




HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #30  
BOMA  
11/12/13

## MEMORANDUM

September 24, 2013

**TO:** Board of Mayor and Aldermen

**FROM:** Eric S. Stuckey, City Administrator   
Vernon Gerth, Assistant City Administrator  
Dan Allen, Assistant Director of Engineering  
Andrew Orr, Principal Planner

**SUBJECT:** 1 Megawatt Solar Project at Wastewater Treatment Plant

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) the information necessary to make an informed decision to consider proposed Contract 2013-0137 with Energy Source Partners (ESP) for the installation of a second solar installation at the Wastewater Treatment Plant located at 135 Claude Yates Drive.

### **Background**

In May 2012 through a partnership with Energy Source Partners (ESP), the City completed a 200 kW solar installation at the wastewater treatment plant. Through July 2013, the system has earned \$76,887 from the sale of electricity to TVA with the City keeping \$15,377.

In April 2013, the City learned of a new Tennessee Valley Authority (TVA) program called the Renewable Standard Offer with the Solar Solutions Initiative price adder for projects up to 1,000 kW (1 Megawatt). TVA only accepted a limited number of projects for this program and the capacity filled up quickly. Energy Source Partners and the City submitted an application for a 1 Megawatt project that was recently approved.

### **Financial Impact**

ESP will design, build, finance, operate, and maintain the solar array, just as with the current 200 kW project. The City will transfer 90% of all revenue earned from the sale of power to ESP until year 10, which is when the project is estimated to hit payback. After this point, the City will keep 80% of all revenue and return 20% to ESP for the remainder of the 20 year lease.

TVA guarantees to purchase all power generated for the next 20 years. The first ten of those years includes the base rate plus the incentive amount. After year 10 of the project, TVA will only purchase the power at the base rate. Staff anticipates the City will have earned approximately \$165,000 by year 10 of the lease and will earn approximately \$800,000 from years 10-20.

### **Recommendation**

Staff recommends approving the ESP Contract 2013-1037.

**ENERGY SOURCE PARTNERS  
THE CITY OF FRANKLIN  
SOLAR SERVICES AND SITE LEASE AGREEMENT  
COF Contract No. 2013-0137**

This Solar Services and Site Lease Agreement (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Execution Date"), by and between Energy Source Partners LLC, a Tennessee limited liability company ("ESP"), and the City of Franklin, a Tennessee municipal corporation (the "City").

**WITNESSETH:**

**WHEREAS**, ESP is in the business of developing and managing renewable energy resources and selling the energy output from such resources; and

**WHEREAS**, ESP desires to design, build, finance, operate, and maintain an electricity grid-connected photovoltaic solar power system with the specifications attached hereto as Exhibit A (as further defined in Section l(m) of this Agreement, the "Generating Facility"), at a cost of \$2,650,000.00 (Two Million Six Hundred and Fifty Thousand Dollars) with a generating capacity rated at approximately 1000 kWdc at the City property located at 135 Claude Yates Dr., Franklin, Tennessee 37064, as the same is more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the "Site");

**WHEREAS**, the City is a tax-exempt entity; and

**WHEREAS**, ESP desires to lease from the City certain premises at the Site so that ESP may install, operate, and maintain the Generating Facility; and

**WHEREAS**, the City desires to lease certain premises at the Site to ESP, host the Generating Facility on said leased premises, permit such installation, operation and maintenance of the Generating Facility on such leased premises, and utilize the green energy output of the Generating Facility on the terms and conditions hereof; and

**WHEREAS**, the Parties further desire to take advantage of the Tennessee Valley Authority's ("TVA") Renewable Standard Offer and SSI Agreements, whereby TVA will purchase at a premium all of the green energy output from the Generating Facility, as well as other federal, state, and local green power incentive programs.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, ESP and the City hereby agree as follows:

**1. Definitions**

(a) "Affiliate" means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person.

(b) "Code" means the Internal Revenue Code of 1986, as amended.

- (c) "Commercial Operation" means the condition existing when (i) the Generating Facility is mechanically complete and (ii) energy is delivered through the Generating Facility's meter to the Site's electrical system under an executed and effective Interconnection Agreement.
- (d) "Commercial Operation Date" means the date on which the Parties mutually agree that the Generating Facility has achieved Commercial Operation.
- (e) "Energy Delivery Point" means the energy delivery point within the Site's electrical system on the City's side of the Site's Utility meter, as designated in the Interconnection Agreement.
- (f) "Energy Output" means the total quantity of all actual net energy generated by the Generating Facility (measured in kWhac) and delivered in accordance with Section 6 hereof to the Energy Delivery Point, in any given period of time. Energy Output does not include the Environmental Incentives.
- (g) "Environmental Laws" means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Leased Premises, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.
- (h) "Event of Default" has the meaning given to it in Section 17.
- (i) "Execution Date" has the meaning given to it in the paragraph first set forth above.
- (j) "Expiration Date" has the meaning given to it in Section 14(a).
- (k) "Fair Market Value" has the meaning given to it in Section 14(f)(ii).
- (l) "Force Majeure" has the meaning given to it in Section 18.
- (m) "Generating Facility" means an electricity grid-connected photovoltaic, solar power plant with the specifications attached hereto as Exhibit A and with a total generating capacity rated at approximately 1000 kWdc upon Commercial Operation, and all associated electric power generation equipment, controls, meters, switches, connections, conduits, wires and other equipment that may be necessary to connect such solar power plant to its respective Energy Delivery Point and to generate energy.
- (n) "Generation Meter" means the meter installed by the Utility to measure the kWh generated by the Generating Facility.
- (o) "Generation Partners Program Price" means the sum of the purchase price of solar- power-generated electricity at the Utility retail per kilowatt-hour rate plus the TVA Green Premium that is credited monthly to the Utility billing statement or is otherwise paid to the City.
- (p) "Hazardous Materials" means, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products,

polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(q) "Interconnection Agreement" means an interconnection agreement, as amended from time to time, entered into by and between the City and the Utility that provides for the Generating Facility to be interconnected with the Utility's electricity distribution system, and for energy to flow from the Generating Facility to such system, and from such system to the Energy Delivery Point, under the net metering provisions of the Utility's tariff.

(r) "kWac" means kilowatt alternating current. (s) "kWdc" means kilowatt direct current

(t) "kWhac" means kilowatt-hour alternating current. (u) "kWp" means kilowatt rated power.

(v) "Leased Premises" has the meaning given to it in Section 2. (w) "Lender" has the meaning given to it in Section 23(a).

(x) "MTEMC" means Middle Tennessee Electric Membership Corporation. (y) "Parties" means ESP and the City.

(z) "Party" means ESP or the City.

(aa) "Permits" has the meaning given to it in Section 8(h).

(bb) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

(cc) "Prudent Industry Practices" means those practices, methods and equipment, as changed from time to time, that are commonly used in the State of Tennessee in prudent electrical engineering and operations to operate solar generation equipment lawfully and with safety, reliability, efficiency and expedition.

(dd) "Reporting Rights" means the right of ESP to report to any federal, state or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that ESP owns the Environmental Attributes and the Environmental Incentives associated with the Energy Output.

(ee) "Site" has the meaning given to it in the Second Recital. (ff) "Term" has the meaning given to it in Section 14(a).

(gg) "Transfer" has the meaning given to it in Section 11(b).

(hh) "TVA Green Premium" means the amount the TVA, or its successor or assign, will pay in excess of the retail per kilowatt-hour rate charged for electricity, plus any fuel cost adjustments, to purchase green solar energy output as defined and stipulated in the TVA Participation Agreement.

(ii) "TVA Participation Agreement" means the Renewable Standard Offer and SSI Agreements, as amended from time to time, entered into by and among the City, TVA and ESP.

(jj) "Utility" means the electric distribution company responsible for electric energy transmission and distribution service at the Site. The Parties acknowledge and agree that, as of the Execution Date, the Utility is MTEMC.

## **2. Lease**

The City does hereby lease to ESP, in accordance with the terms and conditions set forth herein, the premises described in Exhibit C and incorporated herein by this reference (the "Leased Premises").

## **3. Access to Leased Premises**

The City hereby also grants to ESP, during the Term of this Agreement, the right to access the Leased Premises at times and via routes approved in advance by the City as is necessary for the installation, operation, and maintenance of the Generating Facility. The City and ESP shall cooperate in good faith to coordinate access for the regularly scheduled maintenance of the Generating Facility by ESP and to provide ESP with a method and process for access in the event of an emergency. ESP will give the City reasonable written or telephonic notice before any entry onto the Leased Premises by ESP's employees, agents or contractors. The City will make available to ESP access to the Generating Facility and the Leased Premises for the purposes set forth in Section 5 hereof in accordance with the terms set forth herein. Notwithstanding anything to the contrary in this Agreement, ESP shall be permitted to access the Leased Premises twenty- four (24) hours a day, seven (7) days a week for emergency purposes after reasonable written or telephonic notice to the City.

## **4. Benefits**

ESP hereby covenants to pay to the City, on or before the Commercial Operation Date, and on or before each anniversary of the Commercial Operation Date during the Term of this Agreement, as and for rent of the Leased Premises, the sum of \$1.00 (one U.S. dollar).

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

(a) The City hereby consents to the construction and installation of the Generating Facility, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The City acknowledges that the installation of all or a portion of the Generating Facility may require physically mounting and adhering the Generating Facility to the Leased Premises or to the ground or a combination thereof.

(b) ESP shall have the right and obligation during the Term hereof: (i) to construct, install and operate the Generating Facility on the Leased Premises; (ii) to maintain, clean, repair, replace and, as may be necessary for the proper maintenance, cleaning, repair and replacement thereof, dispose of part or all of the Generating Facility; (iii) to add or remove equipment as needed to increase or decrease the capacity of the Generating Facility; (iv) to remove the Generating Facility as permitted pursuant to Section 14(f)(i); (v) to install and maintain such equipment as is necessary for remote monitoring of the Generating Facility, including without limitation the establishment at ESP's sole discretion of a land based or satellite based high speed internet connection; and (vi) to conduct an in-person physical inspection of the Generating Facility and the Leased Premises.

