from the System shall transfer from Owner to Utilities upon delivery of the associated Energy to the Delivery Point.

5. **Purchase of Energy and Environmental Attributes**. With respect to the System installed on the Site pursuant to this Agreement:

5.1 **Purchase Entitlement**. In addition to all Energy from the System delivered to the Delivery Point, Utilities shall be entitled to 100% of the Environmental Attributes generated by the System after December 1st, 2018. Energy production shall be metered and verifiable by Utilities' personnel. While the Energy and Environmental Attributes are calculated and billed on a per kWh basis (the "kWh Rate") as set forth in Exhibit C, attached hereto and incorporated by this reference, they represent a package of services as described in the definitions herein. The payments for that package of services, as provided for in this Agreement, are calculated to include all of the defined services in the kWh Rate. Neither Utilities nor Owner may claim that by this Agreement, Owner is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Owner shall not claim to be providing electric utility services to Utilities or Platte River.

5.2 **Purchase Rate**. The fee structure and method of compensation shall be as shown in Exhibit C.

5.3 **Environmental Attributes**.

5.3.1 The Environmental Attributes including all RECs, and Reporting Rights shall remain with the Owner until December 1, 2018, after which time all such attributes shall transfer and assign to Utilities without further action by the Parties. At Utilities' request, Owner shall provide evidence of Owner's transfer and assignment of right, title and interest in and to the Environmental Attributes.

5.3.2 Owner will at all times retain all tax credits and depreciation associated with the System.

6. **Billing and Payment**. Billing and payment for the Energy and Environmental Attributes sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

6.1 **Billing**. Owner shall not be required to submit invoices or billing to the City for Monthly Production. City shall monitor though the Meter at the Delivery Point all Energy delivered by the System in each Monthly Period during the Term of this Agreement, and make appropriate payments, as set forth in Section 6.2.

6.2 **Payments**. Utilities shall pay to Owner for each Monthly Period during the Term within thirty (30) business days after close of the month for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the relevant kWh Rate for Energy and Environmental Attributes relating to the System as set forth on Exhibit C, which payment shall be made by check or by wire transfer of immediately available funds to Owner or to such assignee as Owner shall designate in writing to Utilities. This payment fully compensates Owner for all Energy and Environmental Attributes produced by the System.

7. **Force Majeure**.

7.1 **Definition of Force Majeure Event**. For the Agreement, an act or event is a "Force Majeure Event" if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence. Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes; (v) action by a Governmental Authority, including a moratorium on any activities related to this Agreement; (vi) the impossibility for one of the Parties, despite reasonable efforts, to obtain any approval necessary to enable the affected Party to fulfill its obligations, provided that the impossibility is not attributable to the Party and that such Party has exercised reasonable efforts to obtain such approval; (vii) termination of the MOU by Platte River without any subsequent agreement under which Utilities would be compensated for solar power generated by the System; and (viii) a Budget Non-Appropriation Event as described in Section 7.2.

7.2 **Non-Appropriation**. For Utilities, due to constitutional and charter limitations pertaining to multiple-year contracts, a Force Majeure Event shall include a budget non-appropriation event in which the City of Fort Collins Budget of any year covered in this Agreement does not appropriate funds for the procurement of parallel generation services for the Utilities (a "Budget Non-Appropriation Event"). Upon occurrence of a Budget Non-Appropriation Event, the obligation of Utilities to pay for the Energy in accordance with Section 6.2 shall be suspended for the Force Majeure period. Utilities agrees it shall use good faith efforts to seek appropriation for parallel generation services during the term of this Agreement. Utilities will notify Owner no later than June 30th of the fiscal year if a Budget Non-Appropriation Event has occurred.

7.3 **Termination in Consequence of Force Majeure Event**. If a Force Majeure Event shall occur that affects a Party's performance of its obligations hereunder and that Force Majeure Event continues for a period of three hundred sixty-five (365) consecutive days, the non-affected Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party and Platte River. If at the end of such thirty (30) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other or Platte River. By mutual agreement of the Parties, the System damaged or destroyed by a Force Majeure Event may be replaced by Owner within the time frames set forth above and subsequent to replacement and upon commencement of operation of the replacement System all terms and conditions of this Agreement will remain in effect. Notwithstanding any other provision hereunder to the contrary, following the conclusion or resolution of any Force Majeure Event, the parties agree to the extent possible, the Term of this Agreement shall be extended as necessary to preserve the rights, obligations and economic benefits of Owner and Utilities hereunder. If during a Budget Non-Appropriation Event, Utilities continues to receive Energy (on behalf of Platte River) and Environmental Attributes from Owner, upon the conclusion of such event, Utilities shall pay for such Energy and Environmental Attributes.

