

Master Performance Agreement

Between

**Township of Lacey, New Jersey
[Government Aggregator]**

And

[Supplier]

For the Provision of Electric Generation Service and Government Energy Aggregation Services

This Master Performance Agreement (“Agreement”) is entered into as of this ____ day of _____, 2024, (“Effective Date”) by and between the Township of Lacey (“Government Aggregator,” “Lead Agency” or “Township”), in Ocean County, New Jersey, located at 818 W. Lacey Road, Forked River, New Jersey 08731, and _____ (“Supplier”), a corporation with its principal place of business at _____, (collectively, “Parties”).

RECITALS

WHEREAS, the Township of Lacey Township Committee, the governing body of the Government Aggregator, a municipality in the State of New Jersey, adopted Ordinance No. 2013-21 on September 12, 2013, which established the Lacey Community Energy Aggregation (“LCEA”), a government energy aggregation program pursuant to the Government Energy Aggregation Act (P.L. 2003, c.24; N.J.S.A. 48:3-93.1 et seq.) and implementing rules adopted by the New Jersey Board of Public Utilities (N.J.A.C. 14:4-6.1 et seq.); and

WHEREAS, Ordinance No. 2013-21 adopted by the Township designated the Township as the Lead Agency of the LCEA, and memorialized the Lead Agency’s intent to solicit proposals for electric generation service for Township residents who do not “opt-out” of the LCEA program, and to enter into a contract for the provision of electric generation service on behalf of residential customers within the boundaries of the Township, provided that the price for the selected supplier is below the then current price for electric generation service provided by the local electric utility, Jersey Central Power and Light Co.; and

WHEREAS, the Township has previously implemented two rounds of the LCEA, most recently via an agreement with a third-party supplier under Round 2 of the LCEA, which expired in September 2020 and participants were subsequently returned to service on JCPL’s BGS Tariff; and

WHEREAS, the Lead Agency has followed all of the required steps of an “Option 2” government energy aggregation program as provided for in N.J.S.A. 48:3-93.1 et seq. and N.J.A.C. 14:4-6.1 et seq., including the issuance of a Request for Proposals dated February 27, 2024 (the “RFP”) for the provision of electric generation service and government energy aggregation services to participating members under Round 3 of the Lacey Community Energy Aggregation program, referred to hereinafter as the “LCEA”; and

WHEREAS, the Lead Agency accepted proposals on July 1, 2024 in response to the RFP; and

WHEREAS, Supplier submitted all required qualification documents, and submitted a proposal and an executed transmittal letter in response to the RFP; and

Appendix B –LCEA RFP dated 2/27/2024 - Form of Master Performance Agreement applicable to Participating Residential Customers

WHEREAS, the Lead Agency issued an Award Letter on March 28, 2024 indicating its selection of Supplier as the winning supplier of electric generation service and government energy aggregation services; and

WHEREAS, Supplier is duly licensed by the New Jersey Board of Public Utilities (License No. ESL-XXXX) as an Electric Power Supplier and has all requisite agreements in place with Jersey Central Power and Light ("JCP&L") to sell retail electric generation service to customers in the JCP&L service territory, utilizing the existing transmission and distribution systems; and

WHEREAS, both parties have the corporate, governmental and/or other legal capacity(s), authority(s) and power(s) to execute and deliver this Agreement and related agreements and to perform its obligations hereunder; and

WHEREAS, by this Agreement, Government Aggregator and Supplier desire to enter into a mutually beneficial power supply and services provisions relationship whereby Supplier shall provide Electric Generation Service and related Government Energy Aggregation Administrative Services necessary to fulfill the obligations of this Agreement.

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

ARTICLE 1
Definitions

"Administrative Fee" means reimbursable, out-of-pocket LCEA program expenses in the amount of \$927.30 incurred by the Township in connection with the implementation and administration of the LCEA program for the Township's residents, and payable by Supplier to Government Aggregator pursuant to N.J.A.C. 14:4-6.8(d).

"Award Letter" means the notice of contract award letter issued by the Lead Agency on March 28, 2024 notifying Supplier that it has been designated the selected supplier for the Township's residents as a result of the Lead Agency's Request for Proposals dated February 27, 2024, which is attached hereto as Appendix A and which sets forth, among other things, the price (\$/Kwh) that will be charged to LCEA Participants for Electric Generation Service.

"Basic Generation Service" or "BGS" means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the BPU.

"BPU" or "Board" means the New Jersey Board of Public Utilities, or its successor.

