AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item:

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Contract for large generation systems pertaining to the Courthouse and Public Safety Center solar arrays.

Fiscal Impact: none

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
no concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/29/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 5/29/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 5/29/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/4/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 6/16/2020

Revised April 2015

AGREEMENT FOR PURCHASE OF AS-AVAILABLE ENERGY

This Agreement For Purchase of As-Available Energy ("Agreement") is made and entered by and among the Board of County Commissioners of Gunnison County, Colorado (hereafter: Gunnison County), having its principal place of business or residence at 200 E. Virginia Ave., Gunnison, Colorado with respect the Facilities identified in Exhibit A attached hereto and made part of this Agreement (hereinafter referred to as the "QF"), and the City of Gunnison, Colorado (hereinafter referred to as the "Participant"). The Gunnison County and the City of Gunnison may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the QF desires Parallel Operation with the City of Gunnison and to sell the net output generated by the Facilities to the City of Gunnison, and the City of Gunnison desires to purchase any as-available energy to be generated by the Facilities and made available for sale, consistent with Net Metering Rules, as such rules may be amended from time to time; and

WHEREAS, Gunnison County has acquired or will acquire agreements regarding interconnection, distribution and transmission service with the City of Gunnison in whose service territory the Facilities are to be located;

NOW, THEREFORE, for mutual consideration, the Parties covenant and agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and in the Exhibits hereto, the following capitalized terms shall have the following meanings:

1.1 **As-Available Energy** means energy produced and sold by Gunnison County on an hour-by-hour basis for which contractual commitments as to quantity, time, or reliability of delivery are not required.

1.2 **Environmental Attributes** means with respect to a specified quantity of electricity, the right of a purchaser of such Environmental Attributes to claim, under applicable energy generation disclosure and tracking laws and regulations,

all of the non-energy attributes and value associated with the generation of such renewable power, including: any green tags, tradable renewable certificates or similar renewable energy certificates, credits, values or premiums associated with such renewable energy generation; any output-based incentive, allocation, credit, value, set-aside allowance or non-energy attribute relating to or arising out of the production of renewable wind energy generation, and emission and greenhouse gas reductions; whether any of the foregoing arises pursuant to existing or future energy generation disclosure and tracking laws and regulations, or existing or future certification, certification program, trading market or exchange.

1.3 **Executed Date** means the date on which the Parties execute this Agreement.

1.4 **Facility** means all equipment, as described in this Agreement, for the Facilities identified on Exhibit A, used to produce electric energy and, for a cogeneration facility, used to produce useful thermal energy through the sequential use of energy.

1.5 **FERC** means the Federal Energy Regulatory Commission and any successor.

1.6 **Force Majeure Event** means an event or occurrence that is not reasonably foreseeable by a Party, is beyond its reasonable control, and is not caused by its negligence or lack of due diligence, including, but not limited to, natural disasters, fire, lightning, wind, perils of the sea, flood, explosions, acts of God or the public enemy, strikes, lockouts, vandalism, blockages, insurrections, riots, war, sabotage, action of a court of public authority, or accidents to or failure of equipment or machinery, including, if applicable, equipment of the Transmission Service Utility or Participant.

1.7 **Interconnection Facilities** means all equipment located on the City of Gunnison's side of the Point of Delivery, (including without limitation), equipment for connection, switching, transmission, distribution, protective relaying and safety provisions which in the City of Gunnison's judgment is required to be installed for the delivery and measurement of electric energy into Participant's system on behalf of the QF, including all metering and telemetering equipment installed for

the measurement of such energy regardless of its location in relation to the Point of Delivery.

1.8 **KW** means one (1) kilowatt of electric capacity.

1.9 **KWH** means one (1) kilowatt-hour of electric energy.

1.10 MEAN means Municipal Energy Agency of Nebraska; the City of Gunnison's wholesale power provider. Or any successor.

1.11 **Net Metering Rules** means applicable state or federal laws, rules or regulations requiring the Participant to measure and bill only the difference between electricity supplied by the utility and the electricity generated by the QF.

