

A REGULAR MEETING

Of The

TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

Tuesday, July 9, 2019

At

5:15 p.m.

In The

COMMISSION CHAMBERS
(2nd floor, Governmental Center)
400 Boardman Avenue

Traverse City Light and Power will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon notice to Traverse City Light and Power. Individuals with disabilities requiring auxiliary aids or services should contact the Light and Power Department by writing or calling the following.

Jennifer St. Amour
Administrative Assistant
1131 Hastings Street
Traverse City, MI 49686
(231) 932-4543

Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
231-922-4940

Posting Date:
7/3/2019
3:00 P.M.

AGENDA

Pledge of Allegiance

1. Roll Call

2. Disclosure of Recusal

3. Consent Calendar

The purpose of the consent calendar is to expedite business by grouping non-controversial items together to be dealt with by one Board motion without discussion. Any member of the Board, staff or the public may ask that any item on the consent calendar be removed therefrom and placed elsewhere on the agenda for full discussion. Such requests will be automatically respected. If an item is not removed from the consent calendar, the action noted in parentheses on the agenda is approved by a single Board action adopting the consent calendar.

- a. Approval of Agenda.
- b. Consideration of approving minutes of the Regular Meeting of June 11, 2019. (Approval Recommended (p.4))
- c. Consideration of approving a contract with Smart Energy Systems for energy waste reduction software. (Approval Recommended) (Arends) (p.9)
- d. Consideration of renewing a Collection Agency contract with Cadillac Accounts Receivable Management, Inc. (Approval Recommended) (Henderson) (p.10)
- e. Consideration of appointing Karla Myers-Beman as Officer Delegate and Kelli Schroeder as Officer Alternate Delegate to cast official votes on behalf of TCL&P at the Annual Meeting of the Municipal Employees Retirement System. (Approval Recommended) (Schroeder) (p.12)

4. Unfinished Business

- a. Consideration of an amended M-72 Power Purchase Agreement for Renewable Energy. (Arends) (p.14)
- b. Consideration of approval of an amended Fiber Fund Budget and submission to the City Commission for approval. (Myers-Beman/Arends) (p.61)

5. New Business

- a. Consideration of authorizing a Resolution to Amend City Ordinance – Lien. (Arends/Myers-Beman) (p.65)

6. Reports and Communications

- a. From Legal Counsel.
- b. From Staff.
 - 1. Fiber to the Premise Project Update. (Menhart/Myers-Beman) (verbal)
- c. From Board.

7. Public Comment

- a. General.

/js

**TRAVERSE CITY
LIGHT AND POWER BOARD**

Minutes of Regular Meeting
Held at 5:15 p.m., Commission Chambers, Governmental Center
Tuesday, June 11, 2019

Board Members -

Present: John Taylor, Elysha Davila, Ross Hammersley, Pat McGuire, Amy Shamroe, Tim Werner, Paul Heiberger

Absent:

Ex Officio Member -

Present: Marty Colburn, City Manager

Others: Tim Arends, Jeff Jocks (General Counsel), Daren Dixon, Scott Menhart, Karla Myers-Beman, Kelli Schroeder, Tony Chartrand, Jacob Hardy, Jennifer St. Amour

Item 2 on the Agenda being Disclosure of Recusal - None

Item 3 on the Agenda being Consent Calendar

Moved by McGuire, seconded by Shamroe, that the following actions, as recommended on the Consent Calendar portion of the Agenda, be approved as amended:

- a. Approval of Agenda.
- b. Approval of the minutes of the Regular Meeting of May 14, 2019 as amended.
- c. *Removed.*
- d. Approval of the 2019-20 Insurance Renewal.
- e. Adopted a Resolution in support of the 80/20 health premium cost share model to comply with the requirements of Public Act 152 of 2011.
- f. Authorized a Construction Agreement for hourly rate assistance with CC Power, Inc.
- g. Approved a Consent to Assignment for Extenet Assets Entity, LLC to accept Extenet Systems, Inc. agreements with TCL&P.

CARRIED unanimously.

Items Removed from the Consent Calendar

- a. Approval of Electric and Fiber Fund Budgets and Six-Year Capital Improvements Plan 2019.

The following individuals from the Public addressed the Board:

Barb Willing, Grant Street, ratepayer

The following individuals addressed the Board:

Tim Arends, Executive Director

Moved by Shamroe, seconded by Hammersley, that the Light & Power Board formally adopts the 2019-20 operating budgets for the Electric Utility and Fiber Optic funds, and Six Year Capital Improvements Plan.

CARRIED unanimously.

Item 4 on the Agenda being Unfinished Business

a. Public Hearing regarding:

- Fiber to the Premise (FTTP) Cost Benefit Analysis.

Chairman Taylor opened the Public Hearing.

The following individuals from the Public addressed the Board:

Barb Willing, Grant Street, ratepayer - opposed

Rick Buckhalter, 932 Kelley Street, ratepayer – in support with clarification

Matthew Scheck, Ninth Street, ratepayer – opposed

Jeff Pynnonen, Beverly Hills, MI, non-ratepayer- in support

Daniel Lecouteur, 1980 Holbert, Interlochen, non-ratepayer – opposed

Marilyn Passmore, Director, Gov. Relations, Charter Communications Inc. - opposed

Lowell Gruman, 318 Wadsworth Street, ratepayer – in support

Chairman Taylor closed the Public Hearing.

b. Consideration of Fiber to the Premise Project financing options.

The following individuals addressed the Board:

Tim Arends, Executive Director

Karla Myers-Beman, Controller

Moved by Shamroe, seconded by Hammersley, that the Light & Power Board approves an interfund loan in the 2019-20 fiscal year in the amount of \$3,500,000 between the electric and fiber fund based on the terms described in the memo.

The following individuals from the Public addressed the Board:

Gerald DeGrazia, 11604 Whittington Street, ratepayer.

Roll Call:

Yes – Hammersley, Shamroe, Taylor, Werner, Davila, Heiberger

No – McGuire

CARRIED.

- c. Consideration of approving a Construction Contract with Fujitsu for the Fiber to the Premise Project.

The following individuals addressed the Board:

Tim Arends, Executive Director
Scott Menhart, Manager of Telecom & Technology
Jeff Jocks, General Counsel

Moved by Werner, seconded by Hammersley, that the Board authorizes the Chairman and Secretary to execute a construction agreement with Fujitsu for a Phase One FTTP deployment in the amount not to exceed \$3,309,426.90, subject to review as to substance by the Executive Director and as to form by General Counsel.

The following individuals from the Public addressed the Board:

Gerald DeGrazia, 11604 Whittington Street, ratepayer.

Roll Call:

Yes – Hammersley, Shamroe, Taylor, Werner, Davila, Heiberger

No – McGuire

CARRIED.

- d. Consideration of approving a Operations and Maintenance Contract with Fujitsu for the Fiber to the Premise Project.

The following individuals addressed the Board:

Tim Arends, Executive Director
Scott Menhart, Manager of Telecom & Technology
Michael T. Riley, Director, Network Design & Integration LOB, Fujitsu

Moved by Shamroe, seconded by Heiberger, that the Board authorizes the Chairman and Secretary to execute an operations and maintenance agreement with Fujitsu for a Phase One FTTP deployment in the amount not to exceed \$849,663.00, subject to review as to substance by the Executive Director and as to form by General Counsel.

Roll Call:

Yes – Hammersley, Shamroe, Taylor, Werner, Heiberger

No – McGuire, Davila

CARRIED.

- e. Consideration of approving an updated organizational chart.

The following individuals addressed the Board:

Tim Arends, Executive Director
Scott Menhart, Manager of Telecom & Technology

Moved by Hammersley, seconded by Shamroe, that the Board approves the changes to the organizational chart and ACT group salary ranges as presented.

CARRIED unanimously.

- f. Consideration of authorizing staff to issue request for proposal for construction, operation and maintenance of a solar generating facility located at the Cherry Capital Airport.

The following individuals addressed the Board:

Jeff Jocks, General Counsel, stated Cherry Capital Airport is a client of Sondee, Racine & Doren.

Tim Arends, Executive Director

7:30 p.m. Amy Shamroe left the meeting.

Moved by Heiberger, seconded by Hammersley, that the Light & Power Board directs staff to solicit bids for lease of airport property and renewable energy development located at the airport for the Board's consideration and approval.

The following individuals from the Public addressed the Board:

Gerald DeGrazia, 11604 Whittington Street, ratepayer.

Roll Call:

Yes – Hammersley, Taylor, Werner, Davila, Heiberger

No – McGuire

Absent - Shamroe

CARRIED.

- g. Consideration of authorizing staff to apply for financing for a solar generating facility located at the Cherry Capital Airport through the United States Department of Agriculture Rural Energy Savings Program.

NO ACTION TAKEN AS RECOMMENDED BY EXECUTIVE DIRECTOR.

Item 5 on the Agenda being New Business

- a. None.

Item 6 on the Agenda being Reports and Communications

- a. From Legal Counsel.

- b. From Staff.

1. Presentation of MPPA's report card on TCL&P.

The following individuals addressed the Board:

Karla Myers-Beman, Controller

2. March 31, 2019 financial statements.

The following individuals addressed the Board:

Karla Myers-Beman, Controller

c. From Board

Item 7 on the Agenda being Public Comment

a. General

The following individuals from the Public addressed the Board:

None.

There being no objection, Chairman Taylor declared the meeting adjourned at 7:45 p.m.

Tim Arends, Secretary
LIGHT AND POWER BOARD



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: June 25, 2019
Subject: Smart Energy Systems, LLC

As part of the process of bringing the Energy Waste Reduction Program (“Program”) in house, staff moved forward last year purchasing software from Smart Energy Systems (“SES”), LLC to manage the Program’s energy savings and rebate costs.

Initially, staff was provided the option of evaluating the program for one year with a four-year extension that provided an annual discount of 20% plus an annual \$375 credit reducing the annual fee from \$7,500 to \$5,625 for a total savings of \$7,500 over the contract term.

Staff recognizes the State mandate for the Program currently ends in year 2021, however, staff does not foresee this program ceasing due to the environmental sustainability it provides to the community.

Approval by the Board is required because it exceeds one year.

This item is on the Consent Calendar as it is deemed non-controversial. Staff recommends that the Board approve a four-year contract extension with SES. Approval of this item on the Consent Calendar means you agree with staff’s recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the “Items Removed from the Consent Calendar” portion of the agenda for full discussion. If after Board discussion you agree with staff’s recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____, THAT THE
LIGHT & POWER BOARD APPROVES THE FOUR-YEAR CONTRACT EXTENSION WITH
SMART ENERGY SYSTEMS, LLC.**



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
CC: Tim Arends, Executive Director
From: James Henderson, Deputy Treasurer
Date: June 25, 2019
Subject: Collection Agency Agreement

Following a review of our vendor contracts, we noted that our agreement with our collections contractor Cadillac Area Receivables Management (henceforth C.A.R.M.) had expired as of June 2019. Over this time, the City Treasurer's office has continued to have productive working relationship with C.A.R.M. C.A.R.M. has continued to demonstrate diligence and effectiveness in collecting City receivables over this time. In addition, city staff has gained a great familiarity with their online collections tracking and reporting tools. For these reasons we wish to re-engage them for another three-year period under the same terms as the prior agreement. These terms are deemed acceptable by the City Treasurer's office.

While the Treasurer's office has a full-time collections employee funded by the electric, water and sewer funds, a majority of his time is spent managing collections for active customer accounts, i.e. payment arrangements, non-payment disconnects, agency referrals, etc. The Treasurer's office believes that utilizing the services of a collection agency for "stale" non-active customer accounts that have not paid their final bills is the most economical method of achieving collection of amounts due the City and Light & Power.