8. **Term; Utilities Options; Termination**.

8.1 **Term**. The operating term of this Agreement shall commence on the Commercial Operation Date and shall expire on the date (the "Expiration Date") that is twenty (20) years after the Commercial Operation Date (the "Term"), unless and until terminated earlier pursuant to Sections 7.3, 8.2, 8.3, or 9.3 (the date of any such termination, the "Termination Date") of this Agreement or unless extended pursuant to Section 8.2.

8.2 **End or Extension of Term**.

8.2.1 **Extension of Term**. Upon prior written notice to Owner of at least one-hundred eighty (180) days, and no time earlier than five (5) years prior to the Expiration Date, Utilities shall have the option to renew the Term of this Agreement for two (2) additional five (5)-year periods under terms and conditions acceptable to the Parties, including but not limited to setting a new power purchase rate.

8.2.2 **Early Termination or End of Term without Extension**. Upon early termination or default by Utilities, or expiration of the term without notice of extension by Utilities, ownership of Energy and Environmental Attributes shall revert to Owner, and where feasible and at Owner's election, (i) Owner will have the option to operate the system as a net-metered system, subject to the interconnection and parallel generation standards in place at that time, or (ii) Utilities will continue to purchase power upon separate agreement with Owner on terms and conditions acceptable to the Parties, including but not limited to setting a new power purchase rate.

8.3 **Owner Termination for Convenience**. Prior to the Commercial Operation Date, Owner may terminate this Agreement at any time upon written notice to Utilities, which termination shall be effective thirty (30) days after Utilities receipt of such notice, subject to Utilities' right to recover from Owner any Replacement Costs, calculated as of the date of termination. After the Commercial Operation Date, Owner may terminate this Agreement at any time following the fifth year of the Term by giving Utilities thirty (30) days prior written notice of Owner's intention to terminate, subject to Utilities' right to recover from Owner any Replacement Costs, calculated as of the Termination Date. The Parties agrees damages would be difficult to quantify upon an early termination and agrees that any component of Replacement Costs that is characterized as an "early termination fee" is not a penalty.

9. **Default**.

9.1 **Owner Defaults**. The following events shall constitute events of default with respect to Owner (each an "Owner's default"):

9.1.1 If Owner fails to generate and deliver any commercially useful amount of Energy and/or Environmental Attributes after the Commercial Operation Date as contemplated in this Agreement (though it shall not be an Owner's default if the System does not achieve the Estimated Annual Production, but otherwise continues to deliver useful Energy consistent with this Agreement) and (i) if such condition can be cured within thirty (30) days after Utilities' notice of such event and Owner fails to so cure, or (ii) Owner fails to commence and pursue

said cure within such thirty (30) day period if a longer cure period is needed; provided that the Owner provides the Utilities with notice of the expected time it will take to cure the breach and such timeframe is not greater than 365 days; or

9.1.2 If Owner is unable to achieve a Commercial Operation Date at the Site within six months of the execution of this Agreement for a Class I system, or twelve months of the execution of this Agreement for a Class II system ("System Delivery Period");

9.1.3 If Owner files or is adjudged bankrupt or fails to demonstrate the ability to perform under the Agreement, following the filing or adjudication of a bankruptcy proceeding.

9.2 **Utilities Defaults**. The following events shall constitute events of defaults with respect to Utilities (each, a "Utilities Default"):

9.2.1 Utilities fails to pay Owner any amount due Owner under this Agreement within thirty (30) days from receipt of notice from Owner of such past due amount; or

9.2.2 Utilities refuses to sign documents needed to obtain any federal, state or utility incentives or tax benefits or refuses to sign or intentionally breaches any term of the interconnection agreement required by the Utility for interconnection of the System.

