General Meeting Information
College Township offers both in-person and virtual meeting attendance for all public meetings. To attend in-person, meetings will be held at 1481 E. College Avenue, State College PA, 16801, 2nd floor meeting room. To attend virtually, please see the information below.

To Attend the LIVE Meeting Via Zoom on Computer or Smart Phone:
- Click HERE to REGISTER for the meeting via Zoom. Once registered, you will receive a confirmation email containing information about joining the meeting. See the College Township website at www.collegetownship.org for detailed instructions on how to participate via zoom.

Written public comments, for specific agenda items, may be submitted until 12:00 noon the day of the meeting by emailing jsnyder@collegetownship.org.

College Township is committed to making meetings accessible to everyone. If you require an accommodation or service to fully participate, please contact Jennifer Snyder at jsnyder@collegetownship.org or 814-231-3021.

COUNCIL MEMBERS:
Dustin Best, Chair.................................. COG Executive Committee
COG Parks Capital Committee
COG Climate Action and Sustainability Committee (CASC)
Spring Creek Watershed Commission (SCWC)

Eric Bernier, Vice Chair......................... COG Land Use Community Infrastructure Committee (LUCI)
COG Facilities
CC Metropolitan Planning Organization Coordinating Committee (CCMPO)

Rich Francke........................................ COG Finance Committee
COG Parks & Recreation Governance Committee

Susan Trainor....................................... COG Public Safety
CT Local Traffic Advisory Committee (LTAC)
CT Industrial Development Authority (CTIDA)

Tracey Mariner..................................... Centre Area Cable Consortium
COG Human Resources Committee

COLLEGE TOWNSHIP COUNCIL MEETING

CALL TO ORDER/PLEDGE OF ALLIEGANCE

PUBLIC OPEN DISCUSSION: For any item not on this agenda. Please limit comments to five minutes.
NEW AGENDA ITEMS: Majority vote of Council required to add business item(s) to the agenda.

SPECIAL PRESENTATION: SP-1 Pennsylvania Emergency Management Agency Presentation
Jonathan Risley, Assistant Chief of Emergency Management, Regional Fire Protection and Emergency Management, CRCOG

REPORTS:

a. Manager’s Update
b. COG Regional, County, and Liaison Reports
c. Staff/P.C./Other Committee Reports
d. Diversity, Equity, Inclusion & Belonging Reports (Public invited to report)
   - Proclamation P-24-01 recognizing February as Black History Month
     o Special Guests – Gary Abdullah, Takina Walker

To review CT’s DEIB Calendar, please scan:

CONSENT AGENDA: CA-1 Minutes
CA-2 Correspondence
CA-3 Action Items

OLD BUSINESS: OB-1 Capital Improvement Plan Review (M. Bloom)
OB-2 Solar Power Purchasing Agreement Discussion/Action (M. Bloom)

NEW BUSINESS: No New Business Items

STAFF INFORMATIVES (Informational Only)

COUNCIL/STAFF OTHER MATTERS (Informational Only)

ADJOURNMENT
CA-1 Minutes, Approval of
   a. February 1, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Letter from Penn Terra Engineering, dated February 1, 2024, regarding Time Extension request for Jersey Mike’s to June 3, 2024
   b. Email from CATA, dated February 7, 2024, regarding support letter for seeking federal funding
   c. Letter from First Night State College, dated February 5, 2024, regarding appreciation for sponsorship of a First Night State College ice sculpture
   d. Letter from Centre County Interfaith Coalition for Gun Safety, dated February 7, 2024, regarding panel discussion on gun violence

CA-3 Action Item, Approval
   (NONE)
EM Overview
Overview

- What is EM?
- Codes, Laws & Rules
- COG & PSU
- Services
- Requirements
- Summary

A copy of the documents, links & PowerPoint can be found here.
What is Emergency Management?

• “is the managerial function charged with creating the framework within which communities reduce vulnerability to threats/hazards and cope with disasters.” – FEMA

• “The judicious planning, assignment and coordination of all available resources in an integrated program of prevention, mitigation, preparedness, response and recovery for emergencies of any kind, whether from attack, man-made or natural sources.” – PA Title 35

• What does this mean for you?
Consolidated Statues – Title 35

§ 7501. General authority of political subdivisions.

(a) Establishing emergency management organization.--Each political subdivision of this Commonwealth is directed and authorized to establish a local emergency management organization in accordance with the plan and program of the Pennsylvania Emergency Management Agency. Each local organization shall have responsibility for emergency management, response and recovery within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such services outside of its jurisdictional limits as may be required under this part.
COG & PSU

• COG Articles of Agreement – Emergency Management
• CRCOG & PSU
  • Established Aug 2002
  • Joint Plan
  • EOCs
  • Resources
Services

• 1 FTE & 1 PT
• Liaison with 6 municipalities & PSU to Centre County
• Special Events Planning in Centre Region
• Situation Awareness
• Disaster Response
  • Emergency Declarations
  • Shelters
  • IMT/ICS
  • Public & individual assistance support
• Public Education
Requirements

Elected Officials
Required
• IS – 100
• IS – 700
Recommended & Advanced
• IS – 200
• IS – 800
• ICS – 300*
• ICS – 400*

Emergency Management Coordinators
Elected Courses
PEMA Certifications
• Associate*
• Professional*
National Emergency Management Academies*
• Basic
• Advanced
• Executive
A copy of the documents, links & PowerPoint can be found here.
Overview

What is a PPA?

Electricity Rates & Project Impacts

Next Steps
Power Purchase Agreement Process

- Doable
- Climate action
- Public wants it
- Fiscally responsible

SPPA Working Group

- 54% State College Area School District
- 17.5% State College Borough Water Authority
- 7.8% Centre County Government
- 2.6% Centre County Housing Authority
- 7.5% State College Borough
- 1.9% Ferguson Township
- 1.4% Patton Township
- 1.1% College Township
- 0.3% Harris Township
- 1.3% College Township Water Authority
- 0.9% Centre Hall Potter Sewer Authority
- 4% Centre Region Council of Governments
# Electricity Procurement

<table>
<thead>
<tr>
<th>Current</th>
<th>Future</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Electricity Contract, 1 – 5 years</td>
<td>• Fixed rate for electricity from solar, 15 years</td>
</tr>
<tr>
<td>• West Penn Power (WPP) Electricity invoice, monthly, bundled distribution and generation costs</td>
<td>• WPP Electricity invoice, monthly, distribution</td>
</tr>
<tr>
<td></td>
<td>• Direct Energy invoice, monthly, generation</td>
</tr>
<tr>
<td></td>
<td>• Energy Services invoice, annually</td>
</tr>
</tbody>
</table>
Power Purchase Agreement Structure

**Solar Developer**
- **Prospect 14**
  - Contract is 15 years
  - Entities receive % of electricity from solar generation
  - The solar PPA is at a “fixed” price
    - There is a 1.5% escalator and settlement cost of ~+/- 5% annually

**Retailer**
- **Direct Energy**
  - Contract is 5 years
  - Manages solar distribution
  - For the energy usage not-covered by solar generation
    - Either fixed price or left at market price

**Energy Services**
- **GreenSky**
  - Contract is 5 years
  - Monitor the PPA
  - Submit monthly approvals
  - Periodic review of charges and generation
  - Advise on non-solar electricity and RECs
Partnership Goal #1: Large-scale Renewables PPA Structure – visual aid

Buyers

SOLAR DEVELOPER
Prospect 14

RETAILER
Direct Energy

Centre County Solar Group

GreenSky Development Group

Renewables Generator/Developer

Utility
Electricity Supply: Projected Rates per kWh

<table>
<thead>
<tr>
<th>Year 1 (2026)</th>
<th>Year 10 (2035)</th>
<th>Year 15 (2040)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PPA Rate</td>
<td>PPA Rate</td>
<td>PPA Rate</td>
</tr>
<tr>
<td>0.0459</td>
<td>0.0525</td>
<td>0.0565</td>
</tr>
<tr>
<td>REC .0035</td>
<td>Settlement</td>
<td>Settlement</td>
</tr>
<tr>
<td>0.069</td>
<td>0.076</td>
<td>0.081</td>
</tr>
<tr>
<td>Fees</td>
<td>Settlement</td>
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<tr>
<td>0.0208</td>
<td>0.0210</td>
<td>0.0212</td>
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<tr>
<td></td>
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<td>0.064</td>
<td>0.071</td>
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<tr>
<td></td>
<td>Settlement</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.075</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Variability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>+/- 5%</td>
<td></td>
</tr>
<tr>
<td>Grid Passthrough</td>
<td>Retail Adder</td>
<td>Management Servicing Contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Electricity</td>
</tr>
</tbody>
</table>
Objective: Obtain lowest cost of alternative source electricity for entire group with the option to purchase REC’s to gain carbon reduction goals at the organization level.
Electricity Supply: Year 1 Rate Comparison

Fees

<table>
<thead>
<tr>
<th>SCBWA Contracted Rate (Dec 2025)</th>
<th>0.0735</th>
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</thead>
<tbody>
<tr>
<td>PPA Rate (2025-26)</td>
<td>0.05604</td>
</tr>
<tr>
<td>Fees</td>
<td>0.01746</td>
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</table>

Potential for Savings: Year 1

Estimated savings in Year 1 for the entire Working Group =

\[ \text{Settlement} = 0.0045 \times 4,847,987 \text{ kWh} = 21,816 \]

\[ \text{Fees} = 0.0095 \times 4,847,987 \text{ kWh} = 46,056 \]

\[ \text{Estimated savings} = 124,000 - 263,000 \]

Over 15 years = $1.8 million

Example:

\[ = 0.0045 \times 4,847,987 \text{ kWh} = 21,816 \]

\[ = 0.0095 \times 4,847,987 \text{ kWh} = 46,056 \]

State College Borough Water Authority
# PPA PROJECT COSTS

<table>
<thead>
<tr>
<th></th>
<th>Consultant</th>
<th>Legal Review</th>
<th>Total</th>
<th>P14 Payment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL WG</td>
<td>$69,725</td>
<td>$165,000</td>
<td>$234,725</td>
<td>($60,000)</td>
<td>$174,725</td>
</tr>
<tr>
<td>College Twp</td>
<td>$831</td>
<td>$2,062</td>
<td>$2,893</td>
<td>($787)</td>
<td>$2,106</td>
</tr>
<tr>
<td>CTWA</td>
<td>$1,528</td>
<td>$3,792</td>
<td>5,321</td>
<td>(1,447)</td>
<td>$3,873</td>
</tr>
</tbody>
</table>

2024-2025 timeframe
We are part of a solar project that is helping to diversify the PA electric grid

- 22 MW solar array in Centre County
- Provide 82% of the total electricity used by the 12 member organizations
- It will avoid 16,000 MTCO$_2$e emissions from the PA electric grid
- It is equivalent to 3,823 homes’ electricity use for one year
Next Steps

**February**

Boards/Council discuss the PPA contracts

**Feb 14**

SPPA Working Group Meeting: review comments and questions
  - Lead solicitor for the group
  - Pitfalls and risk document - *coming*

**Feb 28**

SPPA Working Group Meeting: review and forward final contracts to boards/councils for approval

**March/April**

Boards and councils approve the PPA contracts

**April/May**

PPA Contracts are awarded
Questions?
COLLEGE TOWNSHIP
MANAGER’S UPDATE

February 15, 2024

Status: (C) = Complete; (I) – Incomplete; (D) = Dropped; (R) - Rewritten

(I) 21-04 Dale Summit Small Area Plan (SAP)

Comments: 12/19/23 Staff to discuss review process for approval of Dale Summit Plan and Form Based Code review with PC.

Comments: 1/29/24 Joint meeting of CTC and PC to review and confirm completed Dale Summit Area Plan.

Comments: 1/29/24 DPZ Draft Form Based Code distributed to CTC and PC in advance of next joint meeting in March of 2024.

Comments: 2/6/24 Next PC/Council Special Meeting set for March 26 at 6:00 PM.

(I) 19-08 Solar Power Purchasing Agreement

Comments: 1/22/24 SPPA Working Group met to review completed contracts and plan for participant approvals.

Comments: 2/6/24 To be discussed at 2/15 CT Council meeting.

(I) 21-05 Path to Campus (East College Avenue Shared Use Path)

Comments: 12/4/23 Based on resident request, staff is investigating the potential for crowdsourcing funds for infrastructure projects.

Comments: 12/4/23 Announcement of grant recipients for the TASA and CFA-MTF programs are anticipated in early 2024.

(I) 21-06 Nittany Casino at Nittany Mall

Comments: 1/25/23 PA Gaming Control Board awarded Category 4 license to S23C Gaming. Appeals to the PAGCB decision must be filed within 30-days and any appeal of PAGCB decision will be heard by PA Supreme Court.

Comments: 2/22/23 Zoning permits for commercial alterations submitted for former Macy’s building by 2901 ECA Associates. Projected value of work was estimated at $33 million.

Comments: 9/12/23 Pending court cases in Commonwealth Court consolidated to State Supreme Court.

(I) 24-01 Aspen: Non-payment of Obligations
Comments: 1/30/23 Solicitor letter to Aspen Heights Partners concerning non-payment of outstanding invoices totaling $273,731.66. (MU 24-01)
1. REPORTING ON: Facilities Committee

DATE: Tuesday 2/6/24

2. REQUIRES COUNCIL COMMENTS BACK TO COMMITTEE: YES X NO

3. BRIEF OVERVIEW OF MEETING:

- **POWER PURCHASE AGREEMENT:**
  The committee received a presentation from the Project Management Team on the Power Purchase Agreement (PPA). The members asked several questions and offered some suggestions on changes to the presentation prior to the Project Management Team presenting the draft agreements to the individual municipalities prior to our next meeting in March. At that meeting, the committee will be asked to consider a recommendation to the Executive Committee on the PPA contract approval.

  SPPA - Centre Region Council of Governments (crcog.net)

- **LONG RANGE FACILITIES PLAN UPDATE:**
  Staff and the Chair shared developments that have occurred since the January Facilities Committee meeting:
  - Later in January, Mr. Kimmel and his team (Kimmel Bogrette Architecture + Site, Inc) visited the Centre Region where the Executive Director took them on a driving tour to familiarize them with the COG facilities. Staff then provided them with copies of leases, studies, etc. so they can prepare a draft scope of work for the Facilities Committee to consider.

- **FACILITIES POSITION UPDATE:**
  The Executive Director reviewed the latest draft of the Facilities Administrator position which is budgeted to be filled starting in April 2024. The draft included several significant changes from the previous Facility Project Manager position like:
  - Changed the title to: *Facilities Administrator*
  - Strengthened the responsibilities related to the five-year Capital Improvement Program
  - Removed the scope related to project and fleet management
  - Removed the scope for long-range planning given the progress being made with Kimmel Bogrette Architecture + Site, Inc.
  - The classification of the position was lowered by one grade

  After discussion suggesting both a heavier emphasis/priority on sustainability and flexibility with the (starting) salary range, the committee conditionally moved to support the Facilities Administrator as presented.

- **FUTURE ACTIVITIES**
  The Executive Director briefly reviewed a table (included) listing the variety of challenges facing the COG in the upcoming year; in part, to keep organized, and to manage expectations and workloads, as the management team prepares for the Executive Director’s retirement on June 1, 2024.

Adjourned at 10:03
<table>
<thead>
<tr>
<th>Item</th>
<th>Key Committee/Board/Authority</th>
<th>Other Committees</th>
<th>Staff Time Commitment</th>
<th>Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Workload</td>
<td>All</td>
<td>All</td>
<td>High</td>
<td>All</td>
</tr>
<tr>
<td>Staffing (filling positions - FT and Seasonal)</td>
<td>CRPR Authority</td>
<td>HR, Finance, General Forum</td>
<td>High</td>
<td>CRPR</td>
</tr>
<tr>
<td>Funding remaining Phase I of WRRP / Hess Restrooms</td>
<td>CRPR Authority</td>
<td>Authority, Finance, General Forum</td>
<td>Medium</td>
<td>CRPR</td>
</tr>
<tr>
<td>MMNC Boardwalk</td>
<td>CRPR Authority</td>
<td>Finance, General Forum, GF</td>
<td>High</td>
<td>CRPR</td>
</tr>
<tr>
<td>Budget Training</td>
<td>Finance</td>
<td>General Forum</td>
<td>Very High</td>
<td>Admin. Finance</td>
</tr>
<tr>
<td>Roll Out of CIP, Program Plan, Budget</td>
<td>Finance</td>
<td>General Forum</td>
<td>High</td>
<td>Admin. Finance</td>
</tr>
<tr>
<td>ERP</td>
<td>HR</td>
<td>HR, Others</td>
<td>High</td>
<td>Admin. HR</td>
</tr>
<tr>
<td>Recruitment (ED, Facilities, New, Planning, Insp/FF)</td>
<td>HR</td>
<td>Finance, General Forum?</td>
<td>High</td>
<td>Admin. HR/Fin</td>
</tr>
<tr>
<td>Benefits Review / Budget Review (COLA, Benefits)</td>
<td>HR</td>
<td>Finance, General Forum?</td>
<td>High</td>
<td>Admin. HR</td>
</tr>
<tr>
<td>Job Description Template</td>
<td>Library</td>
<td>Finance</td>
<td>Medium</td>
<td>Library</td>
</tr>
<tr>
<td>District-related Budget Impact</td>
<td>Library</td>
<td>GF - Info only</td>
<td>Medium</td>
<td>Library</td>
</tr>
<tr>
<td>Finalize Library Strategic Plan</td>
<td>LUCI</td>
<td>HR</td>
<td>High</td>
<td>CRPA</td>
</tr>
<tr>
<td>Staffing (filling positions) and/or retooling</td>
<td>LUCI</td>
<td>Finance</td>
<td>Medium</td>
<td>CRPA</td>
</tr>
<tr>
<td>Funding Formula (with or without additional muni reductions)</td>
<td>CRPA</td>
<td>LUCI + GF/municipal</td>
<td>High</td>
<td>CRPA</td>
</tr>
<tr>
<td>Comprehensive Plan</td>
<td>Public Safety</td>
<td>HR, General Forum</td>
<td>High</td>
<td>CRCA/Fire</td>
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<tr>
<td>Inspector/Firefighter Recruitment (and possible unionization)</td>
<td>Public Safety</td>
<td>General Forum</td>
<td>Low</td>
<td>Fire</td>
</tr>
<tr>
<td>Finalize and Approve PSU/Fire Agreement</td>
<td>Public Safety</td>
<td>Finance, General Forum?</td>
<td>High</td>
<td>Fire</td>
</tr>
<tr>
<td>HVAC upgrade for Patton Station</td>
<td>Public Safety</td>
<td>Finance, General Forum?</td>
<td>High</td>
<td>Fire</td>
</tr>
</tbody>
</table>
January 30, 2024

Aspen Heights Partners
David Helfrich / Danielle Bleier
8008 Corporate Center Drive
Suite 201
Charlotte, NC 28226
dbleier@ahpliving.com

1275 State College PA Properties I K6, LLC
c/o Aspen Heights Partners
1301 S. Capital of Texas Highway
Suite B-201
Austin, TX 78746
ATTN: Jenni Simmons

Dear Sirs:

I am the Solicitor for College Township, Centre County, Pennsylvania. I am writing to you on behalf of the Township regarding seriously overdue invoices which must be paid immediately. The invoices, copies of which are attached, include:

1. $100,000 for a future right turn lane - Invoice 7126
2. $75,000 for a multi-use pathway - Invoice 7127
3. $35,000 for grading adjacent to College Avenue.
4. $4200 for developers one-half share of Workforce Housing Administration fee - Invoice IWFH-2023
5. $59,531.66 for paving work - Invoice 7142

Total invoices: $273,731.66 all due and payable to College Township

The purpose of this letter is to advise you that unless all of these invoices are paid in full on or before February 29, 2024, the Township will avail itself of all available legal remedies. The Township’s enforcement remedies include those provided for in Pennsylvania Statute 53 P.S. Section 10513.3, which provides violation of the Subdivision and Land Development Ordinance of up to $500 per day plus all court costs, including reasonable attorneys fees incurred by the municipality. If we are forced to seek a remedy through the courts we will seek the invoice amounts plus $500 per day from the original invoice date, plus all legal fees.

Thank you for your anticipated cooperation in resolving these invoices.