(c) ESP shall cause installation of the Generating Facility to be completed and cause the Generating Facility to begin Commercial Operation substantially in accordance with the installation plans and specifications previously submitted to and approved by the Utility.

(d) ESP shall use its best efforts to prevent activities associated with installation, operation and maintenance of the Generating Facility from disrupting or interfering with the City commercial activities at the Site. ESP shall indemnify, defend, and hold harmless the City from any claims, costs, damages, liabilities, losses, or expenses, arising directly from or related directly to such disruption or interference.

(e) ESP shall be solely responsible for operation and maintenance of the Generating Facility and shall, at all times during the term of this Agreement, maintain the Generating Facility in accordance with Prudent Industry Practices. All maintenance work will be scheduled at a mutually agreeable time so as to ensure the safe, efficient operation of the Generating Facility and without disrupting the City commercial operations.

(f) ESP and the City hereby agree and acknowledge that the City shall have no responsibility for the Generating Facility's operation or maintenance other than using commercially reasonable efforts, at the reasonable request and at the expense of ESP, and which shall not interfere in any way with the City's operations on the Site, to protect the Generating Facility against vandalism and other destruction by a third party and to keep the Site clear of any object or structure that causes the loss of direct beam solar resource to the Generating Facility. Neither the City nor any party related thereto shall have the right or be deemed to operate the Generating Facility for purposes of Section 7701(e) (4)(A)(I) of the Internal Revenue Code.

(g) ESP shall provide general liability insurance coverage as set forth in Section 15.

(h) ESP, at its own cost and expense, shall comply with all applicable laws relating to the installation, operation, and maintenance of the Generating Facility and the generation and delivery of the Energy Output, including obtaining and maintaining all relevant governmental permits, licenses, certificates, approvals, variances and other requirements for use ("Permits") necessary for the construction, installation and operation of the Generating Facility. The City hereby gives its consent to ESP's taking all appropriate and necessary action in applying for any and all Permits necessary for the operation of the Generating Facility and the City hereby appoints ESP its agent for applying for such Permits. ESP, throughout the Term of this Agreement, will fully comply with any and all operational standards and requirements imposed by the Utility, and comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff. The City will cooperate with ESP and, if necessary, will provide consents and execute with the Utility, or any successor Utility, such agreements (if such consents and agreements do not have unacceptable or prohibited terms and/or conditions, or impose additional costs on the City) as are necessary to permit the interconnection of the Generating Facility. This electrical interconnection shall be done at no cost or liability to the City, and ESP shall promptly reimburse the City for all out-of pocket costs incurred in connection with this interconnection. Should the Utility demand fees or equipment in excess of \$5,000.00 for electrical interconnection requirements, ESP may at its sole discretion cease to proceed with installation of the Generating Facility without further obligation to the City, in which event ESP will return the site to the condition it was in prior to commencement of the installation of the Generating facility.

## **6. Acceptance and Delivery of Power**

(a) Beginning on the Commercial Operation Date, and continuing for the Term, the City shall allow the production and accept delivery of the Energy Output of the Generating Facility (in such amount of output as the Generating Facility produces from time to time) at the Energy Delivery Point. All deliveries of Energy Output hereunder shall be in the form of alternating current or similar current to properly integrate with the Site's electrical system.

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

(c) ESP and the City expect that the Utility will purchase the total Energy Output of the Generating Facility pursuant to the TVA Participation Agreement which provides for the purchase of solar-power-generated electricity at a purchase, price equal to the price stipulated in the Renewable Standard Offer and SSI Agreements. The City will provide ESP with a copy of each month's billing statement from the Utility for the Generating Facility within seven (7) days of receipt of such billing statement. ESP and the City hereby agree and acknowledge that ESP will be entitled to receive from the City, and the City will pay to ESP, amounts equal to ninety percent (90%) of all payments made under the terms of the Renewable Standard Offer and SSI Agreements credited or paid to the City ("Green Premium Payments") until the total amount of Green Premium Payments made to ESP by the City totals \$2,650,000 (Two Million Six-Hundred and Fifty Thousand Dollars plus all interest accrued as of the Execution Date on money borrowed by ESP at an annual rate of 6% to fund the installation of the Generating Facility. Thereafter, during each month for the balance of the Term, and any extended or renewal term, ESP will be entitled to receive from the City, and the City will pay to ESP, amounts equal to twenty percent (20%) of all Green Premium Payments. Such amounts will be paid in accordance with the terms of Section 8 hereof.

(d) In the event that the TVA Participation Agreement or Interconnection Agreement is terminated for any reason or expires or the Utility does not purchase the total Energy

Output of the Generating Facility, ESP shall have the right to enter into one or more alternative arrangements for the sale of the Energy Output ("Alternative Arrangement") and, upon the receipt of a written request from ESP, the City may, its consent not reasonably withheld, execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to enter into the Alternative Arrangement(s). ESP and the City hereby agree and acknowledge that ESP will be entitled to receive ninety percent (90%) of all payments received by either Party with respect to the sale of Energy Output pursuant to an Alternative Arrangement until the total amount received by ESP pursuant to this Section 6(d) and Section 6(c) above totals \$2,650,000 (Two Million Six-Hundred and Fifty Thousand Dollars) plus all interest accrued as of the Execution Date on money borrowed by ESP at an annual rate of 6% to fund the installation of the Generating Facility. Thereafter, during each month for the balance of the Term, and any extended or renewal term, ESP will be entitled to receive twenty percent (20%) of all payments received by either Party with respect to the sale of Energy Output pursuant to an Alternative Arrangement. Such amounts will be paid in accordance with the terms of Section 8 hereof.

