

— LAW OFFICES —  
**DECOTIIS**

DeCotiis, FitzPatrick, Cole & Giblin, LLP

61 SOUTH PARAMUS ROAD, SUITE 250

PARAMUS, NEW JERSEY 07652

NEW JERSEY  
NEW YORK

TELEPHONE: (201) 928-1100  
TELEFAX: (201) 928-0588  
WWW.DECOTIISLAW.COM

RYAN J. SCERBO, ESQ.  
RSCERBO@DECOTIISLAW.COM  
201.907.5264

February 21, 2023

**VIA OVERNIGHT MAIL & ELECTRONIC MAIL**

Aida Camacho, Secretary of the Board  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350

**(copy and CD)**

**(copy via email [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov))**

Mike Kammer, Director  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350

**(copy and CD)**

**(copy via email [mike.kammer@bpu.nj.gov](mailto:mike.kammer@bpu.nj.gov))**

Susan McClure, Esq.  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625-003  
**(copy and CD)**

**Re: Mercer County Improvement Authority (the “Authority”)  
Energy Services Agreement by and between the Authority and  
Vicinity Energy Trenton L.P. (the “Agreement”)  
Application for Approval of Agreement Pursuant to N.J.S.A. 40A:11-15(1)(c)**

Dear Sir and Madams:

Please be advised that this office serves as legal counsel to the Mercer County Improvement Authority (the “Authority”). Please accept this application for approval of the above referenced Agreement by and between the Authority and Vicinity Energy Trenton, L.P. (“Vicinity”) related to the Cure Arena facility in accordance with the requirements of the Local Public Contracts Law N.J.S.A. 40A:11-1.1 et seq., (the “LPCL”).

A copy of the final draft of the Agreement is attached hereto as **Exhibit A**. A copy of the Authority’s Resolution, dated February 14, 2023, approving the Agreement subject to approval by the Board of Public Utilities (the “BPU”) is also attached hereto as **Exhibit B**.

#3267920

A copy of the final draft of the Agreement is attached hereto as **Exhibit A**. A copy of the Authority's Resolution, dated February 14, 2023, approving the Agreement subject to approval by the Board of Public Utilities (the "BPU") is also attached hereto as **Exhibit B**.

Specifically, the LPCL at 40A:11-15(1)(c) states that contracting units such as the Authority can enter into long-term contracts for:

"[t]hermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for a term not exceeding 40 years, when the contract is approved by the Board of Public Utilities."

The Agreement includes an initial term of 20 years and provides for several extensions, with the initial term and extensions collectively not exceeding a maximum of 40 years.

Unfortunately, the LPCL does not include any detail addressing what information must be submitted to the Board to assist it in its review of these types of applications. However, should you require any additional information, or should you require this submission to be revised and resubmitted, please do not hesitate to reach out to me directly.

The Authority and Vicinity are eager to implement the Agreement as soon as possible. For this reason, we request the Board's approval of the Agreement at its earliest possible convenience.

Should you have any questions or concerns, please feel free to contact me directly at 201-546-4064 or [rscerbo@decotiislaw.com](mailto:rscerbo@decotiislaw.com). Thank you in advance for your assistance with this matter.

Very truly yours,

**DeCotiis, FitzPatrick, Cole & Giblin, LLP**

By: 

Ryan J. Scerbo, Esq.

cc: Al Collins, MCIA  
Lindsey Sands, Esq., Vicinity

## **Exhibit A**

## EXECUTION VERSION

### ENERGY SERVICE AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”) by and between **VICINITY ENERGY TRENTON, L.P. (f/k/a Trigen-Trenton Energy Company, L.P.)**, 320 South Warren Street, Trenton, NJ 08608 (“**Vicinity**”) and the Mercer County Improvement Authority, a public body corporate and politic in Mercer County in the State of New Jersey, with principal offices located at 80 Hamilton Avenue, 2nd Floor, Trenton, New Jersey 08611 an agency of the political subdivision of the County of Mercer, State of New Jersey (“**Customer**”, and, together with Vicinity, the “**Parties**” and each a “**Party**”).

WHEREAS, Vicinity operates and maintains a district energy system in the City of Trenton (the “**System**”); and

WHEREAS, as part of the System, Vicinity sells hot water and chilled water service to various customers (the “**Energy Service**”); and

WHEREAS, Vicinity has installed, owns, and maintains certain equipment located within the Customer building located at 81 Hamilton Avenue, Trenton, New Jersey 08611 (the “**Equipment Service**”); and

WHEREAS, Vicinity has been providing Energy Service and Equipment Service to Customer pursuant to that certain Energy Service Agreement dated as of July 24, 1998 (the “**Original Agreement**”); and

WHEREAS, Customer and Vicinity wish to terminate services under the Original Agreement and enter into this Agreement for the continued provision by Vicinity of Energy Service and Equipment Service subject to the terms and conditions hereof.

NOW, THEREFORE, Vicinity and Customer agree as follows:

#### 1. SERVICES.

**A. Energy Service.** Vicinity agrees to supply and Customer agrees to accept, for the term of this Agreement, and subject to the terms and conditions hereof, Customer's total Energy Service requirements up to the Contract Capacity. Identified in Exhibit A are (i) the Customer building or buildings to receive Energy Service (the “**Premises**”), (ii) the maximum quantity of Energy Service per hour contracted to be delivered (the “**Contract Capacity**”) for each building or process, and (iii) the technical specifications for Energy Service (“**Service Specifications**”). Certain “**General Terms and Conditions of Service**” are detailed in Exhibit C. Energy Service shall be supplied in accordance with the physical arrangements, including “**Point of Delivery**” and “**Point of Return**”, in the plans and drawings attached as Exhibit D. Specifications and

limitations of the equipment Vicinity has installed for the production and delivery of chilled water and hot water to the Premises are located in Exhibit E. Exhibit F contains a control points list for the Vicinity Air Handlers (as defined on Exhibit E, Section III).

**B. Equipment Service.** Vicinity has designed, purchased, and installed, and will continue to operate, maintain, and replace, as needed, certain equipment within the Premises. All other equipment shall be operated, owned and/or maintained by the Customer. The equipment, specifications and limitations of Vicinity's owning and operating responsibilities are located in Exhibit E.

## 2. SERVICE RATES.

In consideration of the agreement of Vicinity to provide the Energy Service and Equipment Service, the Customer agrees to pay the charges described in Exhibit B (the "**Service Rates**").

**3. LEASE OF FLOOR SPACE.** The Customer agrees to lease to Vicinity the necessary space for its equipment in the chiller room on the Premises as specified in Exhibit E for \$25,000.08 per year for the term of this Agreement. Vicinity will pay monthly lease payments to the Customer beginning on the first day of the month following the Effective Date at a rate of \$2,083.34 per month. Payment will be in the form of a credit on the monthly invoice - Customer agrees to execute such further grants, deeds or other documents as Vicinity may require to enable Vicinity to duly record such leasehold interest, which shall incorporate the terms and conditions hereof as covenants which run with the land to the greatest extent permitted by law.

**4. TERM OF AGREEMENT.** Subject to Section 10 of this Agreement, the Customer and Vicinity agree that the obligations of the parties under this agreement shall commence on the Effective Date and shall remain in effect until the last to occur of (i) the twentieth (20<sup>th</sup>) anniversary of the Effective Date (such period, the "**Initial Period**"); or (ii) the expiration of a "**Renewal Period**", as that term is defined below, which may be agreed to by the parties with respect to any period after the Initial Period; but in no event shall the Agreement term extend beyond forty (40) years. No later than nineteenth (19<sup>th</sup>) anniversary of the Effective Date, and at least 365 days prior to any date upon which the Term is scheduled to expire during any Renewal Period, Vicinity shall offer Energy Service to Customer for a five (5) year renewal period by delivering Service Rate schedules applicable to such 5-year renewal period (such schedules; the "**New Service Rates**"). Each five-year renewal period commencing on or after the Initial Period is referred to herein individually as a "**Renewal Period**" and collectively as the "**Renewal Periods**" (and, together with the Initial Period, is referred to as the "**Term**"). Subject to the forty (40) year maximum, each such offer shall be deemed accepted and this Agreement automatically renewed for the respective Renewal Period at the New Service Rates unless within 90 days after receipt of such offer, Customer gives Vicinity written notice of nonrenewal.

