

DEMONSTRATION OF ENERGY-EFFICIENT DEVELOPMENTS ("DEED") PROGRAM
AGREEMENT BETWEEN AMERICAN PUBLIC PWER ASSOCIATION AND CITY OF
COLUMBIA, MISSOURI

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2010, by and between the AMERICAN PUBLIC POWER ASSOCIATION (hereinafter "APPA") and the CITY OF COLUMBIA, MISSOURI, a municipal corporation of the State of Missouri operating through its Water and Light Department (hereinafter "Columbia") (APPA and Columbia hereinafter referred to collectively as "Parties" or, at times, individually as "Party").

RECITALS:

WHEREAS, the Board of Directors of the American Public Power Association (hereinafter "APPA") has established the Demonstration of Energy-Efficient Developments ("DEED") program with the purpose to sponsor and conduct activities related to energy innovation that would assist local publicly owned electric/energy utilities in maintaining high quality and economical energy services to their consumers;

WHEREAS, **City of Columbia Water and Light** (hereinafter "grantee") has submitted a proposed demonstration project, in a proposal which is incorporated herein by reference, with data including a project description, the rationale, schedule, and estimated cost of the project, together with a statement of why the project is widely applicable to members of APPA, and supporting technical material;

WHEREAS, the DEED Directors have found the proposed project including any changes to be meritorious and worthy of a DEED Grant it is agreed that:

1. APPA will supply a DEED Grant in the amount of **\$25,000.00** to grantee. Payment shall be made within 30 days of receipt of invoice at APPA, as further described under paragraphs 17 and 18.

2. The project to be undertaken by grantee is as follows: **Columbia Water and Light has been presented with the unique opportunity to partner in an innovative biomass CHP feasibility project between Columbia Water and Light Industrial customers located within close proximity of each other. Primary industry include Kraft Foods, JM Eagle, Honeywell, 3M and other smaller thermal load customers, a regional biomass collaborative group that has formed to review the feasibility and**

availability of biomass for such projects and Burns and McDonnell, consulting engineers. This is a public/private partnership evaluating the feasibility of an innovative combined heat and power project which utilizes the waste stream material of a food processing facility combined with additional biomass feedstock within the region to create a Biomass CHP system which is centrally located in the industrial corridor to provide needed thermal loads for the industrial processes and to create renewable energy at the greatest efficiency to meet Columbia Water and Light's self mandated RPS., as more fully described in the grantee's proposal *Biomass Combined Heat and Power Feasibility Study*.

ADDENDUM:

Since the initial grant application submittal, CW&L has realized that it is more cost effective to test the biomass technology in the existing power plant with a permitted "test burn". Data from the use of the innovative fuel in the existing power plant will be a critical component to planning and engineering associated with the planned CHP described in the 2012 DEED grant application. The DEED Board executive committee met by conference call on January 9, 2013 and agreed to allow Columbia Water & Light to amend the grant scope and deliverables and has agreed to reimburse the cost of analysis of the engineered biomass product and other costs of permit application and permitting support for test burns on the innovative product. As an initial step toward the goals described above, Columbia Water & Light and the biomass collaborative team will be conducting testing and analysis in support of the permit application and engineering work related to:

- Engineered Product Specifications
 - Work Product will be an engineering document which will include information related to, but not limited to the following physical, chemical, and operational characteristics of the innovative engineered fuel product:
 - Heat Content
 - Ash Content
 - Moisture Content

- Critical Pollutant Content
- Physical Shape
- Durability
- Handling and Storage Requirements
- Safety and Transportation Requirements

The Product Specification will be completed by February 28, 2013

- Test Burn Scope and Preliminary Plan
 - The initial Work Product for this line item will be a document/report which will be a “typical” plan, that may be applicable for a variety of municipal power plant technologies, that outlines potential test burn objectives, typical test run protocols, and desired permit conditions. The report will include detail on permitting for the test burn and fuel product design for the quality, quantity and timing required. The collaborative will perform a review of industry accepted approaches to identify other successful permitted test burns and plans. Any information used will be referenced as back-up to the engineering approach.
 - The “typical” test burn planning document will be completed by February 28, 2013.
 - A second Work Product will be a document/report completed to include the items described in the “typical” test burn plan, but also include details of the Test Burn Scope and Preliminary Plan for testing the innovative fuel at the Columbia Water & Light plant, with specific engineering data to be included reflecting the site-specific requirements. A comparative review of CW&L's past experience of the power plant's biomass test burns will be important to building upon past knowledge.
 - The Columbia Water & Light test burn planning document will be completed by March 15, 2013.

