

**Meeting Agenda**  
**Borough of State College Council**  
**Regular Meeting**  
**Monday, February 12, 2024**  
**7:00 p.m.**

*The Borough Council Regular Meeting will be a hybrid meeting – held in person in the State College Municipal Building and via Zoom for participants who are unable to attend in person. If you need special accommodations to participate in any of these meetings, please contact the Borough offices 48 hours in advance at (814) 234-7110.*

*The Zoom link to attend virtually is:*

[https://us02web.zoom.us/webinar/register/WN\\_4EalqTx\\_R2e9h7qd44uGSw](https://us02web.zoom.us/webinar/register/WN_4EalqTx_R2e9h7qd44uGSw)

**I. Call to Order**

**II. Moment of Silence and Pledge of Allegiance**

**III. Roll Call**

Ezra Nanes, Mayor  
Evan Myers, Council President  
Gopal Balachandran  
Matt Herndon  
Kevin Kassab  
Nalini Krishnankutty  
Divine Lipscomb  
Josh Portney

**IV. Virtual Meeting Procedure Overview**

**V. Special Business**

**A. Community Choice Aggregation Project – 30 minutes**

Dennis Rowan, State Organizer for CCA for PA, will present an update on the Community Choice Aggregation opportunity for State College. CCA for PA and Joule Community Power are currently developing a CCA Implementation Plan for PA municipalities. Community Choice Aggregation (CCA) enables local governments to aggregate their electricity load to purchase or develop power on behalf of their residents, businesses, and municipal accounts within their service territory to help attain their energy and environmental goals. Mike Gordon, Founder of Joule Community Power, will join Mr. Rowan for this presentation.

No action will be taken at this meeting. This will be included on an upcoming work session agenda for further discussion by Council. The Borough decision to join the CCA for PA group will be scheduled at a regular meeting following the work session.

B. PSU Sustainability/Sustainable Communities Collaboration Report – 15 minutes

Lara Fowler, Penn State's Chief Sustainability Officer, and Ilona Ballreich, Penn State Sustainability Communities Collaborative Program Director, will present an update on sustainability efforts and collaboration with the Borough.

C. Climate Action Plan Update – 10 minutes

Jasmine Fields, Sustainability Program Officer, will be giving an update on the development of the Borough's Climate Action, Resiliency, and Environmental Sustainability Plan and the work that the Sustainability Division completed in 2023 to support the plan development process.

D. Greenhouse Gas Inventory – 10 minutes

Council will receive a greenhouse gas inventory report for 2022 from Max Theuer (Graduate Student, Penn State Public Polic) and Hayden Reboulet (Energy and Sustainability Policy, '23), students in Penn State's Local Climate Action Program (LCAP). This report assists the Borough to determine the community's and the Borough government's emissions by sector. These sectors include residential and commercial energy, transportation, water and wastewater, and solid waste. The inventory assists in the prioritization of greenhouse gas mitigation and ongoing climate planning in the Borough, the Centre Region, and Centre County. More details about context, data, and methods can be found in the printed inventory report. The LCAP is a program of Penn State Sustainability in partnership with the Department of Environmental Protection's Energy Programs Office and ICLEI: Local Governments for Sustainability.

E. Bird Town PA – 10 minutes

Heidi Shiver will be presenting information related to Bird Town PA. After teaching for 30 years and working as a teacher naturalist for Peace Valley Nature Center for over 10 years, Heidi moved to focus primarily on advocating for the environment. She became a member of Buck's Audubon's Board and also served as Board President, helping to create their Advocacy committee, establishing renewable energy as a focus, and creating and leading their book club for 6 years. She currently serves on Doylestown Township's Environmental Advisory Council and coordinates their Bird Town Program, is a Bucks County Penn State Master Gardener, and also serves on the Executive Committee of the Pennsylvania Audubon Council. For the past 3 years, as President, she has been working intensely with their Board to reinvigorate, to strengthen, and to grow the Bird Town Pennsylvania Program across the state and promote community-based conservation actions to create a healthier and sustainable environment for birds, wildlife, and people.

F. Solar Power Purchase Agreement Update – 10 minutes

Pam Adams, Sustainability Planner for the Centre Regional Planning Agency, and Co-Chair of the SPPA group will provide an update on the Solar Power Purchase Agreement. *[Pages 7-54, additional information can be found at [Reference Documents](#)]*

**VI. Items of Information from Council Members**

Any member of Council who wishes to bring up an item of information for the benefit of the full Council, including items that members may wish to have added to a future agenda, will be recognized.

**VII. Public Hour**

Anyone in the audience wishing to address Council with an item that is not on the agenda should ask to be recognized at this time. Each speaker will have four minutes to present comments to Council.

**VIII. Consent Items – 5 minutes**

Recommendation: Staff recommends that Council approve the following Consent items. (Attached to the agenda beginning on *Page 55* is the background information.)

- A. Approve Payroll and Accounts Payable Vouchers for the month ended January 31, 2024, totaling \$5,069,390.18.
- B. Award the Service Facilities HVAC Controls Contract to Automated Logic Corporation in the amount of \$78,440.00. *[Pages 55-56]*
- C. Award the Replacement of all on-street parking meters to Duncan Parking Technologies, Inc. of Milwaukee, WI under PA Costars contract number 033-E22-036, in the amount of \$198,414. *[Pages 57-58]*
- D. Approve, *with conditions*, the closure of Fraser Street from Beaver Avenue to College Avenue from 12:00 am to 9:00 pm, and the use of the Dr. Martin Luther King Plaza, on Saturday, April 20, 2024, for the APIDA Festival. *[Pages 59-68]*

**IX. General Policy and Administration – No Business**

**X. Planning and Zoning – No Business**

**XI. Public Safety – No Business**

**XII. Public Works**

- A. Atherton Street Section 154 Project – 30 minutes

Jared Lapczynski, (PennDOT), and Lou Spaciano, (Verdantas, Formerly Borton-Lawson,) will provide an update on the Atherton Street Section 154 project. The project includes roadway and drainage improvements on Atherton Street between Westerly Parkway and University Drive. The project is currently in the early stages of design, but the design team representatives will provide a brief overview of the project. They will also discuss and request Council's input on a Road Diet Study for this section of the project.

**XIII. Parking – No Business**

**XIV. Equity and Inclusion**

A. National Day of Racial Healing – 10 minutes

Chiluvya Zulu, Diversity, Equity, Inclusion, and Belonging Director, will update Council on the National Day of Racial Healing.

**XV. Regional Issues – No Business**

**XVI. Official Reports and Correspondence**

A. Mayor's Report

B. President's Report

C. Regional Liaisons Reports

- Executive – Evan Myers – 2 minutes
- Finance – Nalini Krishnankutty – 2 minutes
- Campus & Community in Unity's Centre Region Anti-Bias Coalition Diversity, Equity, Inclusion, and Belonging Workshop– Nalini Krishnankutty – 2 minutes
- Human Resources – Divine Lipscomb – 2 minutes
- Parks Capital – Josh Portney – 2 minutes
- Public Safety – Kevin Kassab – 2 minutes
- Land Use & Community Infrastructure – Matt Herndon – 2 minutes
- Facilities – Kevin Kassab – 2 minutes
- Climate Action & Sustainability – Gopal Balachandran – 2 minutes

D. Staff/Committee Reports – 2 minutes

As part of the Conflict-of-Interest Policy and Code of Conduct regarding HUD Programs, the policy is to be distributed to Council at a regular meeting of Council.

Attached to the agenda is a copy of the Policy. *[Pages 69-73]* Council members are asked to review the policy so that members are informed about the conflicts of interest regulations and prevent conflicts from occurring.

E. Student Representative Reports

- SCASD – Nubah Nusaibah – 2 minutes
- UPUA – Luc Schrauf – 2 minutes
- GPSA – Jillian Kerr – 2 minutes

**XVII. Adjournment**

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## STATE COLLEGE BOROUGH

### INTEROFFICE MEMORANDUM

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TO: Borough Council

FROM: Tom Fountaine, Borough Manager  
Sam Robbins, Director of Public Works

DATE: March 31, 2023

RE: CRCOG SPPA Volume Commitment and Borough Owned Solar Array

Solar energy continues to gain popularity as an alternative to traditional power sources. In the past several decades solar has become more accessible, affordable, and reliable. With the rising concerns of climate change, more local government entities are looking for ways to reduce their carbon footprint, and solar energy has emerged as the one of the most affordable ways to achieve that goal. There are two options to acquire solar energy. One way is through the Center Region Council of Governments (CRCOG) Solar Purchase Power Agreement (SPPA) and the other would be for the Borough to build and operate a solar array.

The SPPA allows local government entities to purchase solar energy from a third party and pay for the energy produced by the system. The developer owns and maintains the array, and the participating local government entities pay for the electricity they use at a lower rate than traditional grid electricity. This option requires no upfront cost, making it an attractive option for those who cannot afford the costs of building and operating a solar array. The solar array option involves a higher one-time upfront cost than the SPPA but allows the owner to generate their own electricity saving money in the long run.

Comparing the two options, the total cost of ownership is lower than the SPPA. With no upfront costs, the various entities can begin saving on their electricity bills immediately. The cost of electricity produced from the SPPA is also lower than traditional electricity rates, further reducing the cost. However, the downside of a SPPA requires a long-term commitment, usually between 15-25 years, and the developer owns the system.

In summary, purchasing a solar array has a higher upfront cost, it offers a long-term cost-effective solution, greater control, and the ability to put power back into the grid. The SPPA, on the other hand, has no upfront cost and provides immediate savings, but requires a long-term commitment.

The cost to build solar energy has declined over the past two decades and will continue as more advancements in solar technology become available. These new advancements will produce a more efficient and lighter panel that will generate more power at a lower overall cost/KWh.

Solar arrays typically have a design life of approximately 25 years and will need minimal maintenance over their lifetime. The panels should be cleaned and inspected annually to ensure maximum electrical output. If designed and constructed properly and high-quality materials are used, the life of a solar array can exceed 25 or more years.

There are several locations where the borough can build solar arrays such as the rooftop of buildings or parking garages. Both have advantages and disadvantages and will need to be considered as we move forward. The building rooftop option will require a structure analysis to ensure the roof can support the weight of the solar equipment. One disadvantage of a rooftop design is that it will require the panels to be removed for maintenance or replacement of the roof. The parking garage option would also require structural analyses and would require a roof to be incorporated into the design or to use elevated aluminum racks to mount the panels on. There are advantages to the parking garage option. One benefit of this design would allow for additional parking under the rooftop panels. The other benefit would be reduced maintenance costs during winter weather events.

Since 2011 the borough has been purchasing one hundred percent of our energy needs through green power sources through Renewable Energy Certificates (RECs) and has become a Green Power Partner with the Environmental Protection Agency. The REC's are to be owned and maintained by the Borough. The borough currently uses approximately 2600 MWh of electricity annually. Power consumption will likely trend higher in the coming years as we continue to move to electrify our fleet and move toward converting all our buildings from natural gas to 100% electricity.

The average annual cost of power has risen over the last fifteen years between 1.5 and 1.7 percent. The developer managing the CR COG SPPA will likely increase rates similarly as outlined in the terms of the 15-year agreement. Currently the Borough is paying \$.0545/KWh. The developer has projected the \$/KWh to be approximately \$.0752 in 2025. Based on our best estimate we expect to produce electricity at \$.065/KWh or less. These are fixed costs and will not increase annually like in the SPPA.

Staff recommends the borough commit to a volume 80% or 2080 MWh to the SPPA. The Borough would construct a solar array on the top of the Pugh Street Garage replacement that would make up the remaining 20%. The actual power output of this solar array will be verified by a solar designer once the building footprint has been established. Over the term of the agreement, the borough should continue to evaluate its changing power needs and study how building additional solar arrays would improve the borough's energy independence.

The overall layout and design of this array would need to be further analyzed by a solar consultant to verify the construction costs and total power output.



**POWER PURCHASE AGREEMENT**

**By and Between**

**[Prospect14 Entity]  
 (“Seller”)**

**and**

**[\_\_\_\_\_]   
 (“Purchaser”)**

**Dated as of [\_\_\_\_\_] [\_\_\_\_], 2024**

**POWER PURCHASE AGREEMENT**  
**(Purchaser Name)**

This Power Purchase Agreement (this “Agreement”) is made this \_\_\_\_ day of [\_\_\_\_], 2023 (the “Effective Date”), by and between [Propsect14 Entity], a Delaware limited liability company (the “Seller”), and [\_\_\_\_], a \_\_\_\_\_ [type of entity] (the “Purchaser”). Seller and Purchaser are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**WITNESSETH:**

WHEREAS, Seller desires to construct, own and operate a solar energy system with a total aggregate nameplate capacity rated at approximately 14 MW DC (as further defined in Article I of this Agreement, the “System”) upon certain real property located at Misty Meadows Lane, Hubersburg, PA 16823 in Centre County, Commonwealth of Pennsylvania<sup>1</sup> (the “Site”), as further described in Exhibit A;

WHEREAS, Seller has entered into a Lease/Solar Site Easement Option Agreement, dated August 23, 2022 (“Seller’s Lease”) with the owner of the Site;

WHEREAS, Seller desires to sell and deliver to Purchaser a share of the electricity that may be generated by the System for the Term of this Agreement and otherwise on terms and subject to the conditions provided herein;

WHEREAS, in accordance with PJM rules, protocols, and procedures, Purchaser has engaged a Designated Retail Supplier to (a) coordinate with Seller to schedule the delivery of Purchaser’s Share of the wholesale electricity generated by the System, (b) accept delivery of such electricity, (c) make payments to Seller for such electricity, (d) utilize or sell such electricity, and (e) use the resulting value to adjust the purchase price of the retail electricity that it, acting as a competitive electric generation supplier, will deliver to Purchaser in accordance with Pennsylvania’s competitive retail electricity choice program;

WHEREAS, the Parties intend (a) for Seller and the Designated Retail Supplier to utilize PJM’s InSchedule System for physical bilateral transactions (the “InSchedule System”) to effect the physical delivery and transfer of Purchaser’s Share of the wholesale electricity generated by the System from Seller to the Designated Retail Supplier’s wholesale energy PJM sub-account established for Purchaser and (b) that in no event shall Purchaser, as a retail end-user, be required itself to schedule or accept delivery of any wholesale electricity or undertake any wholesale sale of electricity in connection with this Agreement.

NOW THEREFORE, in consideration of the mutual obligations and undertakings herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

<sup>1</sup> GH NTD: This is the current anticipated site. Could be the CE-Jacksonville Project, a 14 MW dc project, also located in Center County, PA.

## **ARTICLE I DEFINITIONS; RULES OF INTERPRETATION**

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement shall have the meanings specified in this Article I; (ii) the singular shall include the plural and vice versa; (iii) references to “articles”, “Sections”, “schedules”, “annexes”, “appendices” or “exhibits”, if any, shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (v) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Article or subparagraph hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) the words “include,” “includes” and “including” mean include, includes and including “without limitation;” (viii) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (ix) the masculine shall include the feminine and neuter and vice versa; (x) unless qualified by “either,” “greater of,” “lesser of,” “later of,” “earlier of,” or other express language indicating that clauses are mutually exclusive, when “or” is used in this Agreement it non-exclusive, also contains “and” (i.e., or = and/or), and enables any single listed item, any combination of listed items, or all listed items to apply; and (xi) if the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day. The Parties have collectively prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Headings are intended to assist with reference and are for convenience only.

Certain terms in this Agreement shall be defined as follows:

“Affiliate” shall mean, with respect to a Person or entity, each Person or entity that directly, or indirectly controls, is controlled by or is under common control with, such Person or entity. For purposes of this definition, “control” (including, with its correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any such Person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities or by contract or otherwise.

“Applicable Law” shall mean, with respect to any Person, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, permits, tariffs, licenses and permits, directives and requirements of all regulatory and other governmental authorities.

“Availability Damages” shall have the meaning set forth in Section 19.3.

“Availability Guaranty” shall have the meaning set forth in Section 19.2.

“Availability Report” shall have the meaning set forth in Section 19.4.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, as amended.

“Business Day” shall mean each Monday through and including Friday during the Term other than nationally recognized holidays or a day when the Federal Reserve Banks in New York are closed to the public.

“Claim Notice” shall have the meaning set forth in Section 20.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” or “COD” shall mean the occurrence of Seller certifying to Purchaser that (i) the electric generating equipment and control systems of the System have been completely installed and commissioned, including, but not limited to, the process of starting up, testing and normalization of all operating systems, (ii) the System has demonstrated that it has generated and delivered Energy Output to the Point of Interconnection, (iii) Seller has received all necessary authorization and approvals from Governmental Authorities to operate the System, and (iv) the System is actually interconnected to the Utility, and has received permission to operate from the Utility.