Staff recognizes if the Board and City Commission approve amending the City Ordinance and reducing the lien amount from \$200 to \$0 (allowing delinquent accounts to be placed on the tax roll) it is expected the use of CARM would be minimal. The use would be limited to age receivables before the adoption of the lien change amount and property owners who file an affidavit stating their tenant is responsible for such charges and prohibits a lien to be placed on their property.

The Treasurer's Office is again recommending approval to renew our contract with C.A.R.M. to assist in the collection activities of the delinquent utility and other receivables. Some added benefits of renewing this agreement with the collections agency are the following resources, which the City does not have:

1. They have two separate services, the National Change of Address and the US Postal Service, which they can utilize as a resource to find new addresses.
2. They utilize three resources to find debtors, CBC Innovis, Accurant Search by Lexis Nexis and Experian Credit Report.
3. They have an automatic letter system and voice integrated system they use to contact the debtor for collections.
4. On a monthly basis, they report delinquent receivables on the debtor's credit report.
5. They provide a tool for collections staff to see real-time status reports on collections accounts.

FOR THE LIGHT & POWER BOARD MEETING OF JULY 9, 2019

The following is their proposed fee schedule, which remains unchanged from our last renewal:

Full collection commission	28%
Any collection account, regardless of age	28%
Small balance accounts below \$25	28%
Accounts requiring skip tracing	30%
Legal action accounts, client authorization required	40%
Accounts will be credit reported at no additional charge	

Term of the agreement will be three years with two one-year automatic renewal periods.

This item is appearing on the Consent Calendar as staff deems it to be a non-controversial housekeeping matter and recommends the Board to approve the execution of the agreement with Cadillac Area Receivables Management. Approval of this item on the Consent Calendar means you agree with staff's recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZE THE CHAIRMAN AND SECRETARY TO EXECUTE AN AGREEMENT WITH CADILLAC AREA RECEIVABLES MANAGEMENT FOR COLLECTION AGENCY SERVICES, SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Kelli Schroeder, Manager of HR & Communications
CC: Tim Arends, Executive Director
Date: July 1, 2019
Subject: MERS Annual Meeting - Delegates

The Municipal Employees Retirement System (MERS) is holding their Annual Meeting from October 3 – October 4, 2019 at the Grand Traverse Resort, Acme, Michigan.

The MERS Plan Document provides that our Employees' Delegate shall be selected by secret ballot of the employees who are members of the Retirement System. This year Bill Cornell was elected as Employee Delegate.

The Employer appoints an Officer Delegate and Officer Alternate Delegate to attend this meeting. Please appoint Karla Myers-Beman, Controller as Officer Delegate and Kelli Schroeder, Manager of HR & Communications, as Alternate Delegate.

Attached please find the MERS 2019 Annual Meeting Delegate and Alternate Certification form appointing the Officer Delegate and Alternate. This form also indicates the Employees' selection for Delegate.

This item is appearing on the Consent Calendar as staff deems it to be a non-controversial item. Approval of this item on the Consent Calendar means you agree with staff's recommendation to appoint a MERS delegate and alternate.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation, the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT KARLA MYERS-BEMAN, CONTROLLER AND KELLI SCHROEDER, MANAGER OF HR & COMMUNICATIONS BE APPOINTED OFFICER DELEGATE AND OFFICER ALTERNATE DELEGATE RESPECTIVELY, FOR THE 2019 ANNUAL MEETING OF THE MUNICIPAL EMPLOYEES RETIREMENT SYSTEM; AND FURTHER THAT THE EXECUTIVE DIRECTOR BE AUTHORIZED TO EXECUTE THE CERTIFICATION OF DELEGATES.



Municipal Employees' Retirement System of Michigan
 1134 Municipal Way • Lansing, MI 48917
 800.767.MERS (6377) • Fax: 517.703.9707
 www.mersofmich.com

2019 Officer and Employee Delegate Certification Form

MERS Annual Retirement Conference | October 3–4, 2019 | Grand Traverse Resort, Acme, MI

Please print clearly • Scan and attach this file when you register online • Retain a copy for your records

IMPORTANT: If you are not sending a delegate to Conference, please **DO NOT** submit this form. A **voting delegate registered** to attend the **MERS Retirement Conference** is **NOT** confirmed to have voting rights until this form has been uploaded with your online registration.

The voting delegate representative must be a MERS member, defined as an **active employee on payroll** who is enrolled in either a MERS Defined Benefit Plan, Defined Contribution Plan or Hybrid Plan.

1. Officer (and alternate) delegate information

The officer delegate (or alternate) shall be a MERS member who holds a department head position or above, exercises management responsibilities, and is directly responsible to the legislative, executive, or judicial branch of government.

Officer Delegate name

Karla Myers-Beman, Controller

Officer Alternate name

Kelli Schroeder, Manager of HR & Communications

Officer delegate and alternate listed above were appointed to serve at the 2019 MERS Annual Conference by official action of the governing body (or chief judge for a participating court) on July 9, 2019.

2. Employee (and alternate) delegate information

The employee delegate (or alternate) shall be an employee member who is not responsible for management decisions, receives direction from management and, in general, is not directly responsible to the legislative, executive, or judicial branch of government.

Employee Delegate name

Bill Cornell

Employee Alternate name

Dan Hess

Employee delegate and alternate listed above were elected to serve at the 2019 MERS Retirement Conference by secret ballot election conducted by an authorized officer on July 1, 2019.

3. Certification

NOTE: Certification should be signed by a member of the governing body or chief administrative officer, or the chief judge for a participating court.

I certify that the officer delegate and alternate selections are true and correct, and the secret ballot election results for the employee delegate and alternate are true and correct.

Employer/municipality name*		Municipality number*	Email address	
Traverse City Light & Power		2811	tarends@tclp.org	
Employer address	Employer city	Employer state	Employer zip code	
1131 Hastings Street	Traverse City	MI	49686	
Signature of authorized authority*		Printed name		
Executive Director		Timothy Arends		
		Date		

* Required field

! TIP: Scan and upload this completed form to your computer. Then attach it to your registration when you register online to attend the conference.
www.mersofmich.com



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: June 25, 2019
Subject: Heritage Contract

At the May 14, 2019 board meeting the Board approved the Executive Director to negotiate an amended contract with Heritage Sustainable Energy, LLC (Heritage) to incorporate an additional 2 MW of solar energy within the existing contract.

Included in the packet for your review is an amended M-72 wind turbine and 1 MW solar array agreement adding the 2 MW solar array at the escalating price index provided at the May meeting comprising of energy cost, capacity credit, and renewable energy credits for a term of 20 years.

Other key components of the amended agreement are as follows:

1. Clarified the energy price for the initial 1 MW solar includes RECS, energy and capacity.
2. Installation and maintenance of the meters are the responsibility of the Supplier (Heritage), and generation data will be transmitted to the Buyer (Traverse City Light & Power (TCL&P)) based on real time.
3. Staff incorporated monetary consideration for the capital costs relating to the newly required metering equipment for the wind turbine and 1 MW solar array not clarified in the previous amendment. In the past, TCL&P has communicated to the Supplier there has been a consistent discrepancy in reported delivered energy amount causing TCL&P to be underbilled by the Supplier based on TCL&P metering data. TCL&P has agreed to make a one-time payment for the underbilled amount to be designated for capital costs of the metering equipment from October 2017 until the agreement is executed. Currently this amount is approximately \$14,700 and the estimated costs of the new metering equipment is \$50,000.
4. The agreement includes an option to purchase for another 2 MW similar to the last agreement. If TCL&P elects not to accept the option to purchase it would be obligated to purchase the energy at the locational marginal pricing (market rate).

Staff recommends the Board approve the amended and restated power purchase agreement.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE LIGHT AND POWER BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO SIGN THE SECOND AMENDED AND RESTATED PURCHASE POWER AGREEMENT SUBJECT TO REVIEW AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.

SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT

This Amended and Restated Power Purchase Agreement (the "Agreement") is made and entered into as of _____, 2017⁹ (the "Effective Date") by and between TRAVERSE CITY LIGHT & POWER DEPARTMENT, a Michigan municipal electric utility, ("Buyer") and HERITAGE SUSTAINABLE ENERGY, LLC, a Michigan limited liability company ("Supplier"). Buyer and Supplier are referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Buyer owns electric facilities and is engaged in the purchase, distribution and sale of electric energy in the State of Michigan;

WHEREAS, Supplier owns and operates a wind generation facility and is constructing a solar power facility (together, the "Generating Facility") on a site located in Leelanau County, Michigan;

WHEREAS, Supplier and Buyer entered into that certain Power Purchase Agreement dated December 3, 2014 with respect to the generation, sale and purchase of Wind Energy (the "Original Agreement"); and Amended and Restated Power Purchase Agreement dated August 14, 2017 (Amended and Restated Agreement);

WHEREAS, Supplier desires to sell to Buyer all non-firm Wind Energy and Solar Energy generated by the Generating Facility (less energy consumed by such Generating Facility), and Buyer desires to purchase all such Energy from Supplier upon the terms and conditions set forth herein; and

WHEREAS, Supplier and Buyer desires to amend and fully restate the Original Agreement to include provisions related to Solar Energy generation, sale and purchase, among other things, all as further set forth herein; and

WHEREAS, Buyer has agreed to buy and Supplier sell Additional Solar Energy of approximately 2 MW at a Product Rate as set forth in Exhibit E.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, agree as follows:

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 "Acceptance Notice" has the meaning ascribed to that item in Section 6.2.3.
- 1.2 "Additional Solar Energy" has the meaning ascribed to that item in Section 6.2.1.

- 1.3 “Affiliate” means, with respect to any Person, each Person that directly or indirectly controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) as used with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.
- 1.4 “Agreement” means this Amended and Restated Power Purchase Agreement together with the Exhibits attached hereto, as such may be amended from time to time.
- 1.5 Intentionally left blank.
- 1.6 “Billing Period” has the meaning ascribed to that term in Section 7.2.1.
- 1.7 “Business Day” means any day other than Saturday, Sunday, and any day that is a holiday observed by Buyer.
- 1.8 “Buyer” has the meaning set forth in the preamble of this Agreement, and includes such Person's permitted successors and assigns.
- 1.9 “Commercial Operation” with respect to Wind Energy, means the date the portion of the Generation Facility that generates Wind Energy delivered Wind Energy to the Delivery Point, which the Parties agree and confirm has occurred, been met and satisfied. Commercial Operation with respect to Solar Energy, means the date the portion of the Generation Facility that generates Solar Energy has been constructed in accordance with the requirements of the IOE and Good Utility Practice and has delivered Solar Energy to the Delivery Point and all of the requirements with respect to Solar Energy set forth in Sections 8.1 to 8.5 have been satisfied. If Commercial Operation is not achieved on the first day of a month, then Commercial Operation shall be deemed to be achieved on the first day of the following calendar month.
- 1.10 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.11 “Confidential Information” has the meaning ascribed to that item in Section 23.1.
- 1.12 “Contract Representative” of a Party means the individual designated by that Party in *Exhibit B* responsible for ensuring effective communication, coordination, and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 24.1.
- 1.13 “Contract Year” means each calendar year beginning on January 1 and ending on December 31 of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31.