Sincerely,

Louis T. Glantz

LTG:ksr
Enclosures
cc: College Township
# COLLEGE TOWNSHIP
1481 E College Ave
State College  PA  16801

Phone: 814-231-3021

<table>
<thead>
<tr>
<th>Date</th>
<th>Invoice #</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/17/2023</td>
<td>7126</td>
<td>1</td>
</tr>
</tbody>
</table>

**Bill To:**
1275 State College Properties I K6
350 Squirrel Drive
State College  PA  16801

**Customer No.:** 199
**Due Date:** 12/17/2023

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Description</th>
<th>Unit Price</th>
<th>Net Amount</th>
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<tbody>
<tr>
<td>1.00</td>
<td>Turning Lane Squirrel Drive-Aspen Heights</td>
<td>100,000.00</td>
<td>100,000.00</td>
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</table>

Conditions of Final Approval from College Township Council for Land Development Aspen Heights Project

**Balance Due:** 100,000.00

Please cut and return w/payment

Make checks payable to: 1275 State College Properties I K6

<table>
<thead>
<tr>
<th>Invoice #: 7126</th>
<th>Amount Due: 100,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer #: 199</td>
<td>Customer Type: LandDevelopment</td>
</tr>
<tr>
<td>Amount Paid: $</td>
<td></td>
</tr>
</tbody>
</table>
COLLEGE TOWNSHIP
1481 E College Ave
State College PA 16801

Phone: 814-231-3021

Bill To: 1275 State College Properties I K6
350 Squirrel Drive
State College PA 16801

Date | Invoice # | Page
--- | --- | ---
11/17/2023 | 7127 | 1

Customer No: 199
Due Date: 12/17/2023

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Description</th>
<th>Unit Price</th>
<th>Net Amount</th>
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</thead>
<tbody>
<tr>
<td>1.00</td>
<td>Multi-Use Path Connection to PSU-Aspen Heights</td>
<td>75,000.00</td>
<td>75,000.00</td>
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</table>

Conditions of Final Approval from College Township Council for Land Development Aspen Heights Project

Balance Due 75,000.00

Please cut and return w/payment

Make checks payable to:
College Township
1481 E College Avenue
State College, PA 16801

Invoice #: 7127

Customer # 199
Customer Type: LandDevelopment

Amount Due: 75,000.00

Amount Paid: $
## COLLEGE TOWNSHIP
1481 E College Ave  
State College  PA  16801

Phone: 814-231-3021

Bill To:  1275 State College Properties I K6  
350 Squirrel Drive  
State College  PA  16801

<table>
<thead>
<tr>
<th>Date</th>
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<th>Page</th>
</tr>
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<tbody>
<tr>
<td>11/17/2023</td>
<td>7128</td>
<td>1</td>
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Customer No.  199  
Due Date:  12/17/2023

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Description</th>
<th>Unit Price</th>
<th>Net Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td>Grading Work Intersection Squirrel Dr &amp; College Ave</td>
<td>35,000.00</td>
<td>35,000.00</td>
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</table>

Conditions of Final Approval from College Township Council for Land Development Aspen Heights Project

Balance Due  35,000.00

Please cut and return w/payment

Make checks payable to:  1275 State College Properties I K6  
Invoice #:  7128  
Amount Due:  35,000.00

Customer #:  199  
Customer Type:  LandDevelopment

Amount Paid:  

---

EXHIBIT 3
# INVOICE

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
</table>
| Centre County Housing and Land Trust  
P.O. Box 141  
State College, PA 16804  
P: (814) 571-1179 | Aspen - State College  
204 E Calder Way, Unit 208  
State College PA United States 16801  
P: (582) 205-2550 |

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2023 Workforce Housing Administration Fees</td>
<td>$4,200.00</td>
</tr>
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---

As the Administrator for College Township's Workforce Housing Program, it has been a pleasure to assist in the process for income-qualified lessees to participate in the Aspen-State College development.
COLLEGE TOWNSHIP
1481 E College Ave
State College  PA  16801

Phone: 814-231-3021

Bill To:  1275 State College Properties I K6
          350 Squirrel Drive  
          State College  PA  16801

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Due Date: 12/31/2023

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HRI, Inc. Invoice #3453515

Balance Due 59,531.66

Please cut and return w/payment

Make checks payable to: 1275 State College Properties I K6
College Township
1481 E College Avenue
State College, PA 16801

Invoice #: 7142
Customer # 199
Customer Type: 
Amount Due: 59,531.66
Amount Paid: $
PC was presented the Mt. Nittany Elementary School Sketch Plan.
There was some concern with the parking lot layout and also the general amount of parking available for the entire complex.
There was also a concern about the softball field rotation plan.

Workforce Housing was presented by staff and discussed.
The new ordinance will be offered at the PC meeting on 2.20.
PC was very pleased about this process.
Thanks, Matthew Fenton.
Sent from my iPad
A PROCLAMATION OF THE TOWNSHIP OF COLLEGE, CENTRE COUNTY, PENNSYLVANIA TO OFFICIALLY RECOGNIZE BLACK HISTORY MONTH

WHEREAS, each year, Black History Month is observed in February; and

WHEREAS, the origins of Black History Month date back to 1915 when Dr. Carter G. Woodson founded the organization known today as the Association for the Study of African American Life and History; and

WHEREAS Black History Month is a chance to celebrate Black achievement, provide a reminder to take stock of where systemic racism persists, and give visibility to the people and organizations creating change.

WHEREAS the theme for 2024 is “African Americans and the Arts” and explores the key influence African Americans have had in the fields of “visual and performing arts, literature, fashion, folklore, language, film, music, architecture, culinary and other forms of cultural expression.”

WHEREAS, it is essential that we take note of the accomplishments, hardships, achievements, and struggles of Black Americans, and take time to celebrate the immeasurable contributions of the descendants of enslaved peoples in our neighborhoods, our township, our country, and our society.

NOW, THEREFORE, the College Township Council does hereby proclaim the month of February 2024 as Black History Month, and acknowledge the national theme of “African Americans and the Arts.” We would like to put emphasis on the importance of being an ally to marginalized communities for all 365 days in a year.

THIS PROCLAMATION AUTHORIZED THIS 15th Day of February, 2024, by the College Township Council, Centre County, Pennsylvania.

COLLEGE TOWNSHIP COUNCIL

ATTEST: Dustin Best, Chair

Adam T. Brumbaugh, Township Secretary/Manager
CA-1 Minutes, Approval of
   a. February 1, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Letter from Penn Terra Engineering, dated February 1, 2024, regarding Time Extension request for Jersey Mike’s to June 3, 2024
   b. Email from CATA, dated February 7, 2024, regarding support letter for seeking federal funding
   c. Letter from First Night State College, dated February 5, 2024, regarding appreciation for sponsorship of a First Night State College ice sculpture
   d. Letter from Centre County Interfaith Coalition for Gun Safety, dated February 7, 2024, regarding panel discussion on gun violence

CA-3 Action Item, Approval
   (NONE)

Photo by Frank Scott, IV
CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the February 1, 2024, regular meeting of the College Township (CT) Council at 7:05 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that Council met in an Executive Session to discuss personnel.

PUBLIC OPEN DISCUSSION: No Public Open Discussion Items brought forward.

NEW AGENDA ITEMS: No New Agenda Items were added to the agenda.

P-1  320 Struble Road Building Addition Final Land Development Plan

Ms. Schoch, AICP, Principal Planner, offered that C. Wayne Company LP is proposing a building addition to their existing property located at 320 Struble Road, which was originally Lot 2A of the Ruetgers Organics Subdivision. The property, tax parcel 19-0424E, is currently zoned I-1 General Industrial. The plan proposes a 7,064 square foot building addition to the existing 8,114 square foot warehouse currently utilized by Pierce-Phelps, Inc. for storage and distribution of HVAC equipment.

As the parcel is part of the former Ruetgers-Nease chemical plant, this Superfund site (Superfund gives the Environmental Protection Agency funds and authority to clean up contaminated sites) has limited uses for development.

Mr. Mark Toretti, Penn Terra Engineering, offered information regarding parking, traffic flow, impervious coverage, sidewalks and discussed the entrance light with Council. Council discussed including a note on the plan that the entrance light be activated and maintained as per the Township Code.

Mr. Bernier made a motion to approve the 320 Struble Road Building Addition Final Land Development Plan dated December
18, 2023, and last revised January 8, 2024, subject to the following conditions:

1. Within ninety days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety day recordation time requirement will render the plan null and void.

2. Pay all outstanding review fees.

3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from Staff.

4. Fully comply with College Township Code Section 180-12.

5. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

6. Add a note to the plan that as per §180-16.3B, the owner shall repair, activate and maintain entrance light to the satisfaction of Staff.

Ms. Trainor seconded the motion.
Motion carried unanimously.

P-2 Mount Nittany Elementary School Sketch Plan

Ms. Schoch, AICP, Principal Planner, introduced Mr. Todd Smith, ELA, Project Manager, and Mr. Mike Fisher, Director of Physical Plant, State College Area School District, who introduced the Mount Nittany Elementary School Sketch Plan.

Mr. Smith offered that the preliminary plan for the Mount Nittany Elementary School proposes a 26,000 square foot building addition to the existing Mount Nittany Elementary school to accommodate increased enrollment. A passenger vehicle access/drop-off would be provided by constructing a new access drive connected to the existing elementary/middle school parking lot and running in a southerly direction parallel to the existing building and the new addition. The new access drive is intended to be used by parents for drop-off and pick-up. Mr. Smith offered to Council that this access drive provides enough space for all types of potential vehicle uses, i.e. school buses, charter buses, delivery trucks.

Mr. Smith offered that 44 parking spaces will be added to the campus. Pedestrian connections would be maintained to the existing streets and new connections within the campus would be developed to ensure pedestrian mobility. Playing fields to the east will be shifted for the addition and access drive/parking. Stormwater is addressed by a new basin and an existing basin.

Council offered comments related to pedestrian traffic and crosswalks, timeline of the project and cut-through traffic. Mr. Fisher expects the plan to be presented to Council no later than June with construction to being in late fall of 2024, early spring of 2025.

REPORTS:

a. Manager’s Update

Mr. Adam Brumbaugh, Township Manager, offered that Staff distributed to Council and the Planning Commission the Draft Form Based Code and the completed Dale Summit Area Plan in preparation for the next joint meeting which has now been scheduled for March 26 at 6:00 PM. Consultants DPZ will be in attendance at this meeting.
Additionally, Mr. Brumbaugh offered the Solar Power Purchasing Agreement Working Group met to review completed contracts for participant approvals. This discussion will be on the February 15, 2024, CT Council meeting’s agenda.

b. COG Regional, County, Liaisons Reports

COG Land Use Community Infrastructure Committee (LUCI): Mr. Bernier reported the LUCI Committee met on February 1, 2024, and received an update on the Comprehensive Plan and discussed the PSU Roadmap recently released entitled “Road Map for University’s Future”.

COG Parks Governance Committee: Mr. Francke reported the Parks and Recreation Governance Committee met on January 24, 2024, and held their reorganization meeting, reviewed the matrix of responsibilities of the Special Committee and discussed the mission and purpose of the authority.

c. Staff/Planning Commission/Other Committees

Mr. Fenton, Planning Commission (PC) Liaison to Council, offered that the PC has not met since the last CT Council meeting. Nothing to report.

d. Diversity, Equity, Inclusion & Belonging (DEIB) Reports (Public Invited to Report)

Mr. Brumbaugh, Township Manager, offered that February is the start of Black History Month. At the February 15, 2024, CT Council will bring forward a proclamation recognizing Black History Month.

CONSENT AGENDA:

CA-1 Minutes, Approval of
   a. January 18, 2024, Regular Meeting
   b. January 24, 2024, Joint Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Email from Daniel Materna, dated January 27, 2024, regarding casino
   b. Email from Susan Strauss, dated January 29, 2024, regarding casino

CA-3 Action Item, Approval
   a. Appointment of John Peterson to the CT Industrial Development Authority for a five-year term

Ms. Trainor offered a de minimis change to the meeting minutes.

   Mr. Bernier made a motion to approve the February 1, 2024, Consent Agenda with de minimis changes to the CA-1.a. and CA-1.b.
   Ms. Trainor seconded the motion.
   Motion carried unanimously.

OLD BUSINESS: No Old Business items on the agenda.
NEW BUSINESS:

   NB-1    COG Executive Director Recruitment and Search Committee

Mr. Brumbaugh, Township Manager, offered the COG Executive Director, announced his retirement plans, effective June 1, 2024. To begin the hiring process for the next Executive Director, the General Forum approved that a Recruitment and Search Committee be formed with one representative from each COG member municipality and the COG Executive Director as a non-voting member.

Chair Best offered that he would be willing and able to serve as College Township’s representative on the search Committee. Ms. Mariner offered that she would like to see the committee be comprised equitably related to both race and gender. Ms. Mariner offered she would be willing to serve as College Township’s alternate representative on the search committee.

  Mr. Francke made a motion to appoint Mr. Best as the College Township’s representative on the COG Executive Director Recruitment and Search Committee and Ms. Trainor as the alternate on that committee.
  Ms. Trainor seconded the motion.
  Motion carried unanimously.

STAFF INFORMATIVES:  No Staff Informatives brought forward for discussion.

OTHER MATTERS:  No Other Matters brought forward for discussion.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

  Ms. Trainor moved to adjourn the February 1, 2024, Regular College Township Council Meeting.
  Chair seconded the motion.

The February 1, 2024, Regular College Township Council Meeting was adjourned at 8:14 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary
College Township Council  
1481 East College Avenue  
State College, PA 16801  

RE: Time Extension Request for Jersey Mike’s  

Dear Council Members:  

On behalf of my Client, Cedar Cliff Properties, LLC, I am requesting a 90-day time extension to meet the conditions of approval for the Jersey Mike’s Preliminary/Final Land Development Plan. The current recording deadline is March 5, 2024. With this extension, the new recording deadline will be June 3, 2024.  

If you have any questions or need additional information, please contact me at the phone above, extension 310.  

Sincerely,  

Mark Torretti  
Project Manager  

cc: 23017
Good afternoon,

CATA is once again seeking federal discretionary funding for a systemwide Transit Stop Safety and ADA Accessibility Study. We appreciate your support during our previous attempts to secure funding for this study, and we hope we can count on your support once again as we prepare an application for a Rebuilding American Infrastructure with Sustainability and Equity (RAISE) planning grant. The Transit Stop Safety and ADA Accessibility Study will serve as the basis for a future capital project(s) to bring all existing CATA transit stops into alignment with current ADA Accessibility Guidelines. The information coming out of this study will be shared with PennDOT, CATA’s local funding partners, and the Centre Regional Planning Agency (CRPA) to inform the planning of right of way projects and requests that developers provide ADA upgrades to existing CATA stops during land development plan review.

A strong demonstration of community support will play a large role in US DOT’s decision about whether to fund this study. A draft letter of support has been prepared and is attached for your convenience. We encourage you to tailor it to your municipality’s unique perspective. Should you wish to offer support, please provide your letter via email to me by Wednesday, February 21.

Thank you for your continuing support!

Lyssa Cromell
Grants Administrator

Centre Area Transportation Authority (CATA)
2081 W. Whitehall Road, State College, PA 16801
(814) 238-2282 x5134/Fax (814) 238-7643
www.catabus.com
February 15, 2024

The Honorable Pete Buttigieg, Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg:

On behalf of the College Township Council, I am writing this letter in support of the Centre Area Transportation Authority’s (CATA’s) 2024 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) planning grant application for a systemwide Transit Stop Safety and ADA Accessibility Study.

CATA’s focus on identifying stop improvements designed to eliminate barriers and provide safe, well connected, fully ADA compliant access to transit is commendable. The ADA accessibility study recommendations will enhance the safety and comfort of all users and offer expanded employment, social, and recreational opportunities for transportation disadvantaged residents, including lower income individuals, people with disabilities, and older adults. [Please feel free to insert a humanizing story unique to your constituency that exemplifies the need to approve our project, and makes our application really stand out!]

As a partner in CATA’s mission to deliver safe, reliable, accessible, and affordable transportation, [your office/agency] looks forward to seeing the results of the study and working with CATA, the Centre Regional Planning Agency (CRPA), state and local funding partners, the area’s human services agencies, and the development community to ensure the region’s transit stops meet Americans with Disabilities Act Accessibility Guidelines (ADAAG).

College Township fully supports CATA’s efforts to seek RAISE program funding for a study of transit stop safety and accessibility, and we look forward to learning of a favorable response to their application.

Sincerely,

Dustin Best
College Township Chair

cc: David Rishel, CATA Executive Director/CEO
February 5, 2024

College Township
Adam Brumbaugh
1481 E College Ave
State College, PA 16801-6815

Dear Adam,

Your sponsorship support means so much to us—and our community!

The display of works of art carved from crystal-clear ice at First Night State College was wonderful and is always greatly appreciated by all who come out to ring in the New Year with us.

Your sponsorship of a First Night State College ice sculpture next year will once again help attract locals and visitors alike and make this treasured community celebration of all that is possible in the New Year happen.

On behalf of the Board of Directors, staff, and volunteers who work year-round to produce First Night State College and the Central Pennsylvania Festival of the Arts, thank you for College Township’s contribution of $300 to sponsor a one-block ice sculpture for First Night 2025.

If you and your team would like to get involved in the First Night efforts in some extra way next year, please let me know. We’d love to hear your ideas and welcome your team as volunteers if you are interested.

We really appreciate your sponsorship for First Night State College 2025. We couldn’t do it without you!

Sincerely,

Pamela Etters, Executive Director
February 7, 2024

Dear Mr. Best and College Township Council Members,

On behalf of the Centre County Interfaith Coalition for Gun Safety, I am inviting you to attend a panel discussion What Can I Do About Gun Violence? at Schlow Regional Library on February 25, 2024, at 2:00 p.m. We have invited four panelists to begin the discussion: Maggie Ellis (Pediatric PA and Moms Demand Action), Adam Garber (Ceasefire PA), Reverend Jes Kast (Faith United Church of Christ), and Marisa Vicere (Jana Marie Foundation). Following their short presentations, we will have a period for Q and A and small group work focused on action planning.

So many of us are deeply concerned about gun violence in our community and nationally. We are hoping this conversation is one step towards a better world. As our local government representatives, your involvement in this discussion is crucial. Your presence would be significant.

Please call or email if you have any questions about the presentation or the organization. We hope to see you on the 25th!

Sincerely,

Gail Addison Guss

gailguss@comcast.net  814-466-9208

The Centre County Interfaith Coalition for Gun Safety is an alliance of local religious leaders and community members committed to building a peaceful society free from preventable gun violence. With faith-based responses to gun violence that benefit the whole community, we educate on issues related to gun safety, take action for responsible gun ownership, and engage local, state, and federal officials.” — Centre County Interfaith Coalition for Gun Safety (IC4GS) Mission Statement
MEMORANDUM

To: College Township Council
From: Mike Bloom, Assistant Township Manager
Re: NB-1 - Updated Policy Direction for 2025-2029 Capital Improvement Program (CIP)
Date: February 1, 2024

At the January 18th meeting, Council was asked to review their policy direction for the 2025-2029 Capital Improvement Program (CIP). This direction is provided through the Township’s Vision-Mission-Values & Goals Statements and the 2025-2034 Strategic Summary. This planned annual review of these documents is intended to ensure that the direction addresses Council’s expectations for meeting the needs of the community.

Updates to Policy Direction:
As part of that review, Council suggested an expansion of the Mission Statement to read as follows:

“The mission of College Township is to protect and enhance overall public safety and quality of life, while facilitating responsible growth and maintaining harmony between rural, suburban and urban areas, in an efficient and responsible manner for all its citizens.”

Council also offered revisions to the following elements of the Strategic Summary:

- Add V.3 “Engage and involve our citizens and be sensitive and responsive to their needs”, which was accidentally omitted last year.
- Expand the following statements:
  - V.2 to read “Diversity, equity, inclusivity & belonging.”
  - V.9 to read: “Renewal and investment in key infrastructure, such as public utilities, high-speed internet and transportation and stormwater systems.”
  - O.3 to read: “Align staffing capacity with operational priorities, this includes providing a sufficient staffing level, assigning duties appropriately and offering professional development opportunities.”
  - O.6 to read: “Proactively engage in regional governance and, where appropriate, influence policies and programs, to ensure COG and other regional bodies meet community needs while providing a strong return on investment.”
O.10 to read: “Fill gaps in all modes of travel, with a specific emphasis on the bicycle and pedestrian networks as identified in Walkable College Township.”