## **7. Monitoring and Metering**

ESP may, at its sole discretion, install monitoring of the Generating Facility's inverters. The monitoring will measure the alternating current output of the inverters in kilowatt- hours on a continuous basis. ESP will be responsible for the installation and maintenance of the monitoring system. The energy delivered by the Generating Facility will also be metered by a revenue quality Generation Meter installed and maintained by the Utility. Utility billing is based on the solar energy kilowatt-hours metered by this Generation Meter.

## **8. Payment**

Without offset for any amount owed or claimed to be owed by ESP and outstanding for less than thirty (30) days, (i) the City shall pay-ESP all amounts due to ESP pursuant to Sections 6(c) or 6(d) above on or before fifteen (15) days following the date that (A) a TVA Participation Agreement Price is either credited on a billing statement from the Utility or is otherwise paid to the City or (B) a payment is received by the City pursuant to an Alternative Arrangement, and (ii) ESP shall pay the City all amounts due to the City pursuant to Section 6(d) above on or before fifteen (15) days following the date that a payment is received by ESP pursuant to an Alternative Arrangement (which, in each case, shall be referred to herein as the "Due Date"). If the Due Date is a bank holiday or a weekend, payment shall be due on the next following business day. Any undisputed amount remaining unpaid after the Due Date shall bear interest at the rate of one percent (1%) per month or, if less, the highest rate permitted by applicable law.

## **9. Invoice Adjustments: Disputes over Invoices**

Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered or adjust any invoice for any arithmetic, computational or meter- related error within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If the Parties do not resolve such dispute within such thirty (30) day period, then the Parties may pursue their rights appropriately. ESP shall return to the City any disputed amount which is ultimately determined to have been improperly billed to the City.

## **10. Environmental Attributes, Incentives, and Grant Awards**

(a) Notwithstanding the Generating Facility's presence as a fixture on the Site, ESP shall own the electricity (kWh) generated by the Generating Facility during the Term of this Agreement and ESP shall own, and may assign or sell all right, title and interest associated with or resulting from the development and installation of the Generating Facility or the production, sale, purchase or use of the Energy Output including, without limitation:

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

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

(b) The City shall not knowingly take any action at the Site that would have the effect of impairing the value to ESP of the Environmental Attributes and Environmental Incentives. However, nothing contained in this provision shall, directly or indirectly, limit, impair, or prohibit any action by the City in furtherance of its commercial operations regardless of whether such action impairs any one or more Environmental Attributes and/or Environmental Incentives.



(c) ESP shall be responsible for the management and administration of all state, federal, and/or local Environmental Incentives relating to the purchase, installation, operation, and maintenance of the Generating Facility. ESP shall manage and administer all Environmental Incentives in strict compliance with all state, federal, and local rules, laws, and regulations, as well as all contractual terms and conditions governing such Environmental Incentives. ESP shall indemnify, defend, and hold harmless the City from any claims, costs, damages, liabilities, losses, or expenses, whatsoever, including attorney fees, arising from or related to Environmental Incentive or Attribute covered under Section (IO) (a), (b), or (c) of this Agreement.

## **11. Ownership of and Title to Generating Facility and Other Property Rights**

(a) Notwithstanding the Generating Facility's presence on the Site as a fixture, the City acknowledges and agrees that ESP shall at all times during the Term retain title to and be the legal and beneficial owner of the Generating Facility and all alterations, additions or improvements made thereto by ESP, and the Generating Facility shall remain the property of ESP or ESP's assigns, subject to the City purchase rights as set forth in this Agreement. In no event shall anyone claiming by, through, or under the City (including but not limited to any present or future mortgagee of the Site) have any rights in or to the Generating Facility during such time. The City acknowledges and agrees that ESP may be required to grant or cause to be granted to a lender a security interest in the Generating Facility and the City expressly disclaims and waives any rights it may have in the Generating Facility, at any time and from time to time, pursuant to this Agreement, at law or in equity.

(b) The Generating Facility may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a "Transfer") with the fee interest or leasehold rights to the Leased Premises or otherwise by the City or any other person unless the City's obligations are assumed by the transferee. The City will endeavor to give ESP at least fifteen (15) days written notice prior to any sale of all or a portion of the Leased Premises identifying the transferee, the portion of the Site to be sold and the proposed date of Transfer.

(c) The Parties specifically acknowledge and agree that, unless and until the Generating Facility is purchased by the City pursuant to the terms of this Agreement, ESP shall be the owner of the Generating Facility for all purposes, including without limitation federal income tax purposes, and in that connection, shall be entitled to the depreciation deductions associated with the Generating Facility as well as any tax credits or other tax benefits provided under the Code to which such owner of the Generating Facility may be entitled.