- 1.14 “Control Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to (a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s); (b) maintain scheduled interchange with the other Control Areas, within the limits of Good Utility Practice; (c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.
- 1.15 “Control Area Operator” means a Person, its agents, and successors that is responsible for the operation of the Transmission System and for maintaining reliability of the electrical transmission system(s), including the Transmission System, within the Control Area.
- 1.16 “Cure Period” has the meaning ascribed to that term in Section 19.2.
- 1.17 “Default Notice” means the notice of an Event of Default to the Defaulting Party.
- 1.18 “Defaulting Party” has the meaning ascribed to that term in Section 19.1.
- 1.19 “Deemed Delivered Amount” if the Delivered Amount cannot be determined with respect to Wind Energy, means the quantity of Wind Energy, expressed in MWh, that would have been produced by the Generating Facility and delivered to the Delivery Point during any period, determined by taking into account (i) the actual 10-minute (or more frequent) wind speeds (interpolated over time intervals, if necessary) measured by wind monitoring equipment located on the Wind Turbine that was available for operation immediately prior to the commencement of the period in question and expected to be available for the duration of the period in question or prorated accordingly or, if such monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using industry standard practices, as reasonably accepted by Supplier and Buyer; and (ii) the generation determined by the power curve provided by the manufacturer of the Wind Turbines reflecting the Energy that would be produced by the Wind Turbine at all operational speeds, as applied to the wind speeds referred to in clause (i), as adjusted for line losses to the Delivery Point, using historical data compiled by Supplier and reasonably agreed or confirmed by Buyer.

“Deemed Delivered Amount” if the Delivered Amount cannot be determined with respect to Solar Energy, means the quantity of Solar Energy, expressed in MWh, that would have been produced by the Generating Facility and delivered to the Delivery Point during any period, determined by using sound engineering principles taking into account all appropriate meteorological, solar, and other dynamics and variables existing immediately prior to the commencement of the period in question and expected to be available for the duration of the period in question or prorated accordingly or, if such monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using industry standard practices, as reasonably accepted by Supplier and Buyer, as adjusted for line losses to the Delivery Point, using historical data compiled by Supplier and reasonably agreed or

confirmed by Buyer.

- 1.20 Intentionally left blank.
- 1.21 “Delivered Amount” means, with respect to any Contract Year, the actual amount of Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Contract Year.
- 1.22 “Delivery Point” means the delivery point as set forth in *Exhibit A* and any other delivery point as may be mutually agreed upon by the Parties.
- 1.23 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the forecasted Energy during a Dispatch Hour.
- 1.24 “Disclosing Party” has the meaning ascribed to that term in Section 23.1.
- 1.25 “Dispatch Hour” means each hour from the Operation Date through the end of the Term.
- 1.26 “Dispute” has the meaning ascribed to that term in Section 16.1.
- 1.27 “Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.
- 1.28 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Transmission System, or the transmission system of other electric utilities which is reasonably likely to (a) endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property; or (b) adversely affect, degrade, or impair Transmission System reliability or transmission system reliability of other electric utilities.
- 1.29 “Energy” means three phase 60 Hz electrical energy (measured in MWh) that is generated by the Generating Facility from and after the Operation Date and delivered to the Delivery Point, excluding Station Use. Energy shall also mean the capacity intended to be available and/or delivered to Buyer at the specifications and Delivery Point stated herein. Unless otherwise referenced or provided for separately herein, Energy shall refer to both Solar Energy and Wind Energy.
- 1.30 “Environmental Law” shall mean any federal, state, local, or other law (including common law), regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order relating to the protection, preservation, or restoration of human health, the environment, or natural resources, including any law relating to the releases or threatened releases of Hazardous Substances into any media (including ambient air, surface water, groundwater, land, and surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport, and handling of Hazardous Substances.
- 1.31 “EPT” means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.
- 1.32 “Expansion Notice” has the meaning ascribed to that term in Section 6.2.2.

- 1.33 “Event of Default” has the meaning ascribed to that term in Section 19.1.
- 1.34 “EWG” means an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 2005; as such Law may be amended or superseded.
- 1.35 “FERC” means the Federal Energy Regulatory Commission and any successor entity thereto.
- 1.36 “First Full Contract Year” means the first Contract Year that is a full calendar year.
- 1.37 “Force Majeure” has the meaning set forth in Section 15.2.
- 1.38 “Generating Facility” means Supplier's renewable generating power plant, including both Wind Energy and Solar Energy facilities and any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in *Exhibit A* hereto. With respect to the portion of the Generation Facility that generates Solar Energy, Exhibit A shall be modified accordingly upon completion to reflect the facilities “as built”. The Generating Facility shall be known to the public, and referred to by the Parties, as “Heritage Renewable Energy Corners.”
- 1.39 “Good Faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- 1.40 “Good Utility Practice” means (a) the applicable practices, methods, and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or (b) any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known or that should 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 business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods, or acts generally accepted in the region and industry. Good Utility Practice shall include compliance with applicable Laws and regulations, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.
- 1.41 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.
- 1.42 “Hazardous Substance” means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as, or included in, the definition of “hazardous

substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants”, or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited, or regulated as such under any Environmental Law including the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or any similar state statute, as such Laws may be amended or superseded.

- 1.43 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.44 “Invoice” means the statements described in Section 7.2 setting forth the Energy delivered to the Delivery Point, if any, and the associated payment due for the Billing Period.
- 1.45 “IOE” means the Interconnection and Operating Exhibit, *Exhibit C*, attached hereto.
- 1.46 “Law” means any federal, state, local, or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is binding on a Party or any of its property.
- 1.47 “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, Taxes, judgments, damages, losses, or expenses imposed by a third-party upon a Party or incurred in connection with any claim by a third-party against a Party.
- 1.48 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations, or financial condition of such Party.
- 1.49 “Meter” means any of the physical or electronic metering devices, data processing equipment, and apparatus required for (a) an accurate determination of the quantities of Delivered Amounts from the Generating Facility and for recording other related parameters required for the reporting of data to Supplier, and (b) the computation of the payment due to Supplier from Buyer. Meters do not include any check meters Buyer may elect to install as contemplated by Section 7.1.1.
- 1.50 “MISO” means the Midcontinent Independent System Operator, Inc. and any successor entity thereto “MPSC” means the Michigan Public Service Commission and any successor entity thereto.
- 1.51 “MW” means a megawatt of electrical capacity.
- 1.52 “MWh” means a megawatt hour of electrical energy.

- 1.53 “NERC” means the North American Electric Reliability Corporation and any successor entity thereto.
- 1.54 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.55 “OATT” means Transmission Provider's or Control Area Operator's then effective Open Access Transmission Tariff, which has been accepted for filing by the FERC.
- 1.56 “Operating Representative” means any of the individuals designated by a Party, as set forth in *Exhibit B*, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 24.1 herein.
- 1.57 “Operation Date” with respect to Wind Energy, means the first date on which the Wind Turbine is energized and operates in parallel with the Transmission System and delivers Energy to the Delivery Point, which the Parties agree and confirm has occurred, been met and satisfied. With respect to Solar Energy, means the first date on which the Solar Array is energized and operates in parallel with the Transmission System and delivers Energy to the Delivery Point. Fifteen (15) calendar days prior to any synchronization to the Transmission System, Supplier shall provide written notice to Buyer's Contract Representative, as set forth in *Exhibit B*, that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur.
- 1.58 “Option” means Buyer’s option to purchase Additional Solar Energy from Supplier in accordance with Section 6.2 hereof.
- 1.59 “Option Period” has the meaning ascribed to that item in Section 6.23.3.
- 1.60 “Original Agreement” means the Power Purchase Agreement dated December 3, 2014 between the Parties, which is fully amended, restated and superseded by this Agreement.
- 1.61 “Party” means each Person set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.62 “Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.63 “Power Quality Standards” means the Power Quality Standards established by NERC, MISO, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, and their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.64 “Product” means all Energy produced by the Generating Facility, except Station Usage and any Additional Solar Energy which Buyer has not purchased pursuant to the Option, the Purchase Requirement or otherwise.

1.65 “Product Rate” During the Term of this Agreement:

- 1.65.1 Except as provided in Section 1.664.2 and 1.664.3, “Product Rate” shall mean: (i) with respect to Wind Energy, \$70/MWh; and (ii) with respect to Solar Energy, \$112.50/MWh.
- 1.65.2 After such time as 4,600 MWh (cumulative) of Wind Energy has been delivered to Buyer pursuant to this contract, the “Product Rate” for Wind Energy shall mean the LMP Real-Time hourly rate at the Cons. MPPATC Node.
- 1.65.3 ~~In the event Buyer exercises the Option, any Additional Solar Energy shall have a “Product Rate” of \$99.50/MWh. In the event Buyer fails to properly exercise the Option, but nevertheless thereafter purchases The Product Rate for Additional Solar Energy, including energy capacity and REC’s pursuant to the Purchase Requirement or otherwise, the “Product Rate” (not including capacity) shall be as set forth in Exhibit E. only be for energy at the LMP Real-Time hourly rate at the Cons.TC Node.~~

1.66 “Projects” means the Wind Turbine, Solar Array and Solar Expansion Array.

~~1.661.67~~ “PTC” means the production tax credit established pursuant to Section 45 of the U.S. Internal Revenue Code of 1986; as such Law may be amended or superseded.

~~1.671.68~~ “Purchase Requirement” has the meaning ascribed to that term in Section 6.32.4.

~~1.681.69~~ “QF” means a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as such Law may be amended or superseded.

~~1.691.70~~ “Receiving Party” has the meaning ascribed to that term in Section 23.1.

~~1.701.71~~ “Solar Array” means the Solar Energy generating facilities comprising a part of the Generating Facility, which shall initially be constructed to generate +/- 1MW AC of Solar Energy, and which may be expanded, in Supplier’s sole discretion, to include an additional approximate 1 to 3 MW AC of Solar Energy, which additional Solar Energy shall be sold and purchased pursuant to Section 6.2 hereof.

~~1.711.72~~ “Solar Energy” means the Energy generated by the Solar Array.

~~1.721.73~~ “Solar Expansion Array” has the meaning ascribed to that term in Section 6.2.1.

~~1.731.74~~ “Station Usage” means all Energy consumed by the Generating Facility.

1.74 “Supplier” has the meaning set forth in the preamble of this Agreement and includes such Person’s permitted successors and assigns.

1.75 “Supplier's Lenders” means any Persons other than an Affiliate of Supplier, and their permitted successors and assignees, whose business it is in the ordinary course to provide funding in connection with any development, bridge, construction, permanent debt, or tax equity financing or refinancing (collectively, “Financing”) and, in this case, Financing for the Generating Facility.

1.76 “Tax” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees, or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty, or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

~~1.77~~ —~~Intentionally left blank.~~

~~1.78~~1.77 “Term” has the meaning ascribed to that term in Section 2.2.

~~1.79~~1.78 “Transmission Provider” means the operator or owner of the Transmission System to which the Generating Facilities are interconnected for the delivery of energy.

~~1.80~~1.79 “Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

~~1.81~~1.80 “Wind Energy” means the Energy generated by the Wind Turbine.

~~1.82~~1.81 “Wind Turbine” means the Vestas V44-600, 600KW wind turbine generator presently integrated into the Generating Facility or any upgrade or replacement thereof made by Supplier in its sole discretion in accordance with Section 8 hereof.

TERM, TERMINATION, AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date. This Agreement shall become effective on the Effective Date.