"Budget Billing" means an arrangement whereby Supplier, rather than invoicing and collecting monthly charges from a customer equal to actual monthly metered usage multiplied by the Contract Price, instead invoices and collects an equal amount each month, which equal monthly amount is derived by multiplying estimated total usage over the contract term by the Contract Price, and then dividing that total amount by the number of months in the contract term.

"Contract Price" means the \$/Kwh price for Electric Generation Service, inclusive of the costs for energy, capacity, network transmission, ancillary services, losses, scheduling, PJM ISO administrative fees, RPS compliance, and inclusive of Administrative Fees and Energy Agent Fees, and all applicable taxes including 6.625% New Jersey State Sales and Use Tax, for Participating Residential Accounts as set forth in the Award Letter;

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“Electric Distribution Company” or “EDC” means an electric public utility, as defined in the BPU rules, in whose service territory Government Aggregator is located, specifically Jersey Central Power & Light (“JCP&L”). Pursuant to BPU rules an EDC cannot be a Third-Party Supplier but may provide BGS.

“Electric Generation Service” means the provision of retail electric energy and capacity which is generated offsite from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

“Energy Agent” means a person that is registered with the Board pursuant to N.J.A.C. 14:4-5.1 et seq., and is thereby authorized to arrange the retail sale of electricity, electric related services, gas supply or gas related services between government or private aggregators and electric or gas power suppliers, but does not take title to the electric or gas sold, and has been retained by Government Aggregator to provide consulting services in connection with the LCEA program at no direct, out-of-pocket expense to the Government Aggregator; specifically with respect to this Agreement the Energy Agent is Gabel Associates, Inc.

“Energy Agent Fee” means a fee of \$0.00042/Kwh included in the Contract Price and payable by Supplier to Energy Agent in connection with energy consulting services provided to Government Aggregator, as provided for in the RFP.

“Government Energy Aggregation Administrative Services” means various administrative services to be performed by Supplier in support of the implementation of the LCEA program, as set forth in Article 6 of this Agreement.

“Kwh” means kilowatt-hours, or 1,000 watt-hours of electric energy consumption as measured by the EDC meter.

“LCEA” Program means Lacey Community Energy Aggregation program, a government energy aggregation program pursuant to the Government Energy Aggregation Act (P.L. 2003, c.24, N.J.S.A. 48:3-93.1 et seq.) and implementing rules adopted by the New Jersey Board of Public Utilities (N.J.A.C. 14:4-6.1 et seq.), authorized by the Township of Lacey via duly-adopted Ordinance No. 2013-21.

“LCEA Participants” means Participating Residential Accounts.

“Lead Agency” means the Township of Lacey, in Ocean County, New Jersey.

“Participating Residential Accounts” means residential electric accounts located within the Township that are reported by the EDC to be receiving Electric Generation Service under the EDC’s BGS tariff, and that do not opt-out of the LCEA program or residential electric accounts located within the Township that opt-in to the LCEA program, are not rejected for enrollment by the EDC under a consolidated billing, do not rescind their switch to Supplier as part of their enrollment in the LCEA program, do not otherwise terminate their participation in the LCEA Program or have their participation terminated by the Governmental Aggregator, or that do not have their Third Party Supply Service terminated by Supplier under the terms of this Agreement or by the EDC.

“PJM ISO” means the PJM Interconnection, LLC, an independent system operator (“ISO”) operating the regional electric transmission system in the Mid-Atlantic region, including New Jersey, and surrounding states.

“RFP” means the Request for Proposals for Electric Generation Service and Government Energy Aggregation Administrative Services issued by Government Aggregator on February 27, 2024, including any addenda thereto, attached hereto as Appendix B.

“RPS” means the Renewable Portfolio Standards requirements applicable to providers of Electric Generation Service in New Jersey as provided for in BPU rules and/or applicable law.

"Third-Party Supplier" or "TPS", otherwise referred to in BPU rules as a licensed "electric power supplier," means a person that is licensed by the Board to offer, and to assume the contractual and legal responsibility to provide, electric generation service for use by retail customers. This term includes, but is not limited to, load serving entities, marketers and brokers that offer or provide electric generation service for use by retail customers. An electric power supplier generates electricity or buys electric generation and sells it to others for use by retail customers. An electric public utility that provides electric generation service only for the purpose of providing basic generation service is not a TPS.

"Third Party Supply Service" means Electric Generation Service provided by a BPU-licensed Third-Party Supplier.