9.3 **Remedies**.

9.3.1 If an Owner's Default or a Utilities Default has occurred, the non-defaulting Party shall have the right to: (a) send notice, designating a day, no earlier than five (5) days after such notice and no later than twenty (20) days after such notice, as the Termination Date of this Agreement; (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Term effective as of the Termination Date; and (d) if the default is after Commercial Operation, collect any Replacement Costs, which shall be paid on the Termination Date. Any notice by Utilities shall inform the Owner that upon the Termination Date, Owner is to stop or terminate all work or performance under this Agreement. After receipt of a notice of termination, and except as otherwise directed by Utilities, the Owner shall stop work under this Agreement on the date specified in the notice of termination. Each Party shall have a duty to mitigate any damages or Replacement Costs due under this Agreement upon any termination. Any obligations to terminate performance under this Agreement shall be without prejudice to Owner's rights to exercise its option to operate the System as a net-metered system or enter into a new power purchase agreement, as provided in Section 8.2.2.

9.3.2 Upon a default prior to the Commercial Operation Date, the non-defaulting Party shall not be entitled to Replacement Costs, other than the flat fee provided in Section 1. In addition, upon Owner's Default for failure to achieve the Commercial Operation Date within the applicable System Delivery Period, Owner shall forfeit any deposit previously paid by Owner to Utilities.

9.4 **Actions to Prevent Injury**. If any Utilities Default or Owner's Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such

case, in addition to any other right or remedy that the non-defaulting Party may have, the non-defaulting Party may (but shall not be obligated to) take such action as the non-defaulting Party deems appropriate which may include disconnecting and removing all or a portion of the System, or suspending the supply or receipt of Energy from the System, as applicable.

9.5 **No Consequential Damages**. Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Utilities and Owner. Notwithstanding the foregoing, none of the payments for Environmental Attributes or any other amount specified as payable by Utilities to Owner under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages.

9.6 **Effect of Termination of Agreement**. Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Utilities and Owner under this Agreement shall be terminated (other than the indemnity and responsibility obligations set forth in Section 10). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

10. **Indemnification and Defense**.

10.1 Each Party (an "Indemnifying Party") agrees that it shall indemnify and hold harmless the other party and Platte River, their permitted successors and assigns and their respective directors, officers, members, shareholders and employees (each an "Indemnified Party" and collectively, the "Indemnified Parties") from and against any and all losses incurred by the Indemnified Parties, including costs and reasonable attorney fees, to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any person or loss or damage to property of any person to the extent arising out of the Indemnifying Party's acts or omissions; (ii) any infringement of patents or the improper use of other proprietary rights by an Indemnifying Party or its employees or representatives that may occur in connection with the performance of this Agreement; and (iii), with respect to Owner, Utilities agrees to indemnify Owner and any Owner Indemnified Party from and against any and all losses arising from any claim asserting that the transfer of title to Energy by Owner to Platte River is ineffective. An Indemnifying Party shall not, however, be required to reimburse or indemnify any Indemnified Party for any loss to the extent such loss is due to the negligence or willful misconduct of any Indemnified Party. The liability of Utilities is governed, limited and controlled by the Governmental Immunity Act, Colo. Rev. Stat. §§ 24-10-101 *et seq*., as now or hereafter amended. Nothing in this Agreement shall be construed as a limitation or waiver of the immunities, limits, or protections provided under said Act.

11. **Miscellaneous Provisions**.

11.1 **Notices**. All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express

courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Owner:
Address: _____

_____

Attention: _____

Phone: _____

Fax: _____

If to Utilities:
City of Fort Collins
Utilities Department
PO Box 580
Fort Collins, CO 80522-0580
Attention: Rhonda Gatzke
Phone: 970-416-2312

If to Platte River:
Platte River Power Authority
2000 E Horsetooth Rd,
Fort Collins, CO 80525
Attention: John Bleem
Phone: 970-229-5304

All notices, communications and waivers under this Agreement, if applicable, to any Person who has or will provide financing for this Agreement pursuant to Section 11.4 shall be to the name and address specified in a notice from Owner to Utilities, which Utilities shall acknowledge. All notices sent pursuant to the terms of this Section 11.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

11.2 **Authority**.