“Commencement of Construction Date” shall mean date the construction and/or installation of the System commences, that shall be not later than February 28, 2025 date unless otherwise agreed by the Parties.

“Creditworthy Entity” shall mean an entity with an investment grade credit rating or is otherwise commercially reasonably approved by Seller in writing as creditworthy based on audited financial information.

“Delivery Point” shall mean the MID-ATL/APS Aggregate (Node ID 3), where Purchaser’s Share is delivered by Seller, by means of the InSchedule System, into Designated Retail Supplier’s wholesale energy PJM sub-account established for Purchaser.

“Designated Retail Supplier” shall mean [Direct Energy Business, LLC], or any successor PJM member that is an electric generation supplier licensed in Pennsylvania, designated and appointed by Purchaser from time to time as its transaction manager for PJM and its Pennsylvania retail, competitive electric generation supplier.

“Dispute” shall have the meaning assigned to such term in Section 22.1.

“Effective Date” shall have the meaning set forth in the preamble hereto.

“Energy Charge” shall mean the sum due in relation to the Purchaser’s Share of the System in any month, calculated by multiplying the Purchaser’s Share of the System by the Energy Rate.

“Energy Output” shall mean all the actual, metered kilowatt hours (kWh) of energy generated by the System (to be delivered to the Delivery Point) in any given period of time. For the avoidance of doubt, Energy Output does not include RECs or Other Credits.

“Energy Rate” shall mean the rate for Purchaser’s Share set forth in Exhibit B hereto.

“Event of Default” shall have the meaning assigned to such term in Section 13.1.

“Excused Curtailment” shall have the meaning assigned to such term in Section 6.1.

“FERC” shall mean the Federal Energy Regulatory Commission.

“Financing Part(ies)” shall mean any and all Persons or successors or assignees thereof lending money or extending credit to Seller or an Affiliate of Seller, or investing equity ((including tax equity) in Seller or an Affiliate of Seller: (i) for the construction, Term or permanent financing of the System; (ii) for working capital or other ordinary business requirement of the System (including, the maintenance, repair, replacement or improvement of the System); (iii) for any development financing, bridge financing, credit enhancement, credit support or interest rate protection in connection with the System; (iv) for the Seller’s operation of the System; or (v) for the purchase of the System and related rights and obligations of Seller.

“Force Majeure” shall have the meaning assigned to such term in Article XVIII.

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including, the Federal Energy Regulatory Commission or the Pennsylvania Public Utility Commission), or any arbitrator with authority to bind a party at law; *provided, however*, that when acting in its capacity as “Purchaser” hereunder, Purchaser shall not be deemed a Governmental Authority.

“Indemnified Party” shall have the meaning assigned to such term in Section 20.3.

“Indemnifying Party” shall have the meaning assigned to such term in Section 20.3.

“InSchedule System” shall have the meaning set forth in the preamble hereto.

“Interconnection Agreement(s)” shall mean the interconnection agreement between of any or all of Seller, PJM, and the Utility for the interconnection of the System to the Utility’s distribution system, and (b) the Wholesale Market Participation Agreement entered into between Seller and PJM.

“kW” shall mean a kilowatt DC of capacity.

“kWh” shall mean a kilowatt hour AC of Energy Output.

“Lien” shall mean any lien, mortgage, pledge, security interest, charge, or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, mechanic’s liens and other liens arising under law, and any agreement to give any security interest).

“LMP” shall mean locational margin price.

“NERC” shall mean the North American Electric Reliability Corporation.

“Meter” shall mean a revenue-grade instrument or instruments meeting applicable Utility electric industry standards used to measure and record the volume in kWh and other required delivery characteristics of the Energy Output delivered hereunder.

“Operator” shall have the meaning assigned to such term in Section 24.6(a).

“Other Credits” shall mean all rights, credits (including Tax Credits), benefits, reductions, any other reductions or other transferable indicia (other than RECs, which are expressly excluded from this definition): (i) denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility, offsets and allowances and entitlements of any kind, known or unknown at the time of this Agreement, that are or become available to Seller from the environmental attributes of the System or the generation of the Energy Output, or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Energy Output, including, but not limited to carbon credits, allowances and emission reduction credits and offsets and (ii) related to the capacity of the System, whether arising under federal, state or local law, international treaty, trade association membership or the like, and the right to apply for any such credits.

“Person” shall mean an individual, partnership, corporation, company, business trust, joint stock Purchaser, trust, unincorporated association, joint venture, Governmental Authority, limited liability Purchaser or any other entity of whatever nature.

“PJM” means PJM Interconnection, LLC, or any successor organization thereto.

“Point of Interconnection” shall have the meaning set forth in the Interconnection Agreement with the Utility.

“Proprietary Information” shall have the meaning assigned to such term in Section 17.3(a).

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by experienced and leading solar system operators and energy providers in the electric generation industry for facilities of similar size, type, and design, that in the exercise of reasonable judgment, in light of the facts known at the time would have been expected to accomplish results consistent with good electric power generation business practices, PJM rules, protocols, and procedures, Applicable Law, reliability, safety, environmental protection, applicable codes and standards, economy, and expedition. For the avoidance of doubt, Prudent Operating Practices is not intended to be limited to the optimum

practice, method, and standards to the exclusion of all others, but rather, is intended to include acceptable practices, methods and standards generally accepted and utilized in the industry.

“Purchaser’s Performance Assurance” shall have the meaning assigned to such term in Section 16.2.

“Purchaser’s Share” shall mean [ ] percent ([ ]%) of all Energy Output.

“RECs” shall mean those renewable energy certificates associated with the Energy Output generated by the System. One REC represents the renewable attributes associated with one megawatt hour (MWh) of Energy Output generated by the System, using clean renewable energy resources.

“Replacement Sales” shall have the meaning assigned to such term in Section 2.5.

“Reporting Rights” means the right of Seller to report to any federal, state, or local agency, authority, or other party, including under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the RECs and Other Credits associated with the Energy Output.

“Revised Target COD” shall have the meaning assigned to such term in Section 7.3(d).

“Seller Credit Amount” shall have the meaning assigned to such term in Section 16.1.

“Seller’s Lease” shall have the meaning assigned to such term in the recitals hereto.

“Site” shall have the meaning set forth in the recitals hereto.

“Supply Disruption” shall mean an unavoidable delay outside the control of Seller in the supply or delivery of equipment pursuant to a binding supply agreement, where such equipment is necessary to construct and achieve commercial operation of the System. A Supply Disruption must be based on events not due to a Seller’s breach or failure to perform under the applicable supply agreement that have the effect of delaying the delivery of equipment beyond the stated delivery dates in the supply agreement, without regard to whether such delay by the equipment supplier is excused under the terms of the supply agreement.

“System” means all equipment, facilities, and materials, including, photovoltaic arrays, DC/AC inverters, wiring, Meters, tools, and any other property now or hereafter installed, owned, operated, or controlled by Seller for the purpose of, or incidental or useful to, maintaining the use of the solar generation system and providing Energy Output to the Delivery Point.

“Target COD” shall have the meaning assigned to such term in Section 7.3(d).

“Tax Credits” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state, or local law relating to the construction, ownership or production of energy from the System.

“Term” shall have the meaning set forth in Section 7.1(a).

“Termination Amount” shall have the meaning set forth in Section 13.2(d).

“Transferee” shall have the meaning assigned to such term in Section 17.2.

“Transferor” shall have the meaning assigned to such term in Section 17.2.

“Utility” shall mean the electric distribution company responsible for electric energy transmission and distribution service at the Site. The Parties acknowledge and agree that, as of the Effective Date, the Utility is [First Energy].

## **ARTICLE II SALE AND PURCHASE OF ENERGY**

Section 2.1 Summary Description. Seller will cause the System to be constructed at the Site and will own, operate, and maintain the System. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, including, Seller’s provider that is a PJM member contracted to provide scheduling, delivery, and/or other PJM- or wholesale market-related services; *provided, that* Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors and liable for their actions and/or omissions in connection with this Agreement.

Section 2.2 Delivery; Energy Purchase Price. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date (“COD”) and continuing throughout the remainder of the Term, Seller shall sell to Purchaser and deliver to the Designated Retail Supplier at the Delivery Point as and when available, and Purchaser shall purchase and Designated Retail Supplier shall accept from Seller at the Delivery Point by means of the InSchedule System, the Purchaser’s Share. The Designated Retail Supplier on behalf of Purchaser shall pay Seller a purchase price equal to the volume of Purchaser’s Share delivered to, and accepted at, the Delivery Point for the applicable period of time multiplied by the applicable Energy Rate as set forth in Exhibit B; *provided, however*, that Purchaser shall be responsible to pay all amounts due to Seller for the Purchaser’s Share that have been delivered and accepted in the event that the Designated Retail Supplier fails to make payment as required under this Section 2.2. Such amounts shall be paid in accordance with Article III hereof. Subject to Article XIX, Purchaser acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other weather-related factors, will constantly vary and that no particular amount of Energy Output is guaranteed or represented in amount or time of delivery for any given day or month. The Parties acknowledge and agree that the Purchaser’s Share produced by the System will be physically delivered directly to the Designated Retail Supplier at the Delivery Point, and no physical energy will be delivered directly to Purchaser pursuant to this Agreement.

Section 2.3 Exclusive Delivery. Subject to the terms of this Agreement (including, Sections 2.2 and 2.4), the Purchaser’s Share generated by the System shall be delivered exclusively to the Designated Retail Supplier.



Section 2.4 Purchaser's Failure to Accept Delivery. On and after the COD, if, when there exists no breach or default by Seller under this Agreement, the Designated Retail Supplier fails to accept delivery of all or any amount of Purchaser's Share for any reason other than an event of Force Majeure, such event shall constitute "Purchaser Curtailment" and be treated in accordance with Section 2.5 below.

Section 2.5 Purchaser Curtailment. Upon the occurrence of a Purchaser Curtailment, Seller shall promptly: (i) notify Purchaser and the Designated Retail Supplier of such occurrence; and (ii) undertake commercially reasonable efforts to mitigate any potential damages by: (a) selling any affected Purchaser's Share amounts into the PJM market at the applicable real-time hourly LMP for energy at the Point of Interconnection; (b) if better priced than (a), selling any affected Purchaser's Share amounts bilaterally to a third party; or a combination of (a) and (b), ("Replacement Sales"). Unless a Purchaser Curtailment is authorized or excused hereunder or in an enabling or ancillary agreement in connection with this Agreement, in the event of a Purchaser Curtailment, Purchaser shall pay to Seller, as liquidated damages, any positive amount reflecting (i) all or the portion of Energy Charge(s) that would have been charged to Purchaser in the absence of such event, *minus* (ii) the gross revenue received by Seller from Replacement Sales; *provided, that* if the forgoing calculation results in a negative value, then Seller shall credit eighty (80%) percent of the absolute value (a positive amount) of such negative value to Purchaser. The remedy provided in this Section 2.5 shall be the sole and exclusive remedy of Seller, and Purchaser's sole and exclusive liability, for any Purchaser Curtailment.

Section 2.6 Seller's Failure to Schedule or Deliver. On and after the COD, if, when there exists no breach or default by Purchaser under this Agreement, the Seller fails to schedule or deliver all or any amount of Purchaser's Share for any reason other than an Excused Curtailment, such event shall constitute "Seller Curtailment" and be treated in accordance with Section 2.7 below.

Section 2.7 Seller Curtailment. In the event of a Seller Curtailment, Seller shall pay to Purchaser, as liquidated damages, any positive amount reflecting (i) the value of the Purchaser's Share that would have been scheduled or delivered in the absence of such an event, such value based on the applicable real-time LMP value at the Delivery Point, *minus* (ii) all or a portion of the Energy Charge(s) that would have been charged to Purchaser in the absence of such event. The Parties agree the remedy provided in this Section 2.7 shall be the sole and exclusive remedy of Purchaser, and Seller's sole and exclusive liability, for any Seller Curtailment.

Section 2.8 Resolution of Curtailment; Invoicing of Replacement Costs. In the event of a Purchaser Curtailment or Seller Curtailment, the non-performing Party causing such curtailment shall promptly undertake commercially reasonable efforts to resolve such non-performance and conclude such curtailment as soon as practicable. Seller shall include any liquidated damages due between the Parties under Sections 2.2 through 2.7, as either a charge or credit, respectively, in its invoice for the calendar month in which the applicable curtailment occurred.

Section 2.9 Ownership of the System. Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including, all RECs and Other Credits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of,

or fixture to, the Site. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

**Section 2.10 Maintenance of Site; Alterations to Site.** Seller shall, at its sole cost and expense, maintain the Site in good condition and repair. Seller will ensure that the Site remains interconnected to the local Utility grid at all times and will not knowingly permit cessation of electric service to the Site from the local Utility. Seller is fully responsible for the maintenance and repair of the Site electrical system. Seller shall promptly notify Purchaser of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Seller shall not make any alterations or repairs to the Site which may foreseeably adversely affect the operation or maintenance of the System without Purchaser's prior written consent. If Seller wishes to make such alterations or repairs that may adversely affect the operation or maintenance of the Site, Seller shall give prior written notice to Purchaser, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone). To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs to the Site or System, temporary disconnection and any replacement of the System after completion of Seller's alterations and repairs shall be done by Seller or its contractors at Seller's sole cost and expense. All of Seller's alterations and repairs will be done in a good and workmanlike manner, in accordance with Prudent Operating Practice, and in compliance with Applicable Law in all material respects.

### **ARTICLE III BILLING AND PAYMENT**

Billing and payment for amounts due and payable hereunder shall be as follows and/or as otherwise set forth herein:

**Section 3.1 Invoices.** Seller shall deliver to Purchaser, with a concurrent copy to Designated Retail Supplier, an invoice, usually by the fifteenth (15th) day of each month, commencing with the month after which the COD occurs, stating (i) the Purchaser's Share delivered to the Designated Retail Supplier during the preceding month, the applicable Energy Rate, and the calculation of the resulting Energy Charge; and (ii) any other amounts then owing by, or credits and/or payments due to, Purchaser under this Agreement;

**Section 3.2 Payment.** The Designated Retail Supplier shall make payment to Seller, or to any Person reasonably designated by Seller in writing, within thirty (30) days after receipt of Seller's invoice; *provided, however*, that Purchaser shall at all times remain responsible to make payments for amount due and owing hereunder in the event that the Designated Retail Supplier fails to make payments as required herein. All invoices shall be submitted for payment with supporting documentation, to Designated Retail Supplier (in duplicate) in accordance with Designated Retail Supplier's then applicable payment policies, and all Purchaser's notice parties at the addresses specified in in Section 24.3; *provided, that* invoices may be submitted via electronic mail to the Designated Retail Supplier email address set forth in Section 24.3, with an email copy to Purchaser and all its notice parties specified in Section 24.3. The Designated Retail Supplier shall pay to Seller or to any Person designated by Seller in writing, by check or wire

transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the amount due in such invoice. If the Designated Retail Supplier and/or Purchaser in good faith disputes an invoice, the Designated Retail Supplier and/or Purchaser shall provide Seller with a written explanation specifying in detail the basis for the Dispute within eighty (80) calendar days of receipt of such monthly invoice, and the Designated Retail Supplier shall pay the undisputed portion of the invoice in accordance with these payment terms. Disputed portions of Seller's invoice shall be due and payable no later than twenty (20) calendar days after resolution of the Dispute. Payments of disputed amounts shall in no way waive the Designated Retail Supplier's and/or Purchaser's right to contest charges. Any amount not paid when due under this Agreement shall accrue interest at four percent (4%) per annum. In the event the Parties are unable to resolve any Dispute, Article XXII shall be applied as the methodology to resolve any Dispute and shall be binding upon the Parties.

Section 3.3 Errors. Within eighty (80) days after receipt of any invoice, either Party (or the Designated Retail Supplier) may provide written notice to the other Party of any alleged error in such invoice.

Section 3.4 Closing and COD Payments. Upon the Parties executing and entering into this Agreement, Seller shall make a payment to Purchaser in the amount of \$12,500.00. On the Commencement of Construction Date, Seller shall make a payment to Purchaser in the amount of \$12,500.00. Upon Seller achieving COD, Seller shall make a payment to Purchaser in the amount of \$35,000.00.

#### **ARTICLE IV**

#### **SYSTEM INSTALLATION, MAINTENANCE, AND REPAIRS**

Section 4.1 System Installation. The System will be engineered, designed, and constructed by Seller or its subcontractors with a generating capacity as set forth in Exhibit A at Seller's sole cost and expense.