1.12 **Parallel Operation** means Gunnison County will engage in interconnected operation of Gunnison County's generating facility with the City of Gunnison.

1.13 **Participant** means the City of Gunnison, Colorado.

1.14 **Point of Delivery** means the point(s) where electric energy delivered enters Participant's system.

1.15 **Point of Metering** means the point(s) where electric energy made available for delivery to the City of Gunnison, subject to adjustment for losses, is measured.

1.16 **Point of Ownership** means the interconnection point(s) between the Facility and the Participant.

1.17 **Qualifying (Small Power Production or Cogeneration) Facility ("QF")** means a facility that meets the requirements defined in the Public Utility Regulatory Policies Act, as it may be amended from time to time ("PURPA") for a Small Power Production qualifying facility.

1.18 **Transmission Service Utility** means the provider or providers of transmission service of 50 kV or greater outside the service area of Participant utilized to either deliver power to the Point of Delivery or on the bulk transmission system.

ARTICLE II: FACILITY

2.1 The Facilities shall be located in Gunnison, Colorado. The Facilities shall be designed and constructed by Gunnison County or its agents at Gunnison County's

sole expense. This Agreement applies only to the Facilities described in Exhibit A and shall not apply to any expansion of the nameplate capacity or any additional capacity of QF unless otherwise agreed in an amendment signed by all Parties.

2.2 Throughout the Term of this Agreement, the Facilities shall be a Qualifying (Cogeneration or Small Power Production) Facility. In the event a Facility does not maintain its status as a Qualifying Facility, this Agreement shall be immediately deemed null and void as of said date and of no further effect.

2.3 Unless the QF is already interconnected to a transmission or distribution system, no later than sixty (60) days after the Execution Date, the QF shall apply to its Transmission Service Utility for transmission service including a system impact study, if required. The QF shall continue the interconnection process in a timely manner so as to maintain its position in the interconnection queue.

2.4 The QF intends to begin deliveries to the City of Gunnison, by June 22nd, 2020.

ARTICLE III: TERM

Subject to Article XI, the Term of this Agreement shall begin on the Execution Date and shall continue until twenty (20) years following the Execution Date unless sooner terminated upon written notice by the City of Gunnison or by the QF as permitted by applicable law. Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the obligation to pay each other all monies under this Agreement, which obligation shall survive termination or expiration.

ARTICLE IV: PURCHASE OF AS-AVAILABLE ENERGY

4.1 The QF shall sell and arrange for delivery of the As-Available Energy to the City of Gunnison and the City of Gunnison agrees to purchase, accept and pay for the As-Available Energy made available to the City of Gunnison and which the City of Gunnison is available to receive at the Point of Delivery in accordance with the terms and conditions of this Agreement, or a separately negotiated contract.

4.2 The QF shall not commence initial deliveries of energy to the Point of Delivery without the prior written consent of the City of Gunnison, which consent shall not unreasonably be withheld or delayed.

4.3 QF shall retain any and all rights to own and to sell any and all Environmental Attributes associated with the electric generation of the Facility.

4.4 In the event that the City of Gunnison has not received any deliveries of energy from the QF by the date in Section 2.4 or for a period of two (2) years or more, then the City of Gunnison will contact the QF in writing using the information in Article XV requesting the QF's future plans. The City of Gunnison shall have the right to terminate this Agreement unless the QF replies in writing within a reasonable time frame that it would like this Agreement to continue.

ARTICLE V: INTERCONNECTION AND CURTAILMENT

5.1 The QF's interconnection scheduling and cost responsibilities and parallel operating procedures shall be those specified in a separate interconnection agreement.

5.2 The locations and voltage of the Point of Interconnection and the Point of Metering are as follows:

Location 1: 20O E. Virginia Ave., Gunnison, CO

Location2: 510 W. Bidwell Ave., Gunnison, CO

5.3 QF shall curtail production in the event of a Participant or MEAN system emergency or light load conditions. Notice shall be given by Participant to QF according to Article XV.15.2 as soon as an emergency or light load condition is determined. QF shall curtail production as soon as possible, but not later than thirty (30) minutes of receiving such notice. No compensation shall be due to QF for any lost production due to such curtailment.