11.2.1 **Owner Representations**. Owner hereby represents and warrants that: (i) This Agreement is a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (a) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (b) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); (ii)

To the best knowledge of Owner, as of the date of execution hereof, no approval of a Governmental Authority (other than any approvals that have been previously obtained or disclosed in writing to Utilities) is required in connection with the due authorization, execution and delivery of this Agreement by Owner or the performance by Owner of its obligations hereunder which Owner has reason to believe that it will be unable to obtain in due course on or before the date required for Owner to perform such obligations; (iii) As of the date of execution hereof, Owner (a) has taken all actions required of it under the terms of this Agreement, (b) is not intending to dedicate its property to public use, (c) is not a "public utility" and (d) is not an electric utility subject to rate regulation by any Governmental Authority; (iv) Neither the execution and delivery of this Agreement by Owner nor compliance by Owner with any of the terms and provisions hereof (a) conflicts with, breaches or contravenes the provisions of the Articles of Organization or any operating agreement of Owner or any contractual obligation of Owner or (b) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Owner.

11.2.2 **Utilities Representations**. Utilities hereby represents and warrants that: (i) It is a legally and regularly created, established, organized and existing home-rule municipal governmental unit, which municipality duly exists under the laws of the State and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (ii) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action; (iii) This Agreement is a legal, valid and binding obligation of Utilities enforceable against Utilities in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to bankruptcy, reorganization, insolvency, moratorium or other laws of equitable principles affecting the enforcement of creditors' rights; (iv) No approval by a Governmental Authority (other than any approvals which have been previously obtained or disclosed in writing to Owner) is required in connection with the due authorization, execution and delivery of this Agreement by Utilities or the performance by Utilities of its obligations hereunder which Utilities has reason to believe that it will be unable to obtain in due course; (v) Neither the execution and delivery of this Agreement by Utilities nor compliance by Utilities with any of the terms and provisions of this Agreement (a) conflicts with, breaches or contravenes any contractual obligation of Utilities, or (b) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Utilities; and (vi) Utilities has not entered into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by Owner under this Agreement.

11.3 **Assignment**.

11.3.1 **Owner Assignment.** Owner shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Utilities, which consent shall not be unreasonably withheld; provided, however, that Owner is not required to obtain Utilities' consent in order to: (a) assign this Agreement to any affiliate of Owner with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of Owner under this Agreement, and undertakes in

writing to perform those obligations, or (b) sell, transfer, assign or pledge its interest in the System or any monies due under this Agreement to a financial institution ("Financial Institution") (provided that Utilities will not pay to a third party any monies owed hereunder without the advance written direction of Owner). Utilities' consent to any other Assignment shall not be unreasonably withheld if Utilities has been provided with reasonable proof that the proposed assignee: (i) has or is prepared to obtain comparable experience and/or capability in operating and maintaining photovoltaic solar systems comparable to the System and providing services required by this Agreement; and (ii) has the financial capability to maintain and operate the System and provide the services required by this Agreement. A direct assignee from Owner of this Agreement (that is not a Financial Institution acquiring an interest pursuant to a security agreement) shall assume in writing, in form and content reasonably satisfactory to Utilities, the due performance of all Owner's obligations under this Agreement, including any accrued obligations at the time of the Assignment. A copy of the Assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such Assignment agreement shall be sent to Utilities not less than ten (10) days before the Contract Date of such Assignment.

11.3.2 **Utilities Assignment**. Utilities shall not assign its interests in this Agreement, nor any part thereof, without Owner's prior written consent, which consent shall not be unreasonably withheld.

11.4 **Financing Accommodations**. Utilities acknowledges that upon Owner's financing the acquisition and installation of the System or mortgaging the Site with a Financial Institution, that Owner's obligations under the financing may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a transfer of an ownership interest in the System (subject to a leaseback from the Financial Institution). In order to facilitate such necessary financing, Utilities agrees as follows:

11.4.1 **Consent to Collateral Assignment**. Utilities consents to the security assignment by Owner to the Financing Institution of this Agreement, and a transfer of the Owner's right, title and interest in and to the System to the Financing Institution, provided that such assignment shall not relieve the Owner of its obligations hereunder.