Section 4.2 System Maintenance. Seller shall operate and maintain the System during the Term, including any washing, upgrades, and repairs necessary to ensure the maximal delivery of electricity, at minimum, at the guaranteed production levels. All such operations and maintenance shall be at Seller's sole cost and expense. Seller shall maintain Energy Output in accordance with Prudent Operating Practices, including, any cleaning, upgrades, or repairs necessary to ensure the generation of electricity as specified by this Agreement. Cleaning must not include any discharge of chemicals to the storm water drainage that are prohibited by Applicable Law.

Section 4.3 System Repairs. Seller shall accept responsibility and cover all costs for repairs, moisture, infiltration, and damage to the System and any ancillary equipment. In the event of damage or destruction of the System due to vandalism, theft, or otherwise, such event shall be subject to insurance coverage maintained by Seller. In such event, Seller shall undertake any repairs or replacement to the System to return the System to the reasonably equivalent status and operational condition it was in on the Commercial Operations Date at Seller's sole cost and expense, including, any required removal and/or replacement of all or part of the System. For the avoidance of doubt and notwithstanding anything to the contrary, Purchaser shall not have any

liability hereunder, and will not be responsible for any cost or expense, in connection with the Site (including, any restoration or remediation thereof), Seller's Lease, and/or the permitting, installation, construction, operation, maintenance, inspection, repair, replacement, and/or removal of the System.

## **ARTICLE V TITLE AND RISK OF LOSS**

Section 5.1 Title of Energy Output. Seller represents and warrants that, as of the Effective Date and throughout the Term, Seller has good, clean, and marketable title to all System energy output delivered to the Point of Interconnection and to all the Energy Output delivered to the Delivery Point, free and clear of any Liens, claims, encumbrances, or security interests, and Seller has the exclusive right to convey such energy output and Energy Output, including, at such points of delivery.

Section 5.2 Risk of Loss. Risk of loss related to Purchaser's Share shall pass from Seller to Purchaser when the Designated Retail Supplier accepts the InSchedule System delivery at the Delivery Point. All deliveries of Energy Output hereunder shall be in the form of three-phase, sixty-cycle alternating current. The Designated Retail Supplier shall accept delivery of Purchaser's Share at the Delivery Point by means of the InSchedule System.

## **ARTICLE VI CURTAILMENT AND MODIFICATION BY SELLER**

Section 6.1 Excused Curtailment. Seller may only curtail deliveries (inclusive of discontinuing or reducing Energy Output) if in accordance with Prudent Operating Practices and if such curtailment is necessary to construct, install, repair, replace, remove, maintain, or inspect the System in connection with an emergency, a Utility order to curtail, or an event of Force Majeure ("Excused Curtailment"). Notwithstanding anything herein to the contrary, except to the extent PJM directs Seller to curtail (e.g., not dispatched) the energy output of the System in connection with the security-constrained economic dispatch of the System as a result of Seller having offered (or allowing to be offered) the energy output from the System into the PJM market at the Point of Interconnection at a price equal to or less than \$0 per MWh pursuant to Section 6.2 and not clearing and not being dispatched, Seller does not have the right to, and shall not allow or undertake, the curtailment of deliveries of Purchaser's Share at the Delivery Point and/or the reduction the energy output of the System at the Point of Interconnection based on PJM market prices or other economic considerations, including, the LMP value at the Point of Interconnection and/or Delivery Point. Seller shall ensure any Excused Curtailment is no longer than required and proactively and promptly use commercially reasonable best efforts to mitigate, resolve, and conclude any Excused Curtailment. To the extent practicable, all maintenance and repairs to the System shall be performed during off peak hours and in a manner that will not require an interruption in energy output (including, the Energy Output) of the System. Seller shall notify the Purchaser and the Designated Retail Supplier of any curtailments of which Seller has advance knowledge and will use commercially reasonable efforts to mitigate the time periods and causes of such curtailments to the extent that such cause is within Seller's reasonable control. Subject to available sunlight, Seller shall resume deliveries of energy output from the System, including, the

Energy Output, as soon as is reasonably possible and safe in accordance with Prudent Operating Practices.

Section 6.2 Maximizing System Output. Seller shall operate and maintain the System in order to maximize the energy output (including, the Energy Output) of the System subject to Prudent Operating Practices, except that Seller may offer the energy output from the System into the PJM market at the Point of Interconnection at a price equal to (or less than) \$0 per MWh, but in no event shall Seller make or allow any such offer to exceed \$0 per MWh. Seller shall ensure that personnel capable of starting, operating, and stopping the System are either available at the System or capable of remotely starting, operating, and stopping the System within ten (10) minutes, and capable of being at the System with no more than two hours' notice, and in any event, within any shorter time periods otherwise specified by applicable PJM, NERC, and/or Applicable Law requirements. Seller shall ensure that personnel capable of starting, operating, and stopping the System can be reached by phone at all times.

Section 6.3 Modification of the System. Subject to Article XIX, after the Commercial Operations Date, Seller may modify, alter, expand, or otherwise change the System without the prior written consent of Purchaser as required by Prudent Operating Practices, so long as such modifications, alterations, expansions, or other changes would not reasonably be expected to result and/or do not result in a material change in the capacity of the System or a material adverse impact on the operations of the System or the System's capability to operate.

## **ARTICLE VII**

### **TERM, TERMINATION, CONSTRUCTION & COMMERCIAL OPERATION, AND INTERCONNECTION**

#### **Section 7.1 Term and Termination**

(a) Term. The Term of this Agreement ("Term") shall commence on the Effective Date and continue until the sooner of (i) the expiration date that is fifteen (15) years from the first day of the month following the month in which the Commercial Operation Date occurs or (ii) an early termination date established in accordance with this Agreement. At least one hundred eighty (180) days prior to expiration of the Term, the Parties may agree to extend the Term for an additional period, not to exceed five (5) years, *provided, however*, that, in the absence of the Parties agreeing on an amendment that includes changing the Energy Rate and/or its escalation for such extension period, the Energy Rate during such extension period shall continue to escalate at the same percentage as during the initial term hereof.

Section 7.2 Early Termination for Certain Events. Either Party shall have the right, but not the obligation, to terminate this Agreement early (prior to the expiration of the Term) upon the occurrence of any of the following: (1) Purchaser is practically required to become a PJM member in order accept Purchaser's Share or otherwise perform under this Agreement; (2) Purchaser is required to obtain market-based rate authority from FERC in order to dispose of, or utilize Purchaser's Share, or perform under this Agreement; (3) Purchaser is classified, deemed, alleged, and/or identified to be undertaking an unauthorized FERC jurisdictional "wholesale sale" and/or sale of electric energy for resale by virtue of Purchaser's performance of its obligations in

connection with this Agreement; (4) any transactions hereunder and/or pursuant to an enabling and/or ancillary agreement and/or guarantee in connection with the transactions hereunder is classified, deemed, and/or identified as a “swap” under the Commodity Exchange Act and related Commodity Futures Trading Commission rules; (5) an unstayed order or determination of a Governmental Authority, having the effect of subjecting the sales of any portion of the System’s energy output (including, the Energy Output) to federal or state regulation requiring preapproval of cost-based rates; (6) Purchaser is required to obtain any licensure, tariff, certificate, registration, permission, membership, or any approval of any type from a Governmental Authority or PJM in connection with the wholesale or retail sales of electric energy or to perform under this Agreement. Notwithstanding anything to the contrary, in the event that a Party terminates this Agreement early pursuant to this Section 7.2, this Agreement shall terminate without triggering the default provisions of this Agreement (e.g., without constituting, or in connection with, an Event of Default and without giving rise to the remedies pursuant to Section 13.2 such as the Termination Amount) and with no liability of either Party to the other Party except such accrued amounts then due and owing under this Agreement as of the date of such termination and those surviving expiration or termination.

### Section 7.3 Construction and Commercial Operation of the System.

(a) Seller shall install or cause to be installed the System, which, upon the Commercial Operation Date, shall at minimum have an aggregate approximate nameplate generating capacity rating as shown in Exhibit A.

(b) Promptly following the Effective Date, Seller shall commence pre-installation activities relating to the System, which shall include the following:

(i) obtain financing for the System on terms acceptable to the Seller in its sole discretion;

(ii) designate and obtain or cause to be obtained the right to use the Site through Seller’s Lease on a long-term basis on terms acceptable to the Seller in its sole discretion, for the installation, maintenance, and operation of the System;

(iii) subject to the execution and delivery of Seller’s Lease, obtain or cause to be obtained all government approvals, permits, contracts, and agreements required for installation, operation and maintenance of the System and Site on terms acceptable to the Seller in its sole discretion;

(iv) determine, in its commercially reasonable judgment, that the System is able to be constructed on the Site;

(v) confirm that Seller will obtain all applicable RECs, Other Credits and Tax Credits; and

(vi) subject to the execution and delivery of Seller’s Lease, obtain all necessary authority from any applicable regulatory entities for the operation of the System and sale and delivery of Energy Output.

(c) Successful completion of Sections 7.3(b)(i) through (vi) shall be conditions precedent to Seller's obligations to install and operate the System and otherwise perform its obligations under this Agreement. If the activities contemplated in Sections 7.3(b)(i) through (vi) are not completed, or waived by Seller in its sole discretion, prior to the commencement of construction of the System, then, Seller shall make a commercially reasonable offer to Purchaser for a new system and site with a new target commercial operations date proposed to replace the System and Site set forth in Exhibit A and the Target COD set forth in Section 7.3(d). Any new system and site shall be in the same region and have an equivalent or higher aggregate approximate nameplate generating capacity rating. If Purchaser accepts such offer, then the System and Site set forth in Exhibit A and the Target COD set forth in Section 7.3(d) shall be amended and updated accordingly; *provided, that*, in no event shall the new Target COD be later than the Revised Target COD and the Revised Target COD shall not be amended and updated unless mutually agreed by the Parties. For the avoidance of doubt, other than such amendments and updates, the terms of this Agreement shall not be modified in the event of a System and Site replacement pursuant to this Section 7.3(c). If Purchaser declines such offer, then Seller or Purchaser shall have the option to terminate the Agreement without triggering the default provisions of this Agreement with no liability of either Party to the other Party under this Agreement except such accrued amounts then due and owing under this Agreement as of the date of such termination and those surviving termination or expiration, *provided, that*: (i) such option must be exercised by Seller no later than the Commencement of Construction Date and any attempt to exercise such option by Seller after such date shall be null and void; and (ii) Seller shall provide Purchaser notice, at least thirty (30) Business Days prior to the Commencement of Construction Date, that Seller has not completed or waived the conditions precedent set forth in Sections 7.3(b)(i) through (vi).

(d) Seller shall use commercially reasonable efforts to cause the installation of the System to be completed and the System to achieve the Commercial Operation Date on or before October 31, 2026 (the "Target COD"). In the event that the System has not achieved the Commercial Operation Date on or before the Target COD, the Parties agree to negotiate in good faith to amend this Agreement to revise the Target COD, which shall in no case be later than June 31, 2027, (the "Revised Target COD"). Notwithstanding anything to the contrary, in the event that the System has not achieved the Commercial Operation Date on or before the Revised Target COD, Purchaser may, in its sole discretion, negotiate to amend this Agreement to further revise the Revised Target COD, along with any other provisions of this Agreement affected by the failure to achieve the Commercial Operation Date on or before the Revised Target COD, or treat Seller's failure to achieve the Revised Target COD as an Event of Default, in accordance with the provisions of Section 13.1(h), including, exercising the remedies set forth in Section 13.2. The Target COD (or Revised Target COD Date) shall be subject to extension in the event of a Supply Disruption, Force Majeure, or in the event that Purchaser's failure to comply with its obligations hereunder directly delays Seller's ability to achieve the Commercial Operation Date on or before the Target COD (or Revised Target COD Date, if applicable). For the avoidance of doubt, the Revised Target COD deadline may not be modified absent agreement by the Parties.

**Section 7.4 Delay Damages.** It is important that the System be up and running by the Target COD. To guard against a late project operation date, for the System, Seller shall pay, as liquidated damages, delay damages of \$33.00 per MW based on the System generation capacity reflected by Purchaser's Share for each day beyond the Target COD in which the Commercial Operation Date of such System has not yet occurred. With the exception of Seller experiencing an

Event of Default pursuant to Section 13.1(h) and Purchaser exercising the remedies set forth in Section 13.2, the Parties agree that the payment of delay damages pursuant to this Section 7.4 shall be Purchaser's sole and exclusive remedy, and Seller's sole and exclusive liability, for any failure by Seller to cause the System to achieve its Commercial Operations Date by the Target COD.

Section 7.5 No Purchaser Interest in System. Notwithstanding anything to the contrary, Seller and Purchaser hereby agree and acknowledge that Purchaser shall have: (i) no ownership interest in the System; and (ii) no responsibility and/or liability of any kind in connection with: (A) the Site (including, any related taxes, permitting, usage, or any restoration and/or remediation of the Site); (B) Seller's Lease; (C) events occurring before the Delivery Point; and/or (D) the System, including its permitting, installation, construction, operation, maintenance, inspection, repair, replacement, and/or removal. Neither Purchaser nor any party related thereto shall have the right or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code.

Section 7.6 Interconnection.

(a) Seller is responsible for all interconnection, electric losses, congestion, delivery and/or transmission costs and arrangements, and/or any costs required to deliver the Energy Output from the System to the Delivery Point. For the avoidance of doubt, the Designated Retail Supplier shall be responsible for any transmission of the Energy Output from the Delivery Point.

(b) Seller will curtail the production and delivery of Energy Output without any compensation from Purchaser at any time the Utility requires such curtailment. Seller shall promptly provide written notice of such Utility curtailment request to Purchaser and the Designated Retail Supplier.

(c) Seller at its sole cost and expense shall pay to the Utility, and other parties, as applicable, any and all fees and other charges associated with or arising out of the construction or operation of any required interconnection facilities.

Section 7.7 Changes in Interconnection Conditions. The Parties acknowledge that adjustments in the interconnection-related terms and conditions of this Agreement may be appropriate to account for rule changes in the respective Utility or by PJM that could not be anticipated as of the Effective Date or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments to this Agreement only as are required to comply therewith (subject to Section 7.6(a)). For the avoidance of doubt, the Revised Target COD may not be extended by operation of this Section 7.7 and the pricing and volumes hereunder shall not be affected by such operation.

Section 7.8 Forecasting; Scheduling.

(a) For the Designated Retail Supplier's and Purchaser's planning purposes, Seller shall, by December 1 of each year during the Term (other than the last year of the Term), provide an annual update to the historical Energy Output and the expected long-term monthly Energy Output estimates.



(b) At the Designated Retail Supplier's request, Seller shall provide the Designated Retail Supplier each day with an hourly forecast of Energy Output deliveries for each hour of the next day. The Parties and the Designated Retail Supplier shall cooperate in furtherance of implementing and using automatic forecast updates.

(c) The Energy Output will be scheduled by Seller and the Designated Retail Supplier in accordance with PJM rules, protocols and procedures utilizing one or more physical, internal bilateral transactions in the InSchedule System, with the source as the Point of Interconnection and the sink as the Delivery Point (MID-ATL/APS Aggregate). Designated Retail Supplier will be designated as the confirming party with respect to the physical, internal bilateral transactions in the PJM portal. The Parties may elect, on or before the Commercial Operation Date, to agree on additional scheduling protocols to affect the delivery and receipt of Purchaser's Share hereunder.

(d) Seller agrees to collaborate with Purchaser regarding the appointment of a new Designated Retail Supplier, including, promptly entering into new, reasonable enabling and/or ancillary agreements with respect to this transaction and Agreement with Purchaser and/or the new Designated Retail Supplier (e.g., a new InSchedule Agreement), and reestablishing forecasting and scheduling protocols, InSchedule System transaction setup, invoicing system setup, and any other setup required for Designated Retail Supplier to serve in the roles intended under this Agreement and any applicable ancillary and/or enabling agreements.

## **ARTICLE VIII**

[Reserved]

## **ARTICLE IX TAXES**

Section 9.1 Purchaser or the Designated Retail Supplier, as applicable, shall pay all taxes imposed by any taxing authority arising out of and with respect to the sale, purchase or consumption of the Purchaser's Share purchased from Seller, including, sales taxes due with respect to the sale and purchase of the Energy Output. For the avoidance of doubt, the Energy Rates do not include sales taxes. If any taxes are assessed against the sale, purchase, or consumption of Energy Output, Purchaser or the Designated Retail Supplier shall either pay or reimburse Seller for all such amounts due, including, any taxes assessed thereon, in accordance with the terms of Article III hereof, except for any income taxes imposed on Seller based on such sales. Purchaser shall provide Seller with any tax exemption certificates, including, a non-taxable transaction certificate, which may be applicable to the transactions contemplated hereunder. Seller shall be responsible for any taxes, charges, fees, or levies upstream of, or before, the Delivery Point, including, any such taxes assessed on the System. Subject to the forgoing, Seller shall be responsible for any and all taxes and assessments arising out of the services and/or transactions performed hereunder, including, payroll and personal property taxes, franchise taxes, and income taxes.