## 5. BILLING.

**A. Billing and Payments.** Vicinity shall bill Customer monthly. Payment shall be mailed to Vicinity and is due within thirty (30) days of the date of the receipt of the invoice by Customer. Thereafter, an administrative late charge of two percent (2%) per month on outstanding balances shall be charged; provided that such charge shall be waived in the event that Vicinity receives payment within forty-five days (45) of the date that Vicinity mailed the invoice to the Customer. No dispute as to payments due either party hereunder shall relieve the obligation to pay all undisputed amounts due in accordance with this Agreement.

**B. Other Rate Adjustments.** The Service Rates assume a continuation of present laws and regulations and the administration thereof in substantially the same manner as on the Effective Date. Should any applicable law or regulation, or the administration or interpretation thereof by any governmental entity, directly result in required capital investment or imposition of any new tax, fee or surcharge other than federal, state or local taxes based on net income) or any combination of these factors, Vicinity shall be entitled to calculate the annual impact, based on the remaining years in the Term. Within six months of becoming aware of such impact, Vicinity shall provide Customer with notice of same and sufficient explanation supported by documented evidence of increased expenditures, and no earlier than two months after said notice Vicinity shall increase its Service Rates to recover such added expense without profit, pro rata from all Vicinity customers. In the event that Vicinity increases its Service Rates in accordance with this paragraph 5(B) by an amount which would increase the Customer's average monthly bill by an amount in excess of ten percent (10%) of the Customer's average monthly bill in the preceding calendar year, (normalizing for fuel costs), the Customer may elect to terminate this Agreement upon payment of the Termination Payment (as defined below).

### **C. Excess Energy Service Demand.**

1. Customer shall give Vicinity reasonable advance notice of any intention to materially increase its requirements of Energy Service or Equipment Service. If Customer requires Energy Service in excess of Contract Capacity, Vicinity shall not be obligated to provide such excess Energy Service but shall make every reasonable effort to do so. Inability to deliver excess Energy Service shall not be a breach of Vicinity's obligations and Vicinity shall have the right to limit Customer to its Contract Capacity.
2. If excess Energy Service is required more than once in a twelve (12) month period, measured as the maximum use of Energy Service in any 15-minute interval, or if the Parties mutually agree that all or a portion of the excess Energy Service represents a permanent change in Customer's requirements, the Contract Capacity in Exhibit A and the Capacity Charge in Exhibit B will be increased accordingly on the condition that Vicinity can meet the excess Energy

Service demand from the System. The Parties agree that a temporary, non-weather-related event outside the control of Customer (e.g., an equipment malfunction) shall not be used to determine a Contract Capacity increase.

**D. Taxes.** As of Effective Date, Customer is tax-exempt and as such there shall not be added to the monthly bill any surcharges, license, occupation, or other similar fee or tax. If at any point during the Term, Customer becomes subject to any such fees or taxes, Vicinity shall pass through such costs as line items on the monthly bill.

**F. Outstanding Balance.** As of October 12, 2022, Customer owed Vicinity a balance of \$809,238.71 (the “**Outstanding Balance**”) under the Original Agreement. Vicinity acknowledges receipt in full of Customer’s payment in the amount of \$709,238.71 on November 8, 2022, and hereby agrees to forgive the remaining Outstanding Balance of \$100,000, such forgiveness not to serve as a waiver of, or excuse of any other different or subsequent breach by Customer. As of the Effective Date, each party hereby irrevocably releases, acquits and forever discharges the other and its predecessors, successors, subsidiaries, affiliates, principals, officials, owners, shareholders, officers, directors, employees, agents and attorneys from and against any and all claims, cross-claims, counterclaims, demands, causes of action, suits, debts, liens, contracts, agreements, accounts, promises, liabilities, claims, judgments, demands, arbitrations, damages, losses, costs, or expenses (including attorneys’ fees) of any nature whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, claimed or concealed, fixed or contingent, arising out of, related to, connected with, or resulting from, the Original Agreement.

**6. Reserved**

**7. LIMITATION OF LIABILITY**

**A. Injury or Damage.** Except as otherwise set forth in this Agreement, Vicinity shall be liable for any injury or damage resulting from Vicinity’s failure to provide any Energy Service, Vicinity’s operation of any Equipment or Vicinity’s provision of or failure to provide any Equipment Service. Except as provided in Section IX of Exhibit C, or otherwise required by law, Vicinity shall not be liable for any injury or damage resulting in any way from the noncompliant or unauthorized use of any Energy Service or Equipment Service by Customer or by third parties. Neither by inspection or non-rejection, nor by giving approval or consents, nor in any other way, does Vicinity give any warranty, express or implied, as to the adequacy, safety or other characteristics of any structures, equipment, wires, mains, pipes, appliances, or devices owned, leased, installed or maintained by Customer or assume any obligation as to the design, operation or maintenance of Customer’s facilities.

**B. Customer Comfort Level.** If Energy Service or Equipment Service is used for ventilation or space heating or cooling, Vicinity shall have no responsibility for temperature comfort levels within the Premises controlled and determined by the Customer. Customer shall

promptly notify Vicinity of any concerns about the quantity or quality of Energy Service or Equipment Service received.

**C. No Consequential Damages** It is specifically agreed and understood that neither party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith, including but not limited to (i) Customer's failure to accept, or Vicinity's failure to deliver, Energy Service or Equipment Service at any time, (ii) any condition of Vicinity's System or at Customer's facility which is imminently likely to endanger life or property, or (iii) the construction, engineering, repair, inspection, supervision, testing, protection, operation, maintenance, replacement, use or ownership of any of Vicinity's equipment and/or facilities. This Section shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

**D. Limitation of Liability.** Further, to the fullest extent permitted by law and notwithstanding any other provision of this Agreement, Vicinity's liability for performance or non-performance of any obligation arising under the Agreement, plus any available proceeds from insurance required to be maintained under this Agreement up to the specified limits, if any, (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) shall not exceed an amount equal to three (3) times the Customer's average monthly payment under this Agreement, cumulatively for the Term of the Agreement, provided that the foregoing limitation shall not apply to any losses resulting from the gross negligence or willful misconduct of Vicinity. In no event shall Vicinity be liable to Customer for any claims not asserted within two (2) years of the date the Customer becomes aware of the initial event resulting in such claim.

## **8. DEFAULTS**

**A. Vicinity Default.** Any one of the following events shall constitute a "**Vicinity Event of Default**":

(1) Vicinity fails to supply Energy Service or Equipment Service to the Premises (from the System or by any alternate service, including but not limited to portable boilers, chillers or generators) and such failure is not otherwise permitted under this Agreement, for a continuous period of forty-eight (48) hours for heating service or 120 hours for all other Energy Services.

(2) Vicinity fails to comply with any other material provision of this Agreement and fails to cure or remedy that default within forty-five (45) days after notice and written demand by Customer to cure the same or such longer period, approved by the Customer in its sole discretion, reasonably required to cure or remedy said default.

**B. Customer Default.** Any one of the following events shall constitute a "**Customer Event of Default**":



(1) Customer shall fail to pay any bill for Energy Service and Equipment Service rendered or other charges incurred under this Agreement for a period of sixty (60) days after the Customer's receipt of invoice.

(2) Customer shall fail to comply with any other material provision of this Agreement and shall fail to cure that default within forty-five (45) days after notice and written demand by Vicinity to cure the same or such longer period, approved by Vicinity in its sole discretion, reasonably required to cure or remedy said default.

**9. DISCONTINUANCE OF SERVICE.** Except as provided in Section XI, of Exhibit C, Uncontrollable Force, Vicinity will at all times provide a regular and uninterrupted supply of thermal Energy Service on twenty-four (24) hours a day 7-days a week basis in accordance with this Agreement.

**A.** Vicinity may temporarily curtail or discontinue the supply of Energy Service without notice if Customer's property (as described in Section IV of Exhibit C) is dangerous or defective, in an emergency, or to comply with a notice from a governmental authority requiring immediate action; provided that Vicinity agrees to make reasonable efforts to provide notice to Customer of such action within a reasonable time thereafter.

**B.** Vicinity may temporarily curtail or discontinue the supply of Energy Service, with reasonable notice, to maintain, repair or replace its equipment on or off the Premises, or to comply with any order or request of a governmental authority. Vicinity will make reasonable efforts to coordinate such discontinuance to minimize their effects on Customer operations.