(d) Nothing in this Agreement shall be construed to convey to either Party a license or other right to trademarks, copyrights, technology or other intellectual property of the other.

## **12. Representations and Warranties**

(a) Each Party represents and warrants to the other Party that:

(i) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement to perform its obligations hereunder and to consummate the transactions contemplated hereby;

(ii) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary company action;

(iii) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is Subject to (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);

(iv) to such Party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other Party or those described in Section 5(h) above) is required in connection with the due authorization, execution and delivery of this Agreement by such Party or the performance by such Party of its obligations hereunder which such Party has reason to believe that it will be unable to obtain in due course;

(v) neither the execution and delivery of this Agreement by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents, the applicable laws, rules and regulations of the State of Tennessee and its agencies, or any other law or regulation applicable to such Party;

(vi) except as previously disclosed in writing to the other Party there is no pending or, to the knowledge of such Party, threatened litigation, action or proceeding against such Party which would reasonably be expected to have a material adverse effect or which purports to affect the legality, validity or enforceability of this Agreement or the transactions contemplated hereby;

(vii) except as previously disclosed in writing to the other Party there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to such Party;

(viii) such Party is not a "foreign person" (as such terms are defined in Section 168(h) of the Code) and such Party will not assign, subcontract or otherwise transfer its rights under this Agreement to a "foreign person" as defined in Section 168(h) of the Code; and

(ix) to such Party's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the Generating Facility, except as have been disclosed in writing to the other Party.

(b) The City represents and warrants to ESP that, to the City's actual knowledge, without inquiry or investigation, there are no circumstances or commitments to third parties that are reasonably expected to damage, impair or otherwise adversely affect the Generating Facility or its construction, installation or function (including activities that are reasonably expected to adversely affect the Generating Facility's exposure to sunlight). The City represents and warrants to ESP that, except as described in Schedule 12(b), or in the City's normal course of business, the City has not used, stored, handled or disposed of Hazardous Materials on or about the Leased Premises. The City covenants that the City has lawful title to the Site, including the Leased Premises, and full right to enter into this Agreement and that ESP shall have quiet and peaceful possession of the Leased Premises throughout the term of this Agreement so long as ESP has not defaulted hereunder. The City will not initiate or conduct activities that it knows will damage the Generating Facility.

### **13. Covenants**

(a) The City shall provide and take reasonable measures for security of the Generating Facility, including commercially reasonable monitoring of the Site's alarms, if any; provided, however, that ESP shall promptly reimburse the City for costs of security measures the City adds or enhances for or because of the Generating Facility. The City shall not incur costs for any additions or enhancements to security for the Generating Facility for which there is an expectation that ESP shall reimburse the City without prior written permission from ESP for such additions or enhancements. ESP reserves the right to decline the implementation of additions or enhancements to security measures and the associated costs.

(b) Notwithstanding the Generating Facility's presence as a fixture on the Site, the City shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Generating Facility or any interest therein. The City also shall pay promptly before a fine or penalty may attach to the Generating Facility any charges or fees of whatever type of any relevant governmental authority for which the City is responsible. If the City breaches its obligations under this Section 13(b), it shall immediately notify ESP in writing, shall within ten (10) days cause such liens to be discharged and released of record without cost to ESP, and shall indemnify ESP against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such liens. The City hereby appoints ESP, or any of its authorized officers, as its attorney-in-fact to sign, file, and record a UCC-1 financing statement, or other evidence of ESP's ownership of the Generating Facility with any and all appropriate public offices.

(c) The City will comply with the terms of the TVA Participation Agreement, Interconnection Agreement and any agreement entered into in connection with an Alternative Arrangement and will not amend or terminate any such agreement without the prior written consent of ESP.

### **14. Term**

(a) The term of this Agreement (the "Term") shall commence on the Execution Date and, unless earlier terminated pursuant to this Section 14, expire on the twentieth (20th) anniversary of the Commercial Operation Date (the "Expiration Date"). The Parties' respective acceptance and delivery obligations under Section 6(a) above with respect to Energy Output from the Generating Facility shall commence at 00:00 hours on the Commercial Operation Date and shall continue in effect until 24:00 hours on the Expiration Date.

(b) At the expiration of the Term, or should this Agreement be terminated for any reason prior to the expiration of the Term, other than as provided in Section 14(d) or as a result of the City exercising its option to purchase the Generating Facility provided for in this Agreement, all of the Generating Facility and the improvements placed by ESP on the Leased Premises shall remain the property of ESP and shall be removed by ESP within ninety (90) days following termination of this Agreement. This paragraph shall not be construed to give either party the right to terminate this Agreement prior to the expiration of the Term, except as otherwise set out in other provisions of this Agreement.

(c) Early Termination by ESP.

(i) ESP may terminate this Agreement at ESP's sole discretion at any time upon three (3) months written notice to the City. In addition, ESP may terminate this Agreement effective upon provision of written notice to the City if, within 180 days of the date hereof, ESP determines that the Generating Facility cannot be installed and operated according to ESP's investment criteria. Upon any such termination by

ESP, ESP shall restore all of the City property to its original condition as existed prior to the commencement of installation of the Generating Facility.