## **ARTICLE X OFFSETS, ALLOWANCES, CREDITS**

Section 10.1 RECs. Seller shall own and retain all present and future rights, titles, and interest in any RECs attributable to, or associated with, the Energy Output of the System purchased by Purchaser under this Agreement.

Section 10.2 Other Credits. Without limiting Seller's rights under Section 10.1, Seller shall own and retain all present and future rights, titles and interest in any Other Credits or exemptions attributable to the installation of the System or the production of Energy Output therefrom, including, rebates or incentives relating to equipment installed as part of the System, capacity payments or property tax exemptions or credits, but excluding any sales tax exemptions or other exemptions in connection with Purchaser's tax-exempt status.

Section 10.3 Reporting Rights. Without limiting Purchaser's rights under Section 17.1, Seller shall retain the Reporting Rights and the exclusive rights to claim that: (a) the Energy Output was generated by the System on a unit-specific basis; (b) Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Energy Output and the delivery thereof to the Delivery Point; and (c) Seller is entitled to all environmental attributes, credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

Section 10.4 Impairment of Other Credits and RECs. Purchaser shall not knowingly take any action or suffer any omission that would have the effect of impairing the value to the Seller of the Other Credits and RECs. A Party shall use commercially reasonable efforts to notify the other Party of any known action or omission that could impair such value and the Parties shall consult in furtherance of preventing any impairment of the value of the Other Credits and RECs.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Section 11.1 Purchaser represents and warrants that, as of the Effective Date and throughout the Term:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation; that it has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action. Purchaser covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in its jurisdiction of formation, and shall have the power and authority to perform this Agreement;

(b) No suit, action, arbitration, legal, administrative, or other proceeding is pending or, to the best of Purchaser's knowledge, has been threatened against Purchaser that would affect the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on Purchaser's performance of this Agreement;

(c) The execution, delivery and performance of this Agreement by Purchaser will not result in a breach of, default under or violation of any Applicable Law, or the provisions of any authorization or in a breach of, default under or violation of any provision of its articles of incorporation or bylaws or any promissory note, indenture or any evidence of indebtedness or security therefor, material lease, material contract or other material agreement by which it or its property is bound, including its obligations to purchase electricity and related energy products from the Utility;

(d) No governmental approval or consent is required in connection with the due authorization, execution and delivery of this Agreement, or the performance of the Purchaser of its obligations hereunder or thereunder, that the Purchaser has reason to believe it will be unable to obtain in due course on or before the date required for Purchaser to perform such obligations; and

(e) This Agreement constitutes a legal, valid, and binding obligation enforceable against Purchaser in accordance with its terms, except as the enforceability of such terms may be limited by applicable bankruptcy, reorganization, insolvency, or similar laws affecting the enforcement of creditors' rights generally; and

(f) Purchaser has not entered, and will not after the Effective Date enter, into any contracts or agreements which would impair or limit Seller's ability to perform in accordance with the terms hereof;

(g) Purchaser fails to maintain a Designated Retail Supplier for a consecutive period of more than twelve (12) months and Seller suffers a material adverse change with respect to the debt financing of the System as a direct result of such failure. For the avoidance of doubt, this Section 11.1(g) is subject to, and does not limit, Section 7.2;

(h) Purchaser is in compliance in all material respects with all laws that relate to this Agreement;

(i) Purchaser has had the opportunity to evaluate any financial benefits or risks associated with the execution of this Agreement and that the terms of this Agreement and their consequences have been fully read and understood by Purchaser;

(j) Purchaser has had the opportunity to rely on legal advice from an attorney of its choice, so that the terms of this Agreement and their consequences could have been fully read and understood by Purchaser;

(k) Purchaser shall at all times following the Commercial Operation Date during the Term engage and retain a Designated Retail Supplier, which shall be (i) an electric generation supplier, validity licensed and in good standing in the Commonwealth of Pennsylvania, and (ii) a PJM member in good standing. In the event Purchaser breaches this Section 11.1(k) such event shall constitute a "Purchaser Curtailment" and be treated in accordance with Section 2.5 above; and

(l) Purchaser is a political subdivision of the Commonwealth of Pennsylvania and/or is an agency, authority, and/or instrumentality of the Commonwealth of Pennsylvania,

and/or is a corporation which is wholly-owned, directly or indirectly, by any one or more of the foregoing, or an officer, agent, employee of any of the foregoing.

## **ARTICLE XII REPRESENTATIONS AND WARRANTIES OF SELLER**

Section 12.1 Seller represents and warrants that, as of the Effective Date and throughout the Term:

(a) It is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware; that it has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on its part. Further, Seller covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in the Commonwealth of Pennsylvania and shall have the power and authority to perform this Agreement;

(b) No suit, action, arbitration, legal, administrative, or other proceeding is pending or, to the best of Seller's knowledge, has been threatened against Seller that would affect the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on Seller's performance of this Agreement;

(c) The execution, delivery and performance of this Agreement by Seller will not result in a breach of, default under, or violation of any Applicable Law, or the provisions of any authorization or a breach of, default under, or violation of any provision of its certificate of formation or other organizational documents or any promissory note, indenture or any evidence of indebtedness or security therefor, material lease, material contract or other material agreement by which it or its property is bound;

(d) This Agreement constitutes a legal, valid, and binding obligation enforceable against Seller in accordance with its terms, except as the enforcement of such terms may be limited by applicable bankruptcy, reorganization, insolvency, or similar laws affecting the enforceability of creditors' rights generally;

(e) Seller has not entered, and will not after the Effective Date enter, into any contracts, agreements, or arrangements which would impair or limit Purchaser's ability to perform in accordance with the terms hereof;

(f) All information provided by Seller to Purchaser and/or the Designated Retail Supplier, as it pertains to the System, its operations, its energy output (including, the Energy Output), and Seller's performance under this Agreement, is accurate in all material respects to Seller's knowledge;

(g) Seller is in compliance in all material respects with the Applicable Law that relate to this Agreement, the Site, and all associated enabling and/or ancillary agreements (including, Seller's Lease). Any violations under either Clean Air Act (42 U.S.C.7401-7671q) and

the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency;

(h) Seller is in compliance in all material respects with 62 Pa. C.S.A. 3701, et. seq. including: (i) In the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor or any person acting on behalf of the contractor or subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates; (ii) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed, or color; and (iii) notwithstanding anything to the contrary, this Agreement may be canceled or terminated by the Purchaser, Purchaser may avail itself of all remedies under Section 13.2, and all money due Seller, or to become due Seller under the Agreement, may be forfeited (in Purchaser's sole discretion) for a violation of this Section 12.1(h);

(i) Seller is in compliance in all material respects with the provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et. seq.) of the Commonwealth of Pennsylvania, as amended, prohibiting discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap, or disability, by employers, employment agencies, labor organizations, suppliers, and others. Further, Seller recognizes and shall comply with the language of the Commonwealth's non-discrimination clause in 16 PA. Code 49.101;

(j) Seller is not listed on the government-wide exclusions in the System for Award Management ("SAM"), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p.235), regarding "Debarment and Suspension." SAM exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549;

(k) Seller has filed and maintains the required certification under the Byrd Anti-Lobbying Amendment. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award;

(l) Seller is in compliance in all material respects with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C.7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency; and

(m) Seller has not and shall not provide any personal gratuities to any representative of Purchaser. Purchaser's employees may not accept any gift, service, honorarium, stipend, or fee; or use their position for private advantage or personal, financial, or material gain. Purchaser may investigate reported violations. Any suppliers, including, Seller, whom Purchaser finds to have violated these provisions, may be barred from doing business with Purchaser.

### **ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES**

Section 13.1 In the event any potential, threatened, or actual failure to perform under, and/or breach of, this Agreement by Purchaser or its Designated Retail Supplier, Seller shall immediately provide written notice to all of Purchaser's notice parties (as set forth in Section 24.3 and updated by Purchaser from time to time) describing such potential, threatened, or actual failure. Additionally, Seller shall provide written notice to all of Purchaser's notice parties fifteen (15) Business Days prior to any declaration of an Event of Default or the exercise of any remedies set forth in Section 13.2 below. For the avoidance of doubt, the forgoing notice requirements are in addition to any notice requirements (for cure purposes or otherwise) set forth in this Section 13.1 below. Notwithstanding anything herein to the contrary, in the event Seller breaches any of its notice obligations set forth in this Section 13.1, then: (i) Seller shall be required to newly provide all notices required by this Section 13.1; and (ii) any notice- and/or cure-related periods required by this Section 13.1 shall restart, and any declaration of an Event of Default or the exercise of any remedies set forth in Section 13.2 below in the absence of (i) and (ii) shall be null and void.

The following events shall constitute an "Event of Default" hereunder:

(a) A failure by a Party to pay (or, if applicable, to cause the Designated Retail Supplier to pay) any amount due hereunder where such failure is not cured eighty (80) Business Days after receipt of written notice by the non-defaulting Party of such failure to pay such amounts due hereunder; *provided, however*, any amount due shall continue to accrue interest during any such cure period as set forth in Section 3.2;

(b) Except as otherwise provided in Sections 2.4, 2.5, 2.6, 2.7, 7.4, and Article 19, any other material default in the event such default is not cured within thirty (30) Business Days after receipt of written notice of the default from the non-defaulting Party setting forth in reasonable detail the nature of such default; *provided, that* in the case of any such default that cannot be reasonably cured within the thirty (30) Business Days, then the defaulting Party shall have additional time, but in any event not longer than ninety (90) days, to cure the default if it commences in good faith to cure the default within such thirty (30) day cure period and it diligently and continuously pursues such cure;

(c) A Party's dissolution or liquidation; a Party's making a general assignment of its assets for the benefit of creditors (except as otherwise permitted by this Agreement); a Party's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or after the filing of a case in bankruptcy or any proceeding under any other insolvency law against a Party, a Party's failure to obtain a dismissal of such filing within sixty (60) calendar days after the date of such filing;

(d) Any representation or warranty furnished by a Party in connection with this Agreement was false or misleading in any material respect when made, unless the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) calendar days after the other Party has given the defaulting Party written notice thereof; *provided, however*, that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within thirty (30) calendar days; or if such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the non-defaulting Party, then the defaulting Party shall have additional time, but in any event not longer than ninety (90) days, to cure the default if it commences in good faith within such thirty (30) calendar day cure period to correct the fact, circumstance or condition that is the subject of such representation or warranty and it diligently and continuously proceeds with all due diligence to correct the fact, circumstance or condition that is the subject of such representation or warranty;

(e) Seller fails to maintain insurance pursuant to Article XXI, which is not corrected within ten (10) days;

(f) After COD, Purchaser fails to perform its obligations under this Agreement in a way that prevents the delivery of energy output from the System to the PJM grid at the Point of Interconnection for more than one hundred and eighty (180) consecutive days;

(g) With respect to Seller, the System fails to achieve a Guaranteed Availability Factor of at least seventy percent (70%) in any two (2) consecutive years during the Term following the Commercial Operation Date; or

(h) With respect to Seller, the failure to achieve the Commercial Operation Date on or before June 31, 2027.

Section 13.2 Remedies; Early Termination for Default. Subject to the limitations of liability set forth in Article XXIII, upon the occurrence of an Event of Default, the non-defaulting Party may by written notice to the defaulting Party declare such Event of Default and exercise any one or more of the following remedies:

(a) Exercise any and all remedies available under this Agreement or under Applicable Law after the applicable cure period. Notwithstanding the foregoing, neither Party may suspend performance under this Agreement as a remedy for an Event of Default;

(b) Withhold the payment of any amounts due the defaulting Party to the extent, and only to the extent, of its damages under this Agreement;

(c) Terminate this Agreement early by delivery of a written notice to defaulting Party declaring termination. No early termination of this Agreement following an Event of Default shall relieve the defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement pursuant to this Article XIII, and the rights given hereunder and under Applicable Law;

(d) Upon the early termination of this Agreement in connection with an Event of Default, the non-defaulting Party shall calculate the Economic Loss and Costs, if any, in respect of this Agreement. The non-defaulting Party shall aggregate all amounts owing between the Parties under this Agreement into a single amount by netting (i) all amounts due to the defaulting Party under this Agreement that have accrued through the date of early termination *against* (ii) all amounts due to the non-defaulting Party under this Agreement that have accrued through the date of early termination, *plus* the non-defaulting Party's Economic Loss and Costs, if any, such that all amounts are netted into a single amount (the "Termination Amount"), payable by one Party to the other Party as liquidated damages. Notwithstanding anything to the contrary, the Termination Amount shall be the non-defaulting Party's sole and exclusive remedy and the defaulting Party's sole and exclusive liability in connection with early termination of this Agreement. For the avoidance of doubt, the Termination Amount is subject to Article XXIII. The Party to which the Termination Amount is due, shall have the option of drawing on any Credit Support available to such Party as the owing Party's full or partial payment of the Termination Amount, as applicable. As soon as practicable following early termination, if applicable, the non-defaulting Party shall provide an invoice to the defaulting Party specifying the Termination Amount due to, or from, the defaulting Party (including, any reduction or full payment of such amount that has occurred by means of the Party to which the Termination Amount is due drawing on any available Credit Support) and a written statement explaining in reasonable detail the calculation of the Termination Amount. As applicable, the Party owing the Termination Amount shall pay the Termination Amount within sixty (60) Business Days following the defaulting Party's receipt of the non-defaulting Party's invoice. For purposes of the foregoing:

"Costs" means, with respect to the non-defaulting Party, the commercially reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the non-defaulting Party to an independent, arms-length, non-affiliated Person (other than a Party) in connection with entering into new arrangements to replace this Agreement (to the extent, and only to the extent, of the commercially reasonable forecast volume of Purchaser's Share for the period from the early termination date through the scheduled end of Term), and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

"Economic Loss" means, with respect to the non-defaulting Party, the amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the early termination of this Agreement. If Seller is the non-defaulting Party, its economic loss will be the positive amount, if any, equal to (x) the present value of the payments it would receive under this Agreement for Purchaser's Share *minus* (y) the present value of the payments it would receive for Purchaser's Share under transactions replacing this Agreement, where if no bonafide bilateral transactions are available with independent, arms-length, non-affiliated counterparties for greater than the present value of the energy generation that would be sold merchant into PJM using an independent and reputable forecast of PJM LMP values at the Delivery Point, then the present value of the energy generation that would be sold merchant into PJM using an independent and reputable forecast of PJM LMP values at the Delivery Point, in each case for the period from the early termination date through the scheduled end of Term, in each case determined by Seller in a



commercially reasonable manner. If Purchaser is the non-defaulting Party, its economic loss will be the positive amount, if any, equal to (x) the present value of the Purchaser's Share it would receive under this Agreement *minus* (y) the present value of Purchaser's Share under bilateral transactions replacing this Agreement, where if no such bonafide transactions are available, then the value of the energy generation that would be purchased from PJM using an independent and reputable forecast of PJM LMP values at the Delivery Point, in each case for the period from the early termination date through the scheduled end of the Term, in each case determined by Purchaser in a commercially reasonable manner. For the avoidance of doubt, the non-defaulting Party is not required to enter into any replacement transaction in order to determine its Economic Loss.

Section 13.3 Non-waiver of Rights; Mitigation of Damages. No delay or omission of a Party in the exercise of any right, power, or remedy shall impair or operate as a waiver thereof or of any other right, power, or remedy. Neither Party will be deemed to have waived any provision or any remedy available to it, unless such waiver is in writing and signed by a duly authorized officer or representative of each Party. The non-defaulting Party shall undertake commercially reasonable efforts to mitigate any damages sustained under this Agreement.

#### **ARTICLE XIV**

#### **NO PARTNERSHIP; INDEPENDENT CONTRACTOR**

Section 14.1 No Partnership. Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any lease, joint venture, partnership, or association taxable as a corporation or other entity for the conduct of any business for profit. Neither Party shall have any right, power or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of the other Party.

Section 14.2 Changes to Agreement. If it should appear that one or more changes to this Agreement would be required in order to prevent the creation of a partnership for United States federal tax purposes between Seller and Purchaser, the Parties agree to negotiate promptly in good faith with respect to such changes.

Section 14.3 Independent Contractors. The Parties agree that they are independent contractors and shall be at all times solely responsible for themselves, as well as their respective [officers, directors, members, partners, employees, agents, and contractors] as to workmanship, accidents, injuries, wages, supervision, and control. This Agreement may not be altered in any manner so as to change the relationship or responsibilities of the Parties as independent contractors.