O.11 to read: “Perform routine, high quality maintenance on municipal infrastructure and facilities to protect public safety and the community investment, while maintaining its integrity & extending its useful life.”

**Attachments:**
Provided for Council’s review are updated versions of the following documents:

- NB-1.a. - Township’s Vision-Mission-Values & Goals Statements
- NB-1.b. - 2025-2034 Strategic Summary

**Action Requested:**
Council is asked to review and approve the revised documents by motion.

**Next Steps:**
Upon Council’s approval of the policy direction, staff will begin compiling the 2025-2029 CIP immediately. The goal would be to have a Draft CIP ready for Council’s review in mid-late May, with consideration of approval slated for June.

*End of memo*
Vision Statement

“College Township shall be a model of excellence in local government; a safe, well-planned community with equal opportunity for all.”

Mission Statement

“The mission of College Township is to protect and enhance overall public safety and quality of life, while facilitating responsible growth and maintaining harmony between rural, suburban and urban areas, in an efficient and responsible manner for all its citizens.”

Values

• We value honest, open, representative government and the voluntary work of our Township Authorities, Boards, and Commissions.
• We value diversity, equity, inclusivity and belonging.
• We value economic, environmental, fiscal, and social responsibility.
• We believe in earning and maintaining the respect, trust, and confidence of the citizens of College Township.
• We believe it is important to engage and involve our citizens and be sensitive and responsive to their needs.
• We believe our primary responsibility is to those who live, work, visit, or otherwise come into contact with our municipality.
• We believe in enhancing quality of life by providing efficient services of the highest standard.
• We believe in thoughtful planning to promote economic growth and innovation while protecting the character and integrity of our neighborhoods and the history and heritage of our community.
• We believe in fostering effective partnerships and regional cooperation.

Adopted August 20, 2020, amended June 2, 2022 & February 15, 2024
• We believe in renewal and investment in key infrastructure, such as public utilities, high-speed internet and transportation and stormwater systems.
• We believe in the value and importance of high quality recreational and educational opportunities for residents and visitors of all ages and abilities.

Goals

• To champion the success of the community through our resources (workforce, facilities, financial assets, and COG affiliation) to provide the greatest possible benefit to the citizens of College Township
• To preserve and enhance the community’s beauty and natural assets and build upon the heritage of the community.
• To facilitate Township growth while protecting and preserving the environment and maximizing the use of public infrastructure.
• To promote economic (re)development activities that increase citizen access to quality work opportunities while maintaining the Township’s tax base.
• To ensure residents have access to healthful, safe, and affordable housing and neighborhoods.
• To develop and maintain high quality recreational, educational, civic, and social opportunities for all those who live, work, and visit here.
• To improve and sustain our high quality of life through the appropriate implementation of Township ordinances, policies, and enforcement.
• To foster effective dialogue and clear, consistent communication with all stakeholders through both traditional and modern electronic means.
• To ensure accessibility of all critical Township information and resources through multiple delivery formats, including traditional and electronic means.
## VISION & MISSION

**VISION**
To be a model of excellence in local government; a safe, well-planned community with equal opportunity for all.

**MISSION**
To protect and enhance overall public safety and quality of life, while facilitating responsible growth and maintaining harmony between rural, suburban and urban areas, in an efficient and responsible manner for all its citizens.

### VALUES

| V.1. | Primary responsibility is to those who live, work, visit, or otherwise come into contact with our municipality. |
| V.2. | Diversity, equity, inclusivity & belonging. |
| V.3. | Engage and involve our citizens and be sensitive and responsive to their needs. |
| V.4. | Honest, open, representative government, and the voluntary work of our Township Authorities, Boards, and Commissions. |
| V.5. | Earning and maintaining the respect, trust, and confidence of the citizens of College Township. |
| V.6. | Fostering effective partnerships and regional cooperation. |
| V.7. | Enhancing quality of life by providing efficient services of the highest standard. |
| V.8. | Thoughtful planning to promote economic growth and innovation, while protecting the character and integrity of our neighborhoods and the history and heritage of our community. |
| V.9. | Renewal and investment in key infrastructure, such as public utilities, high-speed internet and transportation and stormwater systems. |
| V.10. | Economic, environmental, fiscal, and social responsibility. |
| V.11. | High quality recreational and educational opportunities for residents and visitors of all ages and abilities. |

### GOALS

| O.1. | Optimize the use of technology to improve services to citizens and internal efficiency through accessible, transparent, predictable and efficient processes, access to information and records management. |
| O.2. | Strengthen methods of public engagement to reach all segments of the community. |
| O.3. | Align staffing capacity with operational priorities, this includes providing a sufficient staffing level, assigning duties appropriately and offering professional development opportunities. |
| O.4. | Periodically engage professional consulting services for needs that exceed existing staff capacity and/or expertise. |
| O.5. | Endeavor to better align Council, ABCs and staff on operational and long-term community development priorities. |
| O.6. | Proactively engage in regional governance and, where appropriate, influence policies and programs, to ensure COG and other regional bodies meet community needs while providing a strong return on investment. |
| O.7. | Improve and leverage collaborations with municipal authorities and other economic development oriented agencies to diversify and strengthen the area’s economic base. |
| O.8. | Support and engage in meaningful efforts to combat climate change. |
| O.9. | Promote thorough regulations and, where appropriate subsidize, the development of a diverse, attainable housing stock. |
| O.10. | Fill gaps in all modes of travel, with a specific emphasis on the bicycle and pedestrian networks as identified in Walkable College Township. |
| O.11. | Perform routine, high quality maintenance on municipal infrastructure and facilities to protect public safety and the community investment, while maintaining its integrity & extending its useful life. |
| O.12. | Conduct periodic site assessments of existing municipal facilities to ensure they adequately and efficiently meet the Township’s needs. |
| O.13. | Develop programs and plans that promote civically and economically vibrant places throughout the Township. |
| O.14. | Increase investment in development, maintenance and protection of open space, parks and other recreation facilities, equipment, programs and services. |
| O.15. | Conduct Master Planning efforts on Township Parks & Open Space Areas |

### OBJECTIVES

| G.1. | Champion the success of the community through our resources (workforce, facilities, financial assets, and COG affiliation) to provide the greatest possible benefit to the citizens of College Township. |
| G.2. | Ensure accessibility of all critical Township information and services of the highest standard. |
| G.3. | Improve and sustain our high quality of life through the appropriate implementation of Township ordinances, policies, and enforcement. |
| G.4. | Facilitate growth while protecting and preserving the environment and maximizing the use of public infrastructure. |
| G.5. | Preserve and enhance the community’s beauty and natural assets and build upon its heritage |
| G.6. | Ensure residents have access to healthful, safe, and affordable housing and neighborhoods. |
| G.7. | Promote economic (re)development activities that increase citizen access to quality work opportunities while maintaining the Township’s tax base. |
| G.8. | Develop and maintain high quality recreational, educational, civic, and social opportunities for all those who live, work, and visit here. |

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**2025-2034 STRATEGIC SUMMARY, prepared June 2023 & updated February 2024**

**Walkable College Township**
MEMORANDUM

To: College Township Council  
From: Mike Bloom, Assistant Township Manager  
Re: OB-2 - Power Purchase Agreement  
Date: February 6, 2024  

Background:
In 2018, discussions regarding the potential for a joint power-purchasing program, focusing primarily on procurement of solar energy, began locally. These discussions ultimately culminated in the formation of a Solar Power Purchasing Agreement Working Group.

In the years that followed, the Working Group, Project Management Team (PMT) and their consultant, GreenSky Development Group, have diligently worked through a very complex procurement process for a new Power Purchase Agreement (PPA). The team has reached the final phase of that process and is sharing the five (5) contracts that comprise the PPA, along with additional resources to aid in decision-making.

Presentations:
Pam Adams, Centre Region Sustainability Planner and PMT member, will attend the February 15th Council meeting to provide a broad overview presentation on the proposed PPA and to assist in answering questions.

Prior to the meeting, Council members are also encouraged to view the PPA Educational Video on C-NET. This approximately 40 minute video provides a more detailed look at the PPA and is broken into chapters for easy reference.

Attachments:
The following resource documents are included for Council’s review:

- **OB-2.a.** – PPA Factsheet
- **OB-2.b.** - PPA Overview from GreenSky Development Group
- **OB-2.c.** – Questions & Answers on PPA Contract as of 2/5/24

The next two attachments are the traditional power contracts with Direct Energy, which are comparable with College Township’s current contract with Constellation Energy:

- **OB-2.d.** - Retail Commodity Master Agreement (CMA)
- **OB-2.e.** - Transaction Confirmation (TC)

The following three attachments are contracts that act together to delineate Direct Energy’s, Prospect 14’s, and each organization’s responsibilities for the PPA:

- **OB-2.f.** - PPA Servicing Agreement with Direct Energy
- **OB-2.g.** - InSchedule Agreement with Direct Energy and Prospect 14
- **OB-2.h.** - PPA Master with Prospect 14
The final attachment is a proposal from GreenSky Development Group related to the on-going management of the contracts and services tied to the PPA:

- **OB-2.i.** – GreenSky On-going Services Proposal

**Requested Tasks:**
This agenda item is for discussion purposes only this evening, no formal action is requested. Council is asked to receive the presentation and offer questions/comments/concerns related to the proposed PPA and its related elements.

**Next Steps:**
Below is the current schedule and key dates for advancing the PPA toward approval:

<table>
<thead>
<tr>
<th>Date</th>
<th>Steps</th>
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<tbody>
<tr>
<td>February</td>
<td>Boards and councils to discuss the PPA contracts.</td>
</tr>
<tr>
<td>February 14th</td>
<td>SPPA Working Group Meeting to review comments and questions received to date.</td>
</tr>
<tr>
<td>February 15th</td>
<td>College Township Council to review PPA.</td>
</tr>
<tr>
<td>February 28th</td>
<td>SPPA Working Group Meeting: review any revisions to PPA and forward to boards/councils for consideration of approval.</td>
</tr>
<tr>
<td>March</td>
<td>Boards and councils asked to approve the PPA contracts.</td>
</tr>
<tr>
<td>March 6th</td>
<td>College Township Water Authority to review PPA.</td>
</tr>
<tr>
<td>March 21st</td>
<td><strong>Tentative:</strong> College Township to consider approval of PPA</td>
</tr>
<tr>
<td>April 3rd</td>
<td><strong>Tentative:</strong> College Township Water Authority to consider approval of PPA</td>
</tr>
<tr>
<td>April</td>
<td>Anticipated award of PPA Contracts</td>
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</table>

*End of memo.*
To enter the PPA there are five contracts that will need to be signed as shown below. They include:

These traditional power contracts, just with Direct Energy instead of your current supplier.

1. **Retail Commodity Master Agreement (CMA) with Direct Energy:** provides general terms and conditions that apply to both the Servicing Agreement and the TC over the 5-year contract.

2. **Transaction Confirmation (TC) with Direct Energy:** contract defining the ultimate sale of electricity for a 5-year period.

These three contracts act together to delineate Direct Energy’s, Prospect 14’s, and each organization’s responsibilities for the PPA.

3. **PPA Servicing Agreement with Direct Energy:** contract to manage PPA within the wholesale electricity market and our additional electricity over 5 years.

4. **InSchedule Agreement with Direct Energy and Prospect 14:** a tri-party contract that gives authority for Direct Energy to act on our behalf with the solar generator, Prospect 14 and that all parties will cooperate.

5. **PPA Master with Prospect 14:** governs the purchase of power from a solar generation asset located in Centre County for 15 years.

**STRUCTURE OF PPA**

Each entity will sign its own contract(s) that manages both PPA and retail services

Each entity will continue to receive its own monthly electricity invoice from West Penn Power

**PPA Master - Prospect 14**
- 15-year contract for an expected annual kWh amount at a set price
  - It will be a % of the total from the participating SPPA Working Group
- Option for (2) 5-year extensions

**Retail | Servicing | Transaction - Direct Energy**
- 5-year contract to manage the PPA and traditional grid electricity prices
  - Traditional grid electricity will start with market pricing, similar to current practice
- Option to add and delete individual accounts
- Bid out this service every 5 years

- On-going Group Service management of the contracts and counterparties associated with the PPA and retail supply agreement will be with Green Sky Development Group.
• Each organization will align their current electricity agreement term to the new SPPA term. It will vary for each organization and is part of the process.

• The PPA rate starts at a fixed price of $0.0459/kWh for 15 years with 2 slight variables: a) an annual 1.5% escalator and b) settlement costs are expected to vary approximately +/- 5%

Cost ($) per kWh

Fees include the existing PJM Grid Passthrough and Retail Adder ($0.0175) + new PPA Management ($0.00211) + new Group Service Contract ($0.00123) - Year 1 costs

Settlement variability (+/-5%) accounts for solar variation in the day and seasons when traditional grid electricity will need to be purchased.

• Renewable Energy Credits (RECs) will be an option and managed annually through the retail services provided by Direct Energy
  - If there is a defined plan, then the instructions can be acted on annually
  - Otherwise, yearly maintenance is required for RECs

SPPA WORKING GROUP

Centre County Government
State College Area School District
State College Borough Water Authority
Centre County Housing Authority
State College Borough
Ferguson Township
Harris Township
Patton Township
College Township
College Township Water Authority
Centre Hall Potter Sewer Authority
Centre Region Council of Governments
1. Extensive effort has gone into making the contracts the best for the group and making sure all organizations are protected. The intent is that these final contracts are for organizations to review to understand and ask questions.

2. This contract is for a Power Purchase Agreement (PPA). The solar electricity generated by this project will add renewable energy to the PA grid. The solar credit will be purchased by the utilities that have solar regulatory obligations. The size of the solar array is expected to be 22MW.

3. The PPA will cover 82% of the 12 organizations’ electricity demand. Direct Energy will manage the PPA, and the remaining electricity demands.

4. The solar installation will be built in Walker Township in Centre County. The start date for solar generation is October 31, 2026, at the latest.

5. Total costs to explore this project are expected to be $234,725 (no change since 9/26/23). If the project proceeds, Prospect 14 has offered to reimburse the Working Group members who sign contracts $60,000 upon completion of certain milestones. Working Group total project costs would then be $174,725 as outlined below:

<table>
<thead>
<tr>
<th>Expense Type</th>
<th>Cost</th>
<th>Milestone Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consulting Fees:</td>
<td>$69,725</td>
<td></td>
</tr>
<tr>
<td>Legal Fees:</td>
<td>$165,000</td>
<td></td>
</tr>
<tr>
<td>Reimbursement #1</td>
<td>- $12,500</td>
<td>Signing of Contract</td>
</tr>
<tr>
<td>Reimbursement #2:</td>
<td>- $12,500</td>
<td>Notice to Proceed Construction</td>
</tr>
<tr>
<td>Reimbursement #3:</td>
<td>- $35,000</td>
<td>Commercial Operation Date</td>
</tr>
</tbody>
</table>

**TOTAL PROJECT COSTS** $174,725

6. A working group formed from participating organizations will bid out for a retail service provider at the end of the Direct Energy contract (2025-2029). This group will also manage the 5-year Group Services contract for on-going services with Green Sky Development Group.

7. Under the PPA, each organization will receive a new monthly bill from Direct Energy in addition to their regular bill from West Penn Power. The WPP invoice will be for the normal costs for electricity distribution and the Direct Energy invoice will be for the total electricity usage / generation.
January 31, 2024 – version 3

Mr. Randy Brown
Finance and Operations Officer
State College Area School District
240 Ville Crest Drive
State College, PA 16801

RE: Power Purchase and Retail Services Agreements Overview

Mr. Brown,

GreenSky Development Group LLC ("GreenSky") has completed the structuring and negotiation of the following agreements for the benefit of State College Area School District ("SCASD") and the broader participating group of local governmental, municipal and utility entities. All agreements will be signed individually by all entities.

Prospect 14 – the solar project developer

1. Power Purchase Agreement (PPA) Master – governing the purchase of power from a solar generation asset located in Centre County

Direct Energy – the retail supplier

2. PPA Servicing Agreement – governing the retail services required to manage the PPA within the wholesale electricity market
3. Retail Commodity Master Agreement (CMA) – providing general terms and conditions that apply to both the Servicing Agreement and the TC
4. Retail Electricity Purchase Transaction Confirmation (TC) – governing the ultimate sale of electricity to SCASD and each other individual entity at First Energy node on the PJM wholesale system

All Parties – SCASD et al, Prospect 14, and Direct Energy

5. InSchedule Agreement – acknowledgement by all parties involved (SCASD et al, Prospect 14 and Direct Energy) that they will cooperate for the benefit of the purchasers to ensure the generation amount and economics are provided to the Purchasers

Documents 1, 2, 3, 4, and 5 are attached for review by the participating entities. Document 2 is a standard transactional document that 11 of the 12 organizations are familiar with through their current contracts. The TC document is the only one that won’t be signed until the solar array is close to operation.

The expectation is that each entity will approve the use of these agreements in the form that has been negotiated and finalized with the counterparties. Any changes to the agreements after the date of this
notice that are not agreed to by GreenSky will need to be negotiated directly by each entity with the counterparties.

**Prospect 14 PPA Master Overview**

The PPA commits certain electrical energy generated by the solar project to each entity based on the volume commitments provided by the working group. The key terms under this agreement are as follows:

6. The term of the PPA is 15 years and starts on the first month electricity is delivered and billed.
7. The planned project is located in Hublersburg on Misty Meadows Lane.
   - Should the project fail to obtain the necessary permits to construct or any other of the listed events in Section 7.3, the Seller is required to replace the planned project with another project keeping all other terms the same unless agreed to by the Purchasers (Working Group organization).
8. The volume commitment expressed in terms of MW (not MWh or kWh) will be converted into a percentage (%) of the overall generation capacity. This means that each entity will receive a fixed % of kWh generated each month which will depend on the amount of sunlight received by the system and converted into electricity.
9. The PPA requires the Seller to achieve a Commercial Operations Date of October 31, 2026 at the latest. If not achieved, the Seller will pay damages until June 30, 2027, after which the PPA can be terminated with no further liability.
10. In the event the PPA is terminated for any reason, the Direct Energy and Tri-Party Agreements would also terminate.
11. All Purchasers can terminate the PPA if they are required to become wholesale entities or the PPA is designated in the future as a swap instead of the physical sale it is structured to be.
12. There are two primary pathways to a default by a Purchaser:
   - Nonpayment under the PPA
     - Failure to pay the monthly bill (which Direct Energy will be paying on our behalf)
     - Failure to post any required credit (this would apply only to downgrade events – all entities are credit approved currently and are not required to post credit)
   - Loss of Direct Energy’s services
     - Direct Energy terminates the Servicing Agreement (for convenience)
     - Customer (Working Group organization) default
13. The remedy for default is the payment of the net present value of the remaining contract term estimated payments less the value of replacement sales of generation either into the PJM wholesale spot market or to another party. Early defaults will be more costly than later defaults since the remaining contract term shortens with time.
14. A Purchaser Curtailment provision (Section 2.5) has been negotiated to limit the default potential should Direct Energy terminate the Servicing Agreement. In that event, the Seller has agreed to allow the Purchaser to pay the difference between the PPA purchase and the revenue the Seller
will receive from the PJM wholesale market at the Project interconnect, essentially keeping all parties whole while the Purchasers seek to replace Direct Energy’s services.

- If no replacement is found after 12 months, and the project owner’s debt providers decide to call on their loan as a direct result of the lost services, the purchasers can be placed in default triggering the remedy described above.

15. Similarly, if the Seller fails to deliver electricity on any day or hour, they will pay the Purchaser the difference between the PPA cost and the PJM wholesale market price at the delivery point.

16. The Project is committed to ensuring that no less than 80% of the capacity expected by the generator will be available at all times to limit the low side of kWh generated. The Seller will pay damages if the system is not available at that level.

**Direct Energy Agreements Overview**

The Servicing Agreement is designed to handle the transfer of generation from the Project to each Purchaser. Given the nature of the wholesale market, Purchasers will not receive the exact same kWhs that are generated. The generation will be scheduled to Direct Energy by Prospect 14 and then sold by Direct Energy to PJM at the hourly wholesale spot price. Direct Energy will account for any difference between the cost of the generation billed through the PPA and the credit generated by the sale to PJM in an Energy Rate adjustment to the retail electricity sold by Direct Energy to each Purchaser at the First Energy (West Penn) node under the TC.