The proposal, as well as the DEED requirements for Grant Project Quarterly Reports, the DEED Requirements for Grant Project Final Reports, the Procedures for Completing DEED Grant Summary Abstracts and the Checklist of Requirements to Complete DEED Grant Project, are incorporated herein by reference and made a part of this Contract hereinafter "Contract".

3. The grant shall commence on the date of Contract execution. The grantee is required to complete the DEED grant project, based on the proposed completion date, as noted in the proposal. Changes to the completion date must be addressed as further described in paragraph 11.

4. It is understood that the key personnel of this project are:

Tina Worley, City of Columbia Water and Light

5. It is the responsibility of the grantee to comply with all terms and conditions of the DEED Grant, to use grant funds efficiently and effectively within the approved budget, and to supervise completion of the project in a diligent and professional manner; this responsibility may be neither delegated nor transferred without written permission by APPA.

6. If, without written notification to APPA, the project has not been initiated within six months of the effective date of this Contract, the project will be subject to termination by the DEED Board of Directors.

7. If the grantee proposes to hire a Subcontractor to work on the project, other than Subcontractor mentioned in grantee's original project proposal, the grantee shall request APPA's written permission to do so. In addition, it is important that APPA's rights under this Contract are not diminished in any way by the use of a Subcontractor. Therefore, the grantee must enter into a formal agreement with any Subcontractor, establishing terms and conditions of performance that mirror the grantee's obligations under this Contract,. At a minimum, the agreement shall require all Subcontractors:

(a) to maintain books, records, and other documents and appropriate accounting procedures and practices sufficient to reflect receipt and disposition of project funds and total costs (direct and indirect) of the project, to retain such books, records and other documents until the expiration of three years from the date

of final payment or completion of the project, and permit inspection and audit of such books, records or other documents by APPA or its contractors;

(b) not to delegate or transfer to another party the responsibility for carrying out the project or the use of project funds unless approved in writing by APPA and the grantee;

(c) to notify the grantee and APPA of all proposed major project changes (such as those identified in paragraph 11 of this Contract) in a manner consistent with the provisions of that paragraph, and to provide an opportunity for APPA and the grantee to disapprove any such changes in a manner consistent with the provisions of paragraph 12 of this Contract;

(d) not to terminate the project except for good cause, and if APPA or the grantee finds that the Subcontractor has terminated the project work without good cause, all funds paid by the grantee to Subcontractor shall be returned, at the discretion of APPA, to the grantee or to APPA;

(e) to return unexpended funds to the grantee or APPA, as determined by APPA, in the event that the work is terminated for good cause or the work is completed prior to expenditure of all funds; and

(f) to expressly agree that having each Subcontractor sign Attachment A

No project shall be commenced without an agreement in the form of Attachment A signed by the Subcontractor. The grantee shall provide APPA with a copy of the agreement between the grantee and the Subcontractor (including Attachment A) before any payment of the grant award will be made.

8. Accounting for project funds (including receipts, grantee or other contributions, and expenditures) will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

9. The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly (a) the amount, receipt, and disposition by the grantee of all assistance received for the project and (b) the total cost of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project.

The grantee's facilities or such facilities as may be engaged in the performance of the project for which the DEED Grant has been awarded, and records shall be subject at all reasonable times to inspection and audit by APPA.

The grantee shall preserve and make its records available to APPA until expiration of three years from the date of final payment or completion of the project under this DEED Grant, whichever is later.

10. All APPA assistance received shall be expended by the grantee solely for carrying out the approved project. The grantee may not delegate or transfer responsibility for the use of such funds.

11. The grantee shall promptly notify APPA in writing by e-mail to DEED@PublicPower.org or by certified mail (return receipt requested) of all proposed major project changes, including, but not limited to:

- (a) major changes in the technical plans or specifications for the project;
- (b) acceleration or deceleration in the time of performance of the project, or any major phase thereof;
- (c) major changes that may increase or decrease the total cost of a project;
- (d) major changes that may affect the approved scope of a project; and
- (e) major changed site conditions.

