

## **ORDINANCE NO. 07-83 AC CMS**

### **AN ORDINANCE AUTHORIZING EXECUTION OF AN ENERGY ATTRIBUTES PURCHASE AGREEMENT AND DECLARING AN EMERGENCY**

**WHEREAS, AMP-Ohio on behalf of the City, may as a generator or wholesaler, have ownership of certain energy attributes, and**

**WHEREAS, Oberlin College desires to purchase energy attributes from the City and AMP-Ohio in accordance with and to the extent set forth in the Energy Attributes Purchase Agreement, and**

**WHEREAS, the Energy Attributes Purchase Agreement memorializes the Parties' understanding concerning the sale and purchase obligations on and after the Effective Date hereof for the provision of the Energy Attributes under the terms and conditions set forth in the agreement**

**NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring**

**SECTION 1 That the proposed agreement between the City, AMP-Ohio and Oberlin College for the purchase of Energy Attributes, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City**

**SECTION 2 It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121 22 of the Ohio Revised Code**

**SECTION 3 That the ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, to wit**

**"to execute an Energy Attributes Purchase Agreement to allow Oberlin College to purchase Energy Attributes at the earliest date possible and shall take effect immediately upon passage"**


**PASSED**

1<sup>st</sup> Reading – October 15, 2007 (E)

2<sup>nd</sup> Reading –

3<sup>rd</sup> Reading –

ATTEST



Belinda B. Anderson  
CLERK OF COUNCIL

  
\_\_\_\_\_  
Daniel Gardner  
PRESIDENT OF COUNCIL

POSTED 10/16/2007

EFFECTIVE DATE 10/16/2007

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## **ENERGY ATTRIBUTES PURCHASE AGREEMENT**

This Energy Attributes Purchase Agreement (the "EA Purchase Agreement"), dated as of 10-16, 2007, ("Effective Date") is entered into by and between the City of Oberlin, an Ohio municipal corporation, with its principal office located at 85 South Main Street, Oberlin, Ohio 44074 ("Seller") its agent, American Municipal Power-Ohio, Inc., an Ohio non-profit corporation with its principal office located at 2600 Airport Drive, Columbus, Ohio 43219 ("Agent"), and Oberlin College, an educational institution, with its principal office located at the Cox Administration Building, 70 North Professor Street, Oberlin, Ohio 44074 ("Buyer") Seller, Agent and Buyer may be referred to together as the "Parties" and each individually as a "Party "

### **PREFATORY STATEMENTS**

WHEREAS, Agent, on behalf of Seller, may, as a generator or wholesaler, have ownership of certain Energy Attributes, defined below, and,

WHEREAS, Buyer desires to purchase the Energy Attributes from Seller and its Agent in accordance with and to the extent set forth in this EA Purchase Agreement, and,

WHEREAS, this EA Purchase Agreement memorializes the Parties' understanding concerning their sale and purchase obligations on and after the Effective Date hereof for the provision of the Energy Attributes under the terms and conditions set forth below

NOW THEREFORE, in consideration of the promises, mutual covenants and conditions set forth herein, for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the Parties agree as follows

### **AGREEMENT**

#### **Section 1     Definitions.**

The following terms, when used in this EA Purchase Agreement, whether singular or plural, shall have the meanings specified below

1.1 "Bankruptcy Event" means either Party (i) is dissolved (other than pursuant to a consolidation or merger), becomes insolvent, is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due, or makes a general assignment,

arrangement or composition with or for the benefit of its creditors, (ii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and such proceeding or petition is not dismissed within thirty (30) days of its filing, (iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets, or has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets, (iv) in the case of a municipality, there is appointed or designated any entity such as a board, commission, authority or agency to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress, (v) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (iv) inclusive, or (vi) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts

1 2 "Calendar Quarter" means a period from January through March, from April through June, from July through September, or from October through December, as applicable, during the Period of Delivery, or portion thereof in the event the Period of Delivery does not cover a full calendar quarter

1 3 "Calendar Year" means the period from January through December during the Period of Delivery, or as applicable, a portion thereof in the event the Period of Delivery does not cover a full year from January through December

1 4 "Contract Quantity" means the amount of Energy Attributes set forth in Section 2 1 hereof

1 5 "EA Reporting Rights" means the right of the reporting person or entity to report that it owns the Environmental Attributes to (i) any agency, authority or other party under any emissions trading or reporting program, public or private, which agency, authority or other party has jurisdiction over or otherwise oversees or reviews the activities of such person, and, (ii) customers or potential customers for the purposes of reporting, marketing, and advertising

1 6 “ECAR” means the East Central Area Reliability Council (including its internal control areas), or the successor organization thereto

1 7 “Energy” means physical electric energy, expressed in megawatt hours (“MWh”) or kilowatt hours (“KWh”) of the character that passes through transformers and transmission wires, where it eventually becomes alternating current three-phase, sixty (60) hertz electric energy delivered at nominal voltage

1 8 “Environmental Attributes” means, in the generation of Energy, any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, and offsets (a) resulting from the purchase, generation or use of Energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such purchase, generation or use, or (b) arising out of any law, rule or regulation, *provided, however*, that the term “Environmental Attributes” shall exclude any and all local, state, and/or federal emissions allowances and/or credits, production tax credits, any investment tax credits, tax incentives or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by any Facility

1 9 “Energy Attributes” means any and all Environmental Attributes and the exclusive rights to claim (i) that the Energy was generated by the specific Facilities and such Energy was physically delivered to the Point of Delivery as Undifferentiated Energy, (ii) that the purchaser is responsible for the delivery of the Environmental Attributes to the Point of Delivery as a result of the Energy having been delivered as Undifferentiated Energy to the Point of Delivery, and (iii) the EA Reporting Rights One (1) Energy Attribute shall represent and include any and all Energy Attributes associated with one (1) MWh of Energy generated by the applicable Facilities and delivered to the Point of Delivery

1 10 “Energy Attributes Purchase Price” shall mean the dollar amount set forth in Section 2.3 hereof