ARTICLE VI: ENERGY PAYMENTS

For that electric energy received by the City of Gunnison at the Point of Delivery each month, City of Gunnison will pay the QF at the then-current City of Gunnison avoided cost rate for Qualifying Facilities with a design capacity of less than 100 kW, as adopted, and as amended from time to time, in the City of Gunnison Municipal Code section 12.4.020 "rate tables" and section 12.4.050 "Large Generation Systems".

ARTICLE VII: CHARGES TO THE QF

The City of Gunnison shall bill and the QF shall pay all charges applicable under Exhibit B, attached hereto and made part of this Agreement.

ARTICLE VIII: METERING

All electric energy generated by the QF shall be capable of being measured at the Point of Metering. All electric energy delivered to the City of Gunnison shall be adjusted for losses from the Point of Metering to the Point of Delivery. Any additional required metering equipment to measure electric energy and the telemetering equipment necessary to transmit such measurement to a location specified by the City of Gunnison shall be installed, calibrated and maintained by Participant and to the extent permitted by applicable law all related costs shall be charged to the QF, as part of the Interconnection Facilities.

ARTICLE IX: PAYMENT PROCEDURE

9.1 Except to the extent applicable law establishes an alternative billing procedure, bills shall be issued and payments shall be made monthly to the QF and by the QF in accordance with the following procedures:

9.1.1 The electric energy payment calculated for a given month shall be tendered from the Participant to the QF on the regular utility bill from Participant to QF.

9.1.2 When any amount is owing from the QF, such amounts shall be billed by the City of Gunnison. The City of Gunnison shall issue a monthly bill to the

QF. All amounts owing from the QF shall be due and payable by the deadline for payment of the QF's regular utility bill from the City of Gunnison.

9.1.3 Interest on any unpaid amount from the date due until the date upon which payment is made shall accrue at the rate of one percent per month or fraction thereof.

9.1.4 Payments to be made under this Agreement shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by any Party.

ARTICLE X: INSURANCE

The provisions of this Article shall apply to the extent permitted under applicable law. The provisions of this Article do not apply to a QF whose Facility is not directly interconnected with the City of Gunnison's system.

10.1 The QF shall deliver to the City of Gunnison, at least fifteen (15) days prior to the commencement of any work on the Interconnection Facilities, a certificate of insurance certifying the QF's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Colorado naming the QF as a named insured and MEAN and the City of Gunnison as additional named insureds, which policy shall contain language specifically covering liabilities arising out of the interconnection with the Facility, or caused by the operation of the Facility or by the QF's failure to maintain the Facility in satisfactory and safe operating condition.

10.2 The insurance policy providing such coverage shall provide public liability insurance, including property damage, in an amount not less than $1,000,000 for each occurrence. The required insurance policy shall provide that coverage shall not be canceled or materially changed, except with thirty (30) days notice to the City of Gunnison and MEAN.

10.3 The QF shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the entire period of interconnection with the City of Gunnison.

ARTICLE XI: REGULATORY CHANGES

In the event PURPA is repealed, or in the event of modification to PURPA or to FERC's implementation of PURPA in any way that eliminates the obligation of a utility such as MEAN or the City of Gunnison to purchase the output of the Facility, the City of Gunnison's "Large Generation Systems" Policy as set forth in the City of Gunnison's Municipal Code, and as modified from time to time by action of the City Council, shall control.

ARTICLE XII: FACILITY RESPONSIBILITY AND ACCESS

12.1 Representatives of MEAN and the City of Gunnison shall at all reasonable times have access to the Facilities and to property owned or controlled by the QF and having relationship to the interconnection for the purpose of inspecting, testing, and obtaining other technical information deemed necessary by MEAN or the City of Gunnison in connection with this Agreement. Any inspections or testing by MEAN or the City of Gunnison shall not relieve the QF of its obligation to maintain the Facilities.