12. APPA may disapprove project changes in writing not later than three weeks after receipt of notice. Failure on the part of the grantee to give notice, or disapproval by APPA of the proposed change, shall result in disallowance of costs incurred that are attributable to the change.

13. Approved project changes that do not substantially alter the objective or scope of a project may give rise to grant amendments to increase or decrease the dollar amount, the term, or other provisions of the DEED Grant. A grant amendment shall be effected only by a written amendment to this DEED Grant Agreement.

14. Grantee shall not terminate the project except for good cause. If APPA finds grantee has terminated the project work without good cause, then it shall annul the DEED Grant, and all APPA grant funds previously paid to the grantee shall be returned as final settlement. In the event the project is

terminated for good cause or completed prior to expenditure of all funds provided by APPA, the proportionate share of APPA's DEED Grant shall be refunded. Notwithstanding anything to the contrary in this Contract, APPA may terminate the Contract at its option with or without cause by providing written notice to grantee. Unless otherwise stated in the termination notice, termination shall be effective upon receipt of the notice. After the effective date of termination, neither party shall have any further obligation to the other under the Contract except for grantee's obligations under the provisions where a continuing obligation is implied, and APPA's obligation to pay grantee a portion of the Contract's fixed price equal to the percentage of work required by the Contract that is actually completed.

Grantee shall deliver to APPA or its designees(s) upon request all information and work in tangible form created or compiled by grantee or its Subcontractor(s) in performing services under this Contract and all information in tangible form that grantee has received in the course of their work under this Contract from APPA, its employees, its members, and any of their employees, and individuals or firms under contract to APPA.

15. Requests for deviations from this DEED Grant Agreement shall be submitted as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain at a minimum:

- (a) A full description of the deviation and the circumstances in which it will be used;
- (b) A description of the intended effect of the deviation; and
- (c) Detailed reasons supporting the request, including any pertinent background information that will contribute to a better understanding of the deviation sought.

16. Press releases and other public dissemination of information by the grantee shall acknowledge APPA support of the project through a DEED grant.

17. Grantee shall prepare and submit to APPA quarterly project reports according to directions in the document "Grant Reporting Requirements." These reports will be posted to the DEED project database, located on APPA's website for viewing by DEED members. Capturing the project in photos is encouraged. Electronic copies of project photos taken during the course of the project term shall be

included in the quarterly or final report upload as a .jpeg image file. Photos may be used by APPA/DEED for promotional purposes and grantee grants non-exclusive rights to APPA/DEED for use of said photos. Grantee also shall submit to APPA/DEED: (1) an acceptable, detailed final report relating to the conduct and results of the approved project, describing activities, cost, bibliography, achievements, problems, results, and recommendations, to be submitted within six (6) months of project completion; and (2) a completed "DEED Project Summary Abstract"; and (3) any other deliverable as described in grantee's original proposal or grant approval letter.

APPA will withhold 25 percent of the DEED Grant monies pending satisfactory completion of said report and abstract. In the event the final report and abstract are not provided by the grantee by the due date, APPA may complete the final report and/or abstract itself or hire a third party to do so. APPA may utilize up to the 25 percent withheld to pay for the costs of production and reduce the amount otherwise available to the Grantee in the same amount. It also is understood that an APPA steering committee may make periodic visits to the site of the project to be briefed on the progress and status of the project.

18. The standard method of project payment shall be based on invoices for work completed to date. No more than 25 percent of the total DEED Grant award may be provided to grantee at the inception of the project except in rare instances when the DEED program administrator may increase this amount up to a total of 50% due to special circumstances.

19. Grantee acknowledges that all information, uses, materials and work product, including reports, abstracts, videos, guidebooks and other deliverables, created pursuant to this Grant (the Work) shall be deemed a "work made for hire," as defined in the Copyright Act of 1976, as amended. If for any reason the Work is not deemed to be a "work made for hire", grantee hereby irrevocably assigns to APPA all right, title and interest worldwide, including the copyright and all renewals, in the Work and agrees to execute any necessary paperwork to effectuate such assignment. The grantee shall incorporate a paragraph setting forth the substance of this paragraph 20 in its agreement with the Subcontractor. Contracts between grantee and its Subcontractor participating in the project shall contain similar

provisions. Equipment purchased in support of the DEED grant may be retained by the grantee after acceptable conclusion of the project, unless otherwise directed.