1 11 “Facility” or “Facilities” means the Energy generation units which result in the generation of Environmental Attributes, and of and from which units the Agent has the legal rights to claim, sell, contract, or otherwise transact to sell the Energy Attributes, including the legal right to transfer all title and interests in and to such Energy Attributes, and such generation units include, without limitation, the Belleville Hydroelectric Project located in Belleville, Wood

County, West Virginia, owned by Ohio Municipal Electric Generating Agency Joint Venture 5 (herein “OMEGA JV5”) with FERC Project No 06939, identifying number QF[xx-xx]-000

1 12 “Facilities Confirmation” has the meaning set forth in Section 3 1 hereof below

1 13 “Initial Term” has the meaning set forth in Section 2 5 hereof below

1 14 “ISO” means the independent system operator, regional transmission operator, control area operator or other entity authorized and legally responsible for operating the grid in the ECAR region and for providing transmission services to other entities in accordance with applicable regulatory requirements

1 15 “Laws” means any and all federal, state, local, municipal, or other laws, statutes, rules, regulations, orders, or requirements issued, enacted, adopted, promulgated, implemented, or otherwise put into effect by (a) any governmental or regulatory body, agency, commission or authority with jurisdiction and/or (b) any court or tribunal with jurisdiction

1 16 “Period of Delivery” means the period from the Initial Term hereof through the expiration or termination of this EA Purchase Agreement

1 17 “Point of Delivery” means any suitable Energy delivery point for transmission systems within the grid under the operations of ECAR, in accordance with the ISO and control area requirements or delivery to a point recognized as such by the ISO

1 18 “Protected Information” has the meaning set forth in Section 6 below

1 19 “Regulatory Event” has the meaning set forth in Section 10 below

1 20 “Subsequent Term” has the meaning set forth in Section 2 5 hereof below

1 21 “Undifferentiated Energy” means Energy transferred in a transaction in which the specific generating unit, the specific generating resource, and/or any Environmental Attribute sufficient to identify the generating unit, fuel or resource, is not identified, recorded, claimed or reported, in writing or otherwise, to a third-party not a Party hereto (including without limitation the purchaser of such Energy)

## **Section 2. Sale of Energy Attributes**

2.1 Contract Quantity For each Calendar Year during the applicable Period of Delivery, Buyer shall be obligated to purchase, and shall purchase from Seller and its Agent, for the Energy Attributes Purchase Price, Energy Attributes not to exceed 12,500 megawatt-hours on an annual basis generated by the Facilities, which Seller and its Agent have the legal rights to claim, sell, contract, or otherwise transact to sell (the "Contract Quantity") At the conclusion of each Calendar Quarter, Seller and its Agent will notify Buyer of the availability of Energy Attributes from the Facilities, subject to Agent receipt of Confirmation(s) from the Facility generator evidencing the availability of Energy Attributes, and, Buyer shall thereafter provide Seller notice of the amount of Energy Attributes that it shall purchase for the Calendar Quarter then concluded Buyer shall provide such notice to Seller no later than 10 days after Seller and its Agent provide such notice of availability of Energy Attributes to Buyer

2.2 Delivery of Attestations For the Energy Attributes purchased by Buyer from Seller and its Agent pursuant to this EA Purchase Agreement, Seller and its Agent shall deliver to Buyer a written Facilities Confirmation and Attestation setting forth the applicable number of Energy Attributes as generated by the specific Facilities and sold to Buyer during such Calendar Quarter, in accordance with Sections 3 and 4 below

2.3 Energy Attributes Purchase Price The purchase price to be paid by Buyer for the Energy Attributes delivered by the Agent hereunder, represented by Attestations delivered to Buyer pursuant to Section 4.1 hereof, shall be \$2.00 per MWh (the "Energy Attributes Purchase Price")

2.4 Exceptions to Sales Notwithstanding any provision in this EA Purchase Agreement to the contrary, and notwithstanding Buyer's obligation to purchase the Contract Quantity of Energy Attributes, Buyer expressly agrees and acknowledges that the Seller and its Agent's obligation to sell Energy Attributes to Buyer from the Facilities shall expressly be limited to the production of Energy Attributes from the generating capacities of Facilities and shall expressly be limited to the extent Seller and its Agent have the legal rights to claim, sell, contract, or otherwise transact to sell the Energy Attributes, including the legal right to transfer all title and interests in and to such Energy Attributes

2 5 Term The Parties expressly agree that the term of this EA Purchase Agreement shall commence on June 1, 2006, and shall continue in effect until June 1, 2009 (the "Initial Term") Following the expiration of the Initial Term, this EA Purchase Agreement shall automatically renew for successive periods of (1) one year ("Subsequent Term(s)"), unless terminated by either Party in accordance with the provisions of this EA Purchase Agreement by giving not less than thirty (60) days written notice of such termination prior to the commencement of each Subsequent Term

2 6 Billing and Payment Billing and payment for Buyer's purchase of Energy Attributes pursuant to this Section 2 shall be in accordance with Section 5 hereof below

### Section 3. Confirmations

3 1 Confirmations Within fifteen (15) calendar days (or such other period as the Parties may reasonably agree upon) after Buyer provides notice to Seller of the amount of Energy Attributes that Buyer shall purchase from Seller and its Agent for the applicable Calendar Quarter during the Period of Delivery, Seller and its Agent shall deliver to Buyer a written confirmation in the form attached hereto as Exhibit A ("Facilities Confirmation"), of the amount of Energy Attributes associated with the MWhs of Energy generated by the Facilities during such prior Calendar Quarter (or such other period, as applicable), which Energy shall have been delivered to the Point of Delivery as Undifferentiated Energy during such Calendar Quarter (or such other period, as applicable), and which Buyer shall purchase from Seller and its Agent during such Calendar Quarter (or such other period, as applicable)

3 2 Addresses for Confirmations The Facilities Confirmations shall be delivered by facsimile (with confirmation of receipt) or by regular U S mail or overnight courier to the addresses set forth in this Section 3 2 below (or other address of which a Party may notify the other Party in writing), and shall be effective upon receipt