2.2 Term. Supplier’s obligation to deliver Product and buyer’s obligation to accept and pay for Product under this Agreement shall commence on the Commercial Operation Date and shall continue until December 31, 2038 for the 1MW solar array and December 31, 2041~~38~~ for the additional 2 MW solar expansion array. (the “Term”)

2.3 Termination.

2.3.1 Mutual Agreement. This Agreement may be terminated by written agreement of the Parties.

- 2.3.2 Force Majeure. This Agreement may be terminated by a Party if the other Party's obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than six (6) consecutive calendar months.
- 2.3.3 Wind Energy and Turbine. Supplier and Buyer each have an option to terminate or renegotiate the terms of the Agreement as to the sale and purchase of Wind Energy and the Wind Turbine on January 1, 2025 and January 1, 2030 upon the giving of ninety (90) days advance written notice to the other party. This Agreement shall terminate as to Wind Energy and the Wind Turbine on January 1, 2035.
- 2.4 Extension. As to Solar Energy if not sooner terminated as provided in Section 2.3 above, then after the Term, this Agreement shall automatically renew each January 1 for additional periods of one (1) year each unless Supplier or Buyer shall terminate this Agreement by written notice delivered to the other party not less than three (3) months before such annual renewal date. There is no automatic renewal as to Additional Solar Energy
- 2.5 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.5.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;
- 2.5.2 Limitation of liability provisions contained in Sections 14.1 to 14.3;
- 2.5.3 For a period of one (1) year after the termination date, the right to submit a payment dispute pursuant to Sections 16.1-16.6;
- 2.5.4 The resolution of any dispute submitted pursuant to Sections 16.1 to 16.6 prior to, or resulting from, termination; or
- 2.5.5 The confidentiality provisions contained in this Agreement.

SUPPLY SERVICE OBLIGATIONS

- 3.1 Energy. Subject to the other provisions of this Agreement, Supplier shall supply and deliver to Buyer at the Delivery Point all Product. All purchases of Energy delivered to Buyer shall be sales for resale.
- 3.2 Dedication. All Product shall be dedicated exclusively to Buyer for the Term of this Agreement. Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole discretion), sell, divert, grant, transfer, or assign Product to any Person other than Buyer.

- 3.3 Buyer's Obligation and Delivery. Buyer shall take delivery of all Product at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for all costs associated with delivery of the Product to the Delivery Point. Buyer shall be responsible for all costs associated with receipt of the Product at the Delivery Point.
- 3.4 Title and Risk of Loss. Title to and risk of loss with respect to Product shall pass from Supplier to Buyer at the Delivery Point. Until title passes, Supplier shall be deemed in exclusive control of the Product and shall be responsible for any damage or injury caused thereby. After title to the Product passes to Buyer, Buyer shall be deemed in exclusive control of the Product and shall be responsible for any damage or injury caused thereby. Supplier shall deliver the Product to Buyer free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any Person.
- 3.5 Signage. Subject to the necessary approval of any jurisdictional authority and the mutual consent of the Supplier and Buyer, Supplier shall install a sign at the Generating Facility which identifies to the public Buyer's involvement in the project, includes Buyer's logo and references the production of both Wind Energy and Solar Energy.

PRICE OF PRODUCT

- 4.1 Product Payments. Supplier shall be paid for the Product based on the Delivered Amount (or Deemed Delivered Amount, as the case may be) of Product as determined by data from monthly Meter readings. All Delivered Amounts of Product (or Deemed Delivered Amount, as the case may be) shall be paid for by the Buyer at the Product Rate.

RENEWABLE ENERGY CREDITS AND RENEWABLE ENERGY BENEFITS

- 5.1 Renewable Energy Credits. All Renewable Energy Credits and any Renewable Energy Benefits derived therefrom shall be allocated, as follows:
- 5.1.1 During such time as the Product Rates set forth in Section 1.66.1 are in effect and so long as the Wind Turbine is generating Product:
- 5.1.1.1 With respect to the first 300 MWh of Wind Energy generated in any Contract Year, to the Supplier; and
- 5.1.1.2 With respect to any MWh of Wind Energy in any Contract Year in excess of the amount set forth in Section 5.1.1.1 above, to the Buyer
- 5.1.2 With respect to Solar Energy and Additional Solar Energy, all Renewable Energy Credits are the property of the Buyer.

RIGHT OF FIRST OFFER / OPTION TO PURCHASE

6.1 Right of First Offer

- 6.1.1 Before Supplier (or any direct or indirect parent of Supplier) sells or transfers the Generating Facility to a non-Affiliate third-party, Supplier must provide written notice to Buyer of intention to sell or transfer together with all terms of sale or transfer. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in Good Faith with Supplier for no more than sixty (60) calendar days, unless otherwise agreed to by Supplier, the terms of the sale or transfer of the Generating Facility to Buyer or its designee on an exclusive basis. If Buyer desires to enter into such negotiation, Buyer shall notify Supplier of such decision within thirty (30) calendar days of receipt of Supplier's notice. Supplier will provide, in a timely manner, information regarding the Generating Facility which is reasonable or customary to allow Buyer to perform due diligence and to negotiate in Good Faith for the purchase of the Generating Facility.
- 6.1.2 If Buyer does not exercise its right to negotiate pursuant to Section 6.1, Supplier must comply with Section 18.4 in any assignment or delegation of Supplier's rights, interests, or obligations herein to a purchaser of the Generating Facility.
- 6.1.3 If Supplier does not execute an agreement, subject to receipt of appropriate regulatory approvals, to sell or transfer the Generating Facility to any non-Affiliate third-party in accordance with this Agreement within three hundred sixty-five (365) calendar days of the date that Supplier provided Buyer with written notice pursuant to Section 6.1, Supplier (or any direct or indirect parent of Supplier) must again follow the procedures of this Agreement if it intends to sell or transfer the Generating Facility to a non-Affiliate third-party.
- 6.1.4 Supplier shall supply Buyer with documented proof to Buyer's reasonable satisfaction that the transferee has the qualifications to operate and maintain the turbine and be able to demonstrate the financial ability to meet all financial obligations. Buyer shall not unreasonably delay, condition or deny consent to such transfer.

6.2 Option to Additional Solar Energy Purchase

- 6.2.1 ~~Supplier, in its sole discretion, may had elected~~ to construct additional facilities to expand the Solar Array (the “Solar Expansion Array”) to include an additional ~~approximate 1 to 3~~ 2 MW AC of Solar Energy generating capacity (the “Additional Solar Energy”).
- 6.2.2 ~~Buyer did not exercise the Option in the Original Agreement or the Amended and Restated Agreement. In the event Supplier decides to move forward with the Solar Expansion, Supplier shall provide Buyer with written notice of its intentions to implement the Solar Expansion and sell the Additional Solar Energy (the “Expansion Notice”). The Expansion Notice shall identify the pertinent details related to the Solar Expansion.~~
- 6.2.3 ~~Buyer shall buy and Supplier shall sell to Buyer all Solar Expansion Energy from the Additional Solar Array, including energy, capacity and REC’s for the Product Rate shown on Exhibit E. For a period of sixty (60) days after receipt of the Expansion Notice (the “Option Period”), Buyer shall have the option to elect to purchase all, and not less than all, of the Additional Solar Energy generated by the Solar Expansion at the Product Rate set forth in Section 1.66.3, but otherwise subject to all of the terms and conditions of this Agreement (the “Option”), by delivering a written of such election to Supplier by the end of the Option Period (the “Acceptance Notice”). The delivery of the Acceptance Notice shall be deemed an addendum to this Agreement and shall create a binding legal obligation on the part of Buyer to purchase the Additional Solar Energy in accordance with the terms hereof.~~
- 6.2.3 ~~If Buyer fails to deliver an Acceptance Notice to the Supplier within the Option Period: (i) the Supplier shall thereafter be entitled to sell any and all of the Additional Solar Energy to any Person; and/or (ii) the Supplier may thereafter require the Buyer to purchase, and the Buyer shall be obligated to purchase upon such requirement, any and all of the Additional Solar Energy stipulated by Supplier, provided, however, that the Product Rate for such Additional Solar Energy shall be the LMP Real Time hourly rate at the Cons.TC Node (the “Purchase Requirement”). Supplier’s delivery of written notice to Buyer implementing the Purchase Requirement shall be deemed an addendum to this Agreement and shall create a binding legal obligation on the part of Buyer to purchase the Additional Solar Energy in accordance with the terms of the Purchase Requirement.~~

6.3 Option to Purchase

- 6.3.1 Supplier, in its sole discretion may elect to construct additional facilities to expand the Solar Array (the “Second Solar Expansion”) beyond the original 1 MW solar array and the 2 MW additional solar expansion to include an additional 2 MW AC of Solar Energy generating capacity (the “Additional Solar Energy”) for a total of 5 MW.
- 6.3.2 In the event Supplier decides to move forward with a Second Solar Expansion, Supplier shall provide Buyer with written notice of its intentions to implement the Second Solar Expansion and sell the Additional Solar Energy (the “Expansion Notice”). The Expansion Notice shall identify the pertinent details related to the Second Solar Expansion.

6.3.3 For a period of sixty (60) days after receipt of the Expansion Notice (the “Option Period”), Buyer shall have the option to elect to purchase all and not less than all, of the Additional Solar Energy generated by the Second Solar Expansion at the Product Rate set forth in Section 1.64.3, but otherwise subject to all of the terms and conditions of this Agreement (the “Option”), by delivering a written of such election to Supplier by the end of the Option Period (the “Acceptance Notice”). The delivery of the Acceptance Notice shall be deemed an addendum to this Agreement and shall create a binding legal obligation on the part of Buyer to purchase the Additional Solar Energy in accordance with the terms hereof.

6.3.4 If Buyer fails to deliver an Acceptance Notice to the Supplier within the Option Period: (i) the Supplier shall thereafter be entitled to sell any and all of the Additional Solar Energy to any Person; and/or (ii) the Supplier may thereafter require the Buyer to purchase, and the Buyer shall be obligated to purchase upon such requirement, any and all of the Additional Solar Energy stipulated by Supplier, provided, however, that the Product Rate for such Additional Solar Energy shall be the LMP Real-Time hourly rate at the Cons.MPPA node (the “Purchasing Requirement”). Supplier’s delivery of written notice to Buyer implementing the Purchase Requirement shall be deemed an addendum to this Agreement and shall create a binding legal obligation on the part of Buyer to purchase the Additional Solar Energy in accordance with the terms of the Purchase Requirement.

6.2.4—

METERING, INVOICING, AND PAYMENTS

7.1 Metering.

7.1.1 Meters. Separate Meters for each project, i.e. Wind, Solar and Additional Solar shall be installed and maintained by Supplier at Supplier’s expense. The Meters shall be only as reasonably required under prevailing industry standards to be used for quantity measurements in real time under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. All meter data shall be readily accessible by Buyer. Buyer, at its expense, may install additional check meters. Buyer shall not install any check-metering equipment on ~~Seller’s~~Supplier’s-owned facilities.

7.1.2 Location. Meters shall be installed at the location specified in *Exhibit A*, or as otherwise reasonably determined by ~~Seller~~Supplier to effectuate this Agreement.

7.1.3 Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters.

7.1.4 Meter Testing. Meters shall be tested at least once every two years by Supplier, at Supplier’s expense. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering

(ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected, or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment, or calibration of the Meters or check meters. Supplier's Operating Representative shall provide fifteen (15) calendar days prior notice of routine Meter testing to Buyer's Operating Representative. If Buyer has installed check meters in accordance with Section 9.1.1, Buyer shall test and calibrate each such meter at least once every two years. Buyer's Operating Representative shall provide fifteen (15) calendar days prior written notice of routine check meter testing to Supplier's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other in writing with as much advance notice as practicable.

7.1.5 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Buyer's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed or ninety (90) calendar days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, the adjustment period shall not exceed ninety (90) calendar days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered Amount. In such event, the Parties' estimated payments shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount, the dispute shall be resolved in accordance with Section 16.1-16.6.