#### **ARTICLE XV**

#### **METER MAINTENANCE AND RECORDS**

Section 15.1 Seller shall provide all System operations and maintenance during the Term. The System's energy output at the Point of Interconnection and the Energy Output delivered by Seller to the Designated Retail Supplier hereunder shall be measured by electric watt-hour meters located at the System's point of interconnection located at the Site as follows:

(a) Seller shall own, operate, maintain, and read the Meter for the measurement of Energy Output provided to the Designated Retail Supplier. Seller shall furnish a copy of all technical specifications and accuracy calibrations for the Meter upon and after installation and deliver to Purchaser and the Designated Retail Supplier a copy of Meter accuracy verification test performed one year after the Commercial Operation Date of the System within a commercially reasonable time.

(b) Seller shall provide a Daily Monitoring System by means of an internet-based Data Acquisition System (“DAS”) whose performance is monitored 24/7. Seller’s ongoing monitoring and data output shall be provided to Purchaser and the Designated Retail Supplier via the internet.

(c) Seller shall supply all necessary internet connections for monitoring of the System.

(i) System alerts shall be automatically generated by the DAS and sent via email to the designated Seller reactive maintenance personnel.

(ii) Seller shall investigate all performance alerts promptly for their degree of severity.

(d) Seller will routinely test its metering equipment in accordance with the manufacturer's recommendations and, if requested by Purchaser, Seller will retain an independent, non-affiliated engineer to conduct tests in the presence of a representative of Purchaser.

(i) If requested by Purchaser, Seller will conduct such testing on additional occasions, but no more than once per calendar year, subject to Section 15.1(i) below;

(ii) If testing of the metering equipment indicates that such equipment is in error by two percent (2%) or more, then Section 15.1(i) below shall apply.

(e) Seller will maintain an accurate log or record of all tests, whether initiated by Seller or Purchaser, and will make the results of such tests available to Purchaser promptly upon request.

(f) Purchaser (or the Designated Retail Supplier) shall have the right at its sole cost and expense to install check meters and associated metering equipment and shall, upon prior written notice to Seller, have reasonable access to Seller’s metering equipment for purposes of testing. Purchaser and/or its designee may test the Meter annually, with the costs of such annual testing to be borne by Purchaser.

(g) Each Party shall have the right to be present when the other Party is performing maintenance on the metering equipment; provided, that the Party performing maintenance gives the other Party reasonable prior notice of the scheduled maintenance time.

(h) All records, reports and data concerning the Meter shall be and remain the property of Seller, although Purchaser and the Designated Retail Supplier shall have the right to use the same only to the extent necessary to perform and administer this Agreement.

(i) Seller must pay to test the Meter every three (3) years regardless of any error. Should Purchaser request testing more frequently than every three (3) years and such testing indicates that such Meter is in error by less than two percent (2%), then Purchaser shall reimburse Seller for costs associated with testing the Meter. On the other hand, if such testing indicates that such Meter is in error by two percent (2%) or more, then Seller shall promptly repair or replace such Meter at its sole expense. Seller shall make a corresponding adjustment to the records of the amount of Purchaser's Share based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; *provided, however*, that such period shall in no case exceed two (2) years whereupon the Parties shall make such payments (or credits) are appropriate to reflect such correction in Purchaser's Share amounts.

(j) Any Dispute arising out of the reading of the Meter or any metering equipment shall be resolved pursuant to Article XXIII.

## **ARTICLE XVI PERFORMANCE ASSURANCE**

Section 16.1 Seller Security. Seller shall, the earlier of twelve (12) months following the Effective Date of this Agreement or ten (10) Business Days prior to the commencement of construction of the System, deliver to Purchaser security reasonably satisfactory Purchaser (including, in form and substance) in the form of (i) cash (to be held in an escrow account), (ii) a surety bond, (iii) a guaranty from an Affiliate or parent, (iv) a letter of credit, or (v) some other manner reasonably satisfactory to Purchaser, in an amount equal to the System generation capacity reflected by Purchaser's Share times \$90,000.00 (the "Seller Credit Amount"). To the extent of any draw or demand upon the Seller Credit Amount, Seller shall replenish such Seller Credit Amount within five (5) Business Days of such draw or demand, for example, by delivering to Purchaser a supplemental letter of credit in the amount of any such draw or demand, as applicable. To the extent any Seller Credit Amount is held in cash and is subsequently drawn upon, Seller shall replenish such Seller Credit Amount in cash by the amount of any such draw within five (5) Business Days of such draw.

Section 16.2 Purchaser Security. Unless Purchaser is a Creditworthy Entity, Purchaser shall within sixty (60) Business Days of the Seller's written notice provide to Seller security (the "Purchaser's Performance Assurance") in one of the following forms as selected by Purchaser in its sole discretion: (i) a guaranty from an Affiliate or parent; (ii) a Letter of Credit issued by a Creditworthy Entity, (iii) cash (to be held in an escrow account); or (iv) some other manner reasonably satisfactory to Seller and Purchaser, in an amount equal to Purchaser's Share (stated in MWs) times \$50,000. To the extent of any draw or demand upon the Purchaser's Performance Assurance, Purchaser shall replenish such Purchaser's Performance Assurance within fifteen (15) Business Days of such draw or demand, for example, by delivering to Seller a supplemental letter of credit in the amount of any such draw or demand, as applicable. To the extent any Purchaser's Performance

Assurance is held in cash and is subsequently drawn upon, Purchaser shall replenish such Purchaser's Performance Assurance in cash by the amount of any such draw within fifteen (15) Business Days of such draw. After being required to provide Purchaser's Performance Assurance, Purchaser will maintain such Purchaser's Performance Assurance during any period that Purchaser fails to qualify as a Creditworthy Entity. Purchaser's Performance Assurance shall be released upon Purchaser's notice and sufficient evidence that it qualifies as a Creditworthy Entity, or upon the first date that both the Term has ended and Purchaser has satisfied all of its payment obligations to Seller under this Agreement.

## **ARTICLE XVII PUBLICITY AND PROPRIETARY INFORMATION**

### **Section 17.1 Publicity.**

(a) The Parties share a common desire to generate favorable publicity regarding the System and their association with it. The Parties agree that they will, from time to time, issue press releases regarding the System and that they shall cooperate with each other in connection with the issuance of such releases, including, completing the review of press releases proposed to be issued by the other Party by no later than twenty (20) calendar days after submission by such other Party.

(b) Purchaser or Seller may, with the prior written approval of the other Party (which shall not be unreasonably withheld), reference the System and display photographs of the System in its promotional materials.

Section 17.2 Proprietary Information. Except as otherwise provided herein, any Proprietary Information of a Party (the "Transferor") which is disclosed to or otherwise received or obtained by the other Party (the "Transferee") incident to this Agreement shall be held, in confidence, and the Transferee shall not publish or otherwise disclose any such Proprietary Information to any Person for any reason or purpose whatsoever, or use any such Proprietary Information for its own purposes or for the benefit of any Person, without the prior written approval of the Transferor, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Proprietary Information which such Party observes with respect to its own information of the same or similar kind.

### **Section 17.3 Definition of Proprietary Information:**

(a) The term "Proprietary Information" means (i) the terms set forth in this Agreement, and (ii) all information, written or oral, which has been or is disclosed by the Transferor, or which otherwise becomes known to the Transferee or any Person in a confidential relationship with, the Transferee, and which (A) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time

to time, or (B) the Transferor expressly designates in writing to be confidential, which the Parties agree shall include the terms of this Agreement.

(b) Proprietary Information shall exclude information falling into any of the following categories:

(i) Information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;

(ii) Information that, after disclosure hereunder, enters the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;

(iii) Information, other than that obtained from third parties, that prior to disclosure hereunder, was already in the recipient's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;

(iv) Information obtained by the recipient from a third party having an independent right to disclose the information; or

(v) Information that is obtained through independent research without use of or access to the Proprietary Information.

Section 17.4 Notwithstanding the foregoing:

(a) A Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information; provided, that (i) the disclosure of such Proprietary Information is required by Applicable Law, or such Governmental Authority issues a valid order that such Proprietary Information be provided, and (ii) the Transferee promptly advises the Transferor of any request for such information by such Governmental Authority and cooperates in giving the Transferor an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

(b) Seller may disclose Proprietary Information to any Governmental Authority in connection with the application for any license or other authorization or Other Credit or Rebate; *provided, however*, that Seller shall make use of any applicable policy or regulation of the Governmental Authority that allows for the filing of Proprietary Information under seal or other confidentiality procedures.

(c) Seller may disclose Proprietary Information to any prospective Financing Party for purposes of such party's evaluation in connection with the provision of debt or equity financing (including equity contributions or commitments), refinancing of any such financing, or any guarantee, insurance or credit support for or in connection with such financing or refinancing, in connection with the construction, ownership, operation or maintenance of the System, or any part thereof; provided, that the recipient of any such Proprietary Information agrees in writing to

maintain such information in confidence under terms substantially identical to those contained in this Agreement. Seller shall vigorously enforce the terms of any such confidentiality agreement.

(d) Either Party may disclose Proprietary Information to the extent that such disclosure is required pursuant to the rules of any securities exchange to the extent such Party is subject to regulation.

(e) Each Party agrees that it will make available Proprietary Information received from the other Party to its Affiliates and its and their employees, agents, contractors and advisors only on a need-to-know basis (and with respect to Purchaser, the Designated Retail Supplier), and that all Persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to agree to hold such Proprietary Information in confidence under terms substantially identical to the terms hereof.

(f) Each Party shall be responsible to ensure that their agents, contractors, and/or subcontractors comply with the provisions set forth in this Article and treatment of Proprietary Information and shall be liable to the other Party for any breach by such entities of the obligations under this Article.

Section 17.5 Equitable Relief. Notwithstanding anything to the contrary, in the event of a breach or threatened breach of the provisions of this Article by any Transferee, the Transferor shall be entitled to seek an injunction, or other equitable relief such as specific performance, to restrain such Party from such breach.

Section 17.6 Tax Structure or Treatment. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all Persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction, or any tax matter or tax idea related to the transaction.

Section 17.7 Survival. The obligations of the Parties under this Article shall survive the expiration or termination of this Agreement for two (2) years.

## **ARTICLE XVIII FORCE MAJEURE**

### **Section 18.1**

(a) The term “Force Majeure,” as used in this Agreement, means causes or events beyond the reasonable control of, without the fault or negligence of the Party claiming Force

Majeure or its contractors or subcontractors, and that with the exercise of commercially reasonable efforts to mitigate the impact of such causes or events, prevents or delays the affected Party's performance of its obligations hereunder. Subject to the foregoing definition, examples of causes or events that may constitute Force Majeure include acts of God, sudden actions of the elements such as floods, earthquakes, volcanoes, meteorites, hurricanes, solar flare or eruption, wind speeds in excess of safe installation or working limits of the photovoltaic modules or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming the Force Majeure; terrorism; acts of a public enemy; war; riots or other civil disturbance; fire; explosion; blockage, insurrection, or inability (despite due diligence), to obtain or maintain required licenses, permits, or approvals for the construction and operation of the System; any failure or inability to obtain necessary machinery, equipment, materials or spare parts, but only to the extent such failure or inability is caused by an event of Force Majeure, including, any order by a Governmental Authority or PJM to Seller to take any action, that prevents Seller from delivering Energy Output under this Agreement. Notwithstanding the foregoing, during the development or construction of the System, but not from or after the Commercial Operation Date, Force Majeure shall include strikes, slow downs, or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), the adoption or change in (or change in the interpretation of) any rule or regulation or judicial decision lawfully imposed by federal, state, or local government bodies.

(b) Force Majeure shall not include: (i) the economic hardship of either Party; (ii) non-exceptional or non-extreme weather conditions; (iii) Seller's ability to sell the output of the System to any Person other than Purchaser; (iv) increases in Seller's costs to construction the System and achieve the Commercial Operations Date; (v) Seller's failure to timely apply for or maintain a permit, license, or other permission from a Governmental Authority; (vi) a Supply Disruption; (vii) an Excused Curtailment not caused by Force Majeure; (viii) variability in solar irradiance for any reason; (ix) breakdown or failure of mechanical equipment; (x) any action or omission of a Governmental Authority, including, any changes to the Code or related guidance; and (xi) market conditions, including, the LMP values at the Point of Interconnection and/or the Delivery Point.

Section 18.2 Neither Party shall be considered to be in default in the performance of any obligations in this Agreement (other than obligations to pay money, including for sales and purchases of Energy Output pursuant to Article II) when a failure of performance shall be due to an event of Force Majeure, and any time periods for such performance shall be extended during an event of Force Majeure; *provided, that* (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the event of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event; (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform, mitigates the effects of the Force Majeure event and provides regular progress reports to the other Party describing actions taken to end the Force Majeure event; and (iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, the non-performing Party shall provide written notice of its ability to resume performance of its obligations under this Agreement to the other Party and shall promptly resume such performance.

Section 18.3 If an event of Force Majeure is reasonably expected to continue for more than three hundred sixty-five (365) days or longer, despite the affected Party's

commercially reasonable efforts to overcome the effects of Force Majeure, then the Party not experiencing the event of Force Majeure may terminate this Agreement after ninety (90) days by providing thirty (30) days written notice of termination to the other Party. Such termination shall be effective upon the giving of the notice. Purchaser shall pay Seller the Energy Rate for the Energy Output delivered to the Delivery Point prior to the date of termination. Seller shall reimburse Purchaser any overpayment of Energy Output paid by Purchaser in the event of Force Majeure. Notwithstanding anything to the contrary, in the event that a Party terminates this Agreement early pursuant to this Section 18.3, this Agreement shall terminate without triggering the default provisions of this Agreement (e.g., without constituting, or in connection with, an Event of Default and without giving rise to the remedies pursuant to Section 13.2), and with no liability of either Party to the other Party except such accrued amounts then due and owing under this Agreement as of the date of such termination and those surviving expiration or termination.

## **ARTICLE XIX WARRANTIES AND AVAILABILITY GUARANTEE**

Section 19.1 Warranty. Seller warrants that the Energy Output provided by Seller under this Agreement at the Delivery Point shall be produced by a photovoltaic system consisting of photovoltaic modules and suitable for use in a commercial operation for Utility interconnection.

Section 19.2 Availability Guaranty. Seller guarantees that the System will achieve an Actual Availability Factor equal to or greater than the Guaranteed Availability Factor (the “Availability Guaranty”). The Guaranteed Availability Factor shall be eighty percent (80%).

Section 19.3 Availability Damages. In the event Seller fails to achieve the Guaranteed Availability Factor for any Availability Period, Seller shall pay as liquidated damages to Purchaser in the form of a credit (or, at Purchaser’s election, a cash payment) equal to the product of (x) the Availability Shortfall for such Availability Period and (y) the Availability Damages Rate of \$1,000 per each 0.1% shortfall of availability shortfall (the “Availability Damages”), applicable to Purchaser’s Share. Upon determination by the Parties of any Availability Damages owed for any such applicable Availability Period, the Availability Damages shall be included on the next invoice rendered by Seller as a credit (or payment at Purchaser’s request).

Section 19.4 Reporting. No later than thirty (30) days after each Availability Period, Seller will deliver to Purchaser and the Designated Retail Supplier a calculation showing Seller’s computation of the Actual Availability Factor of the System and whether the Availability Guaranty has been met for the previous Availability Period (the “Availability Report”).

Section 19.5 Remedy Exclusive. With the exception of Seller experiencing an Event of Default pursuant to Section 13.1(g) and Purchaser exercising the remedies set forth in Section 13.2, the Parties agree that the payment of Availability Damages pursuant to this Section 19 shall be Purchaser’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any availability shortfall.

Section 19.6 Definitions. As used in this Article XIX:

(a) “Actual Availability Factor” means a percentage calculated by multiplying 100 by (i) the sum of all Available Hours *divided by* (ii) the total number of Period Hours.



(b) “Availability Period” means any two Contract Years following the Commercial Operations Date during the Term.

(c) “Availability Shortfall” means the positive difference between the Guaranteed Availability Factor and the Actual Availability Factor.

(d) “Available Hours” means, for the applicable Availability Period the sum of (a) the number of Period Hours in which the System was capable of producing Energy without regard to solar insolation, plus (b) Excused Hours. Available Hours are counted by the System’s programmable logic controller.

(e) “Excused Hours” means those clock hours during which Seller is unable to generate, schedule or deliver Energy to the Delivery Point as a result of (a) a System emergency, (b) a Force Majeure event, (c) System planned outages not to exceed 336 hours, Purchaser’s failure to perform (other than due to Purchaser Curtailment or a breach by Seller of its obligations under the Agreement), and (e) System curtailments directed by the Utility or PJM.