To  
Agent  
AMP-Ohio  
2600 Airport Drive,  
Columbus, Ohio 43219  
To  
Seller  
OMLPS  
Electric Director  
289 South Professor Street  
Oberlin, Ohio 44074

To  
Buyer  
Ron Watts  
Oberlin College  
Cox Building  
70 North Professor Street  
Oberlin, Ohio 44074

**Section 4. Product Verification**

4.1 Attestation(s) Within fifteen (15) calendar days (or such other period as the Parties may reasonably agree upon) after Buyer provides notice to Seller of the amount of Energy Attributes that Buyer shall purchase from Seller and its Agent for the applicable Calendar Quarter during the Period of Delivery, Seller and its Agent shall deliver to Buyer a written generator or wholesaler verification, as applicable, in the form attached hereto as Exhibit B ("Attestation"), covering the amount of Energy Attributes associated with the MWhs of Energy generated by the Facilities during such prior Calendar Quarter (or such other period, as applicable), delivered to the Point of Delivery as Undifferentiated Energy during such Calendar Quarter (or such other period, as applicable), and which Buyer shall purchase from Seller and its Agent during such Calendar Quarter (or such other period, as applicable). Agent may from time-to-time change the form of Attestation, subject to Buyer's approval of such change, which approval shall not be unreasonably withheld and shall be provided promptly. An authorized agent of each entity providing the Attestation shall execute each Attestation.

4.2 Transfer Upon delivery of an Attestation to Buyer, it shall have the sole and exclusive right to file the Attestation publicly or deliver the Attestation to any third-party. Notwithstanding the foregoing, in the event that payment is not received by the due date set forth in Section 5.2, the Energy Attributes shall not be transferred to Buyer, and it shall have no ownership right or interest in the delivered Attestations, and shall have no right to file the Attestation publicly or deliver the Attestation to any third-party.

4 3 Product Notwithstanding any provision in this EA Purchase Agreement to the contrary, the Parties hereto expressly agree that the Agent makes no representation or warranty that the Energy Attributes produced by Facilities and sold pursuant to this EA Purchase Agreement are certified or otherwise approved to any extent by any entity, including, without limitation, the Center for Resources Solutions (or its successor/replacement entity) or that such Energy Attributes are adequate to meet any entity's, including the Center for Resource Solutions' Green-e program's (or its successor/replacement entity's), certification requirements and/or environmental and/or any advertising standards for products similar in nature

**Section 5. Billing and Payment**

5 1 Billing for Energy Attributes For each Calendar Quarter during the Period of Delivery, after Seller and its Agent delivers to Buyer all required Confirmation(s) and Attestation(s) for the Facilities, covering Energy Attributes generated during such Calendar Quarter and delivered to Buyer pursuant to the terms hereof, Seller shall deliver to Buyer an invoice for an amount equal to the product of (i) the Energy Attributes Purchase Price multiplied by (ii) the amount of Energy Attributes generated by the Facilities and sold to Buyer for such Calendar Quarter pursuant to Section 2 hereof (the "Invoice") Buyer shall pay the Invoice in the manner described in Section 5 2 hereof

5 2 Payment Buyer shall pay Seller for all of the Energy Attributes delivered to Buyer hereunder no later than thirty (30) calendar days following the date on which Buyer has received both (a) the Invoice for such Energy Attributes, and (b) Attestation(s) for such Energy Attributes If the payment due date set forth in this Section 5 2 falls on a non-business day for either Party, the payment shall be due on the next following business day Buyer shall make all payments due hereunder by check to Seller

**Section 6. Confidentiality**

6 1 Each Party may, in the course of fulfilling its duties and obligations under this EA Purchase Agreement, obtain access to proprietary information of the other party (hereinafter, "Protected Information") Protected Information includes but is not limited to customer data, account information, pricing information, and the terms and conditions of this EA Purchase Agreement, but shall exclude any information which is expressly permitted to be disclosed

pursuant to the terms of this EA Purchase Agreement

6.2 Information that is disclosed by one Party to the other Party which the disclosing Party believes is proprietary shall be deemed Protected Information, only if such claim of confidentiality is conspicuously disclosed in writing or other tangible form that is marked “confidential” or “proprietary” at the time of transmittal or if disclosed verbally is described as confidential or proprietary at the time of the conversation and the disclosing Party also supplements the verbal transmittal with a transmittal in writing or other tangible form that is conspicuously marked “confidential” or “proprietary” within five (5) days of the verbal disclosure. Each Party shall have the right to correct any inadvertent failure to designate information as Protected Information by providing the other Party with timely written notification of the error, and the designated information shall be treated as Protected Information from the time a Party receives the written notification. If either Party makes an unauthorized disclosure of the other Party’s Protected Information, that fact shall be communicated to the disclosing Party and the disclosing Party shall take reasonable efforts to retrieve the lost or disclosed information. Notwithstanding such claims of confidentiality, the Party to whom Protected Information is disclosed shall have no obligation to preserve the confidential nature of any information which includes but is not limited to information that (i) was previously known to such Party free of any obligation to keep it confidential, (ii) is or becomes publicly available by means other than unauthorized disclosure, (iii) is developed by or on behalf of such Party independent of any information furnished by the Party seeking confidential treatment, (iv) is received from a third party when such disclosure does not violate the confidentiality obligations under this EA Purchase Agreement, or (v) is expressly permitted to be disclosed pursuant to the terms of this EA Purchase Agreement.

6.3 The receiving Party will use the Protected Information solely for the purpose of performing its obligations under this EA Purchase Agreement. Except as provided in this EA Purchase Agreement or as required by applicable law or by regulatory authority, the receiving Party will not disclose any Protected Information to any person or entity. The receiving Party may disclose Protected Information to its employees, officers, directors and agents, but only if and to the extent such persons need to know such Protected Information in connection with the receiving Party’s evaluation, audit, analysis and performance of this EA Purchase Agreement and the transactions contemplated hereby. The Parties may disclose Protected Information to a certifying or standard-setting body (including, without limitation, the Center for Resource

Solutions, Green-e program), to the extent required by such certifying or standard-setting body, provided that such certifying or standard-setting body shall be subject to confidentiality restrictions at least as restrictive as the confidentiality provisions set forth herein. The Party receiving the Protected Agreement will be responsible for any breach of this Section 6 by its employees, officers, directors, and agents.