7.1.6

~~7.1.5~~—Prior Meter Ownership. The Supplier and Buyer recognizes before this amendment, the ownership and responsibility of meters along with the necessity of the Buyer's need for real time metering data were not clarified within the agreement. In addition, the Supplier and Buyer acknowledges the Supplier invoiced based on their metering equipment and the Buyer verified the delivered energy amounts based on its independent metering data. A discrepancy occurred each month since the Buyer started tracking the data in October 2017 in favor of the Buyer. In consideration for the capital costs relating to the installation of the new separate meters for the wind turbine and original 1 MW solar array, the Buyer will make a one-time payment to the Supplier for the discrepancy of energy delivered from October 2017 until the execution of this agreement. No further payments shall be made in regard to the discrepancy of energy delivered between the Supplier and Buyer.

7.2 Invoices.

7.2.1 Invoicing and Payment. On or before the 10th day of each calendar month, Supplier shall send to Buyer an Invoice for the prior calendar month (a "Billing Period"). The Invoice shall be calculated based upon Meter data available to Supplier. Supplier shall calculate each monthly Invoice as set forth in *Exhibit D*.

7.3 Payments.

- 7.3.1 Payment to Buyer. The Invoice referred to in Section 7.2.1 above shall net any amounts owing to Buyer from amounts due to Supplier and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Any payment due to Buyer shall be credited to following Billing Periods and if no such Billing Periods remain.
- 7.3.2 Method of Payment. Buyer and Supplier, as applicable, shall remit the payment of any undisputed amounts pursuant to the instructions stated on the Invoice, and if no instructions are stated on such Invoice, then in accordance with *Exhibit D*. Payment will be made on or before the later of (a) thirty-two (32) calendar days following the end of each Billing Period or (b) thirty (30) calendar days from receipt of Invoice by the applicable Party.
- 7.3.3 Examination and Correction of Invoices. As soon as practicable, either Party shall notify the other Party in writing of any alleged error in Supplier's Invoice.
- 7.3.3.1 If a Party notifies the other Party of an alleged error in Supplier's Invoice, the Parties agree to make Good Faith efforts to reconcile the billing and mutually agree on the appropriate remedy, if any.
- 7.3.3.2 If a correction is determined to be required, Supplier shall provide an adjusted Invoice to Buyer. If such correction results in an additional payment to Supplier, Buyer shall pay Supplier the amount of the adjusted Invoice within thirty (30) calendar days of the date of the receipt of adjusted Invoice. If such correction resulted in a refund owed to Buyer, Supplier shall pay Buyer the amount of the adjusted Invoice within thirty (30) calendar days of the date of the statement or, at Buyer's option, Buyer may net such amount against the subsequent monthly payment to Supplier.
- 7.3.3.3 If Supplier fails to provide Buyer with notice of any alleged error in Supplier's Invoice within twelve (12) months of Buyer's receipt of such Invoice, then Supplier shall be deemed to have waived all rights to object to such Invoice.
- 7.3.4 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case maybe, to the date of payment of such overdue amounts or refund. Any amounts not paid when due shall bear interest until paid at the prime rate established by CitiBank, N.A. as published in The Wall Street Journal on the date the amount becomes due, plus one (1) percent.
- 7.3.5 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the Invoices presented pursuant to this Agreement.

- 7.3.6 Parties Right to Net. Either Party shall have the right to net any undisputed amounts owed to the other Party under this Agreement.
- 7.3.7 Taxes. Supplier is responsible for any Taxes imposed on or associated with the Energy or its delivery to the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax.

FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS

8.1 Construction of Generating Facility.

- 8.1.1 With respect to Wind Energy, the Parties acknowledge and agree that Supplier has met and complied with all of its obligations under Section 8.1 of the Original Agreement.
- 8.1.2 With respect to Solar Energy, Supplier shall construct and bring the Solar Array online in accordance with Good Utility Practice. Supplier shall provide to Buyer in a form satisfactory to Buyer within thirty (30) calendar days after connection, an update to *Exhibit A* which shall include a single line diagram of the Generating Facility, the Delivery Point, and the location of Meters, which location shall be reasonably acceptable to Buyer.

8.2 Commercial Operation.

- 8.2.1 With respect to Wind Energy and Solar Energy, the Parties acknowledge and agree that Supplier has met and complied with all of its obligations under Section 8.2 of the Original Agreement.

~~8.2.2~~—With respect to Additional Solar Energy, Supplier shall notify Buyer at least one (1) Business Day prior to the commencement of any performance tests required. Buyer shall have the right to be present at and witness each such test. Supplier shall notify Buyer at least one (1) Business Day prior to the commencement of the performance tests required by

Exhibit FE. Buyer shall be deemed to waive its right to be present at the performance tests if Buyer fails to appear at the scheduled time for the performance tests. Within five (5) Business Days of the successful completion of the performance tests pursuant to Exhibit FE, Supplier shall provide Buyer with a written certification that all of the requirements for Commercial Operation hereunder have been satisfied together with completed test summary data sheets and other relevant data derived from such tests demonstrating to Buyer's satisfaction that such tests have been successfully completed.

- 8.3 Modification. Without the prior written consent of Buyer, which shall not be unreasonably delayed, conditioned or denied, Supplier shall not make any modification to the Generating Facility that might (a) expose Buyer to any additional liability or increase its obligations under this Agreement or (b) adversely affect Supplier's or Buyer's ability to perform its obligations

under this Agreement or any Law or to any third-party. Notwithstanding the foregoing, Supplier may accomplish any of the following in its sole and absolute discretion, without the need for the consent or approval of Buyer: (x) de-commissioning, abandoning, shutting down or other related action with respect to the Wind Turbine, provided Supplier shall be responsible for direct costs related thereto; (y) repair or replace the Wind Turbine so long as the nameplate capacity of such repaired or replaced Wind Turbine is no greater than 1 MW; and (z) the Solar Expansion. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time.

- 8.4 Operation and Maintenance. Supplier at all times shall install, operate, maintain, and repair the Generating Facility in accordance with Good Utility Practice. Supplier agrees to (a) maintain records of all operations of the Generating Facility in accordance with Good Utility Practice, and (b) follow such regulations, directions, and procedures of Buyer, the Control Area Operator, the Transmission Provider, MISO, NERC, and any applicable Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facility. In the event of an inconsistency, Buyer shall choose whose procedures shall govern. Each Party shall use all reasonable efforts to avoid any interference with the other's operations. Supplier shall cause the Energy of the Generating Facility to meet the Power Quality Standards at all times, and shall operate the Generating Facility consistent with MISO, NERC, Buyer, Control Area Operator, and Transmission Provider requirements.
- 8.5 Right to Review. Buyer and Supplier each shall have the right to review and copy during normal business hours copies of the relevant books and records of the other Party to confirm the accuracy of such as they pertain only to transactions under this Agreement. The review shall be consistent with standard business practices and shall follow reasonable notice to the other Party. Reasonable notice for a review of the previous month's records shall be a minimum of seven (7) Business Days. If a review or copy request is requested of other than the previous month's records, then notice of that request shall be provided with a minimum of fourteen (14) Business Days' notice by the requesting Party. The notice shall specify the period to be covered by the review or copying. The Party providing records can exercise its right under Sections 23.1 to 23.6 to protect the confidentiality of the records.
- 8.6 The interconnection of the Generating Facility at the Delivery Point shall be as provided in this Agreement and the IOE, *Exhibit C*, attached hereto and incorporated here by reference.
- 8.7 Interconnection Upgrade. Supplier has commissioned a study of the interconnection of the Generating Facility in light of the addition of the Solar Array to the Generating Facility, the results of which are reported in that certain System Impact & Facilities Study for the Interconnection & Parallel Operation of a 1MW Photovoltaic Distributed Energy Resource Facility for Heritage Sustainable Energy certified as of October 24, 2016 and prepared by Power System Engineering, Inc. (the "Study"). The Study identifies a number of required upgrades to the interconnection to facilitate the addition of the Solar Array (the "Upgrades"). Prior to the Commercial Operation Date, Buyer shall implement all of the Upgrades to the interconnection referenced in the Study and within thirty (30) days of receipt of an invoice from Buyer for the costs and expenses related thereto, Supplier shall

reimburse Buyer. Notwithstanding the foregoing, any Upgrades relating to the transformer shall be implemented and paid for by Supplier.

- 8.8 Future Interconnection Upgrades. In the event the interconnection needs future upgrades to accommodate additional Solar Energy capacity, Wind Energy capacity or otherwise, Supplier and Buyer shall cooperate to develop a mutually agreeable study and approach to address the required upgrades, provided that Buyer shall be responsible for the implementation of same and Supplier shall reimburse Buyer for all related costs and expenses.

EMERGENCY AND CURTAILMENT

- 9.1 In the event of an Emergency, Buyer and Supplier shall promptly comply with any applicable requirements of any Governmental Authority, NERC, MISO, Control Area Operator, Transmission Provider, and any successor of any of them regarding the reduced or increased generation of the Generating Facility.
- 9.2 Each Party shall provide prompt oral and written notification to the other Party of any Emergency. If requested by the other Party, the Party declaring the Emergency shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.
- 9.3 In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid, or mitigate injury, danger, damage, or loss to its own equipment and facilities, or to expedite restoration of service; provided, however, that the Party taking such action shall give the other Party prior notice, if practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.
- 9.4 In the event of an Emergency, as a result of which Buyer is unable to receive some or all of the Energy at the Delivery Point or is unable to deliver some or all of the Energy to its customers, then Buyer shall have no payment liability in respect of such Energy that Buyer is unable to receive.

- 9.5 Supplier shall curtail deliveries of Energy at any time, in whole or in part, in a quantity and for any duration specified by Buyer upon at least thirty (30) minutes prior notice (which may be given by e-mail or telephone) to Supplier. The quantity of Energy curtailed shall equal a Deemed Delivered Amount for such period of curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm to its satisfaction such Deemed Delivered Amount. Supplier shall be paid for such Deemed Delivered Amount at the Product Rate plus an amount equal to the value of the PTCs, if any, associated with such Deemed Delivered Amount that Supplier or any of its Affiliates were unable to utilize as a result of Buyer's curtailment notice, as if the Deemed Delivered Amount were delivered to Buyer. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third-party. All Energy curtailed in accordance with this Section 9.5 shall be considered Product delivered to Buyer for all purposes under this Agreement.
- 9.6 Buyer's curtailment for any safety purposes, or to prevent damage to the turbine unit, or as requested by Supplier, shall not subject Buyer to pay for a Deemed Delivered Amount as it relates to this Section.

REPORTS AND OPERATIONS LOG

- 10.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters, or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.
- 10.2 Notification of Generating Facility Status. Supplier shall notify Buyer of the status of the Generating Facility as an EWG, QF, or such other status no later than ninety (90) calendar days prior to the Operation Date. Supplier shall notify Buyer, as soon as practicable, of any changes in that status after the Operation Date of this Agreement.
- 10.3 Notices of Change in Generating Facility. In addition to any consent required pursuant to Section 8, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance operating characteristics of the Generating Facility, the rate of production and delivery of Energy, interconnection and transmission issues, such additional information as may be required by Buyer.