(f) “Period Hours” means the sum total of all clock hours for the applicable Availability Period.

Section 19.7 Performance Standard. Seller shall operate, repair, and maintain the System in accordance with Prudent Operating Practices.

## **ARTICLE XX INDEMNIFICATION**

Section 20.1 Indemnification by Seller. The work performed by the Seller shall be at the risk of the Seller exclusively. To the fullest extent permitted by law, Seller shall indemnify, defend (at Seller’s sole expense) and hold harmless the Purchaser and its [joint ventures, representatives, trustees, members, designees, officers, directors, employees, agents, contractors, successors and assigns] (“Purchaser Indemnified Parties”) from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of actions, suits, losses, judgments, obligations and any liabilities, costs and expenses (including, reasonable investigative and attorneys’ fees and costs) (“Claims”) which arise or are in any way connected with: (i) Seller’s default under this Agreement; (ii) Seller’s Lease; (iii) the System, including, its permitting, installation, construction, operation, maintenance, inspection, repair, replacement, and/or removal; (vi) the Site, (including, any restoration or remediation thereof); and/or (iv) events occurring before the Delivery Point. Said indemnity and defense obligations shall further apply, whether or not said Claims arise out of the concurrent act, omission, or negligence of the Purchaser Indemnified Parties, whether active or passive. Seller shall not be obligated to indemnify or defend Purchaser for Claims found to be due to the sole gross negligence or willful misconduct of the Purchaser Indemnified Parties. Seller’s indemnification and defense obligations hereunder shall survive the termination of this Agreement.

Section 20.2 Indemnification by Purchaser. Purchaser shall fully indemnify, save harmless and defend Seller or any of its officers, directors, employees, and agents from and against any and all Claims incurred by such parties in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to

any Person after the Delivery Point, but only to the extent caused by (a) the negligence or willful misconduct of Purchaser or its agents or employees or others under Purchaser's control or (b) Purchaser's default under this Agreement. Purchaser shall not be obligated to indemnify or defend Seller for Claims found to be due to the gross negligence or willful misconduct of the Seller Indemnified Parties.

Section 20.3 Notice of Claims. Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a written notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such notice shall be provided in sufficient time to enable the Indemnifying Party to assert and prosecute appropriate defenses to the claim or action; *provided, however,* that failure to give such notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent it will have been prejudiced by such failure. Upon the receipt of such notice, the Indemnifying Party shall make a prompt determination of whether it believes it is required to indemnify the Indemnified Party, and shall promptly notify the Indemnified Party, in writing, of its determination. If the Indemnifying Party determines that it is required to indemnify, it shall assume the defense of the Indemnified Party, including the employment of counsel, and shall thereafter pay all costs and expenses relative to the defense of the claim or action. The Indemnified Party shall cooperate with the Indemnifying Party in all reasonable aspects in such defense. The Indemnified Party shall also have the right, at its own expense, to employ separate counsel in any such action and to participate in the defense thereof. The Indemnifying Party shall not be liable for any settlement of any claim or action made without its consent, such consent not to be unreasonably withheld.

(a) Expenses. In calculating any damages or costs to be indemnified under Sections 20.1 or 20.2 there will be deducted (i) the amount of any insurance recovery by the Indemnified Party (and no right of subrogation will accrue hereunder to any insurer) or, if the Indemnified Party has failed to maintain any insurance coverage required by this Agreement to be maintained by such Party or fails to make a timely claim under any applicable insurance, the amount which would reasonably be expected to have been received had such insurance been maintained or such claim been timely filed, and (ii) the amount of any tax benefit to the Indemnified Party (or any of its Affiliates) with respect to such damages or costs (after giving effect to the tax effect of receipt of the indemnification payments).

(b) Calculation. After any Claim Notice has been given pursuant hereto, the amount of indemnification to which an Indemnified Party will be entitled under this Article will be determined: (i) by the written agreement between the Indemnified Party and the Indemnifying Party; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnifying Party agree in writing.

Section 20.4 Defense of Action. If requested by the Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; *provided, however,* that if the Indemnifying Party is a defendant in any such action and the Indemnified Party reasonably believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such

action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation.

## **ARTICLE XXI SELLER INSURANCE**

Section 21.1 Seller Insurance. Seller shall provide and maintain, without interruption, during the Term hereof commercial general liability insurance on ISO form CG 00 01 10 01 (or a substitute form providing equivalent coverage) in the amount set forth in subparagraph (a) below, and property damage insurance in the amount set forth in subparagraph (b) below. Purchaser's failure to request evidence of this insurance shall not be construed as a waiver of Seller's obligation to provide the insurance coverage specified. All coverage shall be placed with an insurance company duly admitted in the Commonwealth of Pennsylvania and shall be reasonably acceptable to Purchaser. All of Seller's insurance carriers must maintain an A.M. Best rating of A- or better.

(a) Commercial General Liability ("CGL") Insurance, including but not limited to Products and Completed Operations and Contractual Liability and Personal and Advertising Injury, as applicable to Seller's obligations under this Agreement with limits not less than:

- (i) Personal Injury - \$2,000,000 per occurrence and in the annual aggregate; and
- (ii) Property Damage - \$2,000,000 per occurrence and in the annual aggregate.

Such CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL form arising from pollution, explosion, collapse, underground property damage or work performed by the Seller.

(b) Seller shall maintain All Risk Property Damage Insurance (including vandalism, theft, earthquake and flood insurance providing coverage to Seller's property or equipment) at levels sufficient to cover damage and losses to its property and equipment necessary to discharge its obligations hereunder.

(c) Seller shall maintain Excess Liability Insurance with limits of not less than \$5,000,000 per occurrence and in the general annual aggregate in excess of the limit provided in the CGL policies set forth above and the automobile policy set forth below. The coverage terms of the excess insurance must be at least as broad as the underlying insurance policies.

(d) Seller shall maintain employer's liability insurance as required by law and with coverage of at least \$1,000,000.

(e) Seller shall maintain workers' compensation insurance as required by law and with coverage of at least \$100,000 each Accident, \$500,000 Disease policy limit, and \$100,000 Disease each employee.

Section 21.2 Certificates of Insurance and Additional Insured Endorsement. Seller shall provide Purchaser with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or a substitute form providing equivalent coverage) or the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or a substitute form providing equivalent coverage) naming Purchaser as an additional insured thereunder evidencing property insurance and general liability coverage. The coverage available to Purchaser, as Additional Insureds, shall apply as primary insurance with respect to any other insurance afforded to Purchaser, shall not be less than the amounts provided in Section 21.1(a) above, shall be afforded to the Additional Insureds whether or not a claim is in litigation, shall be of sufficient type, scope, and duration to ensure coverage for Purchaser for liability related to any manifestation date within the applicable statutes of limitation or repose which pertain to any work performed by Seller. Each Certificate of Insurance shall provide that the insurer must give Purchaser at least 30 days' prior written notice of cancellation and termination of Seller's coverage thereunder. Not less than two weeks prior to the expiration, cancellation, or termination of any such policy, Seller shall supply Purchaser with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Purchaser as set forth above. Additionally, and prior to commencement of the work, Seller shall provide Purchaser with a Certificate of Insurance showing liability insurance coverage for Seller and any employees for Workers Compensation, Employers Liability, and Automobile Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to Purchaser.

Section 21.3 Occurrence Policy. All insurance required hereunder shall provide insurance for occurrences from the date hereof throughout the later of the expiration or termination hereof.

## **ARTICLE XXII DISPUTES**

Section 22.1 Any dispute, controversy or claim arising out of or in connection with this Agreement (a "Dispute") shall be resolved in accordance with this Article. Upon the occurrence of a Dispute:

(a) Either Party may deliver a notice to the other Party requesting the Dispute be referred to that Party's management. Any such notice shall include the names of the managers to resolve the Dispute. Any such notice shall be delivered within a reasonable period of time after the Dispute arises. Within seven (7) Business Days after receipt of a notice, the other Party shall provide written notice to the requesting Party indicating a schedule for Dispute resolution, which resolution shall commence within fourteen (14) Business Days of the notice of Dispute.

(b) If, after such attempt at resolution in accordance with paragraph (a) above a Dispute remains unresolved, then either Party shall have the right to bring an action regarding the Dispute in federal court in the Eastern District of Pennsylvania. THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR OTHER PROCEEDING INSTITUTED BY OR AGAINST IT IN RESPECT OF ITS OBLIGATIONS OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.

(c) During the conduct of any Dispute resolution procedures pursuant hereto the Parties shall continue to perform their respective obligations irrespective of the matters in Dispute.

### **ARTICLE XXIII LIMITATIONS OF LIABILITY**

Section 23.1 General Limitation of Liability. THE PARTIES AGREE AND CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER ARTICLE XX, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, INCLUDING, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Section 23.2 Aggregate Limitation of Liability. Notwithstanding anything to the contrary set forth herein, in no event shall Seller's aggregate liability under this Agreement, pursuant to any remedy (express or otherwise), claim, and/or theory of law, after the application of any and all applicable insurance proceeds, exceed the [Seller Credit Amount] (the "Liability Cap"). Notwithstanding anything to the contrary set forth herein, in no event shall Purchaser's aggregate liability under this Agreement, pursuant to any remedy (express or otherwise), claim, and/or theory of law exceed the lesser of: (i) Purchaser's Performance Assurance (as defined in Section 16.2 as Purchaser's Share (stated in MWs) times \$50,000; *provided, that*, for the avoidance of doubt, no replenishment dynamic shall apply to this cap on aggregate liability); or (ii) the net

present value of the remaining payments by Purchaser that would occur for the commercially reasonable forecasted Purchaser's Share remaining through the end of the Term.<sup>2</sup>

Section 23.3 Application of Limitations of Liability. The forgoing limitations of liability shall also apply to a Party's [directors, officers, shareholders, partners, members, agents, and/or employees].

## **ARTICLE XXIV MISCELLANEOUS**

Section 24.1 Audit Review. Seller is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. Seller shall keep records documenting any price, cost, or budget computations required under this Agreement. Seller agrees that Purchaser, the Designated Retail Supplier, or a duly authorized representative of Purchaser has the right to audit any directly pertinent books, documents, papers, and records related to transactions or performance of the terms and conditions under this Agreement. Seller shall make available to the Purchaser, the Designated Retail Supplier, or their agents all such records and documents for audit on the Seller's premises (or, at Purchaser's election, electronically) during regular and reasonable working hours. Seller further agrees to disclose within ninety (90) days of receipt, any independent auditors' reports, which bear directly on the performance or administration of this Agreement. The right to audit shall include periodic examinations of records throughout the term of this Agreement and surviving its termination. The right to audit shall also apply to agents and subcontractors hired by the Seller for the purposes of fulfilling this Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation, or non-performance, the Purchaser may recoup the costs of the audit work from the Seller in addition to any remedies available under Applicable Law or this Agreement.

Section 24.2 Purchaser Financial Information. Upon Seller's request, Purchaser shall provide (or causes its auditors to provide) Seller with copies of its most recent audited financial information within one hundred twenty (120) days.

Section 24.3 Notice. Any notice, demand, request, consent, approval confirmation, communication or statements which is required or permitted under this Agreement shall be in writing and shall be given or delivered by [electronic mail,] personal service, Federal Express or comparable overnight delivery service, or by deposit in the United States Post Office, postage prepaid, by registered or certified mail, return receipt requested and addressed to the Party receiving notice as specified below. Changes in such addresses and/or contact persons named shall be made by notice similarly given. Notices given by electronic mail or personal service shall be deemed given and received the day so given or sent. Notices mailed or sent by a delivery service or by registered or certified mail as provided herein shall be deemed given on the third Business Day following the date so mailed or on the date of actual receipt, whichever is earlier. Each Party shall deem a document emailed or electronically sent in PDF form to it as an original document. Any notice required to be provided to a Party must also be provided to all such Party's notice

<sup>2</sup> GH NTD: Per Section 2.5, Purchaser already receives 80% of any mitigation profits.

parties listed below, regardless of reference to such notice parties in any other Article, Section, provision, or Exhibit of this Agreement.

**PURCHASER:** [\_\_\_\_\_]

Attention:

[Address]

Telephone:

Email:

and

**[Purchaser Energy Advisor / Greensky]**

Attention: Gregory C. Shively

5310 16<sup>th</sup> Road N

Arlington, VA 22205

Telephone: (703) 608-5571 / (703) 584-4184

Email: gshively@greensky-dg.com

With a copy to:

**[Designated Retail Supplier / Direct Energy]**

Attention:

[Address]

Telephone:

Email:

**SELLER:**

**[Prospect14 Entity]**

Attention: Carl Jackson

c/o Glidepath Ventures, LLC d/b/a/ Prospect 14

40 East Montgomery Avenue, 4th Floor

Ardmore, PA 19003

Email: legal@prospect14.com

Telephone: 610-708-3090

With a copy to:

**GreeneHurlocker, PLC**

Attention: Andy Brownstein

4908 Monument Avenue, Suite 200

Richmond, Virginia 23230

Email: [abrownstein@greenehurlocker.com](mailto:abrownstein@greenehurlocker.com)

Telephone: (804) 672-4552

Section 24.4 Complete Agreement; Modification. The terms and provisions contained in this Agreement and referenced documents constitute the entire Agreement between Purchaser and Seller and shall supersede all previous communications, representations, or

agreements, either oral or written, between Purchaser and Seller with respect to the sale of Energy Output from the System. No amendment or modification of this Agreement shall be binding on either Party unless such amendment is reduced to writing and signed by authorized representatives of both Parties.

Section 24.5 Third Party Beneficiaries. Except as otherwise expressly provided herein (e.g., with respect to Financing Party's rights hereunder), this Agreement is for the sole benefit of the Parties hereto and their permitted successors and assigns, and nothing in this Agreement, or any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement. Except as specifically otherwise provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement.

Section 24.6 Assignment; Financing.

(a) Assignment. Neither Party shall have the right to sell, transfer or assign this Agreement or its rights, duties, or obligations hereunder, without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. The prior written consent of Purchaser shall be required for any re-assignment prior to assignment, which consent may not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller may, with at least thirty (30) days' prior written notice to Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to any Financing Party, any Affiliate of Seller, or any Person succeeding to all or substantially all of the assets of Seller, *provided, that* Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon the written assumption by the assignee of all of Seller's obligations hereunder and agreement to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment; *provided, further, that* with respect to any Seller assignment described above, the assignee (i) is an entity that has the appropriate experience and ability to operate and maintain utility scale photovoltaic solar systems similar to the System (an "Operator") or (ii) enters into a contract with an Operator, pursuant to which (A) such Operator shall be responsible for all System operation, repair, and maintenance under this Agreement and (B) Seller shall have assigned to Operator all other rights and responsibilities of Seller herein necessary for operation, repair, and maintenance of the System (including, access rights to the Site) as required by this Agreement and/or the Seller's Lease, and (iii) is an entity with the financial wherewithal to perform under this Agreement, including, in connection with obtaining, providing, and/or securing any Seller performance assurance required hereunder, and is as creditworthy as Seller as of the effective date of the assignment. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

(b) Assignment Does Not Equal Novation. No consent by either Party to any assignment or delegation by the other Party shall be deemed to be a novation or otherwise to relieve the assigning Party of its obligations hereunder unless otherwise expressly so stated in such consent.

(c) Purchaser's Cooperation in respect of Seller Financing. To facilitate Seller's efforts to obtain financing to construct and operate the System, Purchaser will make reasonable efforts to provide such consents to assignments, certifications, representations, information, or



other documents as may be reasonably requested by Seller or a Financing Party in connection with the financing of the System. In responding to any such request, Purchaser will have no obligation to provide any consent, or enter into any agreement, that adversely affects any of Purchaser's rights, benefits, risks, or obligations under this Agreement. Seller shall reimburse Purchaser for the reasonable out-of-pocket costs and expenses (including, the fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution, or delivery of any documents requested by Seller or a Financing Party pursuant to this Section 24.6(c). Purchaser acknowledges that it has been advised that part of the collateral securing financial accommodations of Seller may be the granting of a first priority or purchase money security interest in the System to a Financing Party to be perfected by a filing under the Uniform Commercial Code, as enacted in the Commonwealth of Pennsylvania, or by a fixture filing. Purchaser consents to such filings.

(d) Financing. Purchaser acknowledges that Seller may be financing a part or all of its capital requirements for the installation of the System and its operation and maintenance with a financing party ("Financing Party"). Seller may choose the manner of financing the System and the Financing Parties in Seller's sole discretion. The transaction costs and repayment of any such Seller financing shall be borne entirely by Seller. Seller shall arrange and obtain financing for the System.