6.4 In the event that the receiving Party or its representative need(s) to make disclosures of Protected Information to regulatory agencies, governmental or other entities having the right to request and review all or any portions of the Protected Information other than as permitted herein, or are legally compelled or required to disclose any Protected Information other than as permitted herein, the receiving Party shall provide the disclosing Party with timely notice so that procedures may be developed to limit the disclosure to the greatest extent possible or so that the disclosing Party may seek a protective or other order to limit disclosure, and the receiving Party shall furnish only that portion of the Protected Information that is required to be disclosed and shall do so only upon the advice of the receiving Party's legal counsel.

6.5 Protected Information shall be the property of the disclosing Party. The receiving Party shall return or destroy all designated Protected Information within ten (10) business days of receiving a written request by the disclosing Party that the designated Protected Information is being withdrawn from the receiving Party's possession and control. If the receiving Party elects to destroy the designated Protected Information, it shall certify in writing the destruction of the information. Notwithstanding the foregoing, each Party may retain one (1) copy of the same solely for record retention purposes and subject to the terms and conditions contained herein.

6.6 Notwithstanding any provision contained herein or in any other agreement between the Parties, (a) each Party may issue press releases and other public messages regarding its business affairs and otherwise, including a general description of this EA Purchase Agreement, without the consent or approval of the other Party, and (b) the Parties shall be allowed to publicly disclose the nature of their respective relationship with the Facilities as provided herein and the fact that the Parties transact in the Energy Attributes from the Facilities pursuant to this EA Purchase Agreement.

**Section 7. Indemnification, Liability Limitation**

**7.1 Duty to Indemnify**

(a) Neither Party shall be liable to a third party for any unauthorized act or omission on the part of the other Party, nor for any unauthorized obligation or debt incurred by the other Party

(b) Subject to Section 7.2, each Party (an “Indemnifying Party”) shall indemnify and hold harmless the other Party, and each of its divisions, subsidiaries, parents, affiliates and/or other related entities (whether or not such entities are wholly owned) and each of their past, present and future directors, officers, agents, employees, and attorneys, as well as the predecessors, successors and assigns of each of them (collectively, the “Indemnified Party”), from and against any and all suits, actions, claims, liabilities, losses, damages, and expenses of every character whatsoever, including reasonable attorney’s fees, for or on account of any and all third parties in connection with such suits, actions, claims, liabilities, losses, damages, or expenses that arise, directly or indirectly, out of or result from (i) a material default by the Indemnifying Party of any covenant or agreement of this EA Purchase Agreement, or (ii) any negligent, reckless, or intentional misconduct (whether by act or omission) of the Indemnifying Party in connection with the performance of this EA Purchase Agreement, except, in each case (of (i) and/or (ii) above), to the extent arising out of the negligence, recklessness or intentional misconduct (whether by act or omission) of the Indemnified Party

(c) In the event that any claims are asserted against or sought to be collected from an Indemnified Party, such Indemnified Party shall give prompt written notice to the Indemnifying Party of such event (“Claim Notice”). A Claim Notice shall specify, to the extent known by the Indemnified Party, the nature of and basis for such claims, the nature of and specific basis for any claims, and the amount or the good faith estimated amount thereof to the extent then practicable. The Indemnifying Party shall have forty-five (45) days from the delivery or receipt of the Claim Notice to notify the Indemnified Party (i) whether or not it disputes the liability of the Indemnifying Party to the Indemnified Party with respect to the claims in the Claim Notice and (ii) whether or not it desires to assume or participate (with such assumption or

portion of its participation at its sole cost or expense) in the defense of the claim identified in the Claim Notice. An Indemnifying Party shall make no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the Indemnified Party's prior written approval, which approval shall not be unreasonably delayed or withheld.

7.2 Mitigation, Limitation. If a Party defaults under this EA Purchase Agreement, the non-defaulting Party shall use commercially reasonable efforts to mitigate any and all damages arising from the default. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FOR A BREACH OF THIS EA PURCHASE AGREEMENT, REGARDLESS OF WHETHER THOSE DAMAGES ARE CLAIMED UNDER CONTRACT, WARRANTY, INDEMNITY, TORT OR ANY OTHER THEORY AT LAW OR IN EQUITY.

## Section 8     Termination

8.1 Termination. This EA Purchase Agreement is subject to termination under any of the following provisions:

- (a) This EA Purchase Agreement shall terminate in accordance with the terms of this EA Purchase Agreement relating to Subsequent Terms.
- (b) Either Party shall have the right to terminate this EA Purchase Agreement immediately upon providing written notice to the other Party in the event of a Bankruptcy Event by either Party.
- (c) Either Party shall have the right to terminate this EA Purchase Agreement, pursuant to the terms and conditions of Section 10 herein, upon the occurrence of a Regulatory Event.
- (d) The Parties may terminate this EA Purchase Agreement by written agreement of the Parties.
- (e) This EA Purchase Agreement may be terminated as otherwise provided herein in Section 9 (entitled 'Violations').

8.2 Survival of Obligations. Termination shall not relieve a Party of any obligations (including without limitation payment obligations) accrued prior to the date of such termination. Section 2.4 (entitled 'Representations and Warranties'), Section 4.2 (entitled 'Records,

Publication'), Section 6 (entitled 'Confidentiality'), Section 7 (entitled 'Indemnification'), Section 9 (entitled 'Violations'), Section 12 (entitled 'Authorizations'), Section 13 (entitled 'Notices'), and Section 14.6 (entitled 'Governing Law') shall survive any termination of this EA Purchase Agreement pursuant to the terms hereof

## **Section 9.**     Violations

9.1     Violations If a Party believes that the other Party is in material breach of this EA Purchase Agreement, the Party claiming breach shall give notice to the offending Party in writing detailing the alleged violations and requesting specific relief that is in accord with the terms and conditions of this EA Purchase Agreement. The Party receiving the notice of violation shall respond in writing within five (5) business days affirming or denying the alleged violation(s) and detailing how any such breach of this EA Purchase Agreement will be cured. If the Party claiming violation is not satisfied that a breach of this EA Purchase Agreement has been cured within twenty (20) days from the response to the notice of violation, the offended Party shall be free to seek legal redress and take other actions, as it sees fit, including termination for failure to cure the alleged material breach by the offending Party for which notice has been provided as set forth in this Section 9. Upon such a termination, such terminating Party shall use its commercially reasonable efforts to mitigate any and all damages (including without limitation by selling Energy Attributes to third parties). The Parties may agree to, in writing, to attempt to resolve their dispute by some then-acceptable alternative dispute resolution.