Servicing Agreement can be summarized as follows:

- Direct Energy will set up a sub-account under their main wholesale account to receive the generation scheduled to it by the Project. All Customers (Working Group organization) will have access to this account to monitor the generation and compensation/costs incurred. (Note: it is expected the group will have a consultant to monitor the transaction.)
- Direct Energy will accept the scheduled generation each hour.
- Direct Energy will pay the monthly PPA bill on each Purchaser’s behalf.
- The generation will receive compensation from the PJM for the same amount in kWh at the hourly wholesale spot market rate.
- The expected PPA cost and PJM compensation (as well as any other fees or costs) will be estimated by Direct Energy annually to determine the Energy Rate that will be fixed for the year as an adjustment to the energy price determined in the TC.
- Actual PPA cost and PJM compensation will be trued up at the end of each year and included in the next year’s Energy Rate calculation.

The TC is linked to the Servicing Agreement through the Energy Rate and is co-terminus. The TC will be price at the PJM spot market so the fixed price of the PPA can effectively translate to the final bill.
Otherwise, the TC (and the CMA) will be the same structure as the group has always had for competitive electricity purchases.

**InSchedule Agreement Overview**

The InSchedule Agreement is the least complex agreement of the suite. It is simply an acknowledgement by all parties involved that they will work together to ensure all Purchaser/Customer obligations are met under the PPA and Servicing Agreements. There are no separate obligations, costs or damages in this agreement.

Of note, the InSchedule Agreement reiterates clearly that if the PPA is terminated, all other agreements would terminate. However, if the Servicing Agreement terminates, the PPA will not terminate without default. The PPA is the only agreement with a large upfront capital investment implied within and the capital partners (whether debt or equity) need to be protected from the outright loss of their investment.

**Final Steps**

Please review each agreement in detail and do not rely solely on this summary of terms. Each entity should obtain approval to utilize the agreements and communicate such approval back to the lead working group by the end of February 2024. At that time, the form of each agreement will be replicated, populated with individual entity information, and routed for signature.

It has been a pleasure to serve this group in such an important purchase. You have a wonderful roster of professionals on task, and I am certain this purchase will serve you well over the next 15+ years.

Best Regards,

Gregg C. Shively
Principal – GreenSky

Cc: Elaine Wilks, Principal
    Bernd Schaffler, Principal
QUESTIONS AND ANSWERS
POWER PURCHASE AGREEMENT

GENERAL QUESTIONS ABOUT THE PPA

Q1. Will we (SCBWA) and other organizations still be able to participate in Demand Response Programs?
   A: Yes, and you can use your current supplier. This will have no impact.

Q2. Is it possible to get a legal summary to provide to our attorney to make their review more efficient and effective?
   A: Yes, the PMT will pull this together and send it to the Executive Directors/Managers of each organization.

Q3. On the Executive Summary there is reference to purchaser and customer, please confirm that this refers to us, the working group member organization.
   A: Yes, it is the organization. The PPA Master uses the term purchaser to refer to the Working Group organization and the Direct Energy Servicing Agreement uses the term customer.

Q4. In the summer solar production will be greater than in the winter so more kWh will be produced, do we need to match up our demand/usage to meet that production? Or does it work more like net metering?
   A: It works somewhat like net metering. Each organization will get a share of the total PPA production and does not need to match up usage monthly. The settlement cost is what will account for the over/under production of how solar produces. Annually the organization will be responsible for using all the kWh/% it signed up for in the contract.

Q5. Can there be discussion on the risks associated with the project?
   A: There are always risks in projects, but the consultant and solicitor (and PMT) did their best to mitigate those risks. The solicitor considers our documents “above market on some its risk allocation to the favor of the buyer (us)”. Yes, the PMT will identify the top 1-5 risks and how they are dealt with. These will be presented at the next Working Group meeting on February 14 and be made available to all.

Q6. SCASD focus: Can the PMT work on developing a short summary to discuss what are the direct benefits to the SCASD students?
   A: Yes, the school board reps on the PMT can bring this forward.
QUESTIONS SPECIFIC TO THE CONTRACTS

PPA Servicing Agreement (Direct Energy)

Q7. Page 10, Item 6: Is the $6,000 monthly fee paid by each organization?

A: No, that is the total charge, and it is divided among the 12-member organizations. It will be charged on a $/kWh as part of your energy rate (the PPA rate plus this fee from Direct Energy).

PPA Master (Prospect 14)

Note 1: Hublersburg spelling will be corrected

Q8. Do we have to notify Prospect14 if an organization has a downgrade event on their credit?

A: There is no obligation in the PPA for Buyer to provide notice to Seller. The agreement states that unless the buyer is deemed creditworthy, the Buyer will be required to post security. Prospect 14 has stated that at the outset all buyers are approved as creditworthy.

From the PPA, Page A-3, Definitions: “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.

Q9. Can we get an updated timeline of Prospect14’s approvals for developing/constructing the solar array?

A: This is being requested.

Q10. If the event of a default by the developer (Prospect 14), is the any guarantee that the organizations that we will be able to purchase electricity at the same rate as others who locked in prices outside the Group?

A: If there is a default by the developer, the Group will go after the developer for default – they will be required to pay the difference (between the PPA rate and market rate) owed to us for the remainder of the contract. We could continue with Direct Energy who would continue serving our accounts and organizations would pursue locking in fixed pricing based on the market at the time. Organizations could also pursue other retailers for fixed pricing. (Page 11, Section 10(b))

Q11. Should there be a clause defining contract compliance?

A: Not sure what the exact question is, but there is an availability guarantee Section 19.2, protections from value deterioration, and lots of work went into reducing our exposure to risks of termination, Section 7.1.

Q12. Page A-8 section 2.7 – is the current sentence structure correct

A: Yes, It is fine as written.
Q13. Page A-11 section 6.1 – The second sentence starting with the word “Notwithstanding” seems awkward. It appears to say that the Seller may curtail if directed by PJM to put the energy into the system for free. Is that what this sentence means?

A: This refers to the Seller not being able to offer the electricity to PJM at a price below $0. The price on PJM can go negative from time to time and this limits the generator’s ability to put power to PJM below $0.

Q14. Page A-11 section 6.2 - references a value of $0. This section seems to say that the Seller must optimize system output unless the energy is put into the system for free. Is that what this section means?

A: See Q8

Q15. Page A-13 section 7.3(b)(iv) – I thought a site had been determined that is ready for construction?

A: This is a standard term since not all conditions/approvals are finalized. And we have in the agreement that if the Hublersburg location doesn’t end up working for the timeline, Prospect14 must provide us with another option for location. The Group then can agree or decline to proceed.

Q16. Page A-14 section 7.4 – is the delay damage approximately $33.00/MW per day x 22 MW (size of solar array) = $726/day?

A: Yes – that is the way to calculate it.

Q17. Page A-15 section 7.6 (b) this paragraph deals with curtailment. Should it be under section 6.1?

A: It is fine where it is – relating to the utility interconnection. It could be put in a number of spots, but is effective where it is.

Q18. Page A-15 section 7.8 If we are planning to renew or interested in renewing for a 5-year extension, why not provide the last year of Term annual data?

A: If we are interested in renewing, we will be able to get the last year of annual data.

Q19. Page A-18 section 11.1 (g) – something appears to be missing in the sentence structure.

A: The sentence is properly constructed. Section 7.2 is Early Termination for Certain Events.

Q20. Page A-19 section 12.1(e) what does this mean?

A: Prospect14 won’t do anything that impairs us in acting in accordance with the agreement.

Q21. Page A-26 section 16.1 states the surety amount is “equal to the System generation capacity reflected by Purchaser’s Share times $90,000.00 (the “Seller Credit Amount””). What are the units and what is the value multiplied by $90,000 to get the surety amount? For example, if the unit is MW and the value is 22, then the surety is $1,980,000. Since it costs approximately 1MM per MW to build a solar farm, should the $90,000 be $900,000? Then
the surety amount would be $19,800,000 which seems more reasonable since surety should cover 100% of the cost to build.

A: $90,000 as stated is the correct calculation, and the surety amount is intended to cover damages due to you. We don’t have any right to collect the full cost of the project.

Q22. Page A-31 section 19.3 – What are the units for value “x”? Please provide an example equation with units for clarity.

A: The unit is % - for example, the system is only available 75% of the time, then “x” would be 5%. (Guaranteed Availability Factor – 80%) Availability damages would be $1,000 x 50 = $50,000.

Q23. Page A-35 section 22.1 – can we request the court to settle disputes to be changed to the Middle District or Allegheny over Philadelphia?

A: Please provide a meaningful legal rationale for making such change.

Q24. Page A-40 section 24.6(d)(i) Should the group insist the developer not be able to assign his responsibilities to another party until the solar power production is operating to our satisfaction?

A: This is not possible with the process of solar projects. The developer can’t build a large solar array or take advantage of the federal tax credits unless they obtain construction capital and secure a tax equity partner. In the case of tax equity, that entity will take ownership of the asset and it must be assigned to them.

Q25. Page A-45, Exhibit B – Should the energy rate unit be MWh or $0.0459/kWh?

A: Yes, that is a misprint of the unit. The unit will be updated to $/MWh.

InSchedule (Tri-Party) Agreement

No questions
This Commodity Master Agreement ("CMA") among Direct Energy Business, LLC and NRG Business Marketing LLC, (collectively "Seller"), each a Delaware limited liability company, and STATE COLLEGE AREA SCHOOL DISTRICT ("Buyer" or "Customer") (each a "Party" and collectively, the "Parties") is entered into and effective as of January 08, 2024.

1. Transactions: The terms of this CMA apply to all end-use sales of electric power and/or natural gas as applicable (each a "Commodity" and collectively, the "Commodities"), by the applicable Seller to Buyer (each sale as a "Transaction") which will be memorialized in a transaction confirmation signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. This CMA, any amendments to this CMA and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.

2. Performance: Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity.

3. Term: The Delivery Period and any Renewal Term are set forth in the applicable Transaction Confirmation. This CMA shall remain in effect until terminated by either Party pursuant to Section 14 or as otherwise terminated by either Party for convenience upon at least 30 days’ prior written notice; provided, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all outstanding obligations.

4. Purchase Price: Buyer will pay the Purchase Price stated in each Transaction Confirmation, subject to Sections 5 and 10. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price calculated by the Seller.

5. Changes to Purchase Price: In the event there is a change to any tariff, law, order, rule, tax, regulation, transmission rate, or any LDC, EDC or ISO changes to supplier obligations to serve, which increase Seller’s costs, the Purchase Price may be adjusted by Seller to include such costs.

6. Billing and Payment: Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts for which Buyer is responsible under this Agreement. Except as otherwise set forth herein, payment is due within 15 days of the date of the invoice. If Seller cannot verify the Actual Quantity at the time an invoice is issued, Seller will estimate the Actual Quantity. Seller will adjust Buyer’s account following (i) confirmation of the Actual Quantity, (ii) any Utility adjustment or (iii) any other corrections or adjustments, including adjustments to, or re-calculation of Taxes. Buyer will pay interest on late payments for any amount due under this Agreement at 1.50% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer is also responsible for all costs and fees, including reasonable attorney’s fees, incurred in collecting any amounts owed to Seller and any fee charged to Seller for insufficient funds of Buyer. “Actual Quantity” means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. “Utility” means a state regulated entity engaged in the distribution of the applicable Commodity.

7. Taxes: The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer’s behalf and will indemnify, defend and hold Seller harmless from any liability against all Taxes for which Buyer is responsible. Buyer must provide Seller with any applicable Tax exemption documentation and Buyer will be liable for any Taxes assessed against Seller because of Buyer’s failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination or expiration of this Agreement.

8. Disputes: If either Party in good faith disputes amounts owed hereunder, the disputing Party will contact the non-disputing Party in writing and pay the undisputed amount by the payment due date. The Parties will have 15 Business Days to negotiate a resolution. If such dispute is not resolved, the disputing Party will pay the balance of the original invoice and either Party may exercise any remedy available to it at law or equity. "Business Day" means any day on which banks are open for commercial business in New York, New York; any reference to “day(s)” means calendar days.

9. Title and Risk of Loss: Title to, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.

10. Material Deviation: Seller may in its sole discretion pass through to Buyer any losses and/or costs incurred by Seller related to a deviation of +/-25% from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in the applicable Transaction Confirmation (which is not caused by weather).

11. Force Majeure: Other than payment obligations, a Party claiming Force Majeure will be excused from its obligations under Section 2 only if it provides prompt notice of the Force Majeure, uses due diligence to remove its cause and resumes performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility to pay for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence beyond a Party’s
control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, the full or partial closure of Buyer’s facilities, unless such closure itself is due to Force Majeure.

12. Financial Responsibility: Seller’s entry into this Agreement and each Transaction is conditioned on Buyer, its parent, any guarantor or any successor maintaining its creditworthiness during the Delivery Period and any Renewal Term. When Seller has reasonable grounds for insecurity regarding Buyer’s ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, Seller may require Buyer to provide adequate assurance, which may include, in the Seller’s discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance (“Credit Assurance”).

13. Default: “Default” means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within 3 Business Days of a written demand; (ii) failure of Buyer to provide Credit Assurance within 2 Business Days of Seller’s demand; (iii) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true and such breach is not cured within 15 Business Days after written notice; (iv) a secured party has taken possession of all or any substantial portion of its assets or is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation or merger); (v) failure of a Party to fulfill any of its obligations in this Agreement (except as otherwise provided in subsections (i), (ii), (iii) and (iv) hereof) and such failure is not cured within 15 Business Days after written notice; provided that no cure period or demand for cure applies to an early termination of a Transaction Confirmation by Buyer or under Section 15(A)(iii).

14. Remedies: In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) accelerate any amounts owing between the Parties and terminate any Transactions and/or this Agreement between the Parties and/or their affiliates; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated; and/or (iv) net or aggregate all settlement amounts and all other amounts owing between the Parties and their affiliates under this Agreement and other energy-related agreements between them and their affiliates, whether or not due and whether or not subject to any contingencies, plus costs, into one single amount (“Net Settlement Amount”). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within 3 Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. “Close-out Value” is the sum of: (a) the amount due to the non-defaulting Party regarding the Contract Quantities (or, as applicable, estimated Contract Quantities) remaining to be delivered as stated in the applicable Transaction Confirmation during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. “Market Price” means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term. For purposes of determining Close-out Value, Market Price may be established by Seller through information available to Seller internally or through third parties. The Parties agree that Close-out Value constitutes a reasonable approximation of damages and is not a penalty or punitive in any respect. Physical liquidation of a Transaction or entering into a replacement transaction is not required to determine Close-out Value or Net Settlement Amount. The defaulting Party is responsible for all costs and fees incurred for collection of Net Settlement Amount, including, reasonable attorney’s fees and expert witness fees.

15. Representations, Warranties and Covenants: Each of the following are deemed to be repeated each time a Transaction is entered into and during the Delivery Period and any Renewal Period: A. Each Party represents that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; (ii) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and (iii) there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, its parent or guarantor or to its knowledge, threatened against it, its parent or guarantor. B. Buyer represents, warrants and covenants that: (i) it is not a residential customer; (ii) execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term; (iii) if it is the person or entity executing this Agreement is doing so in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide Seller true, correct and complete documentation of such agency relationship, and (iv) (a) it has and will provide, to Seller, all information reasonably required to substantiate its usage requirements; (b) acceptance of this Agreement constitutes an authorization for release of such usage information; (c) it will assist Seller in taking all actions necessary to effectuate Transactions, including providing an authorization form permitting Seller to obtain its usage information; and (d) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement. C. Each Party acknowledges that: (i) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code (“Code”); (ii) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; (iii) Seller is not a “utility” or an “energy generation facility” as defined in the Code; (iv) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by Buyer’s Utility; (v) Seller does not own or operate transmission and distribution systems through which the Commodity is delivered to Buyer, and Seller is not liable for any damages or Losses associated with such transmission or distribution systems; and (vi) Buyer’s Utility, and not Seller, is responsible for responding to leaks or emergencies should they occur. D. Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity as delivered will be free from all royalties, liens, encumbrances, and claims. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
16. Confidentiality: Except as otherwise provided below, Seller shall maintain the confidentiality of Customer’s data collected for purposes of fulfilling the terms of this Agreement including Customer’s name, address, telephone number, electric usage and historic payment information as required by applicable regulation and law. Customer shall maintain the confidentiality of this Agreement and will not without Seller’s prior written consent, disclose the terms of this Agreement or any on-line account management password, to any third party, other than Customer’s employees, affiliates, agents, auditors and counsel who are bound by confidentiality obligations not to disclose this Agreement. Seller may disclose or share the terms of this Agreement or Customer’s data provided under or relating to this Agreement, with its affiliates, employees, lenders, permitted assignees, or service providers who have agreed to confidentiality obligations not to disclose or share such information and to use it only in the course of their performance of services. Where required by applicable regulation or law, Seller will obtain Customer’s consent to disclose or share Customer’s data for any other purpose not defined herein.

17. Indemnification; Limitation of Liability: A. Buyer will be responsible for and shall indemnify Seller against all losses, costs and expenses, including court costs and reasonable attorney’s fees, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges (collectively, “Losses”) which attach after title passes to Buyer. B. Seller will be responsible for and indemnify Buyer against any Losses which attach before title passes to Buyer. C. NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE.

18. Other: (A) The Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. (B) Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. (C) No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy. (D) Any notice or waiver including without limitation any termination or disconnection notice, shall be provided in writing and, if sent to Seller, a copy delivered to: Direct Energy Business, LLC or NRG Business Marketing LLC (as applicable), Attn: Client Services, 1001 Liberty Avenue, Pittsburgh, PA 15222; Email: ContractSupport@nrg.com. Notice sent by electronic means shall be deemed to have been received by the close of the Business Day on which it was transmitted, or such earlier time as is confirmed by the receiving Party. Notice delivered by overnight courier shall be deemed to have been received on the Business Day after it was sent, or such earlier time as is confirmed by the receiving Party. Notice delivered by first class mail (postage prepaid) shall be deemed to have been received at the end of the third Business Day after the date of mailing. (E) No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. (F) Seller may pledge, encumber or assign this Agreement or the accounts, revenues and proceeds thereof without Buyer’s consent. Buyer may not assign this Agreement without Seller’s consent not to be unreasonably withheld. (G) This Agreement may be executed in separate counterparts by the Parties, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. (H) Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if not defined therein then it shall have the generally accepted meaning customarily attributed to it in the natural gas or electricity generation industries, as applicable. (I) Any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and may be introduced as evidence in any proceeding as if it were an original business record and shall not be contested by either party as admissible evidence. (J) Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, this Agreement will constitute a separate agreement with each such Party, as if each such Party executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. (K) If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. (L) If a broker or agent has been involved in any Transaction, such broker is an agent of Buyer only and not an agent of Seller.

IN WITNESS WHEREOF, this CMA is entered into and effective as of the date written above.

Buyer: STATE COLLEGE AREA SCHOOL DISTRICT

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

Seller: Direct Energy Business, LLC

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

NRG Business Marketing LLC

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________
This Transaction Confirmation confirms the terms of the Electricity Transaction entered into between Direct Energy Business, LLC (“Seller”), and the customer above (“Buyer” or “Customer”) pursuant to the terms of the Commodity Master Agreement between Customer and Seller and/or Seller’s affiliate Direct Energy Business Marketing, LLC, db/a Direct Energy Business dated January 08, 2024, as may be amended, (the “CMA”). If the referenced CMA is between Customer and Direct Energy Business Marketing, LLC, db/a Direct Energy Business, Customer and Seller agree that this Transaction Confirmation shall be governed by and incorporate the terms of such CMA. All attachments and exhibits hereto, including any request for a Forward Purchase or a PowerPortfolio Transaction Report, are made a part of and incorporated into this Transaction Confirmation. The Purchase Price excludes Utility transmission and distribution charges and Taxes that are or may be the responsibility of Customer. Customer’s execution and submission of this Transaction Confirmation, including Exhibit A hereto, to Seller shall constitute an offer from Customer to Seller to purchase the Commodity on the terms set forth in the CMA This Transaction Confirmation shall become effective only upon (i) execution by Customer of this Transaction Confirmation, including Exhibit A and CMA; and (ii) the earlier of (a) execution of the CMA and this Transaction Confirmation by Seller or (b) written confirmation by Seller of its acceptance of the Transaction Confirmation to Customer.