**C.** In addition to any and all other rights and remedies available at law or in equity, Vicinity shall have the right, but not the obligation, to discontinue Energy Service and Equipment Service to Customer without notice on the occurrence of a Customer Event of Default; provided that Vicinity agrees to make reasonable efforts to provide seven days prior written notice to Customer of such action.

**D.** In the event of discontinuance due to an act or omission by Customer, Energy Service and Equipment Service shall not be recommenced until and unless Customer shall (i) correct any dangerous or defective condition in its equipment and cure any Customer Event of Default and (ii) pay all amounts due for Energy Service and Equipment Service supplied prior to discontinuance and Reasonable Costs of disconnection and reconnection, provided that Vicinity provides Customer with written documentation supporting any claim for such Reasonable Costs. Notwithstanding the discontinuance of Energy Service and Equipment Service pursuant this Section, Customer agrees to continue to pay to Vicinity the monthly Capacity Charges described in Exhibit B until Energy Service is re-commenced. For any termination in full of this Agreement, Section 10 below shall apply. For purposes of this Section 9 and as used throughout this Agreement, "**Reasonable Costs**" shall mean actual and demonstrable costs that are commensurate

with the local market rate for the applicable goods or services, including services necessary to remedy a condition, but shall not exceed the actual costs incurred by the party. For the avoidance of all doubt the Parties acknowledge that Reasonable Costs shall not include any consequential or special damages.

**10. TERMINATION.** The Customer and Vicinity agree that this Agreement may be terminated only as follows: (i) by Customer by giving written notice of termination to Vicinity after the occurrence of a Vicinity Event of Default, or (ii) by Vicinity by giving written notice to the Customer after the occurrence of a Customer Event of Default, or (iii) on expiration of the Term. The date such termination takes effect is referred to herein as the “**Termination Date.**”

Within thirty (30) days of the Termination Date, Vicinity shall notify the Customer of its election to either: (a) to abandon in place all or part of its equipment and other property at Customer's Premises, provided that no abandoned property unreasonably interferes with Customer operations and Customer agrees that Vicinity shall have no further liability or responsibility for any property so abandoned, and/or (b) to remove all or part of its equipment and property from the Premises. The parties agree that Vicinity shall pay the costs of such removal of equipment in the event of a termination described above by Customer due to a Vicinity Event of Default and that the Customer shall pay the Reasonable Costs of such removal in the event of a termination described above due to Customer's Event of Default. If the Termination Date, resulting from a Customer Event of Default, occurs on any date other than the date of the expiration of the Term, the Customer agrees to pay Vicinity, within ten (10) days of the Termination Date, an amount equal to the 1/12 of 85% of the then current Annual Capacity Charges described in Exhibit B times the number of months remaining in the Term (the “**Termination Payment**”). The Termination Payment may be mitigated to the extent that Vicinity is able to sell all or a portion of the Contract Capacity to other customers. Such rights of abandonment or removal of equipment and termination shall be in addition to any and all other rights and remedies available at law or in equity.

## **11. MISCELLANEOUS**

**A. Pledge or Assignment.** Except as herein provided, neither party may pledge or assign its rights hereunder without the prior written consent of the other party which shall not be unreasonably withheld or delayed. Vicinity may at any time, or from time to time, assign or pledge to (i) any entity controlled by, controlling or under common control with Vicinity; (ii) any successor by way of merger, consolidation or like transaction, or in connection with the purchase of all or substantially all of Vicinity's assets, or (iii) for the benefit of any lender, mortgagee and/or bond trustee, any or all of its rights hereunder, including its rights to receive payments (but Vicinity shall not be thereby relieved of any of its duties and obligations hereunder). Customer shall cooperate as reasonably requested by Vicinity to secure any such assignment. Thereafter this Agreement shall not be terminated, modified or changed by either party hereto except in the manner (if any) permitted, and subject to the conditions (if any) imposed by each such assignment

or pledge. This Agreement shall be binding on the Parties' successors and assigns in accordance with its terms.

**B. Governing Law.** This Agreement shall be construed in accordance with and shall be enforceable under the laws of the State of New Jersey, other than the choice of law rules of that state.

**C. Notices.** All notices hereunder (other than notices designated for delivery to operating personnel, which shall be made in any manner reasonable under the circumstances) shall be sufficient if personally delivered or sent by registered or certified mail postage prepaid, courier service or telecopy (followed by mail) addressed, if to Vicinity: **Vicinity Energy Trenton, L.P., 320 South Warren Street, Trenton, NJ 08608, Attention: General Manager;** and if to Customer: **Mercer County Improvement Authority, Attention: Executive Director , 80 Hamilton Avenue, 2<sup>nd</sup> Floor, Trenton, NJ, 08611.** Vicinity and Customer by like notice may designate any further or different address or addresses to which notices shall be sent.

**D. Severability.** If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**E. Entire Agreement; Counterparts.** This Agreement and the Exhibits attached hereto and incorporated herein by reference constitute the entire agreement between the parties with respect to the matters contained herein and serves to terminate the Original Agreement, including all modifications and amendments thereto, whether in writing or otherwise. Upon execution of this Agreement, all provisions of, rights granted and covenants made in the Original Agreement are hereby waived, released, and superseded in their entirety and shall have no further force or effect. Any and all other prior agreements with respect to the matters contained herein, including the Original Agreement, are superseded hereby and each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth herein. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**F. Amendments.** No amendment or modification hereof shall be binding unless in writing and duly executed by both parties.

**G. Intentionally Deleted.**

**H. Representations and Warranties of the Customer.** This Agreement has been duly executed and delivered by Customer and constitutes a legal, valid and binding obligation of the Customer and is enforceable against the Customer. Subject to 40:37A-50.b., no authorization or approval or other action by, or notice to or filing with, any third party, governmental authority or regulatory body is required for the execution, delivery or performance of this Agreement by the Customer. The execution and delivery of this Agreement by Customer does not, and the consummation of the transactions contemplated by this Agreement will not violate, or conflict

with, or result in a breach of or constitute a default under any mortgage, indenture, agreement, instrument, judgment, statutes, law, decree, court order, writ, injunction, regulation or rule to which the Customer is subject. The execution and delivery of this Agreement and the performance of the obligations contemplated hereby have been duly authorized by all necessary action on the part of the Customer.

**I. OSC Records Retention language.** Pursuant to N.J.A.C. 17:44-2.2 Vicinity shall maintain all documentation related to products, transactions or services under this Agreement for a period of five (5) years from the date of the final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

**J. Business Registration Certificate.** Pursuant to N.J.S.A. 52:32-44, prior to allowing any subcontractors to perform any work under this Agreement, Vicinity shall provide to Customer a copy of its business registration certificate (“BRC”) and, the BRCs of all named subcontractors, if any. A business organization that fails to provide a copy of business registration or that provides false information of a business registration shall be liable for a penalty of \$25 for each day of the violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency or under a casino service industry enterprise contract.

**K. Ownership Disclosure Form.** Prior to executing this Agreement, Vicinity shall have provided to the Customer a completed Ownership Disclosure Statement form required pursuant to N.J.S.A. 40A:11-23.2(c).

**L. Investment Activities in Iran.** Prior to executing this Agreement, Vicinity shall have provided to the Customer a completed Investment Activities in Iran form required pursuant to N.J.S.A. 40A:11-2.1.

**M. Pay to Play Forms.** Prior to executing this Agreement, Vicinity shall have provided to the Customer a completed all Pay to Play Forms required by N.J.S.A. 19:44A-20.26;

**N. EEO/AA Language.** Vicinity shall comply with the requirements of Exhibit A and B - N.J.S.A. 10:5-31 et seq.; N.J.A.C. 17:27-3.7 (Affirmative Action/Equal Employment Opportunity).

**O. Certification of Non-Involvement in Prohibited Activities in Russia or Belarus.** Prior to executing this Agreement, Vicinity shall have provided to the Customer a completed Certification of Non-Involvement in Prohibited Activities in Russia or Belarus form required pursuant to N.J.S.A. 52:32-60.1.

**P. Federal Debarment Requirements.** Prior to executing this Agreement, Vicinity shall have provided to the Customer a completed Federal Debarment Form required pursuant to N.J.S.A. 52:32-44.1.