12.2 In no event shall any MEAN or the City of Gunnison statement, representation, or lack thereof, either express or implied, relieve the QF of its exclusive responsibility for the Facility and its exclusive obligations, if applicable, with the Transmission Service Utility. Any MEAN or the City of Gunnison inspection of property or equipment owned or controlled by the QF or the Transmission Service Utility, or any MEAN or City of Gunnison review of or consent to the QF's or the Transmission Service Utility's plans, shall not be construed as endorsing the design, fitness or operation of the Facility or the Transmission Service Utility's equipment nor as a warranty or guarantee.

ARTICLE XIII: INDEMNIFICATION

To the extent permitted by applicable law, each Party agrees to indemnify and save harmless the other Parties, and their employees, agents, officers, and directors, against any and all liability, loss, damage, costs or expense which the other Parties, their employees, agents, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of the indemnifying Party in performing its obligations pursuant to this Agreement. Nothing in this Agreement is, or shall be construed to be a waiver by any party of it's rights, and protections on limitation on liability provided by the Colorado Governmental Immunity Act.

ARTICLE XIV: EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND INDIRECT DAMAGES

No Party shall be liable to the others for incidental, consequential or indirect damages, including, but not limited to, the cost of replacement power, whether arising in contract, tort, or otherwise.

ARTICLE XV: COMMUNICATIONS

15.1 Any non-emergency or operational notice, request, consent, payment or other communication made pursuant to this Agreement to be given by one Party to any other Party shall be in writing, either personally delivered or mailed to the representative of said other Party designated in this section, and shall be deemed to be given when received.

Notices and other communications to the QF shall be addressed to:

Gunnison County Facilities
200 E. Virginia Ave.
Gunnison, CO, 81230

Notices and other communication to the City of Gunnison shall be addressed to:

Attn: _____
City of _____

_____

_____

15.2 Communications made for emergency or operational reasons may be made to the following persons and shall thereafter be confirmed promptly in writing.

To MEAN:

Title: System Dispatcher

Telephone: 402-474-3542

Facsimile: 402-474-5194

To the QF:

Title: Sustainable Operations Director

Telephone: 970-641-8562

Email: jcattles@gunnisoncounty.org

To the City of Gunnison:

Title: _____

Telephone: _____

Facsimile: _____

15.3 A Party may change its representative's name in this section by prior written notice to the other Parties.

15.4 The Parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. However, they shall not have the authority to amend, modify, or waive any provision of this Agreement.

ARTICLE XVI: SECTION HEADINGS FOR CONVENIENCE

Article or section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

ARTICLE XVII: GOVERNING LAW

The interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Colorado.

[SIGNATURE PAGE FOLLOWING]

IN WITNESS WHEREOF, the Parties have caused this Second Agreement for Purchase of As-Available Energy to be executed by their duly authorized representatives on the day and year below.

The Qualifying Facility:

Gunnison County

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

_____

City of Gunnison:

City of Gunnison Utilities

By: _____

Name: _____

Title: _____

Date: _____

AGREEMENT FOR PURCHASE OF AS-AVAILABLE ENERGY

EXHIBIT A

FACILITY DESCRIPTION

Owner name: _____

Facility #1
Gunnison County Courthouse
Address: 200 E. Virginia Ave.

City: Gunnison State: Colorado Zip: 81230

Type of Renewable Energy Generator: Photovoltaic

Nameplate Rating:_____(KW-DC) or _____(KW-AC)

Commercial Start-up Date:_____

Utility Account Number: 2329000

Facility #2
Gunnison County Public Safety Center
Address: 510 W. Bidwell St.

City: Gunnison State: Colorado Zip: 81230

Type of Renewable Energy Generator: Photovoltaic

Nameplate Rating:_____(KW-DC) or _____(KW-AC)

Commercial Start-up Date:_____

Utility Account Number: 51093901

AGREEMENT FOR PURCHASE OF AS-AVAILABLE ENERGY

EXHIBIT B

CHARGES TO QF

Description	**Quantity**	**Cost Each**	**Total**
		Total Meter and Equipment	$
		Sales Tax	$
		Total	$