



PARK DISTRICT of OAK PARK

**PARK DISTRICT OF OAK PARK
Committee of the Whole Meeting
Hedges Administrative Center
218 Madison Street, Oak Park, Illinois 60302**

Thursday, October 6, 2022 at 7:30pm

AGENDA

- I. Call to Order/Roll Call**
- II. Public Comment**
- III. Recreation and Facility Program Committee – Commissioner Wollmuth**
- IV. Parks and Planning Committee – Commissioner Worley-Hood**
- V. Administration and Finance Committee – Commissioner Wick**
 - A. IAPD Legal Symposium Update
 - B. 2023 Committee and Board Meeting Calendar*
 - C. Community Service Award Nomination Update
 - D. Fall Park Tour Update
 - E. Audit Engagement Letter*
 - F. Community Solar Contract*
- VI. New Business**
 - A. NRPA Recap
- VII. Closed Session**
- VIII. Adjournment**

* Indicates information attached.

** Indicates information to be provided before or at the meeting.

Update/Recap indicates verbal report provided at meeting no materials attached

The Park District of Oak Park welcomes the opportunity to assist residents and visitors with disabilities. If you need special accommodations for this meeting, please call (708) 725-2017 or via email at Edith.Rodriguez@pdop.org.

In partnership with the community, we enrich lives by providing meaningful experiences through programs, parks, and facilities.



2023 Committee & Board Meeting Calendar

Park District of Oak Park

218 Madison Street ▪ Oak Park, Illinois 60302 ▪ ph: (708) 725-2000 ▪ fx: (708) 383-5702 ▪ www.pdop.org



- COW Meeting
- Board Meeting
- Budget Meeting / Release
- Publication Date
- Annual Meeting

Committee of the Whole Meeting -
 First Thursday of the month (unless noted)
 Hedges Administrative Center, 218 Madison
 7:30PM (unless noted)

Regular Park Board Meeting -
 Third Thursday of the month (unless noted)
 Hedges Administrative Center, 218 Madison
 7:30PM (unless noted)

JANUARY
 12 – COW Meeting
 19 – Board Meeting
 26–28 – IPRA Conference

January						
S	M	T	W	T	F	S
	1	2	3	4	5	6
	7	8	9	10	11	12
	13	14	15	16	17	18
	19	20	21	22	23	24
	25	26	27	28		
29	30	31				

February						
S	M	T	W	T	F	S
			1	2	3	4
	5	6	7	8	9	10
	11	12	13	14	15	16
	17	18	19	20	21	22
	23	24	25	26	27	28

March						
S	M	T	W	T	F	S
			1	2	3	4
	5	6	7	8	9	10
	11	12	13	14	15	16
	17	18	19	20	21	22
	23	24	25	26	27	28
	29	30	31			

FEBRUARY
 2 – COW Meeting
 16 – Board Meeting

MARCH
 2 – COW Meeting
 16 – Board Meeting

APRIL
 6 – COW Meeting
 8 – Park District Birthday
 20 – Board Meeting

April						
S	M	T	W	T	F	S
						1
	2	3	4	5	6	7
	8	9	10	11	12	13
	14	15	16	17	18	19
	20	21	22	23	24	25
	26	27	28	29	30	

May						
S	M	T	W	T	F	S
	1	2	3	4	5	6
	7	8	9	10	11	12
	13	14	15	16	17	18
	19	20	21	22	23	24
	25	26	27	28	29	30
	31					

June						
S	M	T	W	T	F	S
				1	2	3
	4	5	6	7	8	9
	10	11	12	13	14	15
	16	17	18	19	20	21
	22	23	24	25	26	27
	28	29	30			

MAY
 4 – Annual Meeting / COW Meeting
 18 – Board Meeting

JUNE
 1 – COW Meeting
 15 – Board Meeting
 20 – Board Retreat

JULY
 6 – COW Meeting
 20 – Board Meeting

July						
S	M	T	W	T	F	S
						1
	2	3	4	5	6	7
	8	9	10	11	12	13
	14	15	16	17	18	19
	20	21	22	23	24	25
	26	27	28	29	30	31

August						
S	M	T	W	T	F	S
			1	2	3	4
	5	6	7	8	9	10
	11	12	13	14	15	16
	17	18	19	20	21	22
	23	24	25	26	27	28
	29	30	31			