**Q. Public Works Contractor Registration Certificate.** Vicinity shall provide Customer with a valid copy of its public works contractor certificate prior to Customer’s approval of this Agreement. Vicinity shall also ensure that its contractors and subcontractors shall provide

to Customer a copy of a valid public works contractor certificate. Vicinity and its contractors and subcontractors, if any, must be registered pursuant to N.J.S.A. 34:11-56.48 et seq.

**R. Prevailing Wage Compliance.** As required by N.J.S.A.34:11-56.27, all persons working for Vicinity, its contractors and subcontractors in the construction related to this Agreement are to be paid prevailing wages as determined by the Department of Labor of the State of New Jersey. Workers implementing the construction aspects of this Agreement shall be paid not less than such prevailing wage rate. In the event it is found that any worker, employed by Vicinity or any subcontractor covered by this Agreement, has been paid a rate of wages less than prevailing wage required to be paid under this Agreement, the Customer may terminate Vicinity's or subcontractor's right to proceed with the construction work, or such part of the construction work as to which there has been a failure to pay required wages and to prosecute the construction work to completion or otherwise. Vicinity and its sureties shall be liable for any excess costs occasioned thereby to the Customer. The prevailing wage rate for each craft or trade or classification of all workers who may be needed to perform the scope of work covered by this provision are found here:

<https://lwdwebpt.dol.state.nj.us/archivewages/032121350-merc-2-1-23.pdf>.

**S. Anti-Discrimination, Pursuant to N.J.S.A. 10:2-1 and 42 U.S.C. 12101,**

- a. In the hiring of persons for the performance of construction work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of any construction work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- c. There may be deducted from the amount payable to Vicinity by the Customer, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. The construction scope of work under this Agreement may be canceled or terminated by the Customer, and all money due or to become due hereunder for such scope of work may be forfeited, for any violation of this section of the

Agreement occurring after notice to Vicinity from the Customer of any prior violation of this section of the contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**VICINITYENERGY TRENTON, L.P.**

By: Trenton Energy Corporation, General Partner

By:

Name:

Title:

**MERCER COUNTY IMPROVEMENT AUTHORITY,**

**An Authority of the Political Subdivision of the  
County of Mercer in the State of New Jersey.**

By:

Name:

Title:

## EXHIBIT A

### PREMISES, CONTRACT CAPACITY AND SERVICE SPECIFICATIONS

For purposes of these Exhibits, “Btu” means British thermal unit “kW” means kilowatts and “kWh” means kilowatt hour. “LHV” means based on lower heating value. “MMbtu” means million Btu. “psig” means pounds per square inch gage. “Ton” means one Ton-hour. “Ton-hour” means 12,000 Btu. “CFM” means cubic feet per minute. “GPM” means gallons per minute. “GPH” means gallons per hour.

I. PREMISES                      Cure Insurance Arena  
    81 Hamilton Avenue  
    Trenton, New Jersey

#### II. CONTRACT CAPACITY

<u>Facility</u>	<u>Heating Hot Water</u>	<u>Chilled Water</u>
Mercer County Arena (known as of the Effective Date as “Cure Insurance Arena”)	5 MMBtu/hr	1,200 Tons

#### III. SERVICE SPECIFICATIONS

A. Building Heating Hot Water and Domestic Hot Water

Heating Hot Water:

Maximum supply pressure 60 psig  
Minimum pressure differential between supply and return 10 psi  
Maximum supply temperature 180 degrees Fahrenheit (F)

Domestic Hot Water:

Total hot water demand, max. = 1412 GPH  
Two (2) heaters @ 65% capacity each  
65% heating recovery = 920 GPH total recovery capacity  
85% hot water storage = 1,200 gallons total storage capacity

B. Chilled Water

42-degree F supply temperature with a 12-degree F differential temperature ( $\Delta T$ )

C. Air Handlers

Four (4) air handling units (as defined in Exhibit E, Section III) for bowl area



Each Air Handler will supply approximately 48,000 CFM with 20,000 CFM outside air  
Supply air temperature 54 degrees F dry bulb/48.2 degrees F wet bulb  
Coil discharge wet bulb temperature 42.8 degrees F wet bulb  
Space condition shall be maintained at 50% relative humidity, maximum

## EXHIBIT B

### SERVICE RATES

**I. SERVICE RATES.** The charges for the Energy Service and Equipment Service consist of (i) an Energy Charge(s) for Hot Water and for Chilled Water to cover the incremental fuel, water and other variable costs incurred by Vicinity in the supply of each unit of energy plus (ii) an Annual Capacity Charge to cover the costs of having facilities available to provide Energy Service and Equipment Service to meet the Contract Capacity, the amount of thermal distribution losses, and the capital recovery and system restoration relative to the Customer's requested capacity. The Annual Capacity Charge covering thermal, chilled water and the Equipment Service (as defined in Exhibit E) will be paid on a monthly basis, regardless of actual monthly consumption, in an amount equal to one-twelfth of the Annual Capacity Charge multiplied by the escalation factor noted below.

(i) **Annual Capacity Charge** = \$613,000\* x (.70 + .30 CPI/CPI<sub>0</sub>)

This Annual Capacity Charge will be adjusted annually on each November 1 based on the CPI index described below. In no event will the CPI adjustment multiplier (CPI/CPI<sub>0</sub>) be less than one.

(ii) **Energy Charges:**

**(a) Hot Water ("HW"):**

$$\text{HW Energy Charge} = [(F \times 1.333)] \times 1.05 \times \text{Monthly Usage in MMBtu}$$

\*Thermal Excess Service Demand under Section 5C will be charged at \$22,000/MMBtu/hr/yr, adjusted annually as set forth above.

**(b) Chilled Water ("CW"):**

$$\text{CW Energy Charge} = [(F \times 0.024)] \times 1.05 \times \text{Monthly Usage in Ton-hours}$$

**Where, for Derivation of Annual Capacity Charge and/or Energy Charges:**

"F" means monthly weighted average cost of energy on lower heating value (LHV) basis of sources of energy (\$/MMBtu) to be calculated by determining the unit cost of fuel (in \$/MMBtu LHV) each month in the following manner and weighting each by the relative consumption in MMBtu's (LHV). This figure shall include all sources of energy used by Vicinity to operate the system, and may include gas, coal, oil, purchased steam, electricity and/or others.

- Natural gas cost equal to PSE&G monthly Published Basic Gas Supply Service or ‘BGSS-F’ Tariff Rate Applicable to the Large Volume Gas “LVG” Tariff in \$/Therm \* 10 (Therms/MMbtu) \* 1.11 (LHV/HHV Conversion Factor)
- Oil cost based on the monthly U.S. Energy Information Administration (EIA) published index, EIA Weekly Petroleum Status Report Table 11. Heating Oils, No. 2 Heating Oil, New York Harbor in \$/gallon x 1,000,000 (BTU/MMbtu) / 130,000 (BTU/gallon).
- Electricity cost based on Vicinity’s monthly average cost of electricity equal to: (Total \$ on PSE&G Monthly Electric Bill for Vicinity’s High-Tension Service (HTS) Tariff account with PSE&G for Central Plant) / ((Total Metered Kwh on PSE&G Monthly Electric Bill for its HTS tariff account with PSE&G for Central Plant) \* 3413 BTU/kWh/1,000,000 BTU/MMbtu)).

“CPI” means the Consumers Price Index for All Urban Consumers (CPI-U), U. S. City Average, Trenton Area, of the Bureau of Labor Statistics, U. S. Dept, of Labor (or any comparable successor index) for the most recent period for which such index has been published. If the referenced index is discontinued, the CPI Index for the geographically nearest metropolitan area shall be utilized. If publication of CPI is discontinued, the parties will use a revised or replacement index that is similar to the discontinued CPI.

“CPI<sub>0</sub>” means the published CPI for the base period (October) as of October 1, 2022.

“Monthly Usage” means the actual quantity of Energy Service consumed for the month in MMBtu or Ton-Hours.