DELIVERY PERIOD

For each Service Location, the first meter read date will be on or after: January 01, 2025, and will continue for a term of 60 Months. Notwithstanding the foregoing, the Delivery Period will extend through the meter read date following the expiration of any Forward Purchase as confirmed by a PowerPortfolio Transaction Report. Seller will request the Utility to enroll Customer on the first meter read date in the first month of the Delivery Period as defined by the Utility. The service start date hereunder will be the date that the Utility enrolls Customer for Seller’s services. Seller shall not be liable for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of the Utility.

Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the “Renewal Term”) until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to the end of the Delivery Period or 15 days prior to the end of each successive month Renewal Term. The termination date shall be the next effective drop date permitted by the Utility. All terms of the Agreement will remain in effect through the termination date as set by the applicable Utility. During the Renewal Term, the Purchase Price for each successive month Renewal Term will be the then market-based price for similar quantities of Commodity at the Delivery Point, including all Taxes, costs, charges or fees which are set forth herein, unless otherwise agreed to in writing by the Parties.

DELIVERY POINT

The Delivery Point shall be the point(s) where Commodity is delivered to the Utility. The Utility is specified on Exhibit A.

BILL TYPE - DUAL

Customer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed on Exhibit A. The section of the CMA regarding material deviation shall not apply to this Transaction Confirmation.

PURCHASE PRICE

The Purchase Price per kWh to be paid by Buyer for the services provided hereunder during the Delivery Period of this Agreement shall be that set forth on Exhibit A. The Purchase Price includes a Services Fee, as well as the components marked below as "Included". For those components marked "Pass through", they will be passed through to you at cost and shown as a line item on your bill. Buyer acknowledges that the Energy Rate, as that term is defined in the Servicing Agreement between Seller and Buyer dated __________, will be included as an additional line-item charge on Buyer’s invoice, subject to the Billing and Payment Section of the CMA.
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<tr>
<td>Applicable Taxes</td>
<td>Pass Through</td>
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</tbody>
</table>

**DEFINITIONS**

**Ancillaries**: Wholesale commodity services and products required to facilitate delivery of Commodity to the Utility.

**Auction Revenue Rights (ARR)**: Entitlements allocated annually to Fixed Transmission Service Customers that entitle the holder to receive an allocation of the revenues from the Annual FTR Auction.

**Block Purchase**: Purchasing an amount of Electricity from Seller in an amount no less than 300kW, which may be increased in increments of 100kW, for a minimum term of one (1) calendar month. Block Purchase(s) may include a Services Fee.

**Capacity**: The Capacity obligations met through the provisions of the PJM Reliability Assurance Agreement (RAA).

**Day-Ahead LMP Purchase**: The purchase of a certain quantity of Commodity (per MWh(s)) on the day preceding the day in which the Energy (which includes the Commodity component) is to be delivered to the Delivery Point.

**Exhibit A**: The list of Service Locations attached to this Transaction Confirmation, which list specifies the Service Locations covered under the scope of this Transaction Confirmation for PowerPortfolio, Day-Ahead, Real-Time and other index products. For fixed price products, it refers to the pricing attachment to this Transaction Confirmation that sets forth (together with this Transaction Confirmation) the Purchase Price applicable to, and the Service Locations covered by, this Transaction Confirmation.

**Exhibit B**: A Forward Purchase Order Form which Customer may complete, execute, and submit to Seller to confirm their offer to Seller to make a Forward Purchase.

**Forward Purchase**: The purchase of a certain quantity of Commodity (power per MWh(s)) for a period of time greater than one day, which will be part of the Energy which is to be delivered to the Delivery Point.

**Locational Marginal Price (LMP)**: The hourly integrated market clearing marginal price for Commodity at the location the Commodity is delivered or received as defined by the PJM RTO.

**Marginal Loss Credit**: A credit provided by certain RTOs as a result of an over-collection of funds for transmission and distribution losses.

**Off-Peak**: Monday through Sunday hours ending ("HE") 0100 through HE 0700 and HE 2400 and Saturday through Sunday HE 0800 through HE 2300. Off Peak also includes NERC Holidays HE 0100 through HE 2400. HE shall be at Eastern prevailing time.

**On-Peak**: Monday through Friday HE 0800 through HE 2300, excluding NERC Holidays. HE shall be at Eastern prevailing time.

**PJM**: The Pennsylvania New Jersey Maryland Interconnection, L.L.C.

**PJM RTO**: The PJM Interconnection Regional Transmission Organization.

**PowerPortfolio Transaction Report**: The written confirmation sent by Seller to confirm its acceptance of Customer's offer of a Forward Purchase.

**Regional Transmission Expansion Plan (RTEP)**: PJM's Regional Transmission Expansion Plan identifies transmission system additions and improvements needed to keep electricity flowing to the millions of people throughout PJM's region.

**Reliability Must Run (RMR)**: A unit that must run for operational or reliability reasons, regardless of economic considerations. Also called reliability agreement.

**Renewable Portfolio Standard (RPS)**: A regulation that requires the increased production of energy from renewable energy sources.
Services Fee: The fee for the services provided by Seller to meet the Service Locations' load requirements, including any applicable broker fee, which is included in the Purchase Price to be paid by Buyer.

Transmission: The transportation of energy over high voltage wires from a generator to the Utility.

Utility Defined Loss Factor: Loss Factor as published in applicable utility tariff.

**SPECIAL PROVISIONS**

**1.. Product Description:** Seller will work with Buyer to develop an overall approach for Buyer's Commodity purchases ("Buying Strategy") that is mutually agreed upon by the Parties, based on the options given below. This Special Provision will outline the types of services that Seller provides as part of the PowerPortfolio Product, the Purchasing Options available to meet Buyer's Commodity requirements, the total cost of the Energy and services provided and the process by which Commodity purchases are to be effectuated.

A. Portfolio Purchasing Options: Seller will use the Purchasing Options below, as selected by Buyer, to meet Buyer's Commodity requirements at its Service Locations in accordance with the Buying Strategy:

1. Day-Ahead Locational Marginal Price ("Day-Ahead LMP") Purchase: The Day-Ahead LMP Purchase is the hourly integrated market clearing marginal prices for Commodity for the next operating day based on submitted demand bids and generation offers at the location of the Commodity is delivered or received. Day-Ahead LMP Purchases(s) are made in 0.1 megawatt ("MW") increments and are not permitted for Service Locations unless Buyer's forecasted usage for those Service Locations per Utility territory is equal to, or greater than, 0.1 MW.

2. Forward Purchase: During the Delivery Period of this Agreement, Buyer may purchase any amount of the Commodity component of its Energy requirements from Seller as a Forward Purchase. Buyer will request a Forward Purchase at least five (5) business days prior to Buyer's desired start date for such purchase. Forward Purchase(s) are no less than 300kW, in increments of 100kW, and for a minimum term of one (1) calendar month and are not permitted for certain Service Locations unless Buyer's forecasted usage for those Service Locations per Utility territory is equal to, or greater than 300kW. In all events, Seller will make Forward Purchase amounts available to Buyer in a commercially reasonable timeframe following Buyer's request to effectuate a Forward Purchase. To initiate a Forward Purchase, Customer should complete and submit a Forward Purchase Order Form as set forth in Exhibit B or pursuant to an email transaction containing the required information set forth in Exhibit B and submit to Seller five business days prior to the desired start date. If Seller is able to fulfill the request, it will send Customer a PowerPortfolio Transaction Report. Seller will invoice Buyer, and Buyer will pay, for the entire quantity of any Block Purchase regardless of whether the entire amount is consumed, including but not limited to where Buyer begins or ends service with Seller within a month where a block is purchased. Buyer may not purchase a quantity of Commodity that is greater than Buyer's forecasted usage, as agreed to by Buyer and Seller.

3. If Buyer has not specifically selected a Day-Ahead LMP or Forward Purchase for any given day during the Delivery Period, Seller will purchase Commodity necessary to meet Buyer's Energy requirements for Buyer's forecasted usage on a Day-Ahead LMP basis as if Buyer and Seller had agreed upon such Day-Ahead LMP Purchase.

4. To the extent Buyer's Day-Ahead LMP and/or Forward Purchase(s) do not meet Buyer's hourly Commodity requirements, Seller will meet Buyer's remaining Commodity requirements with PJM Real-Time LMP. Buyer will pay Seller the associated Real-Time LMP for such additional Commodity purchase(s).

5. Seller will deliver all quantities of Energy made under Day-Ahead and/or Forward Purchase(s) into the PJM RTO regardless if they are actually consumed by Buyer. Although Buyer is obligated and shall pay Seller for the entire quantity of such Day-Ahead LMP and/or Forward Purchases, Seller will credit/debit Buyer for the dollar amount that Seller receives from the PJM RTO for such quantity(ies) of unconsumed Commodity. The dollar amount credited/debited to the Buyer shall be, as reasonably determined by Buyer and Seller, in accordance with Buyer's full usage requirements.

6. Purchasing Acknowledgement: Buyer acknowledges that under any Forward Purchase or Day-Ahead LMP Purchase selection, Buyer may not knowingly purchase or allow for the scheduling of a quantity of Commodity that is greater than Buyer's forecasted usage. In all cases all forecasts and Commodity purchases shall be, as reasonably determined by Buyer and Seller, in accordance with Buyer's full usage requirements.

7. Email Transactions: The Parties consent to the use of electronic agreements and to conduct Transactions and/or Forward Purchases via email and/or facsimile. Such electronic correspondence shall be deemed a "writing", by which the Parties intend to be bound, for purposes of satisfying any applicable state and federal legal requirements. The Parties agree that a typed name and title, including the use of an automated email signature block, in such writing(s) is the legal equivalent of such Party's representative's manual signature (an "E-signature"). The Parties agree that no certification of authority or other third-party verification shall be necessary to validate an E-signature and lack of such certification or third-party verification will not in any way affect the enforceability of a Party's E-signature. In all cases, the failure of Seller to send a PowerPortfolio Transaction Report or the failure of Buyer to acknowledge receipt of a PowerPortfolio Transaction Report shall not invalidate the Forward Purchase agreed to by the Parties. If there are any inconsistencies between this Transaction Confirmation and any finalized Forward Purchase, such inconsistencies will be resolved in favor of the latter for that applicable purchase.

**2. Change in Utility Account Numbers:** The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations attached in the Exhibit A, or any replacement account number issued by the Utility from time to time.

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3. Third Party Charges: Customer acknowledges that any costs assessed by the Utility or any third party as a result of Customer's switch to or from Seller, including but not limited to switching costs, are not included in the Purchase Price and shall be the responsibility of the Customer.

4. Billing and Payment: The following is hereby added to the Billing and Payment section of the CMA:

"Seller and Buyer agree upon the following condition regarding its non-interval monthly meter accounts, if any: Seller will deaggregate the Buyer's usage, based on Utility and ISO settlement protocols, and Buyer agrees to accept the results of this deaggregation as its hourly billing determinants. Where Buyer has interval meters, Seller will use the interval meter hourly usage for billing only to the extent that the hourly usage is used by the applicable Utility and ISO for settlement purposes with Seller. In the event of an interval meter where the Utility and ISO do not use the hourly usage for settlements, Seller will deaggregate Buyer's usage, based on Utility and ISO settlement protocols, and Buyer agrees to accept the results of this deaggregation as its hourly billing determinants."

5. Risk Acknowledgements: By selecting and executing this Transaction Confirmation, Buyer acknowledges that it is acting for its own account, and it has made its own independent decision to enter into this Agreement based solely upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of Seller or its affiliates (or its respective representatives) in any respect, and in particular, not as investment advice or as a recommendation to enter into any Agreement, it being understood that information and explanations related to the terms and conditions of any Agreement will not be considered investment advice or a recommendation to enter into the Agreement. Buyer understands and agrees that the energy market is a volatile market and that - except as to any agreed prices between the Parties described in this Agreement - no warranties (express or implied) and no guarantees regarding market movement or price trends are made by Seller or its affiliates in connection with this Agreement. No communication (written or oral) received from Seller or its affiliates (or their respective representatives) will be deemed to be an assurance or guarantee as to the expected results of any transaction elected by Buyer under this Agreement.

6. Buyer has entered into a Power Purchase Agreement ("PPA") dated _____ with _____.

7. Buyer designates, appoints and authorizes [name of agent company], to act as its authorized agent(s) (the "Agent(s)") to bind it to this Transaction Confirmation and all Transactions entered into under the CMA. However, Buyer may revoke the designation of [name of agent company] by written notice to Seller; provided further, such revocation shall not affect any Transaction Confirmations previously entered into by Agent on behalf of Buyer.

8. Buyer further authorizes the Agent to enter into Transactions for all the parties listed on Exhibit C (the "Centre County Solar Group Portfolio Group"), attached hereto and made a part hereof, for the Delivery Period and any Renewal Term and that such Transactions shall be completed as an aggregated purchase for the entire Centre County Solar Group Portfolio Group, not as individual transactions for each individual party. Buyer agrees that all purchases under this Transaction Confirmation shall be recorded as one Transaction Confirmation for the Centre County Solar Group Portfolio Group rather than separate Transaction Confirmations for each Buyer's Agreement. This authorization is not limited to the terms, length or conditions of the purchase of the electricity service.

9. A copy of the Centre County Solar Group Portfolio Group's Transaction Confirmation(s) shall be copied and placed with each individual Centre County Solar Group Portfolio Group member Agreement. Buyer understands and agrees that all actions of the Agent shall be binding upon Buyer.

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TAX EXEMPTION STATUS - If exempt, must attach certificate

In order to ensure accurate billing, tax status indication is required. Please check the appropriate status below:

[ ] Non-Exempt
[ ] Exempt (e.g. Residential, Non-Profit Organization, Manufacturing, Small Business, Agricultural, Resale, etc.)

<table>
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<tr>
<th>Buyer: STATE COLLEGE AREA SCHOOL DISTRICT</th>
<th>Seller: Direct Energy Business, LLC</th>
</tr>
</thead>
<tbody>
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<td>By: ______________________________</td>
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EXHIBIT A PRICING ATTACHMENT

This Exhibit A is to the Transaction Confirmation dated January 08, 2024 between
DIRECT ENERGY BUSINESS LLC
and
STATE COLLEGE AREA SCHOOL DISTRICT
for a term of 60 Months
Contract ID: 7219746

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<td>Capacity / Transmission Tags</td>
<td>*Estimated Meter Read Start Date (MM/DD/YYYY)</td>
<td>Purchase Price (cents/KWh)</td>
<td>Annual Historical Usage (kWh)</td>
</tr>
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<td>WPP</td>
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<td>WPP</td>
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<td>Service Location</td>
<td>Utility</td>
<td>Utility Rate Class</td>
<td>Zone</td>
<td>Capacity / Transmission Tags</td>
<td>*Estimated Meter Read Start Date (MM/DD/YYYY)</td>
<td>Purchase Price (cents/KWh)</td>
<td>Annual Historical Usage (kWh)</td>
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<td>DISTRICT - Customer - 215 W. Main Street)</td>
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</table>

**Total Annual Usage:** 16,553,174

*The Estimated Meter Read Start Date is merely an approximation based upon Seller’s best estimation as to when the service will begin and may not reflect the actual start date. Seller shall not be liable for any lost savings or lost opportunity relating to this estimation.*

**Monthly Contract Quantity**

<table>
<thead>
<tr>
<th>KWh</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
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<tbody>
<tr>
<td>2025</td>
<td>861,876</td>
<td>1,472,004</td>
<td>1,523,038</td>
<td>1,254,559</td>
<td>1,185,665</td>
<td>1,082,940</td>
<td>1,387,592</td>
<td>1,385,172</td>
<td>1,333,700</td>
<td>1,267,343</td>
<td>1,309,816</td>
<td>1,670,419</td>
</tr>
<tr>
<td>2026</td>
<td>1,617,729</td>
<td>1,472,004</td>
<td>1,528,342</td>
<td>1,254,559</td>
<td>1,173,047</td>
<td>1,087,121</td>
<td>1,380,119</td>
<td>1,394,455</td>
<td>1,333,700</td>
<td>1,243,817</td>
<td>1,321,024</td>
<td>1,670,419</td>
</tr>
<tr>
<td>2027</td>
<td>1,608,765</td>
<td>1,472,004</td>
<td>1,535,647</td>
<td>1,254,559</td>
<td>1,173,047</td>
<td>1,087,121</td>
<td>1,380,119</td>
<td>1,394,455</td>
<td>1,333,700</td>
<td>1,243,817</td>
<td>1,321,024</td>
<td>1,680,244</td>
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<tr>
<td>2028</td>
<td>1,617,729</td>
<td>1,525,951</td>
<td>1,535,647</td>
<td>1,234,173</td>
<td>1,198,323</td>
<td>1,087,121</td>
<td>1,372,646</td>
<td>1,403,737</td>
<td>1,319,960</td>
<td>1,255,580</td>
<td>1,332,231</td>
<td>1,650,768</td>
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<tr>
<td>2029</td>
<td>1,626,694</td>
<td>1,472,004</td>
<td>1,528,342</td>
<td>1,244,366</td>
<td>1,198,323</td>
<td>1,082,940</td>
<td>1,380,119</td>
<td>1,403,737</td>
<td>1,306,219</td>
<td>1,267,343</td>
<td>1,332,231</td>
<td>1,650,768</td>
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<td>2030</td>
<td>692,344</td>
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</tr>
</tbody>
</table>

*Usage values in the above table represent the aggregated Usage for all Service Locations for a month. Material Usage Deviation includes for the purposes of this Exhibit A, any deviation caused by net metering or other Buyer initiated energy efficiency measures.*

This Exhibit is based on a Weighted Average Price. Any strikeouts of any of the accounts provided with a Weighted Average Price will render pricing for the accounts assigned with a Weighted Average Price null and void.

**Term of Months:** 60 Months

**Meter Read Start Date:** January, 2025

[] Please aggregate my account onto one invoice
(If more than 50 accounts are to be aggregated, accounts will be separated by meter read date)

Accepted and Agreed to:

By: ________________________________ Date: ________________________________
Exhibit “B”

FORWARD PURCHASE ORDER FORM

This Exhibit B is being provided pursuant to and in accordance with the Transaction Confirmation dated () and Commodity Master Agreement dated () between Customer (“Buyer”) and Direct Energy (“Seller”) (the “Agreement”), and is hereby incorporated into and made part of the Agreement. Buyer’s execution and submission of this Exhibit B to Seller shall constitute an offer by Buyer to Seller to purchase Electricity in accordance with the terms set out below. This Exhibit B will become valid upon i) execution by the Buyer and ii) written confirmation of the Seller’s acceptance of the terms herein to the Buyer.

1. Transaction details including the Term, Times of Delivery, Quantity and Energy Price are shown below:

<table>
<thead>
<tr>
<th>Delivery Zone</th>
<th>Term Start</th>
<th>Term End</th>
<th>Time of Day</th>
<th>Energy/Commodity Price ($/MWh)</th>
<th>Block Size (MW or %)</th>
<th>Quantity (MWH)</th>
</tr>
</thead>
</table>

2. Special Provision(s), if any:

In no event shall Buyer have any recourse against Seller for any purchase that is transacted under this Forward Purchase Order Form so long as the Commodity Price stated above is achieved.

Following written confirmation by Seller of its acceptance, Seller will make reasonable efforts to send Buyer an executed copy of this Exhibit B. However and in all cases, the failure of Seller to send an Exhibit B or the failure of Buyer to acknowledge receipt of an Exhibit B shall not invalidate the Forward Purchase agreed to by the Parties.

Unless specifically modified herein, all terms and conditions of the Agreement remain the same. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

This Exhibit B may be executed in one or more counterparts and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other Party by facsimile, mail, courier or electronic mail, all of which together shall constitute one and the same Agreement.

DIRECT ENERGY BUSINESS, LLC
By: ________________________________
Print Name: __________________________
Title: ________________________________
Date: ________________________________

STATE COLLEGE AREA SCHOOL DISTRICT
By: ________________________________
Print Name: __________________________
Title: ________________________________
Date: ________________________________

PLEASE E-MAIL to the attention of: EnergyAdvisors@nrg.com
EXHIBIT C
CENTRE COUNTY SOLAR GROUP PORTFOLIO GROUP

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Address</th>
<th>Account Number</th>
<th>Anything else to be captured?</th>
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</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>
PMT/Gregg’s Comments for TC

Pages 1–3 is the Commodity Master Agreement (CMA)

Pages 4–12 is the Transaction Confirmation (TC)

Both are drafted with SCASD as the member example and the TC is currently for the 2024 contract that SCASD has entered – so any dates should be viewed as placeholders not actuals.