"Township" means the Township of Lacey in Ocean County, New Jersey.

ARTICLE 2 **General Requirements**

2.1 Governmental Aggregator Obligations and Authority.

- 2.1.1 Governmental Aggregator hereby authorizes Supplier to provide Electric Generation Service to LCEA Participants.
- 2.1.2 Governmental Aggregator has the authority to designate and has designated Supplier as the Electric Generation Service provider for LCEA Participants.
- 2.1.3 Governmental Aggregator shall meet its obligations in connection with Government Energy Aggregation Services as set forth in Article 6 of this Agreement.
- 2.1.4 Government Aggregator hereby represents and warrants that the Administrative Fee and expenses related thereto meet the requirements of the BPU's rules concerning Government Energy Aggregation as set forth in N.J.A.C. 14:4-6.8(d) and acknowledges that it has sole responsibility for demonstrating compliance of the Administrative Fee with applicable BPU rules.
- 2.1.5 Government Aggregator hereby provides authorization to Supplier as necessary in order to satisfy the provisions of N.J.A.C. 14:4-6.10 (a) (5).

2.2 Supplier Obligations.

- 2.2.1 Supplier shall provide a firm supply of Electric Generation Service (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the full requirements of LCEA Participants. Supplier shall arrange for the delivery of Electric Generation Service in accordance with the requirements of the EDC and/or PJM ISO according to the rules, regulations, and tariffs governing Third Party Supply Service. These requirements may include electric energy, capacity, network transmission, ancillary services, losses, scheduling, PJM ISO administration fees and RPS compliance costs. Notwithstanding the foregoing, Supplier is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.
- 2.2.2 Price for Electric Generation Service for LCEA Participants in Initial Enrollment: The Contract Price for Electric Generation Service charged by Supplier to each LCEA Participant that is enrolled for Electric Generation Service commencing with the July 2024 meter read date shall be the non-variable \$/Kwh amount as set forth in the Award Letter (attached hereto as Appendix A). The

Contract Price shall not vary and shall not be changed for the term of Electric Generation Service, except as specifically provided for in section 3.2 of this Agreement.

- 2.2.3 Price for Electric Generation Service for LCEA Participants that Join the LCEA program after the initial enrollment: The price for Electric Generation Service charged by Supplier to each Participating Residential Account that enrolls in the LCEA program after the initial opt-out period will be the non-variable \$/Kwh Contract Price applicable to residential customers as set forth in the Award Letter, which shall be below the then-current BGS-RSCP price. The price shall not vary and shall not be changed for the remaining term of Electric Generation Service, except as specifically provided for in section 3.2 of this Agreement. In the event that the Contract Price is adjusted during the contract term as provided for in section 3.2 of this Agreement, LCEA Participants that join the program after the initial enrollment and after such adjustment shall be charged the adjusted Contract Price then in effect.
- 2.2.4 Supplier shall be responsible for all acts necessary for Supplier to perform its obligations hereunder, including but not limited to the scheduling of delivery of Electric Generation Service hereunder.
- 2.2.5 Supplier shall provide LCEA Participants with the environmental disclosure data and other data it is required to provide to comply with the rules of the BPU.
- 2.2.6 Supplier shall meet its obligations in connection with Government Energy Aggregation Administrative Services as set forth in Article 6.
- 2.2.7 Supplier shall familiarize itself and comply with BPU rules in N.J.A.C. 14:4 as they relate to third party suppliers, consumer rights and protections as set forth in N.J.S.A. 48:3-85 and N.J.A.C. 14:4, renewable energy requirements under N.J.S.A. 48:3-87 and N.J.A.C. 14:8, and the EDC's customer account services master performance agreement which is posted on the EDC's website.
- 2.2.8 Not applicable.
- 2.3 Term of this Master Performance Agreement. The term of service of this Agreement shall be from the Effective Date until [check one consistent with contract term selected by the Lead Agency in the Award Letter] [] July 31, 2025; or [] December 31, 2025; or [] July 31, 2026. The initial term of service may be extended by mutual consent and written agreement of both parties, such written agreement to extend the initial contract term to be executed by both parties no later than sixty (60) days prior to end of the initial contract term, and otherwise in accordance with applicable law.
- 2.4 Term of Service for Electric Generation Service – Program-Wide. The term of service for Electric Generation Service to LCEA Participants provided pursuant to this Agreement shall commence on the July 2024 meter read date and, unless Electric Generation Service to an individual account is terminated sooner as a result of the provisions of this Agreement, continue for [check one consistent with contract term selected by the Lead Agency in the Award Letter]: a) [] twelve (12) consecutive months beginning with the July 2024 meter read date, and terminating with the July 2025 meter read date for each account; or b) [] seventeen (17) consecutive months beginning with the July 2024 meter read date, and terminating with the December 2025 meter read date for each account; or c) [] twenty-four (24) consecutive months beginning with the July 2024 meter read date, and terminating with the July 2026 meter read date for each account. Unless Supplier is awarded a new contract to provide Electric Generation Service to LCEA Participants past the initial termination date (July 2025, December 2025 or July 2026 depending upon contract term selected by the Lead Agency as indicated in the Award Letter), or there is a written agreement to extend the initial contract term executed by both parties no later than sixty (60) days prior to end of the initial contract term in accordance with applicable law, Supplier shall