**II. Invoice Support.** Vicinity shall provide the following with the monthly invoice as verification of its weighted average cost of energy in \$/MMbtu and its assessed monthly hot water and chilled water energy charges: (i) Vicinity’s actual monthly fuel mix in MMBtu by source of energy (e.g., natural gas, oil, and/or electricity) used to calculate monthly weighted average energy cost; (ii) actual oil consumption; (iii) monthly unit price of natural gas (using benchmark above) used in calculation of monthly weighted average cost of energy; (iv) electricity invoices (to verify Vicinity monthly average cost of electricity); and (v) natural gas invoices (solely to verify natural gas volumes). Vicinity shall cooperate to periodically provide additional energy charge verification information as may be reasonably requested by Customer.

## EXHIBIT C

### GENERAL TERMS AND CONDITIONS OF SERVICE

Vicinity furnishes from its System a private (as distinguished from public) service to customers who enter into individual service agreements with Vicinity. Accordingly, Vicinity reserves the right to refuse to enter into service agreements with any party or parties requesting service for any reason or reasons deemed by Vicinity to be sufficient.

**I. DEFINITIONS AND INTERPRETATION.** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural as the context may require, and any reference to a law or document shall mean such law or document as it may be amended from time to time.

**II. HOT OR CHILLED WATER SERVICE.** Vicinity will provide hot or chilled water at Customer's Point of Delivery in accordance with Exhibit A. Demand shall be calculated over a fifteen-minute interval. Customer shall return at the Point of Return 100% of the water volume delivered to Customer. Vicinity shall maintain a water quality and shall employ such chemical treatment of its water as it determines to be adequate for the normal protection of its own production and distribution equipment. Vicinity shall advise Customer of the chemical treatment it employs, as well as any changes thereto, and it shall be Customer's responsibility to ensure that its equipment is compatible therewith. Customer shall not perform any water treatment or add any chemicals or foreign substances into the water being used in its system without the prior written consent of Vicinity. Vicinity may refuse to continue hot or chilled water Energy Service to Customer if water is contaminated between the Point of Delivery and Point of Return.

**III. VICINITY PROPERTY.** Vicinity has installed and will continue to maintain all service lines, at its own expense except as otherwise stated herein. If during the Term of this Agreement, Customer requires or requests that such service lines be moved or re-located, Vicinity reserves the right to determine the location or relocation of any of its Energy Service lines on the Premises and shall act reasonably in consultation with Customer with respect to any future relocation of such lines. The service lines, meters and service equipment installed by Vicinity shall remain the property of Vicinity. Energy Service is being supplied to the Premises through a single service line supply line and a single return line. Vicinity may at its option install more than one service line. Any change requested by Customer in the Point of Delivery or Point of Return or the location of Vicinity's Energy Service and Equipment Service facilities (including without limitation metering equipment) after initial installation of Vicinity's facilities (provided such change is approved by Vicinity) will be made at the expense of Customer. This Agreement shall be amended as necessary to reflect any such changes under this Section III.

The System shall be operated only by authorized personnel of Vicinity, except when necessary due to emergency circumstances which require immediate shutoff of Energy Service. Vicinity shall be notified immediately of any such shutoff. Seasonal and maintenance shutoffs of

Energy Service, to include maintenance of Vicinity owned equipment required by Vicinity shall be the responsibility of Vicinity and shall be coordinated with the Customer. Customer, its agents and employees shall not authorize or knowingly permit any person, except a duly authorized employee of Vicinity, to operate Vicinity equipment (including the re-energizing of service lines following emergency shutoffs or disconnections), to break or replace a Vicinity seal or lock, or to alter or interfere with the operation of meters or Vicinity's connections, or any item of service equipment installed by Vicinity on Customer's Premises. Customer shall be liable for any loss or damage occasioned by any unauthorized re-energization of service lines or any other unauthorized operation of Vicinity equipment by Customer, its agents or employees.

**IV. CUSTOMER PROPERTY.** Customer has furnished and installed, and will continue to operate and maintain, where required, on the service side of the meter, such pumps, valves, regulating devices and electrical switches as are necessary to maintain Energy Service conditions required by Customer equipment and this Agreement. Customer has also furnished and installed and will continue to repair and maintain all facilities required for its utilization of the Energy Service between the Point of Delivery and the Point of Return, except as may be specifically provided in this Agreement. Customer shall give immediate notice to Vicinity of any leakage or escape of steam, hot water, or chilled water known to Customer. If Customer's operations or equipment adversely affects Vicinity's measurement of Energy Service, Customer shall, at its expense, make such reasonable changes in its operations or equipment as shall be necessary to allow accurate measurement of such Energy Service. Customer shall continue to provide, without cost to Vicinity, internal, enclosed, dry, adequately ventilated and secure space for the installation, inspection, protection and maintenance of Vicinity's meters and necessary Energy Service and Equipment Service equipment within the Premises, at a location acceptable to Vicinity. Where electricity or instrument air is required for the operation of Vicinity's meters or meter regulating valves, Customer has furnished, without cost to Vicinity, such electricity and instrument air. Vicinity has furnished and installed wiring and piping from such outlet to its equipment. Customer shall continue to provide adequate telephone line connection facilities not more than thirty (30) feet from Vicinity's Point of Delivery Equipment to be used exclusively by Vicinity for monitoring and metering data transmissions. Such line(s) designated for Vicinity's use shall not be shared or otherwise interfered with. Telephone line costs from the connection points to Vicinity's remote monitoring or other sites, and transmission costs, will be the responsibility of Vicinity. Customer shall also permit Vicinity to install either a dedicated telephone line or other communication cable in reasonable proximity to the meter installation.

## **V. METERING**

**A. Meters.** Except as provided elsewhere in Subsection C hereof, Service Rates shall be computed based on Vicinity's meter reading. Vicinity has furnished and installed and will continue to maintain meters and associated equipment appropriate (at the time of installation) to the Service requirements. If Customer requests installation of any meter by Vicinity in addition to those determined to be appropriate by Vicinity, Customer shall pay all installation expenses therefor and a monthly charge shall be charged for each such meter. If Customer chooses to employ

its own meters in parallel with Vicinity meters, Customer will cooperate with Vicinity in locating any Customer meters and will set them at the same time and calibration standard, and will use the same data collection intervals as Vicinity's meters.

**B. Testing.** The accuracy of Vicinity meters for hot water or chilled water shall be no less than the manufacturer accuracy and shall conform to generally accepted engineering practices and standards applicable to utility metering. Vicinity meters shall be tested for accuracy at least once every year at Vicinity's expense by Vicinity personnel. If a test establishes the meter is not performing as required, Vicinity shall repair or replace the meter and shall make an appropriate adjustment in Customer's billing, measured from the date Vicinity determines in good faith that the inaccuracy began. Customer may request additional meter tests at any time, provided that if the meter is found to be accurate in accordance with this Section, Customer will bear the cost of such test.

**C. Bill Adjustments Based on Estimated Use.** If the date the inaccuracy began cannot be so determined, the billing adjustment shall be made (excluding any period of outage or other non-use of Service and taking into account price changes during the period) for one-half of the period between the date of the last prior successful meter test or recalibration and the date of the test disclosing inaccuracy, but in no case for a period greater than six (6) months. If a meter fails to provide usable readings, the quantities of Service to be billed for such period will be estimated by Vicinity (acting reasonably) based upon quantities of Service utilized for the same period in the prior year, normalized for weather and number and type of events held, and excluding any period of outage or other non-use of Service and taking into account price changes during the period. Customer shall pay for Service during such periods based on the estimated amount. All billings based on estimated usage shall be indicated on the bill as such. Any such billing adjustment by Vicinity shall include a detailed written explanation with supporting data. If Customer disputes Vicinity's estimate, it shall notify Vicinity of the same and the Parties will negotiate expeditiously to resolve any such dispute within thirty (30) days, such resolution to be final.

**VI. EASEMENTS AND RIGHTS-OF-WAY.** Customer hereby grants to Vicinity all necessary rights-of-way, access rights, easements, and licenses to construct, install, operate, maintain, repair, replace and remove Vicinity Point of Delivery Equipment and Point of Return Equipment (as described in Exhibit D hereto) on Customer's Premises and to allow exporting capabilities. Customer further agrees to execute such other grants, deeds or other documents as Vicinity may require to enable it to duly record such rights-of-way and easements. For the avoidance of all doubt, the Parties acknowledge that all such a necessary rights-of-way, access rights, easements, and licenses shall be co-terminus with this Agreement; provided, however, if Vicinity requires such rights in order to continue service to other customers on its district energy system, Customer will negotiate in good faith an extension of any such rights.