Purchase Price – Our intent is to have the Energy Rate and Purchase Price (PPA) be a single bill item, not separate. Meaning PPA rate and the fees (outlined in PPA Factsheet) be all included as one line item. This would match how we currently receive electricity pricing for our generation.

Block Purchase – working to get the threshold lowered to 100/kWh to provide this option for the non-solar electricity portion.

Forward Purchase ‘Customer should complete and submit a Forward Purchase Order Form’ – On-going services consultant (GreenSky) will do this with approval from the organizations

‘Seller will invoice Buyer, and Buyer will pay, for the entire quantity of any Block Purchase regardless of whether the entire amount is consumed’ – GreenSky will be keeping an eye on this to minimize sell backs.

Appendix A - Pricing is only including a placeholder of .250 cents/kWh ($0.0025/kWh) – This is the fee of $6,000/month but they are breaking it down into a kWh charge. Pam calculated it as $0.00211/kWh for the total electricity used by the group. The PMT will discuss what kWh of electricity is being used to determine that rate – whether it is the total for the group or just the total in the solar project. The PMT will confirm and update the rates on the factsheet and presentations as appropriate.
SERVICING AGREEMENT

This Servicing Agreement (the “Agreement”) is entered into as of [DATE] (the “Effective Date”), by and between Direct Energy Business, LLC (“Supplier”) and ___________________ (“Customer”). Customer and Supplier are each a “Party” and collectively the “Parties” under this Agreement.

WHEREAS, Supplier, Customer and ___________________ (“Generator”) are parties to that certain InSchedule Implementation Agreement dated as of [DATE], (the “InSchedule Agreement”) substantially in the form attached hereto as Schedule 1;

WHEREAS, the Parties desire for Customer to appoint Supplier as Customer’s Designated Retail Supplier to serve as PJM transaction manager (the “Buyer’s Transaction Manager”) with respect to that certain Power Purchase Agreement dated [______________, 2023], as amended and assigned (“PPA”) between Customer and Generator substantially in the form attached hereto as Schedule 2;

WHEREAS, the Parties desire, in connection with the PPA, by means of the InSchedule System, that Generator delivers, transfers, and/or assigns Purchaser’s Share produced by the power generation Facility identified on Attachment A (as defined in the PPA) to Buyer’s Transaction Manager at the Delivery Point, and Buyer’s Transaction Manager accepts, through PJM’s InSchedule system, such physical bilateral transfer of energy on behalf of Customer (as contemplated by the InSchedule Agreement, PPA, CMA (as defined below), and this Agreement), (such energy, “Contract Energy”);

WHEREAS, the Parties desire to set forth terms and conditions applicable to Supplier’s services in connection with the Contract Energy, including, without limitation, its appointment as Buyer’s Transaction Manager and Customer’s assignment of its rights to accept Contract Energy and receive the revenues from PJM with respect to Contract Energy (“Generation Revenues”) to Supplier in exchange for Supplier’s treatment of such revenues pursuant to Section 4 of this Agreement; such treatment establishes the Energy Rate that adjusts the purchase price for commodity retail electricity under the Commodity Master Agreement dated as of [Date] by and among [NRG Business Marketing LLC], Supplier and Customer (as amended, and together with all related transaction confirmations (together with each such confirmation, a “CMA Transaction Confirmation”) thereunder, the “CMA”) substantially in the form attached hereto as Schedule 3;

WHEREAS, each of the InSchedule Agreement, this Agreement, and the CMA are co-terminus;

WHEREAS, a termination of the PPA will cause termination of the InSchedule Agreement, this Agreement, and the CMA; and

WHEREAS, the Parties desire to set forth the terms and conditions applicable to Supplier’s provision of such services to Customer.
NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agree as follows:

1. Definitions. All capitalized terms herein that are not otherwise defined shall have the meaning given to such terms in Attachment B hereto or the PPA, as applicable.

2. Relationship of Parties; Limitation of Supplier’s Authority.

   a. Relationship of Parties. This Agreement shall not make any Party an agent, partner, joint venturer, lessee, lessor, fiduciary, or legal representative of any other Party for any purpose whatsoever, except as specifically set forth in this Agreement. Neither Party is authorized to assume or create any liability, expressed or implied, on behalf of or in the name of any other Party or to bind any other Party in any manner whatsoever, except as specifically set forth in this Agreement. The relationship of Supplier as set forth in this Agreement is that of an independent contractor. Nothing contained herein is intended to give Supplier any authority or rights to control any generation facility.

   b. Limitation of Supplier’s Authority; Limitation of Customer Obligations.

      i. Nothing contained herein is intended to give Supplier any authority or rights to operate the Facility. Supplier shall not hold itself out as controlling the Facility in filings with governmental authorities, including the Federal Energy Regulatory Commission (“FERC”) or the North American Reliability Corporation (“NERC”).

      ii. Supplier is not obligated to perform any Services, and Supplier will not be deemed to have breached its obligations hereunder, if the performance or manner of performance of such Services would, in Supplier’s commercially reasonable determination or judgment in accordance with Good Industry Practice, violate any provision of applicable law, rule, or regulation (including, without limitation, the rules and regulations of PJM) or perform any act or engage in any transaction on behalf of Customer that is not expressly permitted under this Agreement. Supplier shall perform all Services in accordance with the PJM Documents and the PJM Manuals, and for the avoidance of doubt, subject to the forgoing, Supplier shall not be required to take physical title of energy pursuant to this Agreement or the InSchedule Agreement.

      iii. Nothing contained in this Agreement will be construed to limit Supplier’s operations within PJM or any other geographic region or require Supplier or its affiliates to unreasonably favor the desires of the Customer over any other Supplier customer or the interests of Supplier or its affiliates. Customer agrees and acknowledges that Generator has sole responsibility for the control and market participation of the Generator.
iv. Nothing contained in this Agreement, the InSchedule Agreement, PPA, or CMA is intended to require Customer to: 1) directly accept wholesale physical energy; 2) become a PJM member or Market Participant; 3) obtain market-based rate authority from FERC; 4) undertake a FERC jurisdictional “wholesale sale” and/or sale of electric energy for resale; 4) participate in any “swap” under the Commodity Exchange Act and related Commodity Futures Trading Commission rules; 5) participate in any preapproval of cost-based rates; 6) 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, the InSchedule Agreement, PPA, or CMA. If any of the events listed above in this Section 2.b.iv occur, or are reasonably likely to occur as a result of a communication or ruling of a governmental authority, then either Party shall have the right, but not the obligation, to terminate this Agreement.

v. Nothing contained herein obligates Customer to be responsible for any damages, or to make any payment to Supplier for costs or expenses of any kind under the InSchedule Agreement except in the event of Customer’s gross negligence, willful misconduct or failure to pay Supplier for its obligations under this Agreement.

3. General Agreement; Services.

a. Supplier responsibilities. Customer hereby appoints Supplier to act as its Designated Retail Supplier under the PPA and to serve as Buyer’s Transaction Manager providing PJM transaction services on behalf of Customer. Subject to Excluded Acts and the other provisions of this Agreement, Supplier shall provide the following services under this Agreement as Buyer’s Transaction Manager (the “Services”):

i. Supplier shall remain a PJM Market Participant in good standing through the Term (as defined below);

ii. Supplier shall establish a sub-account for Customer with PJM to receive Generation Revenues (the “Sub-Account”);

iii. Supplier shall provide Customer electronic access to the PJM Sub-Account using PJM eTools upon Customer’s request;

iv. Supplier shall: 1) coordinate forecasting and scheduling of deliveries of Contract Energy with Generator; 2) utilize Generator’s energy schedules for the Generation Facility in connection with Services under this Agreement and the InSchedule Agreement; 3) accept Contract Energy through the
InSchedule System and associated Generation Revenues in the Sub-Account; and 4) transfer and/or sell the Contract Energy;

v. Supplier will pay any ordinary course third-party invoices between Customer and Generator, duly authorized in advance by Customer in writing for each invoice for any associated transaction for Contract Energy under the PPA. All such payments will be made by Supplier at the direction of the Customer (collectively, “Third-Party Payments”); provided, that for the avoidance of doubt, Supplier is not obligated to make any such Third-Party Payments to the extent that such payment constitutes a termination payment, liquidated damage, or other damage or penalty under the PPA. Third-Party Payments shall be billed through the Energy Rate, and in any case shall be passed through without markup of any kind;

vi. Supplier will receive and retain Generation Revenues provided by PJM in the Sub-Account and perform the calculation described in Section 4;

b. Supplier shall perform its obligations under this Agreement in accordance with Good Industry Practice, PJM Rules, and applicable law. Notwithstanding anything to the contrary in this Agreement and except, if and to the extent of, Customer’s actions or inactions that directly cause Supplier to incur such damages or costs or when Supplier is acting at the express instruction of Customer, Supplier shall be responsible for any damages or costs incurred by Customer under the PPA arising in connection with Supplier’s acts or omissions when performing under this Agreement and/or the InSchedule Agreement, and be required to promptly reimburse Customer for such damages, subject at all times to the Liability Cap.

c. Excluded Acts. The following actions are expressly excluded from the Services (collectively, “Excluded Acts”):

i. Except with respect to Supplier’s credit obligations to PJM as a PJM Market Participant, under no circumstances shall Supplier provide or be required to provide any collateral or credit support that is required to be provided to any third party with respect to transactions entered into under, or in connection with, this Agreement, the InSchedule Agreement, or the Services.

ii. Supplier shall not assume with respect to the Facility under this Agreement the role of, and nothing contained in this Agreement shall be construed to make Supplier a, “Generator Operator” or “Generator Owner” as such terms are defined by NERC. Nothing contained in this Agreement shall be construed to require Supplier to take on any responsibility under the NERC policies and procedures for any obligations reserved to any generation owner or generation operator. Supplier shall not under this Agreement be responsible for any NERC compliance activities. Generator shall maintain
responsibility for all services related to the control and PJM market participation of the Generator.

iii. Nothing contained herein obligates Supplier to negotiate, execute, or reconcile to preliminary terms any document, agreement, or confirmation on behalf of the Customer, and Customer will be responsible to negotiate, execute or reconcile any such document, agreement, or confirmation that binds it as a principal.

iv. As of the Effective Date, Supplier is not a licensed commodity trading advisor, is not licensed to provide commodity trading advice of the type regulated by the U.S. Commodity Futures Trading Commission (“CFTC”) or the National Futures Association (“NFA”) and is not otherwise registered with the CFTC or NFA in any capacity. Accordingly, Supplier is not providing any commodity trading advice of the type regulated by the CFTC or NFA advice under this Agreement, no fiduciary relationship is created, and nothing contained in this Agreement will be construed to obligate Supplier to provide any advice to Company or to perform any Services that would in Supplier’s sole judgment require Supplier to register in any capacity with, or subject Supplier to the jurisdiction of, the CFTC or NFA (regardless of whether or not an exemption from such registration may exist).

v. Nothing contained herein obligates Supplier to be responsible for any damages, or to make any payment to Generator or any third party for any costs or expense of any kind, under the InSchedule Agreement.

vi. Supplier shall not be required to make any payment or incur any liability in respect of Reimbursable Expenses if Supplier has a commercially reasonable belief that it will not receive timely reimbursement from Customer, or which would cause Customer to exceed the internal credit limits Supplier establishes, in its sole judgement, from time to time.

d. Standard of Care.

i. Supplier shall perform the Services in a good, workmanlike, and commercially reasonable manner and in accordance and compliance with Good Industry Practice, applicable law, and reasonable instructions from Customer and Customer’s representatives that Customer has notified Supplier in writing as being authorized to provide instructions to Supplier on the Services. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE REQUIRED TO PROVIDE A STANDARD OF CARE BEYOND THAT SET FORTH IN THIS AGREEMENT.
ii. “Good Industry Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry in the United States during the relevant time period, and any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good electric power generation business practices, reliability, safety, economy, expedition, applicable codes and standards, the PJM Rules and applicable law. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to refer to a range of acceptable practices, methods, and acts in light of the circumstances and relevant time period.

e. This Agreement shall amend and modify the CMA to the extent that any invoice provided under the CMA shall reference the Energy Rate defined in Section 4 below; provided, however, in the event there is a conflict between this Agreement and the CMA, this Agreement shall control. Except to the limited extent amended by this Agreement the CMA shall continue in full force and effect in accordance with its terms.

4. Treatment of Metered Output; Assignment of Generation Revenues.

a. Provided (i) Customer has satisfied all conditions set forth in Section 5 to the reasonable satisfaction of Supplier and (ii) Supplier has established the Sub-Account, Supplier shall accept all Contract Energy deliveries, transfers, and/or assignments by Generator in the InSchedule System and collect and retain all PJM credits and amounts associated with the Contract Energy and deposited in the Sub-Account for Supplier’s own account, and Supplier shall be entitled to retain all right, title, and interest in such Generation Revenues (the “Assignment”).

b. Customer shall pay and reimburse Supplier for any and all fees, costs, expenses, penalties, and charges that may be assessed by, or deducted from, the Sub-Account by PJM, and Supplier shall credit Customer for any costs, expenses, penalties, and charges credited or added to the Sub-Account (the “Reimbursable Expenses”). For the avoidance of doubt, any amounts under an Assignment that are, or are required to be, returned by Supplier to Customer or PJM, including, without limitation, on the account of any insolvency, bankruptcy or otherwise, shall be deemed to constitute a Reimbursable Expense for such amount. Reimbursable Expenses shall only be billed through the Energy Rate, and in any case shall be passed through without markup of any kind.

c. In exchange for the Assignment, the payment of the Monthly Transaction Manager Service Fee and the Reimbursable Expenses (both to be included in, and billed
through, the Energy Rate), and provided Customer furnishes Supplier with the information access needed, Supplier agrees to perform the Services and apply on each monthly invoice the Energy Rate (defined below) during the term of the CMA.

On an annual basis (each an “Annual Period”), which shall start on the first day of the month Supplier receives generation in the Sub-Account (the “Commencement Date”) and occur annually thereafter, unless the Parties mutually agree to a different time period, Supplier shall develop an Energy Rate for each Annual Period based on the following:

- The “Forecasted Total Output Cost”, which shall equal the:
  
  The forecast PPA cost, which shall equal the quantity of forecasted Contract Energy for the Annual Period reflected on the Forecasted Output Report (defined below) times the contract rate for the Annual Period set forth in the PPA, minus the

  The forecast wholesale cost, which shall equal the sum of all hourly quantities of forecasted Contract Energy for the Annual Period reflected on the Forecasted Output Report (defined below) times the respective hourly LMPs for the Annual Period forecasted by Supplier.

- The “Energy Rate” (in cents/kWh) for each Annual Period shall be equal the sum of (i) the Forecasted Total Output Cost for such Annual Period, (ii) any Reimbursable Expenses or commercially reasonably forecasted Reimbursable Expenses (not to be double counted) for such Annual Period, (iii) any Monthly Transaction Manager Service Fees for such Annual Period, and (iv) applicable after the initial Annual Period for all subsequent Annual Periods, the Prior Annual Period True-Up, divided by the annual forecasted usage amount (in kWhs) of Customer as commercially reasonably determined by Supplier for such Annual Period based on historical use patterns. If the Energy Rate is negative, it will reduce Customer’s overall monthly price of energy and energy rate as a credit under the CMA. If the Energy Rate is positive, it will increase Customer’s overall monthly price of energy and energy rate as a charge under the CMA.

After the initial Annual Period, and for subsequent Annual Periods, the Energy Rate shall include a Prior Annual Period True-Up amount for the previous Annual Period:

“Prior Annual Period True-Up” = the Actual Prior Annual Period Energy Rate minus the Billed Prior Annual Period Energy Rate
“Actual Prior Annual Period Energy Rate” = the Actual Total Output Cost plus any Monthly Transaction Manager Service Fees for the prior Annual Period

“Actual Total Output Cost”, which shall equal the:

The actual PPA cost, which shall equal the actual quantity of Contract Energy for the prior Annual Period times the contract rate for the prior Annual Period set forth in the PPA, minus the

The actual wholesale cost, which shall equal the sum of the actual hourly quantities of Contract Energy for the prior Annual Period times the respective actual hourly LMPs for the prior Annual Period.

“Billed Prior Annual Period Energy Rate” = the Energy Rate used for the prior Annual Period times the actual Customer Usage for the prior Annual Period

d. Customer acknowledges and agrees that Supplier will charge the Energy Rate on a monthly basis on invoices pursuant to the CMA, positive or negative, to the electric energy used by the specified account(s) listed in the CMA and no other accounts unless the Parties agree in writing that it should apply to a different account(s) of Customer under the CMA.

e. The Energy Rate is not an independent amount paid by, and/or credited to, Customer, but is an adjustment for the purchase price of the retail commodity paid for by Customer under the CMA. The Parties agree that the CMA Transaction Confirmation (as modified by this Agreement) (a) will be a physically settled forward contract as considered under the U.S. Commodity Exchange Act and regulations and guidance promulgated by the U.S. Commodity Futures Exchange Commission and (b) is a private commercial merchandising transaction that will result in the transfer ownership of a non-financial commodity under the CMA and will not transfer solely the price risk associated with such commodity. Supplier and Customer are capable of making or taking delivery of the underlying commodity and have entered into the CMA and the underlying CMA Transaction Confirmations with the intent to effect physical delivery of such commodity. Customer is capable of taking delivery of the underlying commodity, by means of its electric distribution utility, and has entered into the CMA with the intent to effect physical delivery of such commodity. Furthermore, Customer acknowledges and agrees that this Agreement and the Services hereunder constitute a single-integrated transaction with the CMA and that Supplier would not have agreed to provide the Services on the terms set forth in this Agreement, separate and apart from the terms of the CMA Transaction Confirmation.
f. At least thirty (30) days prior to the Commencement Date and thereafter annually prior to the start of each Annual Period, Supplier will provide to Customer a report showing the Energy Rate calculation for the current Annual Period (the “Annual Energy Rate Calculation Report”). The report shall provide the actual results for the previous Annual Period including, but not limited to, (i) the generation (in MWhs) received into the Sub-Account, (ii) the payments made to the generator on Customer’s behalf as billed under the PPA, (iii) the revenue for such generation received from PJM, (iv) any Reimbursable Expenses, (v) the Monthly Transaction Manager Service Fees paid to Supplier pursuant to Section 6; and (vi) the forecasted results for the next Annual Period including, but not limited to, (vii) the Forecasted Total Output Cost calculation, (viii) the forecasted Reimbursable Expenses, (ix) the forecasted Monthly Transaction Service Fees, and (x) the current Annual Period Energy Rate calculation inclusive of the Prior Annual Period True-up.

g. Upon termination or expiration of this Agreement, Supplier and Customer will finalize any monies due to Supplier as a result of previously under-collected fees resulting from this Agreement and due Customer as a result of over-collected fees resulting from this Agreement, and the Parties shall net such amounts into a single settlement payment from one Party to the other. Such process shall address, without limitation, any proration of annualized Energy Rate elements as well as the early, prorated calculation of the Prior Annual Period True-Up for the current Annual Period.

5. Customer’s Obligations. Customer shall be responsible for the following:

a. (i) determine if Generator is acting in accordance with the terms and conditions set forth in the InSchedule Agreement and the PPA, and shall not rely upon Supplier to determine if Supplier is receiving the correct amount of Generation Revenues in the Sub-Account and if Generator is in compliance with the PPA and (ii) being solely responsible for its compliance, performance and liability under the PPA.

b. Coordinate with Generator and Supplier to make available to Supplier such information and reports as necessary for Supplier to perform the Services, including, but not limited to, under the PPA and a 12 x 24 output shape from the Generator or a historical 8760 report showing the prior Annual Period generation (or other format of such anticipated Facility output, if mutually agreed upon by the Parties) (the “Forecasted Output Report”);

c. in the event Customer receives any PJM settlements, invoices or payments from PJM related to the Contract Energy, such amounts shall be transferred and/or assigned to Supplier consistent with this Agreement;
d. perform any Customer obligations under the InSchedule Agreement that are not assigned from Customer to Supplier and/or part of the Services under this Agreement;

e. work reasonably and cooperatively in good faith with Supplier so that Supplier may carry out its obligations under this Agreement;

f. Not amend or modify the PPA in any manner that would prohibit or impair the provision of Services by Supplier under this Agreement without the prior written consent of Supplier, not to be unreasonably withheld.