September						
S	M	T	W	T	F	S
						1
	2	3	4	5	6	7
	8	9	10	11	12	13
	14	15	16	17	18	19
	20	21	22	23	24	25
	26	27	28	29	30	

AUGUST
 No COW Meeting
 17 – Board Meeting

SEPTEMBER
 7 – COW Meeting
 21 – Board Meeting
 28 – Budget Meeting

OCTOBER
 5 – COW Meeting/Budget Meeting
 6 – Release of draft budget to the public (30 days)
 10–13 – NRPA Conference
 19 – Board Meeting

October						
S	M	T	W	T	F	S
	1	2	3	4	5	6
	7	8	9	10	11	12
	13	14	15	16	17	18
	19	20	21	22	23	24
	25	26	27	28	29	30
	31					

November						
S	M	T	W	T	F	S
			1	2	3	4
	5	6	7	8	9	10
	11	12	13	14	15	16
	17	18	19	20	21	22
	23	24	25	26	27	28
	29	30				

December						
S	M	T	W	T	F	S
						1
	2	3	4	5	6	7
	8	9	10	11	12	13
	14	15	16	17	18	19
	20	21	22	23	24	25
	26	27	28	29	30	31

NOVEMBER
 2 – COW Meeting / Tax Levy Hearing
 8 – Publish notice of hearings
 16 – Board Meeting / Budget & Appropriation Hearing / Approval of Budget & Appropriation Ordinance

DECEMBER
 7 – COW Meeting
 21 – Board Meeting



MEMO
2022-2024 Audit Engagement Letter



PARK DISTRICT of OAK PARK

Memo

To: David Wick, Chair, Administration and Finance Committee
Board of Commissioners

CC: Jan Arnold, Executive Director

From: Mitch Bowlin, Director of Finance

Date: September 26, 2022

Re: 2022-2024 Audit Engagement Letter



Statement

The Park District of Oak Park has used Lauterbach and Amen (L&A) as the auditor for the District's financial statements for fiscal years 2016-2021. In addition to auditing services, L&A provides actuary services as required for the pension and post-employment benefits portion of the audit, fixed asset services, and free training for PDOP staff.

Discussion

The contract extension will cover auditing the District's financial statements for fiscal years 2022-2024. The agreement will renew automatically in that time period unless the District notifies the audit partner in writing that we will be terminating our relationship with them.

Based on those experiences and their work with many other governments, specifically other park districts, we are comfortable with their quality of work and they assured the District that they would be able to continue scheduling the audit in a time frame that would allow us to meet all required deadlines. Staff feel like they have done a good job of balancing the due diligence required to do a thorough audit as well as working with staff to make the process efficient.

The new contract has the price increasing by \$600 for the 2022 audit and then \$500 increases in years 2023, and 2024. The full cost of the three-year contract is \$56,700,

Recommendation

Staff recommends approval of Lauterbach and Amen's proposal for auditing services for the years 2022-2024, in an amount not to exceed \$56,700.

Park District of Oak Park

218 Madison Street • Oak Park, Illinois 60302 • ph: (708) 725-2000 • fx: (708) 383-5702 •
www.pdop.org



September 20, 2022

Members of the Board of Commissioners
Park District of Oak Park, Illinois

We are pleased to confirm our understanding of the services we are to provide the Park District of Oak Park, Illinois for the years ended December 31, 2022, December 31, 2023, and December 31, 2024.

Audit Scope and Objectives

We will audit the financial statements of the governmental activities, the business-type activities, the discreetly presented component unit, each major fund, and the aggregate remaining fund information, and the disclosures, which collectively comprise the basic financial statements of the District as of and for the years ended December 31, 2022, December 31, 2023, and December 31, 2024. Accounting standards generally accepted in the United States of America (GAAS) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the District's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the District's RSI in accordance with GAAS. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles (GAAP) and will be subjected to certain limited procedures, but will not be audited: management's discussion and analysis, the budgetary comparison schedules, and GASB-required pension and other postemployment benefit (OPEB) reporting.

We have also been engaged to report on supplementary information other than RSI that accompanies the District's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS, and will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements: combining and individual fund statements and budgetary comparison schedules, and other information listed as supplemental schedules.

In connection with our audit of the basic financial statements, we will read the following other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report: introductory and statistical information.