20. Grantee represents and warrants for itself and any Subcontractors that:

(a) All information, uses, materials and work product, including reports, created pursuant to this Grant (the Work) are original and not copied from any previous work not already in the public domain or under license to the grantee; (b) grantee and/or its Subcontractor is the owner or licensee of all rights necessary and appropriate to grant the rights hereunder with respect to the proposed project and any portions thereof, including, but not limited to, documents, text photographs, video, pictures, animation, and sound recordings provided by Subcontractor; and (c) the Work does not contain any libelous material. Grantee agrees to defend, indemnify, and hold harmless APPA, its officers, directors, and employees for any losses, costs, damages, liabilities and expenses (including attorneys' fees and court costs) arising out of any claim, suits or proceedings alleging facts that any of the content of materials provided by grantee and its Subcontractor infringes or violates a U.S. patent, U.S. copyright, U.S. trade secret or trademark of a third party.

21. The grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the grantee for the purpose of securing grants or business. For breach or violation of this warranty, APPA shall have the right to annul this DEED Grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

22. It is understood that this DEED Grant Agreement is not a joint venture and that grantee is not an agent of APPA. APPA assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities undertaken with the financial support of the APPA DEED Grant, whether with respect to persons or property of the grantee or third parties. Grantee shall indemnify (including court costs and attorneys' fees)

APPA if APPA is made a party to any litigation, arbitration, mediation or negotiations for activities connected with this DEED Grant Agreement, unless APPA, its employees or agents are found to be grossly negligent or otherwise directly at fault.

23. Except with respect to taxes which may be due as a result of income to APPA, grantee and Subcontractor shall be responsible for payment of all taxes for which grantee, subcontractor or APPA may be liable in connection with this Contract, including any sales, use, or other tax owed for work products delivered or services performed by grantee or Subcontractor under this Contract. Except as required by law, APPA shall not withhold federal, state or local income tax, or any other tax, from any payment to grantee or Subcontractor under this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, effective as of the

_____ day of _____, 20__

Witness:

American Public Power Association

Date: _____

Title: DEED Program Director

Witness:

City of Columbia Water and Light

Date: _____

Title: _____

ATTACHMENT A

Work Made for Hire Assignment Agreement:

Agreement made by and between _____ 1) [a United States Citizen residing at _____ and born in 19____] or _____ 2) [a corporation located and doing business at _____] (hereinafter referred to as the “Subcontractor”) and, American Public Power Association, a corporation of the District of Columbia located and doing business at 1875 Connecticut Avenue, Northwest, Washington, D.C., 20009 (hereinafter referred to as “Commissioning Party”).

WHEREAS, the Subcontractor is not an employee of the Commissioning Party; and

WHEREAS, the Subcontractor was commissioned by the Commissioning Party to create ***Biomass Combined Heat and Power Feasibility Study*** [See Addendum added to item 2.](#) (hereinafter the “Work”) at the request of and for the benefit of the Commissioning Party.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows;

1. Subcontractor represents and warrants its contribution to the Work was original and not copied from any previous work not already in the public domain, or under license to Subcontractor. Subcontractor shall indemnify and hold the Commissioning Party harmless for any claim that the Work infringes the rights of any third-party.
2. Subcontractor further represents and warrants that his/her contribution was or will be created solely by him/her self, without assistance from any third-party, to be the extent any third-party contributed to the creation of the Subcontractor’s contribution to the Work, Subcontractor shall secure a “work for hire/assignment” agreement incorporating the same terms as this agreement, signed by any contributing party.
3. The parties (including any third-party contributors) acknowledge that the Work shall be deemed to be a “work made for hire”, as defined in the Copyright Act of 1976, as amended. If for any reason the Work is deemed not to be a “work made for hire”, the Subcontractor (and any third-party contributors) will upon request and without further consideration from the Commissioning Party,

irrevocably assign(s) to the Commissioning Party all right, title and interest worldwide, including the copyright and all renewals in the Work.

4. Subcontractor (including any third-party contributors) hereby acknowledges that [it or he/she] is an independent contractor for purposes of this Agreement.

Subcontractor: [Missouri Corn Growers Association](#)

By: _____

Name: _____

Title: _____

Date: _____

Third-party Contributor (if any):

By: _____

Name: _____

Title: _____

Date: _____

Commissioning Party: American Public Power Association

By: _____

Name: _____

Title: _____

Date: _____