**VII. ACCESS TO PREMISES.** Vicinity's duly authorized representatives shall have the right of access to the Point of Delivery and Point of Return equipment and the Vicinity equipment listed in Exhibit E on a 24-hour per day seven (7) days per week basis, and to all other portions of

Customer's Premises at all times for the purposes of installing, inspecting, testing, protecting, maintaining, replacing and removing its equipment and other property, to ascertain connected loads, or for any other proper purpose. For the avoidance of all doubt, the Parties acknowledge that all such grant of access shall be co-terminus with this Agreement and only survive to the extent required for Vicinity to remove any equipment under Section 10 of the Agreement, if it so elects.

**VIII. APPROVAL OF CUSTOMER'S SYSTEM.** Under the terms of the Original Agreement, Vicinity interconnected its System with the Premises.

Any future modification of Customer's approved equipment and system shall require the prior consent of Vicinity, which shall not be unreasonably withheld or delayed. If Customer fails to obtain such consent and any modification materially adversely affects the operation of Vicinity's or its other customers' equipment or facilities, Vicinity may hold Customer liable for the consequences thereof and may discontinue Service to Customer until Customer has corrected the situation and eliminated the adverse effects. Vicinity shall not be required to continue supplying Service (i) if it makes a determination of unsuitability or incompatibility with respect to such modification, unless and until Customer makes such changes in its system or equipment as Vicinity deems necessary, and (ii) if applicable, until Customer's modifications shall have been thoroughly cleaned and flushed in accordance with Customer's plans and specifications therefor, approved by Vicinity. Vicinity shall bear no responsibility for any deficiency in Service to Customer resulting from Customer's system or equipment modification.

Vicinity, by approving and accepting Customer's system and equipment, including any modifications, as provided above, shall in no manner be deemed to have assumed any obligation as to the design, operation or maintenance of Customer's facilities, nor to have relieved Customer in any way from accepting Service from Vicinity as provided in this Agreement.

#### **IX. INDEMNIFICATION**

A. Except as limited by Section 7 of the Agreement, Vicinity hereby assumes all risk of and responsibility for, and agrees to indemnify, defend and save harmless Customer, its parent and subsidiary organizations, directors, officers, employees and agents from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses in connection therewith, made, brought or obtained on account of loss of life or property, or injury or damage to the person or property of any person or persons, which arise out of or result from any negligence or willful misconduct of Vicinity, or any agent or employee of Vicinity, except to the extent that such loss, injury or damage is caused by Customer, its agents or employees.

B. Except as limited by Section 7 of this Agreement, and to the extent permitted by law, Customer hereby assumes all risk of and responsibility for, and agrees to indemnify, defend and save harmless Vicinity, its parent and subsidiary organizations, directors, officers, employees, and agents from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses in connection therewith, made, brought or obtained on account of loss of life or

property, or injury or damage to the person or property of any person or persons, which arise out of or result from any negligence or willful misconduct of Customer, or any agent or employee of Customer, except to the extent that such loss, injury or damage is caused by Vicinity, its agents or employees.

**X. INSURANCE.** All insurance required hereunder shall be primary to any and all other insurance coverage and shall not contribute with similar insurance in effect by the other party.

**A.** Vicinity shall make effective the following minimum insurances and follow all provisions, at its own expense, prior to commencement of the services in this Agreement. Such insurance requirements shall apply to Vicinity and any contractors or sub-contractors of Vicinity.

**Insurance Coverages**

1. Commercial General Liability: \$5,000,000 Each Occurrence / \$5,000,000 Aggregate  
a. Completed Operations must be included
2. Business Automobile Liability: \$1,000,000 combined single limit any one accident  
a. All owned, hired or non-owned automobiles used in connection with this agreement
3. Intentionally omitted
4. Workers' Compensation: Statutory
5. Employers' Liability: \$1,000,000
6. Crime: \$1,000,000  
a. Must include Employee Theft and Client Coverage
7. Cyber Liability: \$1,000,000 Each Claim / \$1,000,000 Aggregate

**Additional Insurance Provisions**

1. Any combination of primary and umbrella/excess policies may be used to satisfy the limits. All below provisions shall also apply to the umbrella/excess policies for such coverages listed below.
2. All coverages shall remain in effect for the life of the Agreement and for three (3) years thereafter. As respects any claims-made coverages, any combination of renewal policies and extended reporting periods may be used to satisfy such time period; however, no extended reporting period shall be affected for the work under this agreement until the last work has been completed.
3. Any retroactive dates, or the similar, must be no later than the effective date of this Agreement.
4. All insurance shall be procured from insurers permitted to do business in the United States and having an A.M. Best rating of at least "A-: VIII", or the S&P equivalent.
5. All General Liability and, Automobile Liability coverages shall name Customer as an additional insured on a primary and non-contributory basis.
6. Customer shall be named as Loss Payee on the Crime coverages.
7. All coverages shall contain Waiver of Subrogation provisions, as allowed by law, in favor of Customer.



8. At least thirty (30) days written notice of cancellation or non-renewal (10 days for non-payment) of any of the coverages shall be provided to Customer.
9. Full "cross liability" / "severability of interests" / "separation of insureds" provisions shall be provided on all coverages.
10. All insurances must be applicable to and cover the operations/services described in this Agreement.
11. Remove reverse Hold Harmless clauses.
12. As respects individuals opting-out of the Workers' Compensation coverage, such individuals shall not work on the subject (project, services) in this Agreement.

The amounts of the insurances or the carrying of the insurances described shall in no way be interpreted as relieving Vicinity of any responsibility or liability under the Agreement. Any type of insurance or any increase in limits of liability not described above which Vicinity requires for its own protection or on account of statute shall be its own responsibility and at its own expense. Vicinity shall promptly notify Customer and the appropriate insurance company(ies) in writing of any accident(s) or circumstance(s), as well as any claim, suit or process received by Vicinity arising in the course of operations under the agreement. Vicinity shall forward such documents received to its insurance company(ies), as soon as practicable, or as required by its insurance policy(ies).

**B.** Customer at its sole cost and expense shall at all times maintain adequate insurance for loss or damage (1) by fire and all other risks embraced by standard "extended coverage" endorsements, (2) by sprinkler leakage, (3) as applicable, from explosion of high pressure steam boiler, air-conditioning equipment, pressure vessels, motors or similar equipment, as well as commercial general liability insurance in an amount of not less than \$1,000,000/\$3,000,000 bodily and personal injury and \$1,000,000 property damage. The insurance required to be maintained by Customer shall name Vicinity as an additional named insured as is interest may appear and shall extend, as appropriate, to the benefit of any lender, mortgagee or bond trustee of Vicinity during the Term of this Agreement. A copy of said policy shall be provided to Vicinity once obtained and thereafter as renewed or amended.

**XI. UNCONTROLLABLE FORCE.** As used in this Agreement, "Uncontrollable Force" means any event beyond the reasonable control of a Party which results in the failure of some performance under this Agreement, including but not limited to the following: failure of equipment or facilities due to drought, flood, earthquake, storm, fire, act of terrorism, lightning, epidemic, war, riot, civil disturbance, sabotage, strike or labor difficulty, accident or curtailment of supply or equipment, casualty to equipment or other unavailability of equipment, inability to obtain and maintain rights-of-way, permits, licenses and other required authorizations from any federal, state or local agency or person for any of the facilities or equipment necessary to provide or receive Energy Service and/or Equipment Service hereunder, and restraint order or decree by court or public authority.

Neither Party shall be considered to be in default of any obligation hereunder (other than the obligation to pay amounts due to the other Party under or pursuant to this Agreement) to the extent such failure of performance shall be due to an Uncontrollable Force. The Party affected by an Uncontrollable Force shall (and in no event later than within five (5) days of the commencement of non-performance due to an Uncontrollable Force) give notice to the other Party stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect. Performance shall be excused for no greater scope and no longer duration than is required by the Uncontrollable Force. The non-performing Party shall use its reasonable best efforts to remedy its inability to perform, but neither Party shall be obliged to settle or resolve a labor difficult or to hire substitute labor on terms unacceptable to that Party.