- 10.4 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer on January 1 and July 1 of each calendar year throughout the Term of this Agreement an electronic copy of a report which shall include all pertinent information in connection with Supplier's Generating Facility, which includes all reporting information maintained in the operational log. Each February during the Term, the Parties may meet to conduct an annual review of the Generating Facility at the request of either Party. Additional data and meetings may be required as necessitated by Generating Facility performance.
- 10.5 Operations Log. Supplier shall maintain an operations log, which shall include the Delivered Amount, unplanned maintenance outages, circuit breaker trip operations, partial deratings of equipment, and any other significant event or information related to the operation of the Generating Facility. The operations log shall be available for inspection and copying by Buyer upon reasonable advance request, and Supplier shall make the data that supports the log available on a real-time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access.
- 10.7 Financial Information. Upon Buyer's written request, Supplier shall, within thirty (30) calendar days of such request, provide Buyer with (a) copies of Supplier's most recent financial statements required by Supplier's Lenders and (b) in the initial request by Buyer, the relevant provisions of Supplier's lending agreements setting forth the financial reporting obligations and, for any subsequent requests, any amendments thereto. In the event Supplier is funding one hundred percent (100%) of the engineering, procurement, construction, and operation of the Generating Facility with its own equity, then Supplier shall, within thirty (30) calendar days of a request for its most recent financial statements, provide Buyer with copies of such financial statements prepared in accordance with generally accepted accounting principles in the United State as in effect from time to time.

COMMUNICATIONS

- 11.1 On Call: Supplier's Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour, seven (7) day per week basis. Supplier shall, at its expense, maintain and install a twenty-four (24) hour, seven (7) day per week communication link with Buyer's Operating Representative at Buyer's operations center and with Buyer's scheduling personnel, as listed on *Exhibit B*, to maintain between personnel on site at the Generating Facility and Buyer's Operating Representative at Buyer's operations center. Buyer's schedulers and the Control Area Operator at all times. Supplier shall provide at its expense equipment to transmit to and receive voice data, facsimiles, and mail from Buyer and the Control Area Operator.

COMPLIANCE

- 12.1 Compliance with Laws. Each Party shall comply with all relevant Laws and shall, at its sole expense, maintain in full force and effect all relevant permits, authorizations, licenses, and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of the Control Area Operator, Transmission Provider, and each Governmental Authority to ensure the safety of its employees and the public.
- 12.2 Good Utility Practice. Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practice.

CREDITWORTHINESS AND SECURITY

- 13.1 Credit Appraisal. Acceptance of this Agreement is contingent upon (i) Buyer's completion of a credit appraisal of Supplier and (ii) Buyer's determination, in its sole discretion, that Supplier is able to perform its obligations. To enable Buyer to conduct such credit appraisal, within 30 days after the Effective Date Supplier shall submit the information below to the extent such information is applicable to Supplier. All such information shall be submitted on a confidential basis.
- 13.1.1 Supplier shall provide the latest audited fiscal and latest interim financial statements, prepared in accordance with generally accepted accounting principles;
- 13.1.2 Supplier shall confirm in writing that no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the business entity's ability to remain solvent;
- 13.1.3 Supplier shall provide a statement of prospective Supplier's legal composition and ownership;
- 13.1.4 Supplier shall provide such other information as may be requested by Buyer; and
- 13.1.5 In the event Supplier cannot provide the information above, it shall, if applicable, provide that information for Supplier's parent company or guarantor.
- 13.2 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law and otherwise, to require Buyer to provide financial assurances or security (including, but not limited to, cash, letters of credit, bonds, or other collateral) in respect of its obligations under this Agreement.

- 13.3 Adequate Assurances. If at any time, Buyer has reasonable grounds for insecurity of the Supplier's ability to perform under this Agreement, then Buyer may require Supplier to Provide adequate assurance of due performance as determined by Buyer in a commercially reasonable manner. After receipt of a justified demand, Supplier shall provide such assurance of due performance as is adequate under the circumstances within thirty (30) calendar days of the particular demand.
- 13.4 Letter of Credit. Within 30 days of Buyer's approval of Supplier's financial condition to perform this Agreement, as set forth in Section 13.1, above, Supplier shall provide to Buyer an irrevocable letter of credit in the amount of \$150,000. The letter of credit shall serve as security for Supplier's faithful performance of any decommissioning of the Wind Turbine at any time before the commencement of the 6th Contract Year. Commencing with the 6th Contract Year, such letter of credit shall no longer be required. Supplier shall be responsible for any and all costs and expenses relating to any decommissioning of the Wind Turbine._

LIMITATION OF LIABILITY

- 14.1 Responsibility for Damages. Except where caused by Buyer's gross negligence or willful misconduct, Supplier shall be responsible for all physical damage to or destruction of the property, equipment, and/or facilities owned by it and Supplier hereby releases Buyer from any reimbursement for such damage or destruction.
- 14.2 Limitation on Damages. To the fullest extent permitted by Law, and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption, damages, and lost business opportunities), exemplary, or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement.
- 14.3 Survival. The provisions of Section 14.1-14.2 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

FORCE MAJEURE

- 15.1 Excuse. Subject to Section 15.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations, and shall be excused in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product), if such delay or failure is due to an event of Force Majeure.

15.2 "Force Majeure" means, subject to Section 15.3, any of the following enumerated events that occur subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement, and that delays or prevents a Party's performance of its obligations under this Agreement, but only to the extent that (a) such event of Force Majeure is not attributable to fault or negligence on the part of that Party; (b) such event of Force Majeure is caused by factors beyond that Party's reasonable control; (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate, or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate, or overcome such event or consequences; and (d) such Party has satisfied the requirements of Section 15.4:

15.2.1 Acts of God such as storms, hurricanes, floods, lightning, and earthquakes;

15.2.2 Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

15.2.3 War, riot, acts of a public enemy or other civil disturbance;

15.2.4 Strike, walkout, lockout or other significant labor dispute;

15.2.5 Action or inaction of a Governmental Authority (excluding any change in Law, including Renewable Energy Law); or

15.2.6 Action or inaction of Transmission Provider, but excluding any FERC approved amendments to Transmission Provider's FERC approved tariff.

15.3 Exclusions. None of the following shall constitute an event of Force Majeure:

15.3.1 Economic hardship of either Party;

15.3.2 The non-availability of wind or sunlight to generate electricity from the Generating Facility;

15.3.3 A Party's failure to obtain any permit, license, consent, agreement, or other approval from a Governmental Authority attributable to the fault or negligence of that Party, except to the extent it is caused by an event listed in Sections 15.2.3 or 15.2.4; and

15.4 Conditions. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

15.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

15.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

- 15.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute;
- 15.4.4 Exercises all commercially reasonable efforts to mitigate or limit damages to the other Party; and
- 15.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

DISPUTES

- 16.1 Dispute or Claim. Any cause of action, claim, or dispute which either Party may have against the other arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination, or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 16.2 Good Faith Resolution. The Parties agree to cooperate in Good Faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 16.3 Informal Negotiation. The Parties shall first attempt in Good Faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.
- 16.4 Mediation. If the Parties are unable to resolve a Dispute as provided in Section 16.3, and before formally instituting any other dispute resolution mechanism, the Parties shall use the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring the Parties together in at least one mediation session. All mediation sessions shall occur within 60 days after receipt of written submission of any Dispute provided in Section 16.1.
- 16.5 Litigation. If the Parties are unable to resolve any Dispute pursuant to the foregoing, either may seek redress in a court of law or equity subject to the exclusive jurisdiction in the state court. All meetings, hearings and actions to resolve any Dispute shall be in Grand Traverse County as venue.

16.6 Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including court costs, the prevailing Party's reasonable attorneys' fees, and related costs and expenses of litigation.

NATURE OF OBLIGATIONS

- 17.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 17.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

ASSIGNMENT

- 18.1 Buyer Assignment. Buyer's obligations hereunder shall not be assigned by Buyer without the prior written consent of Supplier, which consent shall not be unreasonably delayed, conditioned or denied.
- 18.2 Supplier Assignment. Supplier's obligations hereunder shall not be assigned by Supplier without the prior written consent of Buyer, which consent shall not be unreasonably delayed, conditioned or denied.
- 18.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Agreement and consented to by the other Party shall relieve said Party from any liability and financial responsibility for the future performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 18.4 Transfers of Ownership. Subject to Section 6.1-6.4, during the Term, Supplier shall not sell, transfer, assign, or otherwise dispose of its ownership interest in the Generating Facility to any third-party absent (a) a transfer of this Agreement to such third-party and (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third-party pursuant to which such third-party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 18.5 Assignee Obligations. Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each party possessing a security interest in the Generating Facility to the effect that, if such party forecloses on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (b) it will not sell, transfer, or otherwise dispose of its interest in the Generating Facility to any third-party absent an agreement from such third-party to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.

- 18.6 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

DEFAULT AND REMEDIES

- 19.1 Events of Default. Except to the extent excused due to an event of Force Majeure or as otherwise permitted in accordance with this Agreement, an event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:
- 19.1.1 Failure to comply with any material obligations imposed upon it by this Agreement;
 - 19.1.2 Failure to make timely payments due under this Agreement;
 - 19.1.3 Failure to comply with the material requirements of the Control Area Operator, Transmission Provider, Buyer, MISO, MPSC, FERC, and any successor thereto where following such directions is required hereunder;
 - 19.1.4 In the case of Supplier, its failure to install, operate, maintain, or repair the Generating Facility or Meters in accordance with Good Utility Practice;
 - 19.1.5 In the case of Supplier, its failure to comply with the provisions of Section 13.3 or 13.4;
 - 19.1.6 In the case of Supplier, its failure to comply with the provisions of Section 18.2 or 18.4;
 - 19.1.7 In the case of Supplier, its failure to comply with the provisions of Section 22.1 and 22.6;
and
 - 19.1.8 In the case of Supplier, if Supplier (a) becomes insolvent and files for or is forced into bankruptcy, (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due, or (d) is subject to a similar action or proceeding.
- 19.2 Cure Period. Upon the occurrence of an Event of Default, other than pursuant to Section 19.1.8, the Defaulting Party shall be entitled to a period of thirty (30) calendar days from the date of written notice of such default from the Non-Defaulting Party such occurrence (the "Cure Period") to cure such Event of Default during which time the duties and obligations of the Non-Defaulting Party under this Agreement are suspended. If such Event of Default is not capable of cure within such 30-day notice period, and if the Defaulting Party commences and diligently proceeds to cure such default within such 30-day notice period, then the Cure Period shall be extended up to 60 additional days.

- 19.3 Remedies. If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to all legal remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3.

REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier represents and warrants the following to Buyer as of the Effective Date and the beginning of each Contract Year, as applicable:

- 20.1 Organization; Qualification. Supplier is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease, and/or operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction in which the property owned, leased, or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 20.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions contemplated herein. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.
- 20.3 Consents and Approvals: No Violation. The execution, delivery, and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.

- 20.4 Regulation as a Utility. Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 20.5 Availability of Funds. Supplier has, or will have, and shall maintain, sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 20.6 Title. Upon achieving the Operation Date, Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 20.7 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located, (b) has obtained the option to exclusively use and/or purchase the real property on which the Generating Facility will be located, or (c) has obtained the necessary rights to construct and operate the Generating Facility on such real property, throughout the Term.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants the following to Supplier as of the Effective Date and the beginning of each Contract Year, as applicable:

- 21.1 Organization; Qualification. Buyer is a Michigan municipal electric utility duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.
- 21.2 Authority Relative to this Agreement. Buyer has full authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions contemplated herein. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.

- 21.3 Consents and Approvals; No Violation. The execution, delivery, and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization, or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization, or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings, and notices which become applicable to Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings, and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.
- 21.4 Related Agreements. Buyer warrants that it has entered into or will enter into all necessary and material agreements related to Buyer's obligations under this Agreement.