9.2     Remedies Not Exclusive Each and every power and remedy given to a Party pursuant to this Section 9 (a) shall be in addition to every other power and remedy now or hereafter available to such Party at law or in equity (including the right to specific performance), (b) may be exercised from time to time and as often and in such order as may be deemed expedient, and (c) shall be cumulative, so that the exercise of one power or remedy shall not waive the right to exercise any other or others. No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this EA Purchase Agreement shall impair any such power or remedy or waive any default.

## **Section 10.**     Regulatory Event

10.1     Definition of Regulatory Events The following events constitute a "Regulatory Event" hereunder

- (a) Illegality Due to the adoption of, or change in, any applicable law, or in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this EA Purchase Agreement
- (b) Adverse Government Action (A) Any regulatory agency or court having jurisdiction over the EA Purchase Agreement requires a material change to the terms of this EA Purchase Agreement that materially and adversely affects a Party's ability to perform hereunder, or (B) Any regulatory agency issues new regulations, amends existing regulations, or, issues an order, or a court enters an order, the effect of which is to adversely and materially affect a Party's ability to perform hereunder
- (c) Adverse Governing Organization Action Any action by a Governing Organization that adversely and materially affects a Party's ability to perform hereunder
- (d) New Taxes Any ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, emissions, transaction or other governmental charge, license, fee or assessment (other than such charges based on net income or net worth), or increase in such charges, or application of such charges to a new or different class of parties, enacted and effective after the Effective Date that adversely and materially affects a Party's ability to perform hereunder

10.2 Occurrence of Regulatory Event Upon the occurrence of a Regulatory Event, the adversely affected Party shall within ten (10) days give notice to the other Party that such event has occurred. Within five (5) days, or such other period as the Parties may agree to in writing, each Party will enter into good faith negotiations with the other Party to amend or replace this EA Purchase Agreement. In the case of a Regulatory Event, the Parties shall attempt to amend this EA Purchase Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. In either case, if the Parties are unable, within ten (10) days of initiating negotiations, or such



other period as the Parties may agree to in writing, to agree upon an amendment to the EA Purchase Agreement, the adversely affected Party shall have the right, upon subsequent additional ten (10) days prior written notice, to terminate this EA Purchase Agreement pursuant to the terms of this EA Purchase Agreement

#### **Section 11.    Force Majeure**

11.1 “Force Majeure” means physical or governmental causes of the kind not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party could not have prevented or is unable to overcome. Such causes shall include interruptions of firm transmission service relied on to make delivery, strikes, labor difficulties, shutdowns in anticipation of strikes, accidents, equipment breakdown, riots, fire, flood, wars, terrorist events, delays or interruptions in transportation, materially disruptive actions or failure to act of any government or government agency (whether or not having legal force and effect including, without limitation, any court or regulatory order or any environmental compliance order or notice) or any other disabling cause or contingency not reasonably within the control of the party claiming such event, whether of the nature or subject matter herein enumerated. Nothing contained herein, however, shall be construed to require a party to prevent or settle a strike against its will. Economic hardship shall not constitute Force Majeure.

11.2 Neither Party shall be considered to be in default in the performance of its obligations hereunder, if its failure to perform results directly from a Force Majeure event. In the event that either Party is unable, wholly or in part, to meet its obligations under this EA Purchase Agreement due to conditions of a Force Majeure event, the obligations of each Party, so far as they are affected by such Force Majeure, shall be excused from the inception throughout the period of continuance of the Force Majeure. In the event any party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, it is agreed that upon such party's (the “Claiming Party”) giving notice and full particulars of such Force Majeure to the other Party as soon as reasonably practicable, using best efforts to provide notice within three (3) business days, after becoming aware of the cause relied upon, such notice to be confirmed in writing to the other Party, then the obligations of the Claiming Party shall, other than the obligation to make payments due hereunder, and to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability but for no longer period. In the event the Party receiving such notice of an event of Force Majeure objects to or disputes the

existence of an event of Force Majeure, such receiving Party shall send notice to the other Party of such objection or dispute of the existence of an event of Force Majeure as soon as reasonably practicable following receipt of such notice of an event of Force Majeure. The Claiming Party affected by an event of Force Majeure shall use commercially reasonable efforts to fulfill its obligations hereunder and to remove any disability caused by such event at the earliest practicable time.

## **Section 12.** Authorizations

12.1 Each Party represents and warrants to the other that (a) it is duly organized and validly existing under the laws of its jurisdiction of organization or incorporation and, if relevant under such laws, in good standing, (b) it has the corporate, governmental and/or other legal capacity, authority and power and authority and the legal right to execute and deliver this EA Purchase Agreement, and perform its obligations under this EA Purchase Agreement and has taken all necessary action to authorize such execution, delivery and performance, (c) the execution, delivery and performance of this EA Purchase Agreement by such Party has been authorized by all necessary action on its part and will not result in any breach of or default under any term or provision of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation to which it is a party or by which it may be bound, and (d) this EA Purchase Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms (except as may be limited by any law affecting the enforcement of creditors' rights generally and subject to equitable principles of general application). Each person who executes this EA Purchase Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound by the EA Purchase Agreement.