(i) Seller may assign and transfer as collateral security to any Financing Party all of the interest, rights, and remedies of Seller in, to and with respect to this Agreement or with respect to the System.

(ii) In the event of a default by Seller in the performance of any of its obligations under this Agreement, or upon the occurrence or non-occurrence of any event or condition under this Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Purchaser to terminate or suspend its obligations or exercise any other right or remedy under this Agreement or under Applicable Law, then (A) if Seller has provided written notice to Purchaser of the Financing Party's name and address, then Purchaser will provide the Financing Party with notice of such occurrence at the same time it provides such notice to Seller, and (B) Purchaser will afford the Financing Party or its designee the same cure period as provided to Seller pursuant to this Agreement, it being understood that the cure period in respect of one event will cover the same days for Seller and the Financing Party or its designee as long as each receives such written notice of default.

(iii) Upon any default by Seller and the exercise of remedies by a Financing Party under any Seller financing agreement, including, any foreclosure on or taking of possession of the System by the Financing Party, whether by judicial proceeding or under any power of sale contained in any security agreement, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, and upon compliance by such Financing Party or designated Operator with Seller obligations in connection with its rights of cure as contained in such financing agreement, Purchaser shall accept such Financing Party or designated Operator in place of Seller for all purposes under or in connection with this Agreement for the remainder of the Term hereof, *provided, that*, such replacement complies with the requirements of Section 24.6(a)(iii) and either (i) or (ii) and agrees to assume all of Seller's obligations hereunder.

Section 24.7 Severability; Savings Clause. Each term and condition of this Agreement is deemed to have independent effect and in the event any partial or whole paragraph, provision, Section, or Article of this Agreement is, or becomes, void, illegal, or unenforceable, it shall not affect the validity or enforceability of the remaining paragraphs, provisions, Sections, or Articles.

Section 24.8 Counterparts. This Agreement may be executed in counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

Section 24.9 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement: (a) constitute a “forward contract” within the meaning of the Bankruptcy Code; (b) that each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code; and (c) transactions hereunder are for the physical delivery of a non-financial commodity.

Section 24.10 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania (where the System is located), without regard to its principles on conflict of laws.

Section 24.11 Estoppel. Either Party hereto, without charge, at any time and from time to time, within thirty (30) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person, firm or corporation specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by a Party hereto. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

Section 24.12 Service Contract. The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a lease and, pursuant to Section 7701(e)(3) of the Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the Purchaser of electric energy produced at an alternative energy facility.

Section 24.13 Survival. Articles I, XIII, XV, XIX, XX, XXII, XXIII, Section 24.1, and any other provisions that by their express terms survive the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

Section 24.14 Attorneys' Fees. In the event that any court or arbitration proceeding is brought under or in connection with this Agreement, the prevailing Party in such proceeding (whether at trial or on appeal) shall be entitled to recover from the other Party all costs, expenses, and reasonable attorneys' fees incident to any such proceeding. The term "prevailing party" as used herein shall mean the Party in whose favor the final judgment or award is entered in any such judicial or arbitration proceeding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

**Purchaser:**

[\_\_\_\_\_]

---

Name:

Title:

**Seller:**

[ ]

---

Name:

Title:

**Exhibit A**

**SYSTEM SPECIFICATIONS**

Site Location: Misty Meadows Lane, Hubersburg, PA 16823 in Centre County, Commonwealth of Pennsylvania

System Size (Nameplate Capacity):

Installation Type:

Site Layout and System Drawings:

DRAFT

**Exhibit B**

**ENERGY RATES**

Pursuant to Section 2.2 the rates paid during the Term of this Agreement are as follows:

Energy Rate shall mean:

A starting rate of \$45.90/kWh adjusted (with an annual escalation rate of 1.5%) on the first anniversary of the Commercial Operation Date, and each anniversary of such date thereafter over the Term, as set forth in the table below.

Year	Energy Rate in \$/kWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
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24	
25	

**State College Borough Council  
Summary Information for the Award of Contract**

**Project Number:** BD-245  
**Project Name:** Service Facility HVAC Controls  
**Date Prepared:** 01/19/2024  
**Prepared By:** Lance King, Buildings and Grounds Manager  
**Proposed Meeting Date:** 02-05-2024  
**Deadline for Action:** 02-05-2024

---

1. **Project Description:** Replacement of malfunctioning HVAC controls at the Public Works Service Facility

2. **Other Background Information:**

The current HVAC controls system does not function properly and software is no longer supported. Converting this system to the system used in our other facilities will reduce maintenance costs and allow the HVAC equipment to operate more efficiently.

3. **Funding Source:** Funding for this project is in the 2024 capital budget in fund B130-20-72-00-0000-000-93720 -BD245

Staff received 1 Quote via COSTARS for this project. Automated Logic Corporation is our current vendor for HVAC control systems at the State College Municipal Building, Schlow Library, and Centre Region COG Building. Adding the Public Works Service Facility to this system saves staff time, reduces software licensing costs, and improves efficiency.

4. **Bids Received:**

**Bidder**

**Amount**

a. Automated Logic Corporation

Bid: \$78,440

5. **ABC Review and Comments:** N/A

6. **Solicitor Comments:** N/A

7. **Staff Recommendation and Reason:** Public Works staff recommends that the project be awarded to Automated Logic Corporation in the amount of \$78,440

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**State College Borough Council  
Summary Information for the Award of Contract**

<b>Project Number:</b>	
<b>Project Name:</b>	<b>Replacement of all on street parking meters</b>
<b>Date Prepared:</b>	<b>1-25-2024</b>
<b>Prepared By:</b>	<b>Thomas Brown, Parking Director</b>
<b>Proposed Meeting Date:</b>	<b>02-05-2024</b>
<b>Deadline for Action:</b>	<b>02-05-2024</b>

---

1. **Project Description:** The replacement of all single space on-street parking meters.
2. **Other Background Information:** The Parking Department operates and maintains 339 single space parking meters in the on-street spaces throughout downtown. These meters are at the end of their useful life and are costing significantly more to maintain. Additionally, we are spending on average 1-3 hours a day working on and replacing meters to keep them active. We have been told by our current meter vendor that they are phasing out this style of meter, and it will be increasingly difficult to keep them serviced and operational.
3. **Funding Source:** Funding for this purchase will be borrowed from the Borough's Asset Replacement Fund and shall be repaid over the estimated useful life of seven (7) years for the meters. Additionally, State Grant opportunities have been identified and will be pursued to help offset a large portion of this expense.

Several meter vendors and styles were considered, and the Liberty single and dual space meters that are produced by Duncan Parking Technologies Inc. is the most reliable and highly rated meter according to parking operators. We made telephone contact with several large cities including Colorado Springs CO (2200 meters), Montgomery County, MD (2000 meters) Los Angeles CA, (12000 meters) to ask about their experiences with these meters and with Duncan overall, and all reported that they are very happy with the product and service.

The new meters will save \$2,100 a year in monthly fees and 7 cents per credit card transaction for a total annual savings of approximately \$32,000. And, staff productivity improvements should be realized with the new meter installation, as we expect to spend less time fixing broken meters and more time serving as parking and community ambassadors.

4. **Bids Received:**

<b>Bidder</b>	<b>Amount</b>
a. Duncan Parking Technologies, Inc. Milwaukee, WI 53227	Bid: \$198,414
5. **ABC Review and Comments:** N/A
6. **Solicitor Comments:** N/A
7. **Staff Recommendation and Reason:** Staff recommends that this contract be awarded to Duncan Parking Technologies Inc. of Milwaukee, WI. under PA Costars contract number 033-E22-036.

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Date of Submission: 1/23/24

**Application for Use of Public Property  
(Processions, Assemblages and Special Activities Form)**

Name of Responsible Sponsor: Genevieve De Los Santos  
Address of Sponsor: 243 S. Allen St. State College Phone: 814-234-4401  
PA 16801 Cell: 717-383-7740  
E-mail address: gdelossantos@statecollegepa.us Fax: \_\_\_\_\_  
Other Contacts: (Primary) Chilunya Zulu Phone: 814-234-7160  
(Secondary) \_\_\_\_\_ Phone: \_\_\_\_\_  
Date of Activity: April 20th From: 3pm To: 8pm (8p-9p)  
Rain Date: (If applicable) \_\_\_\_\_ From: \_\_\_\_\_ To: clean down  
Type of Activity: Community No. Expected to Participate: 50-70

**ACTIVITY DETAIL**

Describe your proposed activity in detail: (Use additional sheets, if needed)

The Pan Apida Circle, Apida Caucus and SC Borough having the second annual Apida Festival. Expanding from last year onto Fraser St. w/ the theme Asian Night Market. The event

Does your activity require a street closure for this activity? ☐ No ☒ Yes is from 3-8pm with set up from 12pm-3pm, clean up from 8-9pm.  
If yes, select the type of road to be closed: (For more information see map and list provided)

- ☐ State Road(s) Only\* (Additional Permit Required: PennDOT TE-300 Form)  
☒ Local Road(s) Only  
☐ State Road(s) and Local Road(s)\* (Additional Permit Required: PennDOT TE-300 Form)

Listed in order of route, what street(s) would you like closed for this activity? (Add additional sheets, if needed)

Fraser Street - from Beaver to College

How long will the street closure be in effect? From: 12 pm To: 9 pm  
Will you need barricades and/or signs? ☐ No ☒ Yes  
Will you need assistance closing the street? ☐ No ☒ Yes  
Are you planning to use sidewalks only? ☒ No ☐ Yes  
Will you cross any state roads? ☒ No ☐ Yes (If yes, submit TE-300 Form)

**PLEASE NOTE: Sponsor is held responsible for the replacement value and/or repairs of missing cones, barricades, signs or message boards that are needed/required to close a street.**

\*Event organizers will be required to produce a copy of the PennDOT permit to State College Police Department representatives prior to the event. Failure to do so will prevent the police department from lawfully closing the affected street(s) and the event will not be permitted to take place.

Date of Submission: 1/23/24

### USE OF OTHER PROPERTY

If this event includes the use of a municipal park, please contact Centre Region Parks and Recreation by phone at (814) 231-3071 or by e-mail at [crpr@crcog.net](mailto:crpr@crcog.net) prior to submission of this form. Special park permits and conditions may also apply.

If any part of this activity is to take place on other public property, state road, on campus or on private property an official of the other government agency, university or property owner must sign here:

Name: (Print) \_\_\_\_\_ Title of Official: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Signature \_\_\_\_\_ Date: \_\_\_\_\_

\* **CHARITABLE CAUSE:** Is the Sponsor a non-profit organization? ☐ Yes ☐ No

If this activity is to benefit a charitable organization, name the recipient:  
\_\_\_\_\_

**HEALTH CONSIDERATIONS:** Will you be providing food or drink to the public? ☒ Yes ☐ No

\* If yes, have you made arrangements for approval/inspections with the Department of Ordinance Enforcement and Public Health? ☒ Yes ☐ No

If no, please complete the form that is attached to this application and obtain approval, prior to submission.

Applicant recognizes and AGREES that the Borough requires the proposed activity to be conducted in such a manner as to promote harmony in the area, insure domestic tranquility and be within the limits established by existing ordinances. By signature below, applicant AGREES to protect, defend, indemnify and hold the Borough of State College and its officers, employees and agents free and harmless from and against any and all losses penalties, damages, settlements, costs or other expenses or liabilities of every kind and character arising directly or indirectly from this special activity. Applicant further AGREES to investigate, handle, respond to, provide defense for, and defend any such claims, etc., at applicant's sole expense and AGREES to bear all other costs expenses related thereto, even if such claims are groundless, false or fraudulent.

Signature: *Henrique P. Santos* Date: 1/22/24

### OFFICE USE ONLY: ROUTING FOR APPROVAL:

Police Chief	_____	Public Works Director	_____	Risk Manager	_____
Parking Manager	_____	Planning Director	_____	Health Director	_____
				Borough Manager	_____

### THIS SERVES AS YOUR PERMIT

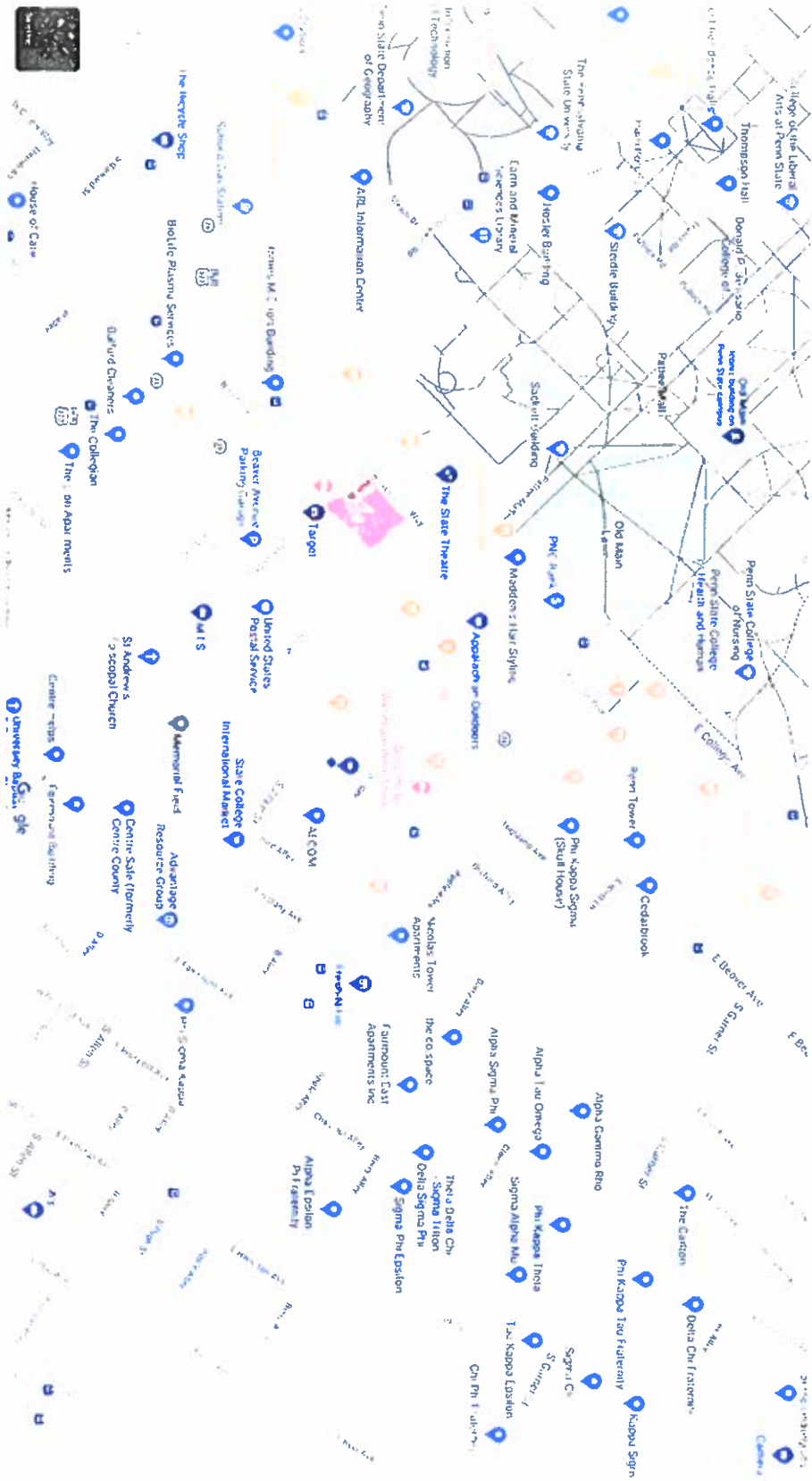
The State College Borough Council approved your application on: \_\_\_\_\_

Conditions (if any) are as follows: \_\_\_\_\_

*Any change in this application, whether approved at all levels or not, must be resubmitted and routed through the same channels as if it were a new application.*

### Helpful Hints:

**Print this map out and use a highlighter to highlight which streets and/or areas you would like to use**



OR

Create your own map digitally (Google, plotting the actual route in walking mode for walks/runs/parades, is highly recommended) highlighting the streets and/or areas you would like to use

*This map is provided for your convenience & shows the boundaries of the Borough.*



*Please provide additional or alternate maps, shows the boundaries of the Borough.*



Dear Business/Property Owner:

As noted below, we are planning to hold a special activity/event in the near future. As part of the State College Borough's Use of Public Property Application, we are required to notify affected business/property owners of the planned street use and/or closure(s) for our activity.