(ii) If the City is unable to deliver possession of any or all of the Leased Premises to ESP, ESP in its sole discretion and as its sole remedy may terminate this Agreement with respect to any or all of the Generating Facility without liability of any kind to the City.

(d) Early Termination by either Party. ESP and the City shall have the right, but not the obligation, to terminate this Agreement prior to expiration of the Term upon the occurrence of an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or service, which order will have a materially adverse effect on the terminating party.

In the event that either Party terminates this Agreement pursuant to this Section 14(d), this Agreement shall terminate without triggering the default provisions of this Agreement, and with no liability of either Party to the other Party except such amounts as are due and owing under this Agreement as of the date of such termination. Upon such termination, ESP shall have the right, but not the obligation, to remove the Generating Facility, together with any related wiring, cabling, and other equipment of ESP and leave the Leased Premises in at least as good condition (as reasonably determined by the City), normal wear and tear excepted, as that which existed prior to installation of the Generating Facility, and shall be granted access to the Site to do so. (e) The Parties acknowledge that given the complexity of this technology and the volatility of energy markets, adequate damages in the event of a breach of this Agreement will be difficult if not impossible to calculate. Consequently, the Parties agree that upon early termination or the occurrence of an Event of Default that leads to termination, the defaulting Party's liability hereunder shall be limited to the amounts calculated as herein set out. In no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or business interruption damages, by statute, in tort, contract or otherwise.

(f) The City Options at End of Agreement. Upon expiration of this Agreement, or termination by either party for reasons other than those outlined in Section 14(d), or as otherwise set out herein, the City may choose one of the following options:

(i) Removal of Generating Facility. ESP shall, if requested in writing to do so by the City, remove the Generating Facility, together with any related wiring, cabling, and other equipment of ESP, subject to the City's reimbursement of ESP's reasonable costs of removal if removal occurs during the Term as the result of default or termination by the City, or at ESP's expense at the expiration of the Term or upon termination by ESP, and leave the Leased Premises in at least as good condition (as reasonably determined by the City), normal wear and tear excepted, as that which existed prior to installation of the Generating Facility. Except as herein set out, ESP shall indemnify, defend, and hold harmless the City from any claims, costs, damages, liabilities, losses, or expenses, arising directly from or directly related to removal of the Generating Facility.

(ii) Purchase of Generating Facility. Provided no default of the City shall have occurred and be continuing, the City may, at its option, elect to purchase the Generating Facility on a date that is ten (10) years after the Commercial Operation Date or at any time thereafter, up to and including the Expiration Date. The purchase price ("Buy-Out Price") shall be the greater of (1) the Fair Market Value of the Generating Facility, or (2) the positive difference, if any, between (x) \$2,650,000 (Two Million Six Hundred and Fifty Thousand Dollars) plus all interest accrued as of the Execution Date on money borrowed by ESP at an annual rate of 6% to fund the installation of the Generating Facility and (y) the amount received by ESP pursuant to Sections 6(c) and 6(d) of this Agreement. If the City exercises the purchase option herein granted, then upon payment of the Buy-out Price ESP shall take whatever actions

are necessary to transfer title ownership to the City of the Generating Facility and all improvements placed by ESP on the Leased Premises, free from any lien or monetary encumbrance. Not less than ninety (90) days prior to the exercise of the purchase option, the City shall provide written notice to ESP of the City's exercise thereof. Thereafter, upon receipt of the then Buy-Out Price, and all other amounts then owing by the City to ESP, the Parties will execute all documents necessary to cause title to the Generating Facility to pass to the City as-is, where-is; provided, however, that ESP shall remove any encumbrances placed on the Generating Facility by ESP. The "Fair Market Value" of the Generating Facility shall be the value determined by the mutual agreement of the City and ESP within ten (10) days of the City's termination notice pursuant to this Section 14. If the City and ESP cannot mutually agree to a Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the Generating Facility will be transferred from ESP to the City at the City's sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two appraiser firms proposed by the respective Parties.

## **15. Insurance**

ESP shall maintain, at its sole expense, commercial general liability insurance covering the Generating Facility, including bodily injury, property damage and personal injury liability insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, or other applicable and required limits as determined and communicated periodically by the Risk Manager of the City of Franklin. The general liability insurance shall extend to both ongoing operations and completed operations. ESP, if it has employees, shall also maintain at all times during the Term workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. ESP shall provide a Waiver of Subrogation regarding Workers Compensation coverage. ESP shall deliver to the City a certificate of insurance evidencing such coverage. This certificate shall name the City as an Additional Insured and shall specify that the City shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. The Additional Insured status shall be applicable to the general liability coverage. ESP shall provide a copy of the Automobile Liability coverage, which shall be in the amount of \$1,000,000.00 Combined Single Limit if employees of ESP drive ESP vehicles onto the City's property. ESP shall provide a copy of the Employers Liability coverage, which shall be in the amount of \$1,000,000.00/\$1,000,000.00/\$1,000,000.00. ESP's insurance shall be primary coverage without right of contribution from any insurance of the City. ESP shall maintain at its sole expense property insurance covering the Generating Facility only. The amount of coverage will be sufficient to repair or replace the Generating Facility's components as is necessary to ensure good working order. ESP shall bear all risk of loss with respect to the Generating Facility, except for losses arising solely from negligent actions or intentional misconduct by the City or its employees, directors, officers, managers, members, shareholders or agents. Except as otherwise set out herein, all other property insurance shall be the responsibility of the City.