## **Section 13.** Notices

13.1 Any notice or other communication required or permitted to be given under this EA Purchase Agreement shall be in writing and shall be (a) sent by overnight express service or mailed by certified mail, return receipt requested, postage prepaid, addressed to the Party at the addresses set forth below, or (b) delivered in person at the addresses set forth below. All notices and other communications shall be deemed given when received. The address of a Party to

which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Parties according to the terms herein

If to Oberlin College to

Oberlin College  
Vice President of Finance  
Cox Building  
70 North Professor Street  
Oberlin, Ohio 44074

If to City of Oberlin to

OMLPS  
Electric Director  
289 South Professor Street  
Oberlin, Ohio 44074

If to AMP-Ohio to

Manager of Clean Energy Development & Sustainability  
Attn Julia Blankenship  
2600 Airport Drive, Columbus, Ohio 43219

With copy to  
John W Bentine  
Chester, Willcox & Saxbe LLP  
65 E State Street, Columbus, Ohio 4325

**Section 14.** Miscellaneous

14.1 Further Assurances and Cooperation Each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements including, without limitation, instruments and documents of recordation, assignment, transfer, conveyance and clarification, and to take all other actions necessary in the reasonable discretion of the requesting Party to carry out the purposes of this EA Purchase Agreement. Unless otherwise provided, no consent or approval provided for in this EA Purchase Agreement may be unreasonably withheld or delayed by either Party, as applicable.

14.2 Entire Agreement This EA Purchase Agreement, including attachments hereto, contain all of the terms and conditions of the agreement reached by the Parties hereto, and supersede all prior oral or written agreements with respect to this EA Purchase Agreement

14.3 Counterparts This EA Purchase Agreement may be executed in on or more counterparts, including by a facsimile transmission hereof, each of which shall be deemed an original, but all of which shall together constitute one instrument

14.4 Headings The Parties have inserted the headings used in this EA Purchase Agreement for convenience only and each heading shall not be construed to limit, add to or otherwise affect the interpretation of the provision in which it appears

14.5 Governing Law The Parties agree and submit that this EA Purchase Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio without regard to its principles governing conflict of laws. The Parties further consent and agree to submit to the exclusive jurisdiction of the state and federal courts located in or having jurisdiction over Franklin County, Ohio

14.6 Assignment Neither Party may assign this Agreement without the prior written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns

14.7 Amendment This EA Purchase Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by the Parties hereto

14.8 Attorneys, Dispute, and Mediation Costs, Drafting Unless agreed to otherwise in writing, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this EA Purchase Agreement. Each Party represents and warrants that they have completely read this EA Purchase Agreement, that it fully understands and voluntarily accepts each and every provision of this EA Purchase Agreement, and that neither Party shall have any provision hereof construed against such Party by reason of such Party drafting this EA Purchase Agreement or any provision hereof

14 9 Independent Parties Nothing in this EA Purchase Agreement shall constitute or be construed as constituting or tending to create an agency, partnership, master-servant or employer-employee relationship between the Parties, and does not confer any rights or remedies upon any person or entity not a Party to this EA Purchase Agreement

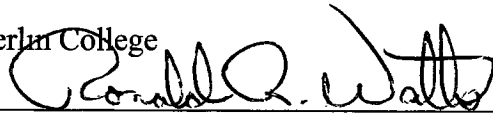
14 10 Prefatory Statements, Definitions, and Headings The Parties hereto agree and acknowledge that the prefatory statements and definitions in this EA Purchase Agreement are intended to be and shall be a part of the provisions of this Agreement, and that the headings used herein are intended to be and shall be for convenience and organizations only, and shall have no substantive weight with respect to this EA Purchase Agreement

IN WITNESS WHEREOF, the Parties have each caused this Energy Attributes Purchase Agreement to be executed by their duly authorized representatives

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Oberlin College

By



Name Ron Watts

Title Vice President of Finance

City of Oberlin

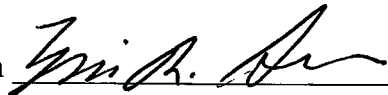
By



Name Gary Boyle

Title Interim City Manager

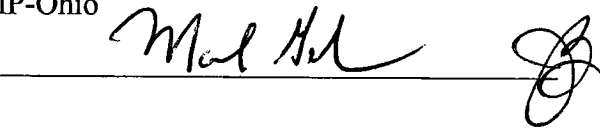
Approval to Form



Eric R. Severs, Law Director

AMP-Ohio

By



Name Marc Gerken

Title President

EXHIBIT A

FORM OF FACILITIES CONFIRMATION

## CONFIRMATION

Date

To Ron Watts

Oberlin College

Cox Building

70 North Professor Street

Oberlin, Ohio 44074

Subject Energy Attributes

Reference is made to the Energy Attributes Purchase Agreement, dated as of \_\_\_\_\_, 2007, by and between the City of Oberlin ("Seller") its agent, American Municipal Power-Ohio, Inc ("Agent") and Oberlin College ("Buyer"), ("EA Purchase Agreement") Pursuant to the EA Purchase Agreement, Seller and its Agent is pleased to confirm the sale to Buyer of the quantity of Energy Attributes (as defined in the EA Purchase Agreement) set forth below, on the terms and subject to the conditions set forth in this Confirmation and in the EA Purchase Agreement

Facilities	
Quantity	Energy Attributes representing _____ MWhs of energy generated by the _____ facilities and delivered to the ECAR grid as either Undifferentiated Energy or Unbundled Energy (as such terms defined in the EA Purchase Agreement) during the Period of Delivery set forth below
Period of Delivery	
Purchase Price	\$ 2 00 per MWh
Delivery of Attestation	Delivery of Attestation is due from Seller to Buyer within 30 days following the previous calendar quarter



Any capitalized term not otherwise defined in this Confirmation shall have the meaning ascribed to such term in the EA Purchase Agreement

Please acknowledge your acceptance by signing and dating this Confirmation below

Sincerely,

City of Oberlin

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

ACKNOWLEDGED AND ACCEPTED AS OF THE DATE SET FORTH ABOVE

Oberlin College

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT B

FORM OF GENERATOR AND WHOLESALER ATTESTATION

**GENERATOR ATTESTATION**

(Generator Sale of Energy Attributes directly to Buyer, where Energy sold to a 3rd Party)