11.4.2 **Financing Institution's Default Rights**. Notwithstanding any contrary term of this Agreement:

11.4.2.1 The Financing Institution, as collateral assignee, shall be entitled to exercise, in the place and stead of Owner, any and all rights and remedies of Owner under this Agreement in accordance with the terms of this Agreement. Financing Institution

shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

11.4.2.2 The Financing Institution shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Owner hereunder or cause to be cured any default of Owner hereunder in the time and manner provided by the terms of this Agreement plus an additional fifteen (15) business days. Nothing herein requires the Financing Institution to cure any default of Owner under this Agreement or (unless the Financing Institution has succeeded to Owner's interests under this Agreement) to perform any act, duty or obligation of Owner under this Agreement, but Utilities hereby gives it the option to do so.

11.4.2.3 Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Institution, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Owner to the Financing Institution (or any qualified assignee of the Financing Institution as defined below) in lieu thereof, the Financing Institution shall give notice to Utilities of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

11.5 **Successors and Assigns**. The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

11.6 **Amendments**.

(a) **In writing**. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by Owner and Utilities.

(b) **No oral modification**. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted.

(c) **Changes or modification required by Fort Collins City Council**. Notwithstanding any other provision, this Agreement shall, at all times, be subject to such changes or modifications by the Fort Collins City Council as it may, from time to time, direct in the exercise of its jurisdiction, provided that no such changes or modifications i) shall affect the rights, obligations and economic benefits of the Parties hereto or ii) shall be effective without the prior written consent of Owner and Platte River.

(d) **Claim barred after final payment**. No claim by Owner for an adjustment hereunder shall be allowed if written modification of this Agreement is not made prior to final payment under this Agreement.

11.7 **Waiver**. The failure by either Party to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of that Party's right to enforce the same in accordance with this Agreement. The fact that Utilities specifically refers to one provision of the procurement rules or one section of applicable statutes, and does not include other provisions or statutory sections in this Agreement shall not constitute a waiver or relinquishment of Utilities' rights or Owner's obligations under the procurement rules or statutes.

11.8 **Partial Invalidity**. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Owner and Utilities shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Owner and Utilities cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

11.9 **Disputes; Governing Law; Venue; Jurisdiction**.

(a) Disputes shall be resolved in accordance with the laws of the State, as the same may be amended from time to time.

(b) The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State.

(c) Either party may initiate dispute resolution procedures by sending a notice of dispute ("Notice of Dispute"). The parties will attempt to resolve the dispute promptly through good faith negotiations. If the dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties may proceed to mediation.

(d) If a dispute remains unresolved for sixty (60) days after receipt of the Notice of Dispute, either party may submit the Dispute to the courts, as provided in this Section 11.9.

(e) Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in the District Court in and for Larimer County, Colorado or U.S. District Court in Colorado. Each party irrevocably agrees to submit to the exclusive jurisdiction of such courts over any claim or matter arising under or in connection with this Agreement.

11.10 **Third Parties**. This Agreement is for the exclusive benefit of the parties to this Agreement, and Platte River, their successors and permitted assigns and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

11.11 **Relationship of Parties; Independent Contractor Status, Responsibilities**.

(a) In the performance of services required under this Agreement, Owner is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, Utilities shall have a general right to inspect work in progress to determine whether, in Utilities' opinion, the services are being performed by Owner in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that Utilities does not agree to use Owner exclusively, and that Owner is free to contract to provide services to other individuals or entities while under contract with Utilities.

(b) Owner and Owner's employees and agents are not by reason of this Agreement, agents or employees of Utilities for any purpose, and Owner and Owner's employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

(c) Owner shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by Owner by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes, including any property tax, associated with the equipment. Owner also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

(d) Owner is responsible for securing all employee-related insurance coverage for Owner and Owner's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

11.12 **No Public Utility**. Nothing contained in this Agreement shall be construed as an intent by Owner to dedicate its property to public use or subject itself to regulation as a "public utility" (as defined by Applicable Law).

11.13 **Cooperation with Financing**. Utilities acknowledges that Owner may be financing the System and/or the Site and Utilities agrees that it shall reasonably cooperate with Owner and its financing parties in connection with such financing, including (a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Owner and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate Utilities to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Utilities, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Owner as a financing party may reasonably request).