Audit Scope and Objectives – Continued

The objectives of our audit are to obtain reasonable assurance as to whether the financial statements as a whole are free from material misstatement, whether due to fraud or error; issue an auditor's report that includes our opinion about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP; and report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

Auditor's Responsibilities for the Audit of the Financial Statements

We will conduct our audit in accordance with GAAS and will include tests of your accounting records and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the District or to acts by management or employees acting on behalf of the District.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

Auditor's Responsibilities for the Audit of the Financial Statements – Continued

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected customers, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement.

Audit Procedures – Internal Control

We will obtain an understanding of the District and its environment, including internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

We have identified the following significant risk(s) of material misstatement as part of our audit planning: management override of controls, improper revenue recognition, and general or local economic challenges. Planning for this engagement has not concluded and is subject to change.

Audit Procedures – Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the District's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Other Services

We will also assist in preparing the financial statements and required audit adjustments, if any, for the District in conformity with accounting principles generally accepted in the United States of America based on information provided by you. We will perform these services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgement, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Responsibilities of Management for the Financial Statements

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America.

Management is responsible for making drafts of financial statements, all financial records and related information available to us and for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers). You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws and regulations.

You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America. You agree to include our report on, the supplementary information in any document that contains, and indicates that we have reported on the supplementary information. You also agree to make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Responsibilities of Management for the Financial Statements - Continued

You agree to assume all management responsibilities for the financial statement preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Engagement Administration, Fees, and Other

Our fees for the December 31, 2022, December 31, 2023, and December 31, 2024 audits will be \$18,400, \$18,900, and \$19,400, respectively.

The District agrees that during the term of this agreement and for a period of twelve months thereafter, the District shall not solicit, or arrange an employment contract with personnel of Lauterbach & Amen, LLP. Violation of this provision shall, in addition to other relief, require the District to compensate Lauterbach & Amen, LLP with one hundred percent of the solicited person's annual compensation.

Reporting

We will issue a written report upon completion of our audit of the District's financial statements. We will make reference to the other audit of component unit in our report on your financial statements. Our report will be addressed to the Board of Commissioners of the District. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or withdraw from this engagement.

We appreciate the opportunity to be of service to the Park District of Oak Park, Illinois and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign below and return it to us.

Cordially,

Lauterbach & Amen, LLP

LAUTERBACH & AMEN, LLP

RESPONSE:

This letter correctly sets forth the understanding of the Park District of Oak Park, Illinois.

By: _____

Title: _____



MEMO
Community Solar Contract

Memo

To: David Wick, Chair, Administration and Finance Committee
Board of Park Commissioners

From: Mitch Bowlin, Director of Finance

CC: Jan Arnold, Executive Director

Date: September 19, 2022

Re: Community Solar Contract



Statement

The Park District of Oak Park is currently looking to move the remainder of its available electric load to a community solar program.

Discussion

The Park District decreased electric usage from ComEd by 22% from 2016 to 2019, via supplying power through solar panels at various facilities and other green initiatives. In 2021 the District signed an electric supply contract with Clearway Energy to supply 15% of the electric load via a solar farm in Illinois. The District is now looking to sign a similar contract for 31% of the electric load.

Community solar supply contracts are essentially a subscription contract to purchase a given amount of electricity over a period of 15 years. The solar farms supplying this energy are within the local ComEd service area and these contracts are supporting newly installed solar farms. There is flexibility to reallocate usage among facilities, so, if the District installs solar panels at another facility and the demand decreases at a specific location, we can use that power elsewhere. The District intends to bring more facilities onto this type of contract in the future as there is currently very little risk and downside to the Park District for this type of contract and there will be a cost savings.

Nexamp was the only company that responded with a solar farm that was in the process of coming online. The electric supply will become available in November 2023. The supply contract will be for 15 years with flexibility to shift the electric load as needed. This means that we are free to add solar panels to any facility, and the energy from the solar farm can be provided to a different location at no cost to the District. The contract also includes a 15% discount over the default rate, which equates to a projected savings of \$174,380 over the life of the contract.

Recommendation

Staff recommend the Board consider a contract for community solar electric supply and authorize Executive Director Jan Arnold to sign the contract for the District at the October Regular Board Meeting.

CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of [REDACTED], 2022 (the “*Effective Date*”) by and between **Peterman Solar, LLC**, a Delaware limited liability company (“*Seller*”), and the Park District of Oak Park, an Illinois park district and unit of local government (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, the Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, mutual representations, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

ARTICLES I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, unless a different meaning is expressed or clearly indicated by the context. Words defined in the Glossary of Terms which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

ARTICLE II TERM

2.1 Term. The term of this Agreement (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the Fifteenth (15th) anniversary of the Commercial Operations Date (the “*Termination Date*”), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. This Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):

- (a) by Seller, subject to Section 5.4, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it should not construct the Facility or (ii) after the Construction Commencement Date it should abandon the Facility as a result of an event of Force Majeure;

- (b) by Seller, in accordance with section 4.1 (regarding conditions precedent);
- (c) by either Party, in accordance with Section 4.2 (regarding regulatory change); or
- (d) pursuant to Section 10.3 (regarding financing).

Upon early termination of this Agreement in accordance with this Section 2.2, each Party shall discharge by performance all obligations due to the other Party that arose before the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

ARTICLE III TITLE; COMMERCIAL OPERATION DATE

3.1 Title.

- (a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, Buyer shall assign them to Seller, and if Buyer receives any payments for them it shall promptly pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.
- (b) As between Seller and Buyer, title to, and risk of loss of, the Credits will pass from Seller to Buyer upon allocation of the Credits to Buyer's Utility Account(s).

3.2 Notice of Commercial Operations Date. Seller shall promptly notify Buyer in writing of the Commercial Operations Date.

ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE

4.1 Conditions Precedent. Seller's obligations under this Agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, or the Utility, including the Illinois Shines Community Solar Standard Disclosure Form or the Illinois Solar For All Community Solar Standard Disclosure Form, if applicable. If the Facility does not so qualify, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the delivery of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice and Section 11.1 (Disputes) shall continue to apply notwithstanding such termination.

4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a {00128024.1}

Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Illinois Commerce Commission, the Utility, or any other Governmental Authority that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefit to each Party and to do so in a timely fashion. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, the imposition of any non-bypassable charge(s) and/or utility rate designed to recover additional costs due to Buyer's purchase or receipt of the Credits, shall not trigger the obligation to amend this Agreement under this Section 4.2.

ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES

5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for the Quantity of Credits associated with the Energy, as determined by the Meter. Price is stated on Exhibit A, attached hereto and incorporated herein.

5.2 Delivery; Indemnification. Seller shall, in its sole discretion, direct the Utility to deliver the Credits to Buyer under the State Program.

- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (as determined by a process established by the Utility pursuant to the Tariff or other similar rules adopted by the Utility).
- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits.

{00128024.1}

- (c) Buyer acknowledges that Seller is relying on commitments made by Buyer under this Agreement for the Facility to receive and maintain qualification as a Community Solar Project. Buyer agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Solar Project and shall cooperate with Seller to assure the Facility's continued qualification.
- (d) Seller will attempt to correct any Utility allocation error and Buyer agrees to cooperate in a timely manner as needed.

5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary documentation to evidence the exemption or exclusion.

5.4 Contract Adjustments.

- (a) If the Seller determines in its sole discretion that it's beneficial to submit a revised Exhibit A and B designating a new Facility, then Seller may submit a revised Exhibit A and B designating a new Facility and this Agreement shall be modified to account for the revisions, provided that the alternate Facility (i) is located within the same Utility service territory, (ii) has a Commercial Operations Date that is not substantially later than is anticipated for the original Facility (iii) satisfies the program qualification requirements, and (iv) does not materially change the estimated Quantity to be delivered to the Buyer.
- (b) Buyer may request in writing an update to the Utility Accounts, and upon consent by Seller (such consent not to be unreasonably withheld, conditioned or delayed), such updated Utility Accounts shall automatically become effective ninety (90) days after Seller's consent. Buyer represents that all Utility Accounts are for subsidiaries or Affiliates of Buyer for which Buyer is duly authorized to execute on behalf of. Notwithstanding the above, any requested amendments must be to Utility Accounts within the same [utility area / load zone] and the aggregate Purchase Percentage shall not be adjusted. Buyer further acknowledges that all invoices and payments for Credits with respect to allocations made to Utility accounts prior to the effective date of any updated Utility Account list shall not be affected by any such update or amendment.

ARTICLE VI PAYMENT

{00128024.1}

6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the “***Invoice***”) for the amount due based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest, as allowed by law, from the date on which the payment was due, through and including the date Seller receives the payment. The annual interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall take all actions necessary to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and Buyer shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the dispute. Any overpayments shall be returned by the receiving Party promptly following the request or, deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date. If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

- (b) If the Parties determines that the value of Credits reflected on an Invoice is different

{00128024.1}

than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Buyer, as the Utility Account holder, and with Seller's cooperation, shall resolve the discrepancy with the Utility.

ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the State of Illinois.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall perform its obligations under this Agreement in material compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.3 To the extent the financial statements are not publicly available, or if Buyer's credit rating is withdrawn or greater than two years old, Buyer shall provide to Seller, on or prior to the Effective Date and annually thereafter, a copy of the most recent year's financial statements for Buyer. If, at any time, the Buyer or its Affiliates contract for more than ten (10) MW (DC) aggregate energy generated by any of Seller or its Affiliate's solar energy (PV) facilities, and the investment grade rating of the Buyer does not meet or falls below Standard & Poor's BBB- or Moody's Baa3 or Fitch's BBB ("Investment Grade"), then Seller may terminate this Agreement or require that the Buyer provide credit support from an Investment Grade counterparty in a form acceptable to Seller.

ARTICLE VIII TERMINATION; DEFAULT

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

{00128024.1}

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same, such period not to exceed an additional ninety (90) days.
- (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
- (d) The Party:
 - i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
 - iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

8.3 Termination for Default.

{00128024.1}

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date.

**ARTICLE IX
REMEDIES; LIMITATION OF LIABILITY; WAIVER**

9.1 Remedies. Subject to the limitations set forth in this Agreement, upon an Event of Default by Buyer, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer any loss in revenues including as a result from such sales; and/or pursue other remedies available at law or in equity. Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take commercially reasonable actions available to it to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy

{00128024.1}

or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, transfer does not include any sale of all or substantially all of the assets of Seller or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any other change in control of Seller or Buyer, provided any such surviving entity assumes all obligations of Seller or Buyer, as appropriate, under this Agreement; provided however, with respect to Buyer, such surviving entity is acceptable to Lender in its sole discretion.

10.2 Collateral Assignment; Financing Provisions:

- (a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

- (i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

- (ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled

{00128024.1}

to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility;

(B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by

{00128024.1}

this Agreement and which are capable of cure by a third person or entity, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

- (b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.
- (c) Entry to Consent to Assignment. Buyer agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) materially diminish the Credit value to Buyer, or (iv) disallow the Facility's community solar qualification under Applicable Laws and regulations or eligibility as a Community Solar Project, the Parties shall negotiate in good faith to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

ARTICLE XI DISPUTE RESOLUTION

11.1 Dispute Resolution. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between a senior executive of Seller, and a senior executive of Buyer, who shall use their respective best efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for

{00128024.1}

informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.

(c) Arbitration.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 11.1(a) and (b) shall (except as provided in Section 11.2(d)) be settled by binding arbitration between the Parties conducted in Chicago, Illinois, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the AAA in effect on the date that a Party gives notice of its demand for arbitration.

(ii) Dispute Submission. The Party initiating the Arbitration (the “Submitting Party”) shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the “**Responding Party**”), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

(iii) Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliates. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, “Panel” means either a single arbitrator or a group of three arbitrators selected as provided herein.

{00128024.1}

(iv) Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.

(v) Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vi) Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel's costs shall be made on a monthly basis prior to the Award.

- (d) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bona fide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.
- (e) Survival of Dispute Resolution Provisions. The provisions of this Section 11.1 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

ARTICLE XII MISCELLANEOUS

12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand

{00128024.1}

delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller: Peterman Solar, LLC
ATTN: Asset Management
101 Summer Street, 2nd Floor
Boston, MA 02110
Email: Assetmgmt@nexamp.com

With a copy to: Nexamp, Inc.
ATTN: General Counsel
101 Summer Street
Boston, MA 02110
Email: legal@nexamp.com

If to Buyer: Park District of Oak Park
ATTN: Executive Director
218 Madison Street
Oak Park, IL 60302
Email: jan.arnold@pdop.org

With a copy to: Elrod Friedman LLC
ATTN: Caitlyn R. Culbertson
325 North LaSalle Street, Suite 450
Chicago, IL 60654
Email: Caitlyn.Culbertson@ElrodFriedman.com

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 Confidentiality. Except as provided in this Section 12.2, and to the extent allowed by law, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent; provided that Seller may disclose the existence of this Agreement with Buyer to lenders and potential financing parties..