INSURANCE

- 22.1 General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations, and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer. On all insurance policies, Supplier shall maintain Buyer and the City of Traverse City as additional named insureds.
- 22.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Michigan and with the equivalent, on a continuous basis, of a "Best Rating" of "A" or better and shall include provisions or endorsements:
- 22.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;

- 22.2.2 Stating that no reduction, cancellation, or expiration of the policy shall be effective until ninety (90) calendar days from the date notice thereof is actually received by Buyer, provided that upon Supplier's receipt of any notice of reduction, cancellation, or expiration, Supplier shall immediately provide notice thereof to Buyer; and
- 22.2.3 Naming Buyer as an additional insured on the general liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 22.3 Certificates of Insurance. Within thirty (30) calendar days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) calendar days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
- 22.3.1 The name of insurance company, policy number, and expiration date;
- 22.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy; and
- 22.3.3 A manuscript endorsement indicating that Buyer shall receive at least thirty (30) calendar days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy, including for nonpayment of premium.
- 22.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company.
- 22.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 22.6 Supplier's Minimum Insurance Requirements.
- 22.6.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.

22.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.

22.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned, and hired automobiles with combined bodily injury and property damage limits of at least one million dollars (\$1,000,000) per occurrence and at least one million dollars (\$1,000,000) aggregate.

22.7 Failure to Comply. If Supplier fails to comply with the provisions of Sections 22.1 to 22-7, Supplier shall save harmless and indemnify Buyer from any direct and indirect loss and liability, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of these Sections.

CONFIDENTIALITY

23.1 Confidential Information. "Confidential Information" means information provided by one Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information described in Section 23.3.

23.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party's similar information is treated within the Receiving Party's organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:

23.2.1 Disclosure shall be restricted solely to (a) its agents as may be necessary to enforce the terms of this Agreement; (b) its Affiliates, shareholders, directors, officers, employees, advisors, lenders, and representatives as necessary; (c) any Governmental Authority in connection with seeking any required regulatory approval; (d) to the extent required by applicable Law, in the case of Buyer *only*, potential transferees of Energy obtained by Buyer; and (e) potential assignees of this Agreement (together with their agents, advisors, and representatives) as may be necessary in connection with any such assignment (which assignment or transfer shall be in compliance with this Agreement), in each case after advising those agents of their obligations under this Agreement.

23.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal

process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. In the absence of such protective order, and provided that the Receiving Party is advised by its counsel that it is compelled to disclose the Confidential Information, the Receiving Party shall:

23.2.2.1 Furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and

23.2.2.2 Use its commercially reasonable efforts, at the expense of the Disclosing Party, to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

23.2.3 Section 23.2.2 shall only apply to information disclosed as contemplated by 23.2.1.

23.3 Excluded Information. Confidential Information shall be deemed not to include the following:

23.3.1 Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Agreement; Information which was available to the Receiving Party on a nonconfidential basis prior to its disclosure by the Disclosing Party; and Information which becomes available to the Receiving Party on a nonconfidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party, exercising reasonable due diligence, should have known of such obligation.

23.4 Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of Confidential Information Sections, and the Receiving Party hereby in advance agrees that the Disclosing Party shall be entitled to seek, without proof of actual damages, temporary, preliminary, and permanent injunctive relief from any Governmental Authority restraining the Receiving Party from committing or continuing any such breach.

23.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Generating Facility for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Generating Facility and authorizing the use of pictures of the Generating Facility for such activities.

23.6 The Parties acknowledge that Buyer is subject to the Michigan Freedom of Information Act (FOIA) and that Buyer's obligations under this Section with respect to confidential information are and shall be first subject to FOIA.

MISCELLANEOUS

24.1 Notices.

24.1.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in *Exhibit B* or as modified from time to time by the receiving Party by notice to the other Party. Any changes to *Exhibit B* shall not constitute an amendment to this Agreement.

24.1.2 All notices or submittals required by this Agreement shall be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail, or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 1600 EPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

24.1.3 All oral notifications required under this Agreement shall be made to the receiving Party's Operating Representative and shall promptly be followed by notice as provided in the other provisions of this Section 24.1.

24.2 Integration. This Agreement and the Agreement to Fund and Reimburse Interconnection contain the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.

24.3 Counterparts. This Agreement may be executed in two (2) counterparts, both of which shall be deemed an original and when taken together shall constitute one and the same instrument.

24.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include", "includes", and "including" in this Agreement shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation". References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement. Unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular will include the plural and vice versa.

- 24.5 Headings and Recitals. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement. The Recitals are to be used in the construction of this Agreement, and are considered terms of this Agreement.
- 24.6 Severability. If any term, provision, or condition of this Agreement is held to be invalid, void, or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this Agreement and all remaining terms, provisions, and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in Good Faith to replace such invalid, void, or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.
- 24.7 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 24.8 Amendments. The Parties agree that if the Laws that govern this Agreement are amended or superseded such that a change in Law causes a Material Adverse Effect on either Party, the affected Party is entitled to provide written notice to the other requesting that the Parties convene and negotiate in Good Faith ways to amend this Agreement to mitigate the Material Adverse Effect. Otherwise, amendments to this Agreement shall be mutually agreed upon by the Parties, produced in writing, and shall be executed by an authorized representative of each Party.
- 24.9 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations, and conditions hereof.
- 24.10 Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Michigan.
- 24.11 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents, and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

24.12 Forward Contract. The Parties acknowledge and agree that this Agreement is a contract (other than a Commodity Contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two calendar days after the date the contract is entered into. "Commodity Contract" means (a) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (b) with respect to a foreign futures commission merchant, foreign future; (c) with respect to a leverage transaction merchant, leverage transaction; (d) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or (e) with respect to a commodity options dealer, commodity option.

24.13 No Third-Party Beneficiaries. There are no third-party beneficiaries and (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability, or standard of care to any third-party; (b) no third-party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder; and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the Effective Date:

BUYER:

Traverse City Light & Power
Department
LLC

SUPPLIER:

Heritage Sustainable Energy,

By: John Tayloreff Palisin

Its: Vice-Chairman

By:

Its:

By: Timothy J. Arends
Its: Board Secretary

| APPROVED AS TO SUBSTANCE:

Timothy J. Arends, Executive Director

| APPROVED AS TO FORM:

W. Peter Doren, General Counsel

EXHIBIT A

GENERATING FACILITY

One-Line Document

This Exhibit will be revised to incorporate the one-line diagram of the Additional Solar Energy provided by the Seller before the delivery of energy onto the Buyer's distribution system. The one-line diagram is subject to approval by the Buyer's System Engineer.

EXHIBIT A-1
DESCRIPTION OF FACILITIES AND POINT OF INTERCONNECTION

HSE will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for its Facilities, unless otherwise specified on Exhibit C.

The point of interconnection is TCL&P's primary metering cabinet, which will have primary cable owned by TCL&P coming in and primary cable owned by Heritage coming out.

EXHIBIT B

CONTACT INFORMATION

Suppliers Contract Representative:

Martin G. Lagina
Heritage Sustainable Energy, LLC
121 E. Front Street, Suite 200
Traverse City, MI 49684
Phone: 231-935-4500
~~Mobile: 231-~~

Supplier's Operating

Representative:

Steve Thoms, Site Manager
Site Manager
121 E. Front Street, Suite 200
Traverse City, MI 49684
Mobile: 231-218-1759

Buyer's Contract Representative:

Jennifer St. Amour, Administrative Assistant
Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
231-932-4543

Buyer's Operating Representative:

Tony Chartrand, System Engineer
Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
231-932-4562

EXHIBIT C

Interconnection and Operating Exhibit

1. **Scope of Exhibit** - This Exhibit is applicable to conditions under which HSE's generating facilities (described in Exhibit A-1) (Facilities) are to be interconnected to TCLP's electric power distribution system ("System") as described in this Exhibit.

2. **Establishment of Point of Interconnection** - The point where the electric energy first leaves the wires or Facilities owned by HSE and enters the wires or system provided by TCLP is the "Point of Interconnection."

3. **No Disruption of System** - HSE covenants and agrees to cause the design, installation, maintenance, and operation of, its Facilities so as to reasonably minimize the likelihood of a malfunction or other disturbance, damaging or otherwise affecting or impairing the System. HSE shall comply with all applicable laws, regulations, zoning codes, building codes, safety rules and environmental restrictions applicable to the design, installation and operation of its Facilities.

TCLP will notify HSE if there is evidence that the Facilities' operation causes disruption or deterioration of service to other customer(s) served from the System or if the Facilities' operation causes damage to the System. HSE will notify TCLP of any emergency or hazardous condition or occurrence with HSE's Facilities, which could affect safe operation of the System.

4. **Design Reviews and Inspections** - The HSE shall provide to TCLP the following documentation and inspection results:

- a. One-Line Diagram. The diagram shall include at a minimum, all major electrical equipment that is pertinent to understanding the normal and contingency operations of the Interconnection Facilities, including generators, switches, circuit breakers, fuses, protective relays and instrument transformers.
- b. Testing Records. Testing of protection systems shall be limited to records of compliance with standard acceptance procedures and by industry standards and practices. These records shall include testing at the start of commercial operation and periodic testing thereafter.

5. **Right of Access, Equipment Installation, Removal & Inspection** - TCLP may send an employee, agent or contractor to the premises of the HSE at any time whether before, during or after the time the Facilities first produces energy to inspect the Interconnection Facilities, and observe the Facility's installation, commissioning (including any testing), startup, and operation.

At all times TCLP shall have access to HSE's premises for any reasonable purpose in connection with the interconnection as described in the Power Purchase Agreement, this Exhibit, the Rules, or to provide service to its customers.

6. **Disconnection of Unit** - HSE retains the option to disconnect its Facilities from the System, provided that HSE notifies TCLP of its intent to disconnect by giving TCLP at least thirty (30) days' prior written notice. Such disconnection shall not be a termination of the agreement unless HSE exercises rights under Section 13.

HSE shall disconnect Facilities from the System upon the effective date of any termination under Section 13.

Subject to Good Utility Practice, for routine maintenance and repairs on the System, TCLP shall provide HSE with seven (7) business days' notice of scheduled service interruption.

TCLP shall have the right to suspend service in cases where continuance of service to HSE will endanger persons or property. During the forced outage of the System serving HSE, TCLP shall have the right to suspend service to effect repairs on the System, but TCLP shall use its efforts to provide the HSE with reasonable prior notice.