**XII. SALES TO OTHER CUSTOMERS.** Vicinity may tap any service line or pipeline on the Premises for the purpose of extending service to other customers. Such extended lines may be carried through Customer's wall or floor in furtherance of this purpose. Vicinity agrees to provide reasonable advance notice to the Customer of any plans to extend its service. Vicinity shall ensure that any such extension of service shall not adversely affect the provision of Energy Services to Customer. Vicinity assures that the rates charged to Customer under this Agreement are not unfairly burdened with and do not unfairly subsidize costs attributable to any agreements entered into by Vicinity and its other customers receiving energy from the System. In connection with such plans, Vicinity agrees to obtain Customers prior written approval of its construction plans which shall not unreasonably interfere with the Customer's business, and to fully repair and or mitigate any damage to the Customer's Premises to like condition prior to such construction, property and equipment which may arise out of Vicinity's, or its agents', implementation of such plans.

**XIII. RESALE OF ENERGY.** Hot water and chilled water may be resold by Customer to its tenants, provided such tenants occupy the Premises and such resale does not subject Vicinity to any new or additional governmental rules, regulations or laws, including but not limited to tax laws, loss of status as a "Qualified Facility" under 16 U.S.C. 796, or rate of service regulation by any public utility regulatory authority. In case of any such resale, Customer shall remain primarily liable to Vicinity for all costs and charges incident to the resold energy. No other resale shall be permitted. Customer shall be responsible for any taxes or other governmental charges arising from or in connection with resale of energy to its tenants. Customer shall give at least thirty (30) days written notice to Vicinity and, if such transaction includes the resale of electricity, Customer shall provide Vicinity with a consent, waiver and indemnification, properly executed by Customer and Customer's electricity purchaser.

**XIV. DISPUTE RESOLUTION.** Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section XIV shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered

to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties shall attempt in good faith to resolve the dispute through mediation conducted by a mediator to be mutually selected by the Parties. The Parties shall share the costs of the mediator equally. Each Party shall cooperate fully and fairly with the mediator and shall reach a mutually satisfactory compromise of the dispute. If the dispute is not resolved within thirty (30) days after it is referred to the mediator, or if the non-disputing party elects not to participate in mediation, the disputing party may have any right, remedy or redress by action in court or otherwise.

**EXHIBIT D**

**PLANS AND DRAWINGS**

Attach as available, drawings showing details of service lines, metering, Points of Delivery and Points of Return

## EXHIBIT E

### **EQUIPMENT SERVICE VICINITY EQUIPMENT ON CUSTOMER PREMISES**

**I. Vicinity Chilled Water Production Equipment.** Vicinity has designed and installed, and will continue to own, operate, maintain, and replace as needed chilled water production equipment in a space provided on the Premises. Vicinity purchased and owns the following chilling equipment: two 600-ton thermal chillers, shell and tube heat exchangers for the chillers, cooling tower cells to support the chillers, condenser water pumps for the towers, the Premises' main chilled water pumps, and the supply and return condenser piping to the cooling tower. In addition, Vicinity purchased and owns all of the mechanical piping, electrical equipment and interconnections required by the equipment inside the Vicinity defined mechanical room. The Customer has made all miscellaneous chilled water connections from valved and capped chilled water system in accordance with Vitetta Group project plans and specifications dated 24 April 1998. All electric power is provided by the Customer to Vicinity in the area the Vicinity owned equipment is located. Vicinity has interconnected the Vicinity owned equipment and the Customers electric power.

**II. Vicinity Hot Water Equipment.** Vicinity has designed and installed, and continues to own, operate, maintain, and replace as needed the following heating equipment in a space provided on the Premises: a minimum of 12 MMBtu's hot water to hot water heat exchangers (provided that Vicinity may elect to add an additional MMBtu's hot water to hot water heat exchangers at any time to provide service to other customers provided doing so does not adversely affect the provision of Energy Services to the Customer) and the building's hot water distribution pumps. In addition, all of the mechanical piping and electrical equipment and interconnection required by Vicinity's equipment inside the Vicinity mechanical room. The Customer has made the Arena's interconnections from valved and capped heating hot water system in accordance with Vitetta Group project plans and specifications dated 24 April 1998.

Vicinity has provided a concrete equipment pad for its mechanical equipment.

In addition, Vicinity has installed the domestic hot water heaters. All domestic hot water piping, pumping and recirculation systems were provided by the Customer. Vicinity coordinated with Customer regarding points of interconnection between domestic hot water heating equipment and domestic piping.

**III. Vicinity Miscellaneous Equipment.** Vicinity purchased, and continues to own, maintain, and replace as needed the four main air handlers having the following characteristics: approximately 48,000 CFM air flow, 225 tons of cooling capacity, and 1,750 MMbtu input of heating (the "Air Handlers"). The Air Handlers were purchased with the appropriate chilled and hot water coils and dehumidification equipment. Vicinity provided the lifting, rigging, and mounting of the Air Handlers on the Arena roof. Vicinity was not and is not responsible for the

structural supporting of the Air Handlers, and the Customer made and shall continue to make all of the provisions for these Air Handlers to remain in place on the roof structurally. The scope of Vicinity's work included the installation of the Air Handlers and related curbs, mounting of Air Handlers on the curbs, sealing of the Air Handlers to such curbs and the water tight sealing of the Air Handlers to the curbs. The Customer was and is responsible for the water tight sealing of the curbs to the roof and for the provision of a hole in the roof to accommodate the curbs.

The Customer agreed to the connection of the Air Handlers from below to the roof. All piping, including thermal insulation, from Vicinity's mechanical room up to and including the Air Handlers located on the roof of the Arena related to the operation of the Air Handlers was installed, owned, and will be maintained by Vicinity.

The Customer agrees to cause its contractors to provide details of under curb piping access to Vicinity. In the event that piercing of the roof is required, the Customer agrees to pay the additional cost of such piercing. This piping is shown in the drawings included in Exhibit D.

Air Handlers were provided with variable frequency drives ("VFDs") for supply and return air fans. Vicinity will continue to own, maintain, and replace as needed the variable frequency drives.

All ductwork, and ductwork connections, drains, makeup water and other building related items were provided by the Customer. Vicinity provided the flange associated with the Air Handlers. Vicinity provided the Air Handlers controls (direct digital control or 'DDC' unit controller, logic, wiring from controller to devices, supply fan, return fan, smoke detectors, coil control valves and actuators). The Customer provided head end controls, interfaces and drivers to the central control system, wiring and control conduits between Air Handlers and main control system and the control wiring for the building automation system. An Air Handlers control points list is shown in Exhibit F.

Vicinity provided the electrical power connection for each of the Air Handlers, including electric feeders, motor starters and disconnects.

The Air Handlers are located in the four corners of the arena on the roof. The Vicinity mechanical room (Central Plant) is located on the Event Level in the northwest section of the arena as shown on the drawings in Exhibit D.

**IV. Space Requirements.** The Customer provided and shall maintain the appropriate mechanical space requirements to house all of Vicinity's proposed equipment needs. The space is located in the area shown on the drawings in Exhibit D. The Customer shall provide all lighting, life safety, sprinkler, plumbing, and miscellaneous power wiring within the mechanical room. In addition, makeup water, drains and other building related items shall be provided by the Customer. The Customer will be responsible to provide Vicinity water and sewer services and will be

responsible to pay for all associated water and sewer costs. The Customer also shall provide the appropriate wall separation and point of entry needs to Vicinity for this mechanical space.

Customer provided and shall maintain the appropriate electric feed to Vicinity's mechanical room for all of its production equipment; chillers, condenser pumps, chilled water pumps, controls, metering, etc. Vicinity shall continue to provide and maintain for its equipment the motor control center (MCC) and panel board for its equipment and provide for the interconnection of this equipment in its scope of work. Vicinity has provided and shall maintain up to 100 feet of conduit and wiring for the cooling tower as described in Exhibit D. In addition, Vicinity extends its thermal distribution system from Broad Street to its mechanical room to supply all thermal equipment. The Customer has paid and will continue to pay for all electric energy consumed by the Air Handlers. Vicinity previously installed separate meters for the Central Plant, cooling tower fans and the pump room and previously paid for the electric energy consumed by its equipment at those locations. Customer will be responsible for the payment of such electrical consumption under the terms of this Agreement.