6. Transaction Fee.

a. Fees. In exchange for agreeing to provide the Services set forth in this Agreement, Supplier shall charge, and Customer shall pay, a monthly service fee of $6,000.00 (“the “Monthly Transaction Manager Service Fee”) which will be included in the Energy Rate.

7. Representations and Warranties:

a. Supplier represents and warrants to Customer that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.

b. Supplier represents and warrants to Customer that: (i) the execution and delivery of this Agreement and the InSchedule Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions hereof, do not and will not conflict with any of the terms, conditions or provisions of any legal requirements applicable to Supplier; (ii) it is a Market Participant in good standing with PJM, and, subject to Customer’s performance of the conditions set forth herein, has the capability to perform Supplier’s obligations set forth in this Agreement; and (iii) Supplier will obtain at its own expense all requisite permits, licenses and certifications necessary to perform this Agreement.

c. Customer represents and warrants to Supplier that (i) the execution and delivery of this Agreement and the InSchedule Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions hereof and thereof, do not and will not conflict with any of the terms, conditions, or provisions of any legal requirements applicable to Customer; and (ii) it has obtained or will obtain any and all approvals, consents, licenses, permits or other authority necessary or required in order for Customer to assign its rights to the Generation Revenues to Supplier, for Supplier to receive the Generation Revenues in the Sub-Account and for Supplier to credit the Generation Revenues actually received to Customer as set forth herein.
d. Customer 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.

8. **Compliance with Laws.** Each Party will perform its obligations under this Agreement in compliance with all applicable laws, including, without limitation, applicable electric distribution utility tariffs and PJM rules. Each Party further acknowledges and agrees that, notwithstanding the Assignment of the Generation Revenues to Supplier and the utilization of the Energy Rate to adjust Customer retail commodity pricing under the CMA Transaction Confirmation, (a) neither Supplier nor Customer has an ownership interest in the Facility, (b) neither Supplier nor Customer has the ability to directly control the schedule or dispatch of the Facility and (c) neither Supplier nor Customer has the ability to modify the performance or design of the Facility to abide by any reliability or operational regulations or standards promulgated and/or enforced by PJM, NERC, or any other applicable governmental agency.

9. **Waiver of Sovereign Immunity.** Customer warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

10. **Term and Termination.**

   a. The term of this Agreement shall commence as of the Effective Date, provided, that the Services and all fees and the application of the Energy Rate to CMA Transaction Confirmation energy rates, prices, and invoices shall begin on the Commencement Date, and shall continue in effect until this Agreement expires and terminates upon the earlier of (i) all CMA Transaction Confirmations utilizing the Energy Rate expiring, terminating, or no longer being in effect, (ii) the expiration or termination of the InSchedule Agreement; or (iii) the expiration of termination of the PPA, (collectively, the “Term”).

   b. This Agreement may be terminated by (i) mutual agreement of the Parties, (ii) upon written notice by a Party if the other Party has materially breached this Agreement, which breach has not been cured within sixty (60) days following written notice of such breach, (iii) by either Party upon (a) any revocation of the appointment of Supplier as Buyer’s Transaction Manager and Designated Retail Supplier by Customer or (b) the PPA being terminated or otherwise no longer in effect, or (iv) by either Party upon assignment of this Agreement by Customer to a third party not
in accordance with Section 13 hereto. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate upon termination of: (i) the CMA and/or all CMA Transaction Confirmations; (ii) the InSchedule Agreement; or (iii) the PPA. Upon any termination of this Agreement, the Parties shall retain and be entitled to enforce all rights and remedies available under this Agreement, including, without limitation, such rights and remedies set forth in Section 12 of the CMA for any and all outstanding Customer obligations under this Agreement, including, without limitation for true-ups and Reimbursable Expenses.

c. Upon termination of this Agreement, Customer shall promptly (but in any event within sixty (60) days after termination of this Agreement) take, and will cause any applicable third parties (including but not limited to the Generator) to take, all actions necessary to remove the Sub-Account from being affiliated with the Facility and to remove Supplier as Buyer’s Transaction Manager, and to terminate the InSchedule Agreement with respect to Supplier. Once the Sub-Account is no longer affiliated with the Facility and InSchedule Agreement so terminated with respect to Supplier, the Assignment shall be terminated and of no further force or effect with respect to associated Generation Revenues credited to the Sub-Account on and after such date.

d. Notwithstanding anything to the contrary, following any termination or expiration of this Agreement neither Party shall have any liability to the other Party except such accrued amounts then due and owing under this Agreement as of the date of such termination or expiration, including, without limitation, any proration of Energy Rate elements as well as the early, prorated calculation of the Prior Annual Period True-Up for the current Annual Period.

11. Default and Remedies.

   a. Default. The occurrence of any one or more of the following shall constitute a default (“Default”) with respect to the defaulting Party: (a) such Party’s default under the CMA; (b) such Party’s failure to perform or observe any other material covenant, obligation, representation, warranty or agreement contained in this Agreement, and such failure is not cured within sixty (60) business days after receiving notice from the non-defaulting Party; (c) such Party’s dissolution (other than pursuant to a consolidation, amalgamation, or merger); or (d) such Party shall be, or become, bankrupt or insolvent.

   b. Remedies. Upon the occurrence of a Default by a Party, the non-defaulting Party may (a) pursue any and all rights and remedies available to it under this Agreement, at law or in equity, (b) terminate this Agreement effective upon the date set forth in the notice of termination, or (c) pursue or otherwise take any combination of the foregoing actions.

12. Indemnification; Limitation of Liability.
a. **Consequential and Other Damages.** Neither of the Parties hereto, nor any of their respective affiliates, nor any [employee, shareholder, partner, member, representative, officer, or director] of the Parties or such affiliates, whether past, present, or future, will be liable, whether in contract, in tort or otherwise, for any punitive, special, indirect, incidental, liquidated, or consequential damages whatsoever, which in any way arise out of, relate to, or are a consequence of, this Agreement or performance or nonperformance hereunder, or, as applicable, the provision of or failure to provide Services hereunder (including, without limitation, lost revenue or lost profit), even if made aware of the possibility of such damages, *provided, however,* that this limitation shall not apply to the extent such damages arise due to a Party’s gross negligence, willful misconduct, or fraud; *provided, further* that nothing in this Section 12(a) shall relieve Customer from its obligation to pay all outstanding fees and expenses to Supplier billed through the Energy Rate, including, reimbursement of Supplier for all Reimbursable Expenses already incurred.

b. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND WHETHER UNDER CONTRACT, TORT OR OTHERWISE, EXCEPT IN THE CASE OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUPPLIER, THE AGGREGATE LIABILITY OF SUPPLIER UNDER, OR ARISING FROM, THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT PAID FOR SERVICES BY CUSTOMER UNDER THIS AGREEMENT IN ANY TWELVE (12) MONTH PERIOD (SUCH AGGREGATE AMOUNT, THE “LIABILITY CAP”).

c. Subject to the Liability Cap, Supplier agrees to indemnify, defend and hold harmless Customer and its representatives and [any employee, shareholder, partner, member, representative, officer, or director] of Customer or such representatives, whether past, present, or future (collectively, the “Customer Indemnified Parties”) from and against any and all suits, actions, damages, liabilities, penalties, fines, losses, costs and expenses (including, without limitation, reasonable legal fees), demands, assessments or judgments (each, a “Customer Indemnifiable Loss”) arising out of or resulting from (i) any grossly negligent or tortious acts or omissions by Supplier in connection with this Agreement, or (ii) any grossly negligent or willful misconduct, or breach of applicable law or PJM Rules, on the part of Supplier in connection with this Agreement; *provided, however,* that in all such cases under the foregoing clauses (i) and (ii), Supplier shall not be required to indemnify any Customer Indemnified Party (A) for any such claims to the extent they also result directly from the gross negligence, tortious acts or omissions or willful misconduct of such Customer Indemnified Party or (B) to the extent (i) such claims result from the actions performed by Supplier as directed by Customer; or (C) for any Reimbursable Expenses owed to Supplier that Supplier has had or incurred.
d. Customer agrees to indemnify, defend and hold harmless Supplier and its representatives and any employee, shareholder, partner, member, representative, officer, or director of Supplier or such representatives, whether past, present, or future (collectively, the “Supplier Indemnified Parties”) from and against any and all third-party suits, actions, damages, liabilities, penalties, fines, losses, costs and expenses (including, without limitation, reasonable legal fees), demands, assessments or judgments (each, a “Supplier Indemnifiable Loss”) arising out of or resulting from (i) any grossly negligent or tortious acts or omissions by Customer in connection with this Agreement, (ii) any grossly negligent or willful misconduct, or breach of applicable law or PJM Rules, on the part of Customer in connection with this Agreement; or (iii) any third party claims (including claims of any governmental authority) brought against Supplier arising under the PPA regardless of the nature of the claim; provided, however, that in all such cases under the foregoing clauses (i), (ii) and (iii), Customer shall not be required to indemnify any Supplier Indemnified Party (A) for any such claims to the extent they also result directly from the gross negligence, tortious acts, or omissions or willful misconduct of such Supplier Indemnified Party or (B) to the extent such claims result from actions and/or omissions performed as directed by Supplier.

13. Assignment.

a. This Agreement shall be binding upon the successors and permitted assigns of the respective parties hereto, and the covenants, conditions, rights, and obligations of this Agreement shall run for the Term. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld.

b. Notwithstanding the provisions of clause (a) above, Supplier may assign this Agreement to an affiliate without Customer’s consent, but no such assignment shall release the assignor from liability under this Agreement or from the obligations undertaken hereunder.

14. Miscellaneous. This Agreement, the InSchedule Agreement and the CMA as defined herein contain the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties and their respective predecessors and affiliates. This Agreement may not be amended or modified except in a writing signed by both Parties. This Agreement will be governed by and construed and enforced in accordance with and subject to the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law rules or principles which may direct the application of the laws of any other jurisdiction. Each Party may exercise any remedy available to it in law or equity pursuant to this Agreement. EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING
ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER THEREOF. The Parties hereby consent to jurisdiction of any federal or state court located in Philadelphia, Pennsylvania for any litigation that may arise out of this Agreement and the transactions contemplated thereby. No waiver of any breach of any term or condition of this Agreement will constitute a waiver of any subsequent breach. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be delivered via facsimile or email/pdf, it being the express intent of the Parties that such Agreement delivered via facsimile or email/pdf shall have the same force and effect as if it was an original. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. The headings in this Agreement are for reference use only and are not to affect the construction of this Agreement. Section 12 and this Section 14 shall survive the termination or expiration of this Agreement.

[signature page follows]
SUPPLIER:

Direct Energy Business, LLC

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

CUSTOMER:

[CUSTOMER]

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________
ATTACHMENT A

Facility

[complete]
ATTACHMENT B

DEFINITIONS

“Facility” means as described on Attachment A.

“LMP” means the Locational Marginal Price at the MID-ATL/APS Aggregate (Node ID 116472931 (APS RESID AGG)).

“PJM” means the PJM Interconnection, L.L.C. and/or PJM Settlement, Inc., as appropriate with regard to their respective functions, any successor to its functions.

“PJM Documents” means the PJM Tariff and the PJM Operating Agreement.

“PJM Manuals” means the administrative, planning, operational and accounting manuals issued by the ISO.

“PJM Tariff” means the FERC approved PJM Open Access Transmission Tariff, or any successor thereto, as may be in effect at any time.

“Market Participant” means a Market Buyer, a Market Seller, and an Economic Load Response Market Participant (as defined in the Operating Agreement of PJM Interconnection, L.L.C.).

“PJM Rules” means PJM Documents, PJM Manuals, PJM Tariffs, and any applicable law governing PJM operations and markets.
Schedule 1 (InSchedule Agreement)

Schedule 2 (PPA (Redacted))

Schedule 3 (CMA and CMA Transaction Confirmations)
INSCHEDULE IMPLEMENTATION AGREEMENT

THIS INSCHEDULE IMPLEMENTATION AGREEMENT ("Agreement"), is made this____ day of ________, 2023 ("Effective Date"), by and between [Generator] ("Seller"), [Customer] ("Buyer") and Direct Energy Business, LLC ("Direct Energy" or "Buyer’s Transaction Manager"). Seller, Buyer, and Direct Energy are individually referred to as a “Party” and collectively as the “Parties”. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the PPA (defined below).

WHEREAS, Buyer and Seller are party to that certain Power Purchase Agreement dated [insert date], as amended and assigned (“PPA”), pursuant to which Buyer agrees to pay Seller for Purchaser’s Share of the Energy Output produced by the System delivered by Seller to the Delivery Point, as further specified on Exhibit A.

WHEREAS, as of the Effective Date, (i) Direct Energy is a PJM market participant in good standing and a PJM Market Buyer, Market Seller, and Economic Load Response Participant (each as defined in the Operating Agreement of PJM Interconnection, L.L.C.), and (ii) is the Pennsylvania electric generation supplier and retail supplier of power to Buyer under that certain Commodity Master Agreement and underlying transaction confirmations dated as of [Date] by and among Buyer, Direct Energy, and NRG Business Marketing LLC, an affiliate of Direct Energy (together, the “CMA”).

WHEREAS, Buyer has appointed Direct Energy to act as the Designated Retail Supplier under the PPA and to serve as “Buyer’s Transaction Manager” providing PJM services, including, without limitation, Direct Energy accepting the delivery, transfer, and/or assignment of Purchaser’s Share from Seller by means of the InSchedule System and making payments to Seller, on behalf of Buyer, pursuant to a separate contract between Direct Energy and Buyer dated as of [insert date] (the “Servicing Agreement”).

WHEREAS, pursuant the PPA, Seller is to cooperate with Buyer’s Transaction Manager for the scheduling of physical bilateral energy transactions in PJM pursuant to PJM’s InSchedule System.

WHEREAS, the PPA provides for bilateral energy transactions with the delivery by Seller pursuant to the PJM InSchedule User Guide, Revision: 01, dated June 1, 2015 ("InSchedule Guide") that allows for bilateral transactions for the physical transfer of electric energy to be reported and confirmed by Buyer’s Transaction Manager to PJM, by means of the InSchedule System, which the Parties desire to utilize.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Buyer’s Transaction Manager. The Parties acknowledge and agree that Direct Energy has been designated by Buyer as Buyer’s Transaction Manager pursuant to the Servicing Agreement, subject to the right to revoke such appointment by (i)
Buyer pursuant to the PPA and/or (ii) Buyer or Direct Energy under the Servicing Agreement; provided, however, that (A) Buyer and Seller acknowledge and agree that Direct Energy is not a party to the PPA, and shall have no obligation or liability (monetary or otherwise) to Seller, Buyer, or any other person or entity under the PPA (including, without limitation, as Designated Retail Supplier), and any such obligation or liability of Direct Energy is hereby waived by Buyer and Seller; and (B) Buyer and Direct Energy acknowledge and agree that Seller is not a party to the Servicing Agreement, and shall have no obligation or liability (monetary or otherwise) to Direct Energy, Buyer, or any other person or entity directly under the Servicing Agreement, and any such obligation or liability of Seller is hereby waived by Buyer and Direct Energy.

2. **InSchedule Energy Delivery Reporting; Related Obligations.** Pursuant to Section 1.3 of the InSchedule Guide, the Seller will report all of Purchaser’s Share of Energy Output delivered to Buyer’s Transaction Manager’s sub-account for Buyer pursuant to an InSchedule System transaction as a bilateral transaction for the physical transfer of electric energy at the Delivery Point. Among other obligations set forth in the PPA, Servicing Agreement, and this Agreement: (i) Seller and Buyer’s Transaction Manager shall coordinate forecasting of Purchaser’s Share by sharing annual hourly level generation forecast information (e.g., 8760s) and implementing automatic forecast updates; (ii) Seller shall solely be responsible with providing PJM, Buyer, and Buyer’s Transaction Manager with as-generated schedules of its generation facility in a timely fashion as required by the InSchedule Guide and to allow Buyer’s Transaction Manager to perform its obligations under this Agreement and the Servicing Agreement; (iii) Seller shall deliver, transfer, and/or assign Purchaser’s Share to Buyer’s Transaction Manager’s sub-account for Buyer in the InSchedule System; (iv) Buyer’s Transaction Manager shall accept such delivery, transfer, and/or assignment into such sub-account; (v) Seller shall provide a copy of Buyer’s monthly PPA invoice to Buyer’s Transaction Manager at the same time such invoice is sent to Buyer, and (vi) Buyer’s Transaction Manager shall pay Seller, on behalf of Buyer, the undisputed invoiced amounts approved by Buyer reflecting delivered and accepted Purchaser’s Share. For the avoidance doubt, undisputed invoiced PPA amounts that do not reflect delivered and accepted Purchaser’s Share (e.g., damage payments between Buyer and Seller, such as those related to replacement / cover remedies like Purchaser Curtailment), shall be paid directly by Buyer to Seller (and Seller shall invoice such amounts as separate line-items making them clearly distinct from amounts due for delivered and accepted Purchaser’s Share); and each Party shall provide requisite notice to each other applicable Party as required by the PPA, this Agreement, the CMA, and the Servicing Agreement, respectively. Seller shall provide to Buyer and Buyer’s Transaction Manager a copy of all technical specifications, accuracy calibrations, and accuracy verification tests for the System’s Meter upon and after installation, as well as ongoing System monitoring and data output via the internet.

3. **No Modification of Agreements.** Nothing in this Agreement shall in any way alter or amend (i) the PPA, including, without limitation, Seller’s obligation to deliver
Purchaser’s Share at the Delivery Point listed in the PPA, (ii) the Servicing Agreement, or (iii) the CMA.

4. **Miscellaneous.** This Agreement contains the entire agreement between the Parties with respect to the specific subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties and their respective predecessors and affiliates. This Agreement may not be amended or modified except in a writing signed by the Parties. No waiver of any breach of any term or condition of this Agreement will constitute a waiver of any subsequent breach. This Agreement may be executed in three or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be delivered via facsimile or email/pdf, it being the express intent of the Parties that such Agreement delivered via facsimile or email/pdf shall have the same force and effect as if it was an original. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. The headings in this Agreement are for reference use only and are not to affect the construction of this Agreement. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning Parties, which consent shall not be unreasonably withheld, conditioned, or delayed.

5. **Term and Termination.** This Agreement shall commence as of the Effective Date, provided, that the InSchedule System bilateral transactions described herein shall begin on the first day of the month Direct Energy receives generation in its sub-account with PJM for Buyer, and shall continue in effect until expiring and terminating upon the earlier of the expiration or termination of either (i) the PPA, (ii) the Servicing Agreement, or (iii) the CMA.

6. **Commencement of Energy Delivery.** Seller agrees to provide Buyer and Direct Energy with a notice at least sixty (60) days prior to the date on which Seller anticipates it will start delivering energy to Buyer’s Transaction Manager.

7. **Notices.** Any notice 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 parties listed below.

**Buyer:**

[__________________]

Attention: [Insert Address]

Telephone: Email:

With a copy to:

[Buyer Energy Advisor / Greensky
Attention: Gregory C. Shively
5310 16th Road N
Arlington, VA 22205
Telephone: (703) 608-5571 / (703) 584-4184
Email: gshively@greensky-dg.com]

**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: Eric Hurlocker
4908 Monument Avenue, Suite 200
Richmond, Virginia 23230
Email: ehurlocker@greenehurlocker.com
Telephone: (804) 672-4551]

**Direct Energy:** Direct Energy Business, LLC

Attention: [Insert Address]

Telephone: Email:

8. **Governing Law; Jury Waiver.** This Agreement will be governed by and construed and enforced in accordance with and subject to the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law rules or principles which may direct the application of the laws of any other jurisdiction. Each Party may exercise any remedy available to it in law or equity pursuant to this Agreement.
EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT. The Parties hereby consent to jurisdiction of any federal or state court located in Philadelphia, Pennsylvania for any litigation that may arise out of this Agreement and the transactions contemplated thereby.