## **16. Taxes**

Subject to the provisions of Section 14 hereof, ESP shall pay all possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to ESP's ownership, use and/or operation of the

Generating Facility (or any portion or component thereof) and ESP's generation, sale or delivery of Energy Output, except (i) real and personal property taxes relating to the real property on which the Leased Premises is situated, (ii) inheritance or estate taxes imposed upon or assessed against the Leased Premises, or any part thereof or interest therein, (iii) taxes computed upon the basis of the net income or payments derived from the Leased Premises by the City or the Owner of any interest therein, (iv) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof relative to realty, and (v) taxes, assessments, or charges assessed against any consumption of the Energy Output by the City. The City shall pay all amounts in connection with clauses (i), (ii), (iii), (iv) and (v) of this Section 16. ESP shall also be responsible for all taxes, assessments, or charges assessed against any Environmental Incentives and any equipment installed by ESP as part of the Generating Facility. ESP shall also be responsible for any tax levied on renewable energy systems. Except as otherwise set out herein, all other property taxes, assessments and charges shall be the responsibility of the City. The City shall reimburse ESP for any property taxes resulting from the Generating Facility that are paid by ESP during the Term and any extended or renewal term, as those property taxes are amended from time to time.

## **17. Default and Remedies**

(a) With respect to a Party, there shall be an event of default (each an "Event of Default") if:

(i) such Party fails to pay any undisputed amount within ten (10) days after receiving written notice that such amount is overdue; or

(ii) except as otherwise set forth in this Section 17(a), such Party is in breach of any representation or warranty set forth herein or fails to perform any material obligation required by this Agreement, or if the City breaches the Interconnection Agreement, the TVA Participation Agreement or any agreement entered into in connection with an Alternative Arrangement, and such breach or failure is not cured within thirty (30) days after notice from the non-defaulting Party; provided, however, that the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely by Force Majeure (as defined in Section 18) if the defaulting Party has begun curative action and was proceeding diligently towards completion, using commercially reasonable efforts to complete such curative action.

(b) Upon an Event of Default by one Party, the other Party shall have the right, but not the obligation, to terminate or suspend this Agreement with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations arising prior to such termination or suspension) and to pursue all remedies available to it at law or in equity. In addition, the defaulting Party shall be liable to reimburse the non-defaulting Party for such non-defaulting Party's expenses and costs relating to such Event of Default, including reasonable attorney fees and court costs.

(c) Upon termination or suspension of this Agreement prior to the end of the Term, ESP shall have the right, but not the obligation (unless required by the City pursuant to the terms of this Agreement) to remove the Generating Facility, together with any related wiring, cabling, and other equipment of ESP, unless the City elects to purchase the Generating Facility for its Buy-Out Price, as herein set out. (d) Any waiver at any time by either Party of its rights with respect to an Event of Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Agreement must be in writing.

(ed) Notwithstanding any provision to the contrary in this Agreement, neither the City nor any party related to the City shall bear or be deemed to bear any significant financial burden if there is

nonperformance by ESP under this agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

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

## **18. Force Majeure**

(a) If either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of any cause beyond the reasonable control of, and without the fault or negligence of such Party (an event of "Force Majeure"), such circumstance shall not constitute an Event of Default, and such Party shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an Event of Default hereunder). The settlement of strikes and labor disturbances shall be wholly within the control of the Party experiencing that difficulty.

(b) As used herein, the term "Force Majeure" shall include, without limitation, (I) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) acts of vandalism, (v) terrorist acts affecting the Site, (vi) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vii) requirement by Utility that the Generating Facility discontinue operation for any reason beyond the control of the Parties, (viii) appropriation or diversion of electricity by sale or order of any governmental authority having jurisdiction thereof, or (ix) any other action by any governmental authority beyond the control of the Parties which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

## **19. Liability and Indemnity**

ESP shall indemnify, defend and hold the City and its employees, directors, officers, managers, members, shareholders and agents (each, in such case, an "Indemnified Party") harmless from and against any and all claims, suits, damages, losses, liabilities, expenses and costs suffered or incurred by any Indemnified Party (including reasonable attorneys' fees) including, but not limited to, those arising out of property damage (including environmental claims) and personal injury and bodily injury (including death, sickness and disease). This Section 19 shall survive termination of this Agreement.

## **20. Publicity**

By executing this Agreement, the City consents to ESP publishing factual information related to the Generating Facility on its website (or the website of an Affiliate) and through other forms of electronic media. Such information may include, but is not limited to, the location of the Generating Facility, the name of the Generating Facility's Host, in this case the City, and other features of the Generating Facility.