Name of Facility Belleville Hydroelectric Project (the "Facility")

Address of Facility One-half (1/2) mile west of SR 68 on CR 17, Belleville, WV 26133

Identification Numbers (i) DOE EIA (if applicable) \_\_\_\_\_

(ii) QF Number (if applicable) \_\_\_\_\_

Contact Person Julia Blankenship Title Manager, Clean Energy Dev

Telephone 614-337-6222 Fax 614-337-6220

Owner Ohio Municipal Electric Generating Agency Joint Venture 5

Fuel Type	Capacity (MW)	Operational Date	MWhs of Associated Energy Delivered to 3 <sup>rd</sup> Party / Energy Attributes Sold	Period of Delivery	Average emission rate during Period of Delivery (lbs/MWh)		
					SO <sub>2</sub>	NO <sub>x</sub>	CO <sub>2</sub>

**Declaration:**

I, Marc S Gerken, President/CEO of AMP-Ohio, Inc , the duly authorized agent of the Facility and/or Owner of the Facility, declare that the information provided on this form is consistent with the Facility's business records and is true and correct to the best of my knowledge I further declare that (i) during the Period of Delivery, the Facility generated the MWhs of energy identified above (such MWhs of energy, the "Energy") and the Energy Attributes (as defined below) associated with such Energy, (ii) that such Energy was not used for on-site generation, (iii) the Facility sold such Energy Attributes associated with such Energy (but not the Energy) once and only once exclusively to the Buyer pursuant to that certain EA Purchase Agreement (as defined below), (iv) the Facility has made no representation, in writing or otherwise, that any third-party to the EA Purchase Agreement (including without any purchaser of the Energy) received, or has obtained any right to, any of such Energy Attributes, and (v) during the Period of Delivery, the Facility delivered the Energy associated with the Energy Attributes to any suitable energy delivery point for transmission systems within the ECAR grid (the "Point of Delivery") either (a) pursuant to a transaction in which the specific generation unit, fuel, resource, and/or any other attribute sufficient to identify the specific generation unit, fuel or resource, were not identified, recorded, claimed or reported to a third-party (including without

limitation any purchaser of the Energy), in writing or otherwise, or (b) pursuant to a sale thereof to an ISO, control area operator or third-party power exchange (other than a "green" power exchange) in which the identification of the specific generation unit, fuel or resource is, under applicable laws or tariffs, automatically lost upon scheduling into the ECAR grid

"Energy" means electrical energy express in MWhs (or KWhs) of the character that passes through transformers and transmission wires where it eventually becomes alternating current, sixty (60) hertz electric energy delivered at nominal voltage

"Energy Attributes" means all Environmental Attributes and the exclusive rights to claim (i) that the energy in question was generated by the Facility and such energy was physically delivered to the Point of Delivery as Undifferentiated Energy or Unbundled Energy (as defined below), (ii) that the purchaser (or Buyer) is responsible for the delivery of the Environmental Attributes to the applicable Point of Delivery as a result of the energy having been delivered as undifferentiated energy to the applicable Point of Delivery, and (iii) the EA Reporting Rights

"EA Purchase Agreement" means that certain Energy Attributes Purchase Agreement, dated as of \_\_\_\_\_, 2007 by and between City of Oberlin ("Seller"), AMP-Ohio ("Agent") and Oberlin College ("Buyer")

"Environmental Attributes" means, in the generation of Energy, any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, and offsets (a) resulting from the purchase, generation or use of Energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such purchase, generation or use, or (b) arising out of any law, rule or regulation, provided, however, that the term "Environmental Attribute(s)" shall exclude any and all local, state, and/or federal emissions allowances and/or credits, production tax credits, any investment tax credits, tax incentives or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by any Facility

"EA Reporting Rights" means the right to report that it owns the Environmental Attributes to any agency, authority or other party under any emissions trading program

"Undifferentiated Energy" means energy transferred in a transaction in which the specific generation unit, fuel, resource, and/or any other attribute sufficient to identify the specific generation unit, fuel or resource, were not identified, recorded, claimed or reported to a third-party to the EA Purchase Agreement (including without limitation any purchaser of the Energy), in writing or otherwise, except for the inclusion on the relevant NERC tag of such identification information regarding the generation facility for such Energy as is required by an applicable NERC regional reliability council (or other similar authority) for the purposes of regional reliability tracking or wholesale scheduling tracking

"Unbundled Energy" means Energy purchased (or otherwise transferred) and delivered in a transaction, separate and distinct from the Energy Attributes associated with such Energy, in which transaction (a) the specific generating unit, the specific generating resource or any Environmental Attributes sufficient to identify the generating unit or resource is identified,

recorded, or reported to the third-party Energy purchaser (or transferee), in writing or otherwise, (b) the purchaser (and transferee) of such Energy does not at any time purchase (or otherwise receive upon transfer) any Energy Attributes associated with such Energy, whether explicitly, implicitly, directly or indirectly, and does not and shall at any time make any claims with regards to any of the Energy Attributes associated with such Energy, and (c) the written agreement providing for the purchase of such Energy explicitly provides (i) that the purchaser (and transferee) of such Energy purchases (and receives upon transfer and delivery) only such Energy and not any Energy Attributes associated with such Energy, and (ii) that the seller (and transferor) of such Energy retains ownership of, and all right, title and interest in and to, all Energy Attributes associated with such Energy

Signature \_\_\_\_\_

Date \_\_\_\_\_

Place of Execution \_\_\_\_\_

**The information provided in this Form may be used by Buyer and others, including the Center for Resource Solutions, to substantiate and/or verify the accuracy of their advertising/public communication claims, and in any such entity's advertising and other public communications.**

**WHOLESALE ATTESTATION**

(Seller (and/or its authorized agent of) purchases Energy Attributes and Resells Energy Attributes to Buyer, with any Energy purchased from Facility otherwise sold or consumed as Unbundled Energy or Undifferentiated Energy)