Event:	APIDA Festival
Event Date:	April 20th
Streets:	FRASER ST
Hours of planned use/closure:	3pm - 8pm 12(set up) 8-9(tear down)

Your signature below indicates that you have been informed of this event and our plan for street use and/or closure(s). Please also place an X in the appropriate column, either indicating your approval or that you foresee a possible issue affecting your business.

Sincerely,

Genevieve De Santos  
Signature of Event Organizer/Responsible Individual

1:30-11pm  
#  
10-5  
8:30-9  
9-4pm  
10-5  
12:5-10-5

Business/Property Owner Signature	Business Name/Property Owner Street Address	Date	Please check only one box		
			Approve	Not In Favor	Organizers Unable to Contact
	Target	1/22/24	✓		
	Federal Taphouse	1-22-24	✓		
	Hyatt	1-22-24	✓		
	Nittany Quill	1.22.24	✓		
	Planet Fitness	1/22/24	✓		
	Viva Bella	1/22/24	✓		
	k2 Roots	1/22/24	✓		
	Spentages				
	Comic Swap	1/22/24	✓		
	Fitted Cuts				
	Fraser Street Commons	1/22/24	✓		
	The Central PA Dance Workshop	01/22/24		✓	

cpdw.office@gmail

Dear Business/Property Owner:

As noted below, we are planning to hold a special activity/event in the near future. As part of the State College Borough's Use of Public Property Application, we are required to notify affected business/property owners of the planned street use and/or closure(s) for our activity.

Event:	APIDA Festival
Event Date:	April 20th
Streets:	FRASER ST
Hours of planned use/closure:	3pm - 8pm 12 (setup) 8-9 (tear down)

Your signature below indicates that you have been informed of this event and our plan for street use and/or closure(s). Please also place an X in the appropriate column, either indicating your approval or that you foresee a possible issue affecting your business.

Sincerely,

Deneire De Los Santos  
Signature of Event Organizer/Responsible Individual

	Business/Property Owner Signature	Business Name/Property Owner Street Address	Date	Please check only one box		
				Approve	Not in Favor	Organizers Unable to Contact
0-5:30		Reini Jewelers	1/22/24			
		The Makery • send email	1/22/24			
		CBICC	1/22/24	✓		
7-3pm		Duck Donuts	1/22/24	✓		
		D.I.D	1/22/24	✓		
10-4		United Way	1/22/24	✓		
1:30-9		Your Cigar Den	1/22/24	✓		
0-5:30		Signature Engraving	1/22/24	✓		
11-7		Penn Phone Fix	1/22/24	✓		
		State Theatre	1/22/24	✓		
9-5		Studio One				
Tues. 11-7pm		Juana's				

- Chaar Tae Kwon Do
- PA Chambers





## Application for Use of the Dr. Martin Luther King, Jr. Plaza

Date of Submission: 01/24/24

**NOTE:** By signing and submitting this form, you verify that this activity will be fully contained within the Dr. Martin Luther King, Jr. Plaza – no street closures are requested, and no alcohol will be served. If any of these things are not true, **STOP!** You must complete the Application for Use of Public Property form to secure the reservation.

Event Name: APIDA Festival

Name of Responsible Sponsor: Genieve De Los Santos

Address of Sponsor: 243 S. Allen St

Phone: 814 234 4401

State College PA 16801

Email: gdesantos@statecollegepa.us

Primary Contact Person: Chiruvu Zulu

Phone: (717) 234 4401

Email: 814 325 1194

Additional Contact Person: Nalini Krishnakurthy

Phone: \_\_\_\_\_

Email: nek102@psu.edu

Date of Activity: 4/20/24

Begin Time: 3:00

End Time: 8:00

Type of Activity: festival/celebration

Number Expected to Participate: 50

### ACTIVITY DETAIL

Describe your proposed activity in detail: (Use additional sheets, if needed)

The festival will have an Asian Night market theme that will consist of a dj, live music, dancers, performers, and vendors. Can we have a tent over the stage and 20-30 chairs facing the stage.

Does your activity require a street closure? ☐ NO ☒ YES

Will alcohol be served at your activity? ☒ NO ☐ YES

If yes to either of the above, **STOP!** This is the wrong application form. Please use the Application for Use of Public Property (Special Activity) form to make your request.

Do you require use of electricity for your event? ☐ NO ☒ YES

If yes, for what devices: dj / music in mlk plaza stage

List any planned entertainment (music, live or recorded, etc.) dj / ~~recorded~~ live music,

dancers

Are you requesting a noise waiver for your event? ☐ NO ☒ YES

### IMPORTANT NOTES:

- The Sponsor is responsible for any damage caused by applicant or applicant's attendees.
- State College Borough reserves the right to require a Certificate of Insurance based on the nature of the activity.



## Application for Use of the Dr. Martin Luther King, Jr. Plaza

### Rules and Regulations for Plaza Use:

1. Reservations through this application entitle the applicant to have exclusive use of the stage area of the Plaza. However, the Plaza is a public space and others are free to use pass through the Plaza or otherwise use spaces not in use for the reserved event.
2. Posting of signs, distributing, selling, servicing or renting of any supplies, equipment, material or commodity for any purpose, except by reservation, is prohibited.
3. No soliciting is permitted.
4. Any use of the Plaza between sunset and sunrise, except by reservation, is prohibited.
5. Possession or consumption of alcoholic beverages or illegal substances on the property is prohibited.
6. Boisterous, immoral or indecent conduct is prohibited.
7. Discarding of trash, garbage or other litter, except into containers provided for that purpose, is prohibited.
8. No fires shall be set in the Plaza, except as authorized by the reservation.
9. The discharge of firearms, bows, air guns, rockets, slingshots or fireworks is prohibited.
10. Operation of any drones, radio-controlled or tethered aircraft except by reservation, is prohibited.
11. Damaging, defacing, or removing municipal property, signs, structures, equipment or any other Plaza items or materials is prohibited.

Applicant recognizes and AGREES that the Borough requires the proposed activity to be conducted in such a Manner as to promote harmony in the area, ensure domestic tranquility and be within the limits established by the existing ordinances. By signature below, applicant AGREES that all participants in the activity will adhere to any COVID-19 Borough ordinance and Pennsylvania Department of Health COVID-19 mitigation requirements existing at the time of the event. Applicant further AGREES to bear all costs associated with any damage caused by the applicant or their attendees.

Signature: \_\_\_\_\_

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

### OFFICE USE ONLY – ROUTING FOR APPROVAL:

Community Engagement: \_\_\_\_\_

Plaza Reservation Coordinator: \_\_\_\_\_

Risk Manager: \_\_\_\_\_

Facilities Manager: \_\_\_\_\_

Borough Manager: \_\_\_\_\_

### THIS SERVES AS YOUR PERMIT

Your application was approved on: \_\_\_\_\_

Conditions (if any) are as follows:

☐ If this box is checked, applicant must supply a Certificate of Insurance indicating valid General liability coverage in an amount not less than \$1 million per occurrence and \$2 million aggregate, and naming the State College Borough as Additional Insured, at least for the event



**REGISTRATION OF A FOOD EVENT ON PUBLIC PROPERTY**

Division of Health & Neighborhood Services  
243 South Allen Street, State College, PA 16801  
(814) 234-7191 (phone) (814) 234-7197 (fax)  
[healthdept@statecollegepa.us](mailto:healthdept@statecollegepa.us)

This registration is intended for use by charitable organizations planning to give away food or drink items to the general public or sell food or drink items as a fundraiser. Groups planning to sell any food or drink must contact the State College Department of Ordinance Enforcement and Public Health and return the completed application along with proof of non-profit status to the above address prior to the activity.

If giving away or selling baked goods, please attach a list of the items to be given away or sold along with the preparer's name, address, and phone number. This information must be submitted with the application. Baked goods must be individually wrapped.

No grills, cooking devices or food preparation is permitted on-site (unless previously approved by the Division of Health and Neighborhood Services).

The Department discourages the sale of potentially hazardous foods or drinks (meats, fish, dairy, etc.). If potentially hazardous foods or drinks are to be given away or sold more than three times per calendar year then the charitable organization must contact the Department of Ordinance Enforcement and Public Health to obtain the appropriate license and pay any fees that may apply.

Pan Apida Circle, Apida Caucus, DEIB  
Name of Group

Genevieve De Los Santos  
Name of Representative

Borough of State College  
Address of Representative

814-234-4401  
Phone Number

gdelossantos@statecollegepa.us  
Email

April 20<sup>th</sup> 24  
Date(s) of Event

Fraser St & MLK Plaza  
Where will the event be held?

State College Borough  
Municipality

What types of food(s) or drink(s) will be provided? Asian Cuisine

Where will the food(s) or drink(s) be prepared? in a food truck. will provide licensing later

If the food was not prepared in a licensed facility, a sign must be posted in public view to that effect.

Genevieve De Los Santos  
Signature

1/23/2024  
Date

**FOR INTERNAL USE ONLY**

The State College Borough Council approved your application on: \_\_\_\_\_

Signature: \_\_\_\_\_

Applications must be submitted to the Division of Health and Neighborhood Services and approved prior to submission of an application for the use of public property (Special Activities Application) where food is to be served.

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## Borough of State College MEMORANDUM

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**to:** All Borough Employees

**from:** Ed LeClear, Director of Planning and Community Development

**re:** Conflict of Interest and Drug-Free Workplace Requirements for the Community Development Block Grant and HOME Programs

**date:** February 12, 2024

A Conflict of Interest Policy and Code of Conduct with Regard to HUD Programs was adopted by the State College Borough Council in 2005. This attached revised policy, adopted by Council in 2017, will be distributed annually to Borough employees. Please review the policy. Please send comments and questions to [eleclear@statecollegepa.us](mailto:eleclear@statecollegepa.us).

Additionally, the State College Borough Community Development Department is mandated by the U.S. Department of Housing and Urban Development to notify all employees who are engaged in the performance of the Community Development Block Grant program and the HOME Investment Partnerships program of the status of drugs in the workplace.

It is unlawful to manufacture, distribute, dispense, possess or use a controlled substance in the workplace. Any employee who does manufacture, distribute, dispense, possess or use a controlled substance in the workplace shall be prosecuted under all applicable State and Federal laws, and shall face appropriate personnel action, up to and including termination; or the employee shall participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.

Employees must notify the Borough in writing of their conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction. The State College Community Development Department is required to notify HUD, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of a conviction.

State College Borough has in place an Employee Assistance Plan designed to address drug and alcohol problems in the employee population. The telephone number for the Employee Assistance Plan is 1-800-252-4555; the website is [www.theEAP.com](http://www.theEAP.com).

If you have any questions or comments, please contact me at 814-234-7100.

## **BOROUGH OF STATE COLLEGE**

### **Conflict of Interest Policy and Code of Conduct With Regard to HUD Programs**

#### **SECTION 1 NON-PROCUREMENT CONFLICTS OF INTEREST**

##### **A. COVERED INDIVIDUALS:**

Any employee, agent, officer, elected official, appointed official or consultant of the Borough of State College (Participating Jurisdiction) or; any member of an employee's, agent's, officer's, elected official's or appointed official's immediate family; an employee's, agent's, officer's, elected official's or appointed official's partner; or an organization that employs or is about to employ any of the above.

##### **CONFLICTS PROHIBITED:**

No person(s) described in Paragraph 1 of section 1 who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME Investment Partnerships Program (HOME) or Community Development Block Grant (CDBG) or other U.S. Department of Housing and Urban Development (HUD) funds, or who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a real or apparent financial interest or financial benefit from a HOME, CDBG, or other HUD-assisted activity, or has a real or apparent financial interest in any contract, subcontract, or agreement with respect to HOME, CDBG, or other HUD-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild and in-laws of a covered person. Occupancy of a HOME-assisted unit by a covered person constitutes a financial interest.

##### **EXCEPTIONS:**

Threshold Requirements – Upon the written request of the participating jurisdiction, the U.S. Housing and Urban Development (HUD) or its successor, may grant an exception to the provisions of the CONFLICTS PROHIBITED of section 1 on a case-by-case basis when it determines that the exception will serve to further the purpose of the HOME, CDBG or other HUD program and the effective and efficient administration of the Borough's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure\* of the conflict and a description of how the public disclosure was made; and
2. An opinion from the Borough's attorney that the interest for which the exception is sought would not violate state or local laws.

\*The requirements for public disclosure include publication in a local newspaper or disclosure during an advertised public hearing.

Factors to be considered for Exceptions – In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraphs a. and b. above, HUD, or its successors, will consider the cumulative effect of the following factors, where applicable:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiary of the assisted activity, and the exception will permit such person(s) to receive generally the same interests or benefits as are being made available or provided to the group or class;
3. Whether the affected person(s) has withdrawn from his/her functions or responsibilities or the decision-making process with respect to the specific assisted activity in question;
4. Whether the interest or benefit was present before the affected person was in a position as described in the COVERED PERSONS Paragraph of this section
5. Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
6. Any other relevant considerations.

#### B. OWNERS AND DEVELOPERS:

Any owner, developer or sponsor of a project assisted with HOME, CDBG or other HUD funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community development organization (CHDO) when acting as an owner, developer or sponsor)

#### CONFLICTS PROHIBITED:

No person(s) described in Paragraph 2.A of section 2 may occupy, or appear to occupy, a HOME, CDBG or other HUD-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME, CDBG or other HUD funds to acquire or rehabilitate his or her principal residence or to an employee or agent to the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

#### EXCEPTIONS:

Upon written request of a housing owner or developer, the Borough may grant an exception to the provisions of the above paragraph of this section on a case by case basis when it determines that the exception will serve to further the purposes of the HOME, CDBG or other HUD program and the effective and efficient administration of the owner's or developer's HOME, CDBG or other HUD-assisted project. In determining whether to grant a requested exception, the Borough shall consider the following factors:

1. Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the

- exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class:
2. Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
  3. Whether the tenant protection requirements of Sec. 92.253 are being observed;
  4. Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and
  5. Any other factor relevant to the Borough's determination, including the timing of the requested exception.

## SECTION 2 PROCUREMENT CONFLICT OF INTEREST

### COVERED INDIVIDUALS:

Any employee, officer, or agent of the Borough of State College (Participating Jurisdiction).

### CONFLICTS PROHIBITED:

The CDBG, HOME and other HUD Programs follow the procurement policy of the Borough of State College located in the Borough of State College Code of Ordinances, Chapter 1, Part N. If any provisions of 2 CFR 200.318, 24 CFR 570.611, and 24 CFR 92.356 are not included or conflict with the Borough's Procurement Policy, the provisions of 2 CFR 200.318, 24 CFR 570.611, and 24 CFR 92.356 shall supersede the Borough's Procurement Policy.

No Covered Individuals in section 2 may participate in the selection, award or administration of a contract supported by HOME, CDBG or other HUD Program if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for award:

- employee, agents, or officer of the Borough of State College;
- any member of an employee's, agent's or officer's immediate family;
- an employee's, agent's or officer's partner; or
- an organization that employs or is about to employ any of the above

No employee, officer, or agent of the Borough or subrecipient may solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements.

### EXCEPTIONS:

There are no exceptions for real or apparent procurement conflicts of interest.

A request for a regulatory waiver can be submitted pursuant to 24 C.F.R. § 5.110

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).



SECTION 3 CODE OF CONDUCT:

Persons covered in section 2, paragraph 1, are expressly forbidden from soliciting or accepting money, gifts, gratuities, services, favors, or anything of monetary value (excepting unsolicited calendars, pens, or other items of nominal value used as an advertising medium) from any person, company, firm, or corporation to which any purchase order or contract is, or might, be awarded or from a party to any potential subcontract.

The Borough shall also take disciplinary action in accordance with the Borough Personnel Rules and Regulations against any covered persons in section 2 paragraph 1 who violate this conflict of interest policy.

Employees will receive a copy of the conflict of interest policy on an annual basis as a mailer included in a paycheck. Elected and appointed officials will receive a copy of the policy at a regular meeting of their respective council, authority, board or commission. Distribution of the policy will be noted in the minutes of the meeting. Members who are absent will receive a copy by mail. Consultants and agents will be provided a copy of the policy as part of their contracts.

SECTION 4 SUB-RECIPIENTS:

Applicable Conflict of Interest and Procurement Policies for the Borough's subrecipients are covered under CFR 200.318, 24 CFR 570.611 and 24 CFR 92.356. Each subrecipient has developed its own Conflict of Interest Policy and Procurement Policy in accordance with the applicable regulations.

Authorized Official: Ed LeClear, Director of Planning and Community Development  
243 S. Allen Street  
State College, PA 16801  
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Summary of Revisions:

Adopted by the State College Borough Council on April 18, 2005.

Revised by staff on April 30, 2015.

Revised policy adopted by the State College Borough Council on November 6, 2017.