In addition to the mechanical room space, the required area for the placement of cooling towers was provided. The space for the cooling tower is on the ground level. The Customer accepted responsibility for the design and placement of the cooling towers, as well as any and all costs arising from any relocation or modification of the cooling towers. The Customer has provided and shall maintain electrical outlets and service lighting for the cooling towers.

## **V. Service on Vicinity Owned Equipment.**

**A. Vicinity Chilled Water Production Equipment.** Vicinity has designed and installed, and will continue operate, maintain, and replace as needed all of the defined Vicinity-owned chilled water equipment in Section I above. Vicinity's Annual Capacity Charge covers all starting and stopping of equipment, routine scheduled maintenance, overhauls, and equipment failures with a twenty-four-hour coverage for repairs on Vicinity owned equipment. Vicinity, at Vicinity's discretion, will replace or overhaul the chillers, Air Handlers, and/or VFDs Vicinity shall perform such replacement or overhaul within five (5) years of execution of this Agreement, or later to coincide with the Arena's roof replacement project.

**B. Vicinity Hot Water Equipment.** Vicinity has designed and installed, and will continue to operate, maintain, and replace as needed all of the defined Vicinity-owned hot water equipment defined in Section II above. Vicinity's Annual Capacity Charge covers all starting and stopping of equipment, routine scheduled maintenance, annual maintenance, overhauls, and equipment failures with twenty-four hour coverage for repairs on Vicinity owned equipment. Vicinity, at Vicinity's discretion, will replace or overhaul the thermal heat exchanger within five (5) years of execution of the Agreement.

**C. Vicinity Miscellaneous Equipment.** Vicinity has designed and installed, and will continue to maintain and replace, as needed, all of the defined miscellaneous Vicinity-owned

equipment discussed in Section III above. Vicinity's Annual Capacity Charge covers routine scheduled maintenance, overhauls, and equipment failures with twenty-four-hour coverage for repairs. The control and operation of the Air Handlers will be performed by the Customer. Vicinity will replace the Air Handlers within five (5) years of the Effective Date of the Agreement. Any replacement of the Air Handlers will be scheduled to coincide with the Arena's roof replacement project.

Vicinity will not be responsible for damages occurred to any equipment described in this Exhibit E as the result of improper operation or conditions not controlled by Vicinity.

#### **VI. Construction Schedule/Permits.**

As needed throughout the Term, the Customer agrees to cause and instruct its contractors to agree to access and schedules which will provide Vicinity and its contractors with adequate time to perform Equipment Services and for Vicinity to carry out its other responsibilities under this Agreement. The Customer and Vicinity agree to hold each other harmless against any additional out of pocket cost, including any related attorney's fees, incurred by either of them arising out of scheduling delays caused by the respective contractors of the Customer and Vicinity.

The Customer agrees to obtain all needed construction permits associated with any and all work required to be performed by Vicinity. The Customer agrees to cooperate with Vicinity in connection with any application by Vicinity for a construction permit required to provide service to customers other than the Customer.



## EXHIBIT F

### AIR HANDLING UNIT POINTS LIST

	Air Handling Unit DDC Points List					METASYS			
	AI	AO	DI	DO	HW	AI	AO	DI	DO
Outside Air Temperature	*								
Outside Air Humidity	*								
Outside Air Static Pressure	*								
Outside Air Damper Motor		*							
Outside Air Damper Motor Feedback	*								
Outside Air Damper End Switch - NC			*						
Return/Relief Air Damper Motor		*							
Return/Relief Air Damper Motor Feedback	*								
Return Air Damper End Switch - NO			*						
Relief Air Damper End Switch - NC			*						
Filter Differential Pressure Switch			*						
Freeze Stat			*						
CHW Coil Discharge Air Temp	*								
CHW Coil Control Valve		*							
DX Coil Discharge Air Temp	*								
HHW Coil Discharge Air Temp	*								
HHW Coil Control Valve		*							
Supply Air Fan Differential Pressure Transmitter	*								
Supply Air Fan High Pressure Alarm				*					
Supply Air Fan Low Pressure Alarm				*					
Supply Air Fan Start/Stop			*						
Supply Air Fan Status					*				*
Return Air Fan Differential Pressure Transmitter	*								
Return Air Fan High Pressure Alarm				*					
Return Air Fan Low Pressure Alarm				*					
Return Air Fan Start/Stop			*						
Return Air Fan Status				*					*
Return Air Temperature Sensor	*								
Return Air Humidity Sensor	*								
Space Air Temperature Sensor	*					*			
Space Air Humidity Sensor	*					*			
Duct Smoke Detector (detector by others)					*				
Smoke Evacuation Mode			*					*	
Occupied/Unoccupied Mode			*					*	
Space Temperature Setpoint from BAS	*					*			
Space Humidity Setpoint from BAS	*					*			
Supply Air Fan Alarm				*					*
Return Air Fan Alarm				*					*
CHW Coil Discharge Air Temp Alarm T				*					*
Chilled Water Valve Position	*						*		
Hot Water Valve Position	*						*		
Supply Fan Smoke status "on-off"			*						*
Return Air Fan smoke status "on-off"			*						*



## **Exhibit B**

**RESOLUTION NO. 2023-012**

**RESOLUTION OF THE MERCER COUNTY IMPROVEMENT AUTHORITY  
AWARDING AN ENERGY SERVICES AGREEMENT TO VICINITY ENERGY  
TRENTON, L.P., PURSUANT TO N.J.S.A. 40A:11-5.1(V) AND N.J.S.A.  
40A:11-15.1(C)**

**WHEREAS**, the Mercer County Improvement Authority (the "MCIA") owns and operates the Cure Insurance Arena, located at 81 Hamilton Avenue, Trenton, New Jersey 08611 (the "Arena"); and

**WHEREAS**, Vicinity Energy Trenton, L.P. ("Vicinity") operates and maintains a district energy system in the City of Trenton (the "System"); and

**WHEREAS**, as part of the System, Vicinity sells hot water and chilled water service to various customers (the "Energy Service"); and

**WHEREAS**, Vicinity has installed, owns, and maintains certain equipment located within the Arena (the "Equipment Service"); and

**WHEREAS**, Vicinity has been providing Energy Service and Equipment Service to MCIA pursuant to that certain Energy Service Agreement dated as of July 24, 1998 (the "Original Agreement"); and

**WHEREAS**, MCIA and Vicinity wish to terminate services under the Original Agreement and enter into a new Energy Services Agreement (the "Agreement") for the continued provision by Vicinity of Energy Service and Equipment Service subject to the terms and conditions hereof; and

**WHEREAS**, the MCIA may award the Agreement to Vicinity without the need for public bidding and for a term of up to 40 years subject to the review and approval of the New Jersey Board of Public Utilities pursuant to N.J.S.A. 40A:11-5.1(v) and N.J.S.A. 40A:11-15.1(c) respectively; and

**WHEREAS**, funding is available through the Arena Operating Funds, or if not sufficient, the Authority shall request under the terms of the County Guarantee, a subsidy payment as required;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the MCIA, that the Agreement attached hereto and made a part hereof as **Exhibit A**, is hereby approved; and

**BE IT FURTHER RESOLVED**, the Executive Director, with the assistance of the MCIA's general counsel are hereby authorized and directed prepare and submit to the BPU the paperwork necessary to obtain the BPU's approval of the Agreement; and

**BE IT FURTHER RESOLVED**, upon receipt of an approval from the BPU of the Agreement, without material modification, the Executive Director is hereby authorized and directed to execute the Agreement and such ancillary documents, agreements, forms and applications necessary to effectuate the intent and purpose of this Resolution.

**RESOLUTION NO. 2023-012**

**ADOPTED:** February 14, 2023



Phillip S. Miller Jr., Secretary

RECORD OF VOTE													
	Aye	Nay	N.V.	Abs	Res.	Sec.		Aye	Nay	N.V.	Abs.	Res.	Sec.
Fedorko				X			Preische	X				X	
Khanna	X						Smith	X					X
Lucchesi	X						Thurber	X					
X - Indicates Vote				Abs. - Absent				N.V. - Not Voting					
Res. - Resolution Moved						Sec. - Resolution Seconded							

**Certification**

I hereby certify that the foregoing to be a true copy of a resolution adopted by the Merger County Improvement Authority at a meeting held on February 14, 2023.



Carol Navarro, Board Clerk

SECRET

CONFIDENTIAL



CONFIDENTIAL

CONFIDENTIAL