9. Waiver of Sovereign Immunity. Customer warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

[Seller]

By ______________________________
Name: ____________________________
Title:_____________________________

[Buyer]

By ______________________________
Name: ____________________________
Title:_____________________________

DIRECT ENERGY BUSINESS, LLC

By ______________________________
Name: ____________________________
Title:_____________________________
Exhibit A

The Delivery Point shall be the MID-ATL/APS Aggregate (Node ID 3), where Purchaser’s Share shall be delivered by Seller, by means of the InSchedule System, into Buyer’s Transaction Manager’s wholesale energy PJM sub-account established for Purchaser.
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 [Prospect14 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, Hublersburg, PA 16823 in Centre County, Commonwealth of Pennsylvania¹ (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:

¹ 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.

“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 foregoing 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 30, 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 reestabishing 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;
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;

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

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;

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

With respect to Seller, the failure to achieve the Commercial Operation Date on or before June 30, 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:

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;

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

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 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 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.  

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

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 16th 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
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:

Name:
Title:
SYSTEM SPECIFICATIONS

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

System Size (Nameplate Capacity):

Installation Type:

Site Layout and System Drawings:
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.

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July 25, 2023

Mr. Randy Brown
Finance and Operations Officer
State College Area School District
240 Ville Crest Drive
State College, PA 16801

**RE: On-Going Management of Retail and Solar Services**

Mr. Brown,

GreenSky Development Group LLC (“GreenSky”) is pleased to submit this proposal for services related to the on-going management of the contracts and services tied to the Power Purchase Agreement (“PPA”) currently in negotiation between the State College Area School District (“SCASD”) and the broader participating group of local governmental, municipal and utility entities.

This proposal is being provided to SCASD as the lead member for the group with the understanding that SCASD will singularly contract for the services provided herein on behalf of the group and will allocate costs to participating entities based on a cost sharing arrangement similar to that used for the scope of work and budget contracted under a Master Consulting Services Agreement (“MCSA”) dated October 11, 2021. Further, the services proposed herein, if awarded, would be attached as an additional Statement of Work under the same MCSA.

Over the past 20 months, GreenSky has worked diligently to manage the PPA procurement process and has built strong working relationships with the core working group and the broader stakeholder group. Together we have built a level of trust and communication necessary for productive, efficient performance of longer-term engagements.

Following execution of the PPA, SCASD will require management of the contracts and counterparties associated with the PPA and the retail supply agreement over the 15-year life of the PPA. GreenSky welcomes the opportunity to provide these services and we look forward to continuing to work together to help SCASD and the participating entities to maximize value from the PPA and meet related on-going climate action and sustainability goals over time.

**Proposed Scope of Work**

The execution of a PPA from a direct generator alters the procurement strategy considerably. Fixed priced, full requirements contracts managed by electricity brokers have traditionally been used to minimize and stabilize electricity prices and utility budgets in the past. Going forward, a combination of fixed pricing
under the PPA and market-based pricing for retail electric supply will be required to accomplish the same objectives. The image below illustrates the electricity strategy once the PPA goes into effect.

The tasks required to manage the electricity strategy are listed below and form the basis of the proposed scope of work herein:

- Monitor the PPA prior to the Commercial Operation Date and manage issues related to the development, construction and energization of the solar generator.
- Enroll and transition of each participating entity into the PPA and retail supply agreements with Prospect 14 (or subsequent project owner) and Direct Energy (aka, NRG) respectively.
- Establish procedures, modeling and reporting at the group level necessary to efficiently and effectively manage the needs of Prospect 14, Direct Energy and SCASD (including the participating entities).
- Review the annual Energy Rate estimation (inclusive of the Net Settlement Amount) by the retail supplier under the PPA Management Services Agreement.
• Review monthly bills (one from the retail supplier and one from the PPA provider for each participating entity).
• Submit approval of monthly PPA bills to the retail supplier for payment of the individual PPA bills - they will not pay the PPA bill without approval to do so by each participating entity (or by GreenSky on behalf of SCASD and the participating entities).
• Submit approval of monthly Direct Energy bills to SCASD and each participating entity for payment directly to Direct Energy.
• Periodic review of the retail supplier’s PJM subaccount and charges assessed therein to monitor the recovery of those charges under the Energy Rate and determine and plan for possible adjustments to future Energy Rate calculations through the true-up mechanism (largely for fiscal year budgeting purposes).
• Review of the solar generation allocation to each participating entity over time to ensure the amount of generation allocated is consistent with each entity’s commitment to a percentage allocation in the PPA.
• Review of solar generator’s performance against the Shortfall clause in the PPA to ensure the generation levels meet the generators obligations for minimum generation.
• Management of non-performance issues that may arise triggering curtailment provisions in the PPA.
• Management and advisory on usage that is not backed by the solar PPA generation for participating entities that have not taken a large (over 75%) share of solar as a percent of their total usage requirement (the non-solar usage could simply remain at a market based price, but if there is a desire to fix the price, there would be some advice needed on how to best do that).
• Assistance with the purchase of RECs through the retail supply agreement as required by any or all participating entities.
• Advisory on public statements made by the participating entities in the press or other sustainability related reports to ensure compliance with rules regarding such statements to avoid mis-representing the PPA terms (i.e., the solar RECs are not received from the solar project and public statements regarding the PPA will need to be clear in that regard.)
• Address any disputes between any or all parties involved including contract, credit, or payment disputes coordinating with legal resources where necessary.

Compensation Plan

Based on preferences expressed by SCASD regarding the compensation structure, GreenSky is proposing to provide services under a fixed monthly fee arrangement. The fixed monthly fee applies to all scope items listed above with the exception of the last scope bullet, which will be billed subject to a future Statement.
of Work to be approved and priced at the time in the event it is ever required. In addition, any subsequent competitive solicitation of the retail supply agreement is considered out of scope and subject to approval of an additional Statement of Work. To be clear, a renewal of the Direct Energy supply agreement that does not require a competitive solicitation is considered within scope.

This Scope of Work is expected to eliminate the need for broker services used by SCASD and any of the other participating entities, which should be considered as a cost offset to the fixed fees herein. Common broker fees range from $1-2 per MWh for an annual volume of 25,000 MWh per year totaling $25,000 to $50,000 per year which will vary each year based on consumption and likely includes very little engagement outside of contracting events every two or three years.

Given the strong working relationship achieved to date, GreenSky is able to offer a discounted fee arrangement that targets a fee level similar to that which is currently paid to brokers. GreenSky proposes a monthly fixed fee of $3,500 ($42,000 per year) covering SCASD and all participating entities at the time of PPA execution. As noted in the proposed scope of work, this fee includes more active engagement than a traditional broker arrangement and will better serve the group’s electricity needs.

The monthly fixed fee will start on the first full month following execution of the PPA and the term of the engagement will co-terminate with the Direct Energy retail supply agreement. Should the retail supply agreement with Direct Energy, or any similar successor agreement, be extended past the initial Direct Energy 5-year term, the obligations proposed herein will also extend to match the term of the retail supply agreement with a 10% escalation to the fixed monthly fee to account for inflation over the previous engagement term. Regardless of how many times the retail supply agreement is extended during the 15-year PPA term, the monthly fee shall not escalate above $4,500 per month.

GreenSky requests that SCASD (or another singular designated entity) be assigned as the primary point of contact for all communication and engagement related to this proposal. Any work provided directly to participating entities, and not through the primary point of contact, may be subject to hourly fees which would be billed to SCASD under this agreement and passed along to the participating entity receiving such direct services. GreenSky’s hourly rate as of the date of this proposal is $275/hour and will escalate at 5% per year during the term of this engagement.

**Conclusion**

We at GreenSky thank you for the opportunity to make this proposal and continue our working relationship. We appreciate the complexity of managing a group of entities with different needs and climate action goals and believe we have demonstrated that we are up for the task. Having a deep connection to the Centre
County region, we are honored to be able to assist SCASD and the broader group in achieving its cost and climate action goals for the foreseeable future.

Best Regards,

[Signature]

Gregg C. Shively
Principal – GreenSky

Cc: Elaine Wilks, Principal
    Bernd Schaffler, Principal
LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maxwell Storage</td>
<td>1/16/2024</td>
<td>4/15/2024</td>
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</tbody>
</table>

LAND DEVELOPMENT PLAN ACTIVITY

<table>
<thead>
<tr>
<th>Title</th>
<th>Recording Deadline</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>UAJA Biosolids Upgrade</td>
<td>April 15, 2024</td>
<td>5/22 submitted, comment request sent 5/22; Comments due 6/2; revision due 6/12 (unable to make the revision deadline, extended to 6/19); revision received 6/16; to PC 6/27; to CTC 7/20; conditional approval letter sent 7/21, accepted 7/27; extension request to CTC 10/5; ext. approval sent 10/6; 12/18 sent email for extension request (due 12/26 w/ $375 fee); 1/2 ext. approved; 1/5 demo permit received</td>
</tr>
<tr>
<td>Summit Park Subdivision</td>
<td>June 3, 2024</td>
<td>7/17 submitted, comment request sent 7/18; comments due 7/28; revision due 8/7; comments due 8/11; to PC 8/14; to CTC 9/7; Determined a preliminary does not get recorded; JRA note is good</td>
</tr>
<tr>
<td>Umberger/Rockenbeck Subd</td>
<td>RECORDED</td>
<td>10/23 submitted, comment request sent 10/23; comments due 11/3; 11/13 revision due; comments due 11/17; to PC 11/21; to CTC 12/6; 1/25/24 plan signed; 1/29 picked up for recording; 1/29 RECORDED waiting for copy</td>
</tr>
<tr>
<td>Jersey Mike’s</td>
<td>March 5, 2024</td>
<td>10/23 submitted, comment request sent 10/24; comments due 11/3; 11/13 revision due; comments due 11/17; to PC 11/21; to CTC 12/6; 12/7 conditional approval sent; 12/7 conditions accepted; 1/23/24 received revised TIS; 1/30 received TIS review from Trans</td>
</tr>
<tr>
<td>Winfield Heights – Phase 2</td>
<td>April 1, 2024</td>
<td>11/17 submitted (accepted 11/20), comment request sent 11/20; comments due 12/1; revision due 12/11; comments due 12/15; to</td>
</tr>
</tbody>
</table>
CTC 1/2; 1/2/24 received conditional approval; 1/4 conditions accepted

320 Struble Road May 1, 2024 12/18 submitted; 12/19 comment request sent; comments due 12/29; revision due 1/8/24; comments due 1/12; to PC 1/16; to CTC 2/1; 2/2 emailed conditional approval letter; 2/5 conditions accepted

Maxwell Storage April 15, 2024 1/16 submitted; 1/17 comment request sent; 1/26 comments due; revision due 2/5; comments due 2/9; to PC 2/20, to CTC 3/7

MINOR PLANS

Ohashi Minor Submitted 11/13/2023 sent to Schnure, Kauffman, May; comments due Expires 2/11/2024 11/22; revision due 12/4; 12/13 emailed Nevin and Roxanne to submit revision, w/ reminder of expiration date; 12/21 received extension; 1/26/24 emailed PTE provide owner signed plan for ZO to sign; 2/5 emailed PTE plan coming; 2/6 picked up for recording

Myers Minor Submitted 2/7/2024 sent to Schnure, Kauffman, Tylka; comments Expires 4/7/2024 due 2/16

OTHER

Dale Summit Area Plan PC made recommendation to Council January 18, 2022; Joint Council/PC meeting held March 28; RFQ is on the website: Pre-submission meeting to be 7/14 (5 firms have signed up for pre-submission meeting); Deadline to submit proposals 8/1; to be reviewed by committee (2 Council members, 2 PC members; 1 CRPA; staff); committee established 8/4; submissions sent to committee members 8/9; member meeting 8/29 1-3pm Library; 9/7 follow up with interview candidates to request sealed quotes; interviews October 25th; DPZ is chosen firm; Contract to be reviewed by CTC 12/15; 1/11/2023 DPZ okayed contract and scope; to CTC 1/19 for approval; DPZ will be present 2/27-3/1, with a tour on 2/27; 5/3 Stakeholders identified, pre-charrette May 24; Charrette to take place 6/19-6/23, supplies being collected, possible dry run 6/16; Charrette successfully took place 6/19-6/22; Market analysis under staff review, sent to PC 8/3; Draft Ordinance being reviewed by staff; 9/13 DPZ review with staff; 2nd draft ordinance to come; draft plan submitted 10/23 being reviewed by staff; 12/22 Draft sent to CTC and PC;
Joint meeting CTC/PC 1/24/2024; 1/29 FBC distributed; 3/26 CTC/PC joint meeting

Pike Street Phase 3
Surveying to begin in January; letter sent to residents, surveying started 1/11/2023; 1/18 traffic calming maps removed from Council room; before pictures are complete (may take after pictures of traffic calming phase); dedication of traffic calming 4/21; ongoing

Traffic Signal Technologies Grant (TSTG)
Frank is working with help of District 2 PennDOT; Application due September 30; resolution to be passed; Application submitted; 12/14 approved for $127,700; need RFP for traffic engineering services; 3/28 RFP submission deadline; 5/3 consultant chosen; PO for Adam to sign and return to Nick; meeting 8/9; Q4 status report done; to coincide with GLG; ongoing

Green Light Go (GLG)
to coincide with TSTG; $190,880 awarded, 20% match; exp. 6/30/25; ongoing

ARLE
Awarded $146,320; Rt 322/College Ave signal improvements; 2/5 signed; ongoing

ENGINEERING BOND/LOC SURETY EXPIRING SOON
No surety due to expire/renew until May

LDP’s UNDER CONSTRUCTION

Canterbury Crossing
Rearden
Evergreen Heights
Arize FCU/ Stocker
Mount Nittany Medical Center
Moerschbacher Minor
Steve Shannon
State College Area Food Bank
Winfield Heights
C3 Phases 1 & 4
COLLEGE TOWNSHIP
2024 ORDINANCE ENFORCEMENT REPORT
FOR JANUARY
FRANK B. SCOTT, IV

STARTING MILEAGE: 45,495
ENDING MILEAGE: 45,746
TOTAL MILES: 251

ORDINANCE VIOLATIONS

TOTAL NUMBER OF VIOLATIONS / COMPLAINTS: 14

TYPES OF VIOLATIONS:

SIGNS: 0

<table>
<thead>
<tr>
<th>Violator</th>
<th>Location of Violation</th>
<th>Violation/complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
</tr>
</thead>
</table>

GRASS / WEEDS: 0

<table>
<thead>
<tr>
<th>Violator</th>
<th>Location of Violation</th>
<th>Violation/Complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
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</table>

CAT / DOG / ANIMAL: 1

<table>
<thead>
<tr>
<th>Violator</th>
<th>Location of Violation</th>
<th>Violation/Complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Michelle Dzyak</td>
<td>2437 Lexington Cir.</td>
<td>cat roaming Penn Hills</td>
<td>phone call/sent letter</td>
<td>Public</td>
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</table>

ZONING / BUILDING: 0

<table>
<thead>
<tr>
<th>Violator</th>
<th>Location of Violation</th>
<th>Violation/Complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
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RENTAL HOUSING: 0

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<th>Location of Violation</th>
<th>Violation/Complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
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<tbody>
<tr>
<td>Violator</td>
<td>Location of Violation</td>
<td>Violation/Complaint</td>
<td>Action Taken</td>
<td>Twp/Public</td>
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<tr>
<td>1.S&amp;A Homes</td>
<td>500 blk Brandywine Dr.</td>
<td>placed dumpster on street</td>
<td>site visit/dumpster moved</td>
<td>Twp.</td>
</tr>
<tr>
<td>2.Judy Larkin</td>
<td>122 Mt. Nittany Rd.</td>
<td>shrubbery overhanging Harris Alley</td>
<td>sent letter/trimmed</td>
<td>Public</td>
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<tr>
<td>MUD TRACKING: 1</td>
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</tr>
<tr>
<td>1.S&amp;A Homes</td>
<td>500 blk Brandywine Dr.</td>
<td>mud tracking</td>
<td>site visit/cleaned up</td>
<td>Twp.</td>
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<tr>
<td>TEMP BUSINESS / SOLICITING: 1</td>
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</tr>
<tr>
<td>1.HEAT</td>
<td>Bryce Jordan Centre</td>
<td>placed hand bills on cars</td>
<td>phone calls</td>
<td>Public</td>
</tr>
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<tr>
<td>SOLID WASTE: 1</td>
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<tr>
<td>1.Fisher Estate</td>
<td>2670 Penbrook Ln.</td>
<td>lg. pile of garbage at the house</td>
<td>phone call/email/cleaned up</td>
<td>Public</td>
</tr>
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<td>NOISE: 0</td>
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<td>PARKING: 0</td>
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<tr>
<td>SIDEWALKS: 7</td>
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<tr>
<td>1.Tenant</td>
<td>800 Pike St.</td>
<td>failed to clear snow from sidewalks</td>
<td>talk w/owner/cleared</td>
<td>Public</td>
</tr>
<tr>
<td>2.SC Food Bank</td>
<td>169 Gerald St.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone call/cleared</td>
<td>Public</td>
</tr>
<tr>
<td>3.Aspen @ SC</td>
<td>Squirrel Dr.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone calls/cleared</td>
<td>Public</td>
</tr>
<tr>
<td>4.Jake’s Fireworks</td>
<td>2000 E. College Ave.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone call/melted</td>
<td>Public</td>
</tr>
<tr>
<td>5.Dunkin Donuts</td>
<td>1381 E. College Ave.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone call/cleared</td>
<td>Public</td>
</tr>
<tr>
<td>6.Welteroth</td>
<td>1246 E. College Ave.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone call/cleared</td>
<td>Public</td>
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<tr>
<td>7.Aspen @ SC</td>
<td>Squirrel Dr.</td>
<td>failed to clear snow from sidewalks</td>
<td>phone call/cleared</td>
<td>Public</td>
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<tr>
<td>BLASTING: 0</td>
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<tr>
<td>OTHER: 1</td>
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</tr>
<tr>
<td>1.Matthew Boyd</td>
<td>303 Norle St.</td>
<td>doesn’t like yard lights</td>
<td>No Violation</td>
<td>Public</td>
</tr>
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</table>
STORMWATER: 0

<table>
<thead>
<tr>
<th>Violator</th>
<th>Location of Violation</th>
<th>Violation/Complaint</th>
<th>Action Taken</th>
<th>Twp/Public</th>
</tr>
</thead>
</table>

**TOTAL TICKETS: 0**

**TOTAL WARNINGS: 0**

**TOTAL COLLEGE TOWNSHIP CITATIONS: 0**

<table>
<thead>
<tr>
<th>TICKET NO.</th>
<th>LOCATION</th>
<th>MAKE &amp; MODEL</th>
<th>LICENSE NO.</th>
<th>VIOLATION</th>
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<table>
<thead>
<tr>
<th>CITATION NO.</th>
<th>TICKET NO.</th>
<th>DATE FILED</th>
<th>VIOLATION</th>
<th>TWP. / BORO</th>
</tr>
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<tr>
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</tbody>
</table>
TICKET REPORT 2024
FOR JANUARY
COLLEGE TWP. O.E.O

TOTAL TICKETS: 0
TICKETS - RESIDENTIAL: 0
TICKETS - COMMERCIAL: 0
TOTAL WARNINGS: 0
WARNINGS - RESIDENTIAL: 0
WARNINGS - COMMERCIAL: 0
TICKETS PAID: 0
TICKETS PENDING: 0
TICKETS DISMISSED: 0
TICKETS VOID: 0
TOWNSHIP CITATIONS: 0

VIOLATION BREAKDOWN
1.NO-PARKING FIRE LANE: 0
2.NO-PARKING HANDICAPPED: 0
3.NO-PARKING THIS SIDE: 0
4.NO-PARKING BETWEEN SIGNS: 0
5.NO-PARKING HERE TO CORNER: 0
6.NO-PARKING SNOW EMERGENCY: 0
7.NO-PARKING TRAVEL LANES: 0
8.NO-PARKING WITHIN 15' OF FIRE HYDRANT: 0
9.NO-PARKING LOADING ZONE: 0
10.NO-PARKING: 0
   -A.WITHIN 20 FEET OF A CROSSWALK: 0
   -B.WITHIN 30 FEET OF A STOP SIGN OR SIGNAL: 0
   -C.IN FRONT OF DRIVEWAY: 0
   -D.AGAINST TRAFFIC: 0
11.DROPPING OR DEPOSITING ON ROADS: 0
12.SOLID WASTE: 0
13.SOLICITATION: 0
14.GRASS & WEEDS: 0
15.BUILDING NUMBERS: 0