## **21. Confidentiality**

All non-public information provided by either Party to the other or which is identified by the disclosing Party in writing as confidential or proprietary information shall be treated in a confidential manner and



shall not be disclosed to any third party without the prior written consent of the non-disclosing Party, which consent shall not be unreasonably withheld. Notwithstanding the preceding, this Section and the restrictions herein contained shall not apply to any data or documentation which is:

(a) required to be disclosed pursuant to state or federal law, an order or requirements of a regulatory body or a court, after five (5) business days notice of such intended disclosure is given by the disclosing Party to the non-disclosing Party or if five (5) business days notice is not practical, then such shorter notice as is practical;

(b) disclosed by a Party to an Affiliate of such Party or in connection with an assignment permitted by Section 23; or

(c) is, as of the time of disclosure, public knowledge without the fault of the disclosing Party.

ESP waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. City may be required to disclose documents under state or federal law. City shall notify ESP if a request for documents has been made and shall give ESP a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, ESP agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon ESP's representation that materials supplied by ESP (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads ESP and ESP assumes control over that claim.

## **22. Records**

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

## **23. Assignment**

(a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, ESP may transfer, pledge or assign any of its rights, duties or obligations under this Agreement to a secured lender for financing the purchase of the Generating Facility ("Lender") without prior written consent from the City.

(b) With respect to a transfer, pledge or assignment by ESP to a Lender for financing the purchase of the Generating Facility, the City and ESP acknowledge and agree that upon receipt of written notice and direction by any such Lender of ESP that ESP is in default under its financing agreements with Lender, and notwithstanding any instructions to the contrary by ESP, the City shall (i) make any and all payments due and owing by the City under this Agreement directly to Lender, and (ii) tender performance of any and all other covenants by the City under this Agreement to and for the benefit of Lender and as Lender may direct in the future. Furthermore, if directed in writing by Lender, the City will recognize such Lender, or any third party to whom such Lender has reassigned the rights of ESP under this Agreement, as the proper and lawful provider of power under this Agreement and fully entitled to receive payments with respect thereto and possessing all other rights of ESP hereunder so long as such Lender (or its



assignee or designee) performs the obligations of ESP hereunder. The City shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which the City shall in good faith believe (a) to be genuine and (b) a copy of which to have been delivered to ESP. The City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

#### **24. Amendments**

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

#### **25. Notices**

Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 25). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below:

If to ESP:

Energy Source Partners, LLC Attn: Ronald B. Merville, Jr.  
2505 21<sup>st</sup> Avenue South, Suite 301  
Nashville, TN 37212

With a copy to:

CorbettCrockett  
Attn: Lee Corbett  
3100 West End Avenue  
Suite 1050 American Center  
Nashville, Tennessee 37203

If to the City:

Eric Stuckey, City Administrator  
109 3rd Avenue South  
Franklin, TN 37065

With a copy to:

The City of Franklin  
Attn: Shauna R. Billingsley  
109 3rd Avenue South  
Franklin, Tennessee 37064

All notices shall be deemed to have been received when delivered in person, sent by facsimile with electronic confirmation of successful transmission, or three (3) days after being sent by registered or certified mail as provided above.

## **26. Waiver**

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

## **27. Remedies Cumulative**

Except as otherwise expressly provided for herein, no remedy herein conferred upon or reserved to ESP or the City shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

## **28. Headings**

The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

## **29. Choice of Law**

This Agreement shall be construed in accordance with the laws of the State of Tennessee

(without regard to its conflicts of laws principles).

## **30. Binding Effect**

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

## **31. Third Party Beneficiaries**

Nothing in this Agreement shall provide any benefit to any third party (other than the Lender pursuant to Sections 23 and 24) or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

## **32. Counterparts**

This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

### **33. Other Agreements**

This Agreement, the Interconnection Agreement and the TVA Participation Agreement represent the full and complete agreements between the Parties with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to said subject matter.

### **34. Set-Off**

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

### **35. Severability**

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

### **36. Survival**

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

### **37. Cooperation**

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents (e.g. Interconnection Agreement, TVA Participation Agreement), instruments and assurances as negotiated in good faith and mutually agreed to by the Parties, and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold condition or delay its compliance with any reasonable request made pursuant to this Section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

### **38. No Partnership**

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**THE CITY OF FRANKLIN**

**ENERGY SOURCE PARTNERS**

By: \_\_\_\_\_  
Dr. Ken Moore, Mayor

By: \_\_\_\_\_  
Ronald B. Merville, Jr., President & CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
Eric S. Stuckey, City Administrator

Date: \_\_\_\_\_

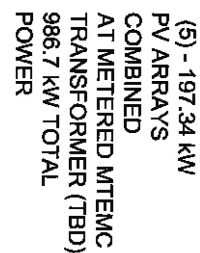
**APPROVE AS TO FORM:**

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

Date: \_\_\_\_\_

**EXHIBIT A**

Electrical Line Drawing  
(See Attached)



THE FOLLOWING VARIABLE  
FAULT CIPHER:  
100342

[illegible][illegible]

**Merville & Howe  
Engineering, Inc.**  
2505 21st, Ave, South.  
Suite 450, Nashville, TN 37212  
Tel (615) 383-8228,  
Fax (615) 385-3984