Name of Wholesale

Power Provider American Municipal Power Ohio, Inc (the "Wholesale Provider")Contact Person Julia Blankenship Title Manager, Clean Energy DevTelephone 614-337-6222 Fax 614-337-6220Name of Generator Energy Development's Inc. (the "Original Seller")

Facility Name / Qualified Wholesale Power Exchange (e.g. APX)	Fuel Typ	MWhs of Associated Energy Delivered to 3 <sup>rd</sup> Party / Energy Attributes Sold	Period of Delivery	Average emission rate during Period of Delivery (lbs/MWh)		
				SO2	NOx	CO2

I, Marc S Gerken, President/CEO of AMP-Ohio, Inc the authorized agent of Wholesale Provider declare that the Wholesale Provider purchased the Energy Attributes (as defined below) associated with such Energy from the Original Seller, a generator and wholesale Seller, and resold such Energy Attributes associated with such Energy to Oberlin College ("Buyer")

I declare that the information provided on this form is consistent with the Wholesale Provider's business records and is true and correct to the best of my knowledge I further declare (i) each of the generators identified above is an Eligible Renewable Generator (as defined and described below), (ii) the Energy identified above was not used for on-site generation, (iii) the Wholesale Provider purchased the Energy Attributes from the Original Seller, (iv) the Wholesale Provider sold all such Energy Attributes (but not the Energy), and all rights thereto, once and only once exclusively to the Buyer, (v) the Wholesale Provider has made no representation, in writing or otherwise, that any third-party to the EA Purchase Agreement (as defined below), including without limitation the purchaser of the Energy associated with such Energy Attributes, received, or has obtained any right to, any of such Energy Attributes, and (vi) the Original Seller delivered the Energy to any suitable Point of Delivery (as defined below) during the Period of Delivery

either (a) pursuant to a transaction in which the Energy is delivered to the Point of Delivery as Undifferentiated Energy (as defined below), (b) pursuant to a sale thereof to an ISO, control area operator or third-party power exchange (other than a "green" power exchange) in which the identification of the specific generation unit, fuel or resource is, under applicable laws or tariffs, automatically lost upon the resale thereof by such ISO, control area operator or exchange, or (c) pursuant to a transaction in which the Energy is delivered to the Point of Delivery as Unbundled Energy (as defined below)

"ECAR" means the East Central Area Reliability Council (including its internal control areas), or the successor organization thereto

"Eligible Renewable Generator" means a generator that generates electricity wholly from the following resources biomass, solar thermal, photovoltaic, wind, geothermal, small hydropower (30 MW or less), digester gas and landfill gas

"Energy" means electrical energy express in MWhs (or KWhs) of the character that passes through transformers and transmission wires where it eventually becomes alternating current, sixty (60) hertz electric energy delivered at nominal voltage

"Energy Attributes" means all Environmental Attributes and the exclusive rights to claim (i) that the energy in question was generated by the Facility and such energy was physically delivered to the Point of Delivery as Undifferentiated Energy (as defined below), (ii) that the purchaser (or Buyer) is responsible for the delivery of the Environmental Attributes to the applicable Point of Delivery as a result of the energy having been delivered as undifferentiated energy to the applicable Point of Delivery, and (iii) the EA Reporting Rights

"EA Reporting Rights" means the right to report that it owns the Environmental Attributes to any agency, authority or other party under any emissions trading program

"EA Purchase Agreement" means that certain Energy Attributes Purchase Agreement, dated as of \_\_\_\_\_, 2007 by and between the City of Oberlin ("Seller"), AMP-Ohio ("Agent") and Oberlin College ("Buyer")

"Environmental Attributes" means, in the generation of Energy, any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, and offsets (a) resulting from the purchase, generation or use of Energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such purchase, generation or use, or (b) arising out of any law, rule or regulation, provided, however, that the term "Environmental Attribute(s)" shall exclude any and all local, state, and/or federal emissions allowances and/or credits, production tax credits, any investment tax credits, tax incentives or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by any Facility

"ISO" means an independent system operator, regional transmission operator, control area operator or other entity authorized and legally responsible for operating the grid within the ECAR (or its successor organization) region and for providing transmission services to other

entities in accordance with applicable regulatory requirements

**“Point of Delivery”** means any suitable Energy delivery point (i) for transmission systems within the grid under the operations of ECAR (or its successor organization) in accordance with any and all ISO or control area requirements

**“Unbundled Energy”** means Energy purchased (or otherwise transferred) and delivered in a transaction, separate and distinct from the Energy Attributes associated with such Energy, in which transaction (a) the specific generating unit, the specific generating resource or any Environmental Attributes sufficient to identify the generating unit or resource is identified, recorded, or reported to the third-party Energy purchaser (or transferee), in writing or otherwise, (b) the purchaser (and transferee) of such Energy does not at any time purchase (or otherwise receive upon transfer) any Energy Attributes associated with such Energy, whether explicitly, implicitly, directly or indirectly, and does not and shall at any time make any claims with regards to any of the Energy Attributes associated with such Energy, and (c) the written agreement providing for the purchase of such Energy explicitly provides (i) that the purchaser (and transferee) of such Energy purchases (and receives upon transfer and delivery) only such Energy and not any Energy Attributes associated with such Energy, and (ii) that the seller (and transferor) of such Energy retains ownership of, and all right, title and interest in and to, all Energy Attributes associated with such Energy

**“Undifferentiated Energy”** means energy transferred in a transaction in which the specific generation unit, fuel, resource, and/or any other attribute sufficient to identify the specific generation unit, fuel or resource, were not identified, recorded, claimed or reported to a third-party to the EA Purchase Agreement (including without limitation any purchaser of the Energy), in writing or otherwise, except for the inclusion on the relevant NERC tag of such identification information regarding the generation facility for such Energy as is required by an applicable NERC regional reliability council (or other similar authority) for the purposes of regional reliability tracking or wholesale scheduling tracking

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Place of Execution \_\_\_\_\_

**The information provided in this Form may be used by Buyer and others, including the Center for Resource Solutions, to substantiate and/or verify the accuracy of their advertising/public communication claims, and in any such entity’s advertising and other public communications.**