11.14 **Rights and Remedies**. Except as otherwise set forth herein, each Party reserves to itself all rights, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

11.15 **Precedence**. The provisions of this Agreement shall take precedence over any other document and shall govern the agreement between the Owner and Utilities.

11.16 **Timely Submission of all Certificates**. All required certificates should be applied for and submitted to Utilities as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

11.17 **Confidentiality**.

(a) All material given to or made available to Owner by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by Owner and shall not be disclosed to any individual or organization without the prior written approval of Utilities.

(b) All information, data or other material provided by Owner to Utilities shall be subject to the Utilities' information regulations.

11.18 **Laws and Regulations**. Owner shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights of way, and all changes thereto, which in any manner affect the contract and all performance thereof. Owner shall comply with all such present laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans, setback imitations, rights-of-way, including the giving of all notices necessary and incident to proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, or rights-of-way, Owner shall forthwith report the same in writing to Utilities.

11.19 **Survival**. The provisions of Sections 1, 7, 8, 9, 10, and 11 shall survive the expiration or termination of this Agreement.

11.20 **Entire Agreement**. This Agreement (including all exhibits attached hereto) represents the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous oral and prior written agreements. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

OWNER: Customer Name

Address: Address

By: _____

Name, Title: _____

Date: _____

CITY OF FORT COLLINS, COLORADO
A municipal corporation

By: _____
Gerry S. Paul
Director of Purchasing and Risk Management

Date: _____

ATTEST:

By: _____
City Clerk

APPROVAL AS TO FORM:

By: _____
Assistant City Attorney

EXHIBIT A
DESCRIPTION OF SITE

(Legal and narrative description, including address and aerial photo)

EXHIBIT B

DESCRIPTION OF SYSTEM; SPECIFICATION; MAINTENANCE

Click here to enter text. KW photovoltaic renewable power system including fixed-tilt ground mount racking, utility scale inverters and related equipment.

Including:

Schedule 1: Estimated Annual Production, as derived through PVWatts® (NREL) or similar production estimation calculator.

EXHIBIT C
PRICING

PRICE SCHEDULE

Period kWh Rate:

The non-escalating rate(s) set forth on this Exhibit C shall control over any contrary provision in the Agreement. For all Energy transferred to Platte River and Environmental Attributes made available to Utilities during the period commencing on the Commercial Operation Date and ending on the last day of the First Commercial Operation Year, the following rate(s) shall apply:

YEAR	RATE:	
	Class I System	Class II System
Commercial Operation Year 1	$0.xx kWh	$0.xx kWh
Commercial Operation Year 2	$0.xx kWh	$0.xx kWh
Commercial Operation Year 3	$0.xx kWh	$0.xx kWh
Commercial Operation Year 4	$0.xx kWh	$0.xx kWh
Commercial Operation Year 5	$0.xx kWh	$0.xx kWh
Commercial Operation Year 6	$0.xx kWh	$0.xx kWh
Commercial Operation Year 7	$0.xx kWh	$0.xx kWh
Commercial Operation Year 8	$0.xx kWh	$0.xx kWh
Commercial Operation Year 9	$0.xx kWh	$0.xx kWh
Commercial Operation Year 10	$0.xx kWh	$0.xx kWh
Commercial Operation Year 11	$0.xx kWh	$0.xx kWh
Commercial Operation Year 12	$0.xx kWh	$0.xx kWh
Commercial Operation Year 13	$0.xx kWh	$0.xx kWh
Commercial Operation Year 14	$0.xx kWh	$0.xx kWh
Commercial Operation Year 15	$0.xx kWh	$0.xx kWh
Commercial Operation Year 16	$0.xx kWh	$0.xx kWh
Commercial Operation Year 17	$0.xx kWh	$0.xx kWh
Commercial Operation Year 18	$0.xx kWh	$0.xx kWh
Commercial Operation Year 19	$0.xx kWh	$0.xx kWh
Commercial Operation Year 20	$0.xx kWh	$0.xx kWh

Commercial Operation Year shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar year in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1)-year periods during the Term.