EXHIBIT D

HERITAGE SUSTAINABLE ENERGY, LLC

121 East Front Street, Suite 200
 Traverse City, MI 49684-2570

Telephone: (231) 935 -4500
 Facsimile: (231) 929 -0242

Bill To:
Traverse City Light & Power Dept. 1131 Hastings Street Traverse City, MI 49686 ATTN: Karla Myers-Beman

DATE	INVOICE #

Description	Amount
<i>Power Generation – [Month of Generation] (_____ MWh)</i>	
Traverse City Light & Power Energy Purchase (\$ _____ Product Rate)	\$ (MWh x Product Rate)
Amount due to Heritage Sustainable Energy, LLC	\$

Payment terms: 30 calendar days after invoice date via wire transfer
--

Banking information:
Bank Name:
Bank ABA#:
Account #:

EXHIBIT E

<u>Year</u>	<u>\$\$/MWh</u>
<u>1</u>	<u>57.00</u>
<u>2</u>	<u>57.00</u>
<u>3</u>	<u>57.00</u>
<u>4</u>	<u>57.00</u>
<u>5</u>	<u>57.00</u>
<u>6</u>	<u>71.41</u>
<u>7</u>	<u>72.48</u>
<u>8</u>	<u>73.57</u>
<u>9</u>	<u>74.67</u>
<u>10</u>	<u>75.79</u>
<u>11</u>	<u>76.93</u>
<u>12</u>	<u>78.08</u>
<u>13</u>	<u>79.25</u>
<u>14</u>	<u>80.44</u>
<u>15</u>	<u>81.65</u>
<u>16</u>	<u>82.87</u>
<u>17</u>	<u>84.12</u>
<u>18</u>	<u>85.38</u>
<u>19</u>	<u>86.66</u>
<u>20</u>	<u>87.96</u>
<u>21</u>	<u>89.28</u>
<u>22</u>	<u>90.62</u>

EXHIBIT F

Performance Test

1. High Potential Test - test of the **armature (stator)** winding of generator
2. UPS (Uninterrupted Power Supply) Test – testing of the UPS units within the generator
3. Grid Fault Potential Test - test the capacity of an earth ground system to dissipate energy in the even of a grid fault
4. De-Energization Test – test of the complete shutdown of the generator
5. Any Other performance Test as required by the Power Purchase Agreement



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Karla Myers-Beman, Controller
Date: July 1, 2019
Subject: Fiber Fund Budget

As mentioned at previous board meetings, staff is bringing forth an amended Fiber Fund Budget to incorporate the recently approved lit fiber contract.

Operating revenues consist of dark fiber system revenues, lit fiber system revenues, and WIFI Operations and Maintenance segregated from each other for transparency of revenues generated. The lit fiber system revenues are based on 50% of revenues presented in the cost benefit analysis, which takes into consideration time it will take to achieve the estimated 40% take rate.

Operating expenses consist of the dark and lit fiber system expenses combined as they utilize the same infrastructure and it would be impossible to differentiate the expenses between the two systems. Modifications to the budget include the following:

1. Broadband Manager hired and employed by TCL&P for 50% of the year with a corresponding reduction in the lit fiber contract.
2. Addition of the lit fiber contract with expenses spread over 50% of the year for the majority of expenses as construction is expected to end in December with customer connections to follow. Some expenses were allocated at higher percentages to be conservative in budgeting operating expenses. An example is marketing as that effort will be more up front.
3. Increase in insurance costs as the equipment may be covered under the utility's insurance policy.
4. Half year of depreciation expense accounting for the infrastructure being placed in service mid fiscal year.
5. Removal of the transfer out except for interest earnings as approved with the interfund loan at the last meeting (transfer of interest earnings to the Electric Fund). The transfer out has moved from an income statement transaction to a balance sheet transaction with the approval of the interfund loan.
6. Separating the WIFI system in a separate department to easily account for the expenditures to be compared to revenues.

Overall the net impact to the Fiber Fund is a positive, reducing the change in net position from a (\$108,900) to (\$55,000) caused by the additional operating expenses offset by revenues and the removal of the transfer out.

If the Board concurs with the proposed budget amendment, staff will request the amendments to be submitted to the City Commission under consent calendar for approval as required by City Charter. As required by charter section 179 (i) "The Board may amend its budget following the same procedure for budget adoption."

FOR THE LIGHT & POWER BOARD MEETING OF JULY 9, 2019

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____, THAT THE
LIGHT & POWER BOARD APPROVES FORWARDING THE 2019-20 AMENDED FIBER FUND
BUDGET AS PRESENTED TO THE CITY COMMISSION FOR ITS CONSIDERATION OF
APPROVAL.**

Traverse City Light & Power
Fiber Optics Fund
2019-20 Budgeted Revenues and Expenses

	FY 16/17	FY 17/18	FY 18/19	FY 18/19	FY 19/20	FY 19/20	
	Actual	Actual	Budgeted	Projected	Approved	Proposed Amended	Difference
OPERATING REVENUES							
Dark Fiber System							
Charges for services	\$ 240,146	\$ 308,247	\$ 418,400	\$ 381,400	\$ 408,400	\$ 408,400	\$ -
Miscellaneous Revenues	-	402	-	-	-	-	-
Lit Fiber System							
Residential	-	-	-	-	-	165,700	165,700
Commercial	-	-	-	-	-	251,800	251,800
VoIP	-	-	-	-	-	31,900	31,900
WIFI Operations and Maintenance							
Charges for Services	39,600	39,600	39,600	39,600	39,600	39,600	-
Total Operating Revenues	279,746	348,249	458,000	421,000	448,000	897,400	449,400
OPERATING EXPENSES							
Dark and Lit Fiber System							
Salaries and wages	56,984	56,867	64,900	64,900	70,000	120,000	50,000
Fringe benefits	49,451	70,845	70,250	70,300	78,500	105,500	27,000
Office & operation supplies	1,273	1,421	2,000	3,000	2,000	2,000	-
Hardware and software	5,850	3,150	5,750	5,800	5,800	5,800	-
Professional services	24,026	-	44,250	25,000	10,000	10,000	-
Professional services - Lit Fiber						386,200	386,200
Legal services	2,280	2,639	2,500	5,000	2,500	2,500	-
City fee	13,999	17,427	23,000	21,050	22,400	44,900	22,500
Professional development	-	932	2,500	2,500	2,500	2,500	-
Insurance	435	467	1,000	1,000	1,000	5,000	4,000
Repair and maintenance	2,999	12,871	16,000	5,000	5,000	5,000	-
Pole attachment fees		11,016	-	6,000	6,200	10,900	4,700
Vehicle rental	8,026	10,986	10,000	10,000	10,000	10,000	-
Miscellaneous	43	299	100	100	500	500	-
Depreciation expense	144,630	146,309	146,000	146,000	148,000	248,600	100,600
Subtotal Dark and Lit Fiber System	309,996	335,229	388,250	365,650	364,400	959,400	595,000

Traverse City Light & Power
Fiber Optics Fund
2019-20 Budgeted Revenues and Expenses

	FY 16/17	FY 17/18	FY 18/19	FY 18/19	FY 19/20	FY 19/20 Proposed Amended	Difference
	Actual	Actual	Budgeted	Projected	Approved		
WIFI Operations and Maintenance							
Salaries and wages	-	2,823	3,000	3,000	3,300	3,300	-
Fringe benefits	-	2,176	2,500	2,500	4,050	4,050	-
WIFI operations and maintenance	30,488	22,647	26,600	23,500	19,650	19,650	-
Subtotal WIFI Operations and Maintenance	30,488	27,646	32,100	29,000	27,000	27,000	-
Total operating expenses	340,484	362,875	420,350	394,650	391,400	986,400	595,000
Operating income (loss)	(60,738)	(14,626)	37,650	26,350	56,600	(89,000)	(145,600)
<u>Non-operating revenues (expenses)</u>							
Reimbursements	33,525	75,465	177,800	80,000	34,000	34,000	-
Interest revenue	231	285	1,130	500	500	500	-
Loss on disposal of fixed assets	(3,897)	-	-	-	-	-	-
Total non operating revenues	29,859	75,750	178,930	80,500	34,500	34,500	-
<u>Other financing transfers</u>							
Transfer out	(125,000)	(125,000)	(175,000)	(175,000)	(200,000)	(500)	199,500
Change in net position	\$ (155,879)	\$ (63,876)	\$ 41,580	\$ (68,150)	\$ (108,900)	\$ (55,000)	\$ 53,900



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: June 25, 2019
Subject: Utility Lien Ordinance

Staff is recommending the support of one modification to go before the City Commission for adoption under Section 1046 Code of Ordinances, Electricity.

In August 2013, staff brought before the Board modification of section 1046.01 Delinquent Bills to reduce the lien threshold from \$1,000 to \$200. Staff is now requesting the threshold be reduced from \$200 to \$0.

The benefits of reducing the lien amount are 1) ease of administration with same lien amount across all utilities, 2) minimize rate increases attributed to bad debt, 3) increase cash collection related to future uncollectible accounts, and 4) reduce future third party collection costs.

Based on the past two years average history projecting forward, this will cause an additional 134 accounts in the approximate amount of \$10,848 to be collected through the lien process.

Attached for your review are the proposed changes to City Code of Ordinances Section 1046 and resolution requesting the City Commission to amend Section 1046 of the Traverse City Code of Ordinances.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____, THAT THE

LIGHT & POWER BOARD ADOPTS THE RESOLUTION TO REQUEST THE CITY

COMMISSION AMEND SECTION 1046 OF THE TRAVERSE CITY CODE OF ORDINANCES.

1046.01 - Delinquent bills.

[SHARE LINK TO SECTION](#)
[PRINT SECTION](#)
[DOWNLOAD \(DOCX\) OF SECTION](#)
[EMAIL SECTION](#)
[COMPARE VERSIONS](#)

(a)

Lien. Charges for services provided by the Light and Power Department pursuant to [Section 21](#) of Act [94](#) of the Public Acts of 1933, as amended (M.C.L.A. 141.121) are a lien on all premises served thereby, unless written notice is given by the owner that a tenant is responsible pursuant to this chapter.

(b)

Placement on tax roll. Whenever any such charge against any piece of property ~~exceeds \$200.00 and~~ is delinquent for six months, the City Treasurer or other official in charge of the collection thereof may certify, on or before May 1 of each year to the City Assessor, and on or before September 1 of each year to the proper tax assessing officer outside of the City, the fact of such delinquency. Upon such certification, such delinquent charge shall be entered upon the next tax roll as a charge against such premises, and a lien thereof shall be enforced in the same manner as general taxes against such premises are collected.

(c)

Tenancy. Where written notice is given by the owner that a tenant is responsible for such charges as provided by [Section 21](#) of Act [94](#) of the Public Acts of 1933, as amended, no further service shall be rendered to such premises until a cash deposit of an amount, not exceeding two months service, has been made as security for payment of such charges.

(Ord. 225. Passed 5-18-87.)

(d)

Collection. The Utility may utilize third party collection efforts in collecting any outstanding receivable before it is certified to the City Assessor.



TRAVERSE CITY LIGHT AND POWER DEPARTMENT
RESOLUTION
REQUESTING AMENDMENT OF ORDINANCE REGARDING DELINQUENT
ELECTRIC UTILITY BILLS

WHEREAS, The City Commission of the City of Traverse City on October 21, 2013, amended Traverse City Code of Ordinance Section 1046.01 providing that delinquent Light and Power Department bills become a lien on the premises served, and if over \$200 and delinquent for six months, may become a charge that is collected and enforced in the same manner as the collection of taxes; and

WHEREAS, Traverse City Light and Power Department is a municipal utility created for the benefit of local control and governance; and

WHEREAS, such ordinances are authorized by Section 21 of the Revenue Bond Act of 1933, MCL 141.121; and

WHEREAS, it is the Traverse City Light and Power Department responsibility to utilize all collection efforts including third party collection efforts in collecting delinquent receivables in the effort to keep rates low; and

WHEREAS, the \$200 limit was requested by the Light and Power Board in the enactment of the ordinance; and

WHEREAS, the Light and Power Board now wishes to reduce the \$200 limit to \$0 and allow all charges by Traverse City Light and Power Department that exceed that amount and is delinquent for six months to be collected and enforced in the same manner as property taxes; and

NOW, THEREFORE, BE IT RESOLVED that the Traverse City Light and Power Board requests the City Commission to amend Section 1046.01 (b) of the Traverse City Code of Ordinances to reduce the \$200 limit to \$0 limit.

I hereby certify that the above Resolution was adopted on July 9, 2019, at the regular TCL&P board meeting held in the Commission Chamber, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

Timothy J. Arends, Secretary
Traverse City Light & Power Board