- (a) Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, lenders and financing parties, representatives, agents and employees who have a need to know related to this Agreement.
- (b) If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose

{00128024.1}

Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall promptly notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

- 12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 11 (regarding dispute resolution) and an arbitrator may reform the Agreement as the arbitrator deems just and equitable to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.
- 12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Illinois without regard to principles of conflicts of law.
- 12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 12.6 Press Releases. The Parties shall cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits and no Party shall issue any public announcement or statement with respect to the foregoing without the prior written consent of the other, which shall not be unreasonably withheld, conditioned, or delayed..
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.10 Further Assurances. From time to time and at any time at and after the execution of this {00128024.1}

Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10.

12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.

12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

BUYER

SELLER

**on behalf of itself and all
Utility Account holders**

Peterman Solar, LLC

By: _____

By: _____

Name: _____

Name: Chris Clark

Title: _____

Title: CDO

Glossary of Terms

“*Affiliate*” means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

“*Applicable Law*” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

{00128024.1}

“Billing Period” shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

“Business Day” means a day on which Federal Reserve member banks in Chicago, IL are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Central Prevailing Time.

“Commercial Operations” shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply electricity to the Utility’s electricity distribution system, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

“Commercial Operations Date” means the date on which the Facility achieves Commercial Operations.

“Community Solar Project” encompasses any distributed generation facility using solar photovoltaic technology and from which the value of the solar electricity may be shared with qualified offtakers in a particular market in accordance with local laws and regulations and subject to the State Program. .

“Confidential Information” means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) is disclosed by the disclosing Party to a third party without a duty of confidentiality; and (f) is disclosed by the receiving Party with the written permission of the disclosing Party’s prior written approval.

“Construction Commencement Date” means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

“Credits”, means the bill credits from a Community Solar Project that are applied toward a participant’s utility account.

“Credit Value” shall be calculated by Seller in its sole discretion and shall be determined in accordance with local laws and regulations and the applicable Tariff, for the relevant Billing Period.

{00128024.1}

“Energy” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“Environmental Attribute” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“Facility” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility’s electric distribution system.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity (including permitting delays); acts or failures to act of the Utility, including disconnections of the Facility from the Utility system or delays in interconnection; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“Governmental Authority” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits, but does not include any non-bypassable charge(s) designed to recover additional costs due to Buyer’s purchase or receipt of the Credits, and/or any similar utility rate or any charge imposed in its place, regardless of how named or characterized.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such

{00128024.1}

publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

“Lender” means the entity or person(s) (or any affiliate of any thereof) from time to time providing any debt or equity financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor.

“Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, interest, fines, fees, penalties, costs, and expenses (including all reasonable attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“Meter” means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

“Price” is defined on Exhibit A.

“Purchase Percentage” is defined on Exhibit A.

“Quantity” means quantity of Credits purchased by Buyer, and equals the total Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage.

“Renewable Energy Certificate” or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

“State Program” means either the (i) revised Illinois Power Agency 2022 Long-Term Renewable Resources Procurement Plan (as approved by the Illinois Commerce Commission), filed in accordance with the Illinois Power Agency Act (20 ILCS 3855 and the Illinois Public Utilities Act (220 ILCS 5): Adjustable Block & Community Renewable Generation Programs, or (ii) and/or Community Renewable Generation Projects, available through Ameren's NM 2 tariff, and/or ComEd's Rider POGCS, as amended and approved by the Illinois Commerce Commission on January 13, 2022, in accordance with 220 ILCS 5/16-107.5(l) or (iii) any other successor or similar program applicable to the Facility.

“Tariff” means the applicable Utility tariff as approved by the Illinois Commerce Commission or any other applicable agency or entity , together with any subsequent amendments

{00128024.1}

and approvals thereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

“Utility” means the electric distribution company providing service to the Facility.

“Utility Account(s)” means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation.

“Utility Statement(s)” means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).

{00128024.1}

EXHIBIT A

PRICE; and PURCHASE PERCENTAGE

“*Price*” equals eighty five percent (85%) of the Credit Value for that Billing Period,

“*Purchase Percentage*” equals Twenty percent (20%) of the Energy generated during the relevant Billing Period.

{00128024.1}

EXHIBIT B

FACILITY

The Facility is the approximately 2 MW (AC) solar (PV) power electrical generation facility located at 3250 E Vanderkarr Road, Aroma Township, IL.

{00128024.1}