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take all steps necessary to submit a drop request to the EDC and return LCEA Participants to EDC BGS service effective with the July 2025 meter read date (or December 2025 or July 2026) meter read date depending upon contract term selected by the Lead Agency as indicated in the Award Letter), in accordance with EDC switching protocols.

- 2.5 Residential Accounts – Pre-Enrollment Opt-Out. Individual residential accounts shall have the opportunity to opt-out of the LCEA program during a 30-day period prior to the initial enrollment, in accordance with the procedures set forth in Appendix B (RFP). There shall be no penalty, early termination fee or any other fees imposed upon a residential account that exercises its pre-enrollment opt-out rights as set forth herein.
- 2.6 Residential Accounts – Post-Enrollment Opt-Out. After the initial enrollment of a residential account for Electric Generation Service, a Participating Residential Account shall have the right to submit an opt-out request to Supplier, in which case Electric Generation Service shall be terminated for that residential account and Supplier shall return the account to EDC BGS service, effective on the first meter read date occurring 30 days or later after such request is received. There shall be no penalty, early termination fee or any other fees imposed upon a Participating Residential Account that exercises its post-enrollment opt-out rights as set forth herein.
- 2.7 Term of Service for Electric Generation Service – Participating Residential Accounts. Residential accounts that do not exercise their opt-out rights during the initial 30-day pre-enrollment period as provided for in section 2.5 of this Agreement shall be submitted by Supplier to the EDC for Electric Generation Service commencing with the July 2024 meter read date, on a consolidated billing basis. If an individual residential account is rejected by the EDC for consolidated billing, Supplier shall decline to enroll the account and that account will not become a Participating Residential Account. Otherwise, residential accounts that do not exercise their opt-out rights during the initial 30-day enrollment period, are submitted for enrollment by Supplier, are accepted for consolidated billing by the EDC and do not rescind the enrollment during the mandatory seven (7) calendar day rescission period administered by the EDC in accordance with BPU rules (N.J.A.C. 14:4-7.6(b)4), shall be enrolled and become Participating Residential Accounts for Electric Generation Service commencing with the July 2024 meter read date. Electric Generation Service to individual Participating Residential Accounts shall continue until the July 2025 meter read date (or December 2025 or July 2026) meter read date depending upon contract term selected by the Lead Agency), unless: a) Electric Generation Service to an individual residential customer is terminated early due to the exercise of post-enrollment opt-out rights as set forth in section 2.6 of this Agreement; or b) Electric Generation Service to an individual residential customer is terminated early by Supplier due to the EDC dropping eligibility for the account to remain on consolidated billing or otherwise for non-payment by the individual customer.
- 2.8 Not applicable.
- 2.9 Governmental Aggregator Does Not Assume Payment or Credit Risk. As between the Governmental Aggregator and Supplier, Supplier shall be responsible for the risk of non-payment by any Participating Residential Account.
- 2.10 Service Inquiries and Service Notices to LCEA Participants. LCEA Participants may direct inquiries regarding this Agreement, and Electric Generation Service provided hereunder, and any supply or billing questions, to Supplier at the address and phone number provided in Section 14.1, which address and phone number shall be provided in communications with LCEA Participants regarding the LCEA program. LCEA Participants should make direct inquiries concerning EDC related emergency, power outage, wire or service maintenance, metering, EDC service billing or other similar EDC related concerns to the EDC.

- 2.11 Subcontracting. Supplier may subcontract the performance of certain obligations under this Agreement. However, no subcontract shall relieve Supplier of any of its obligations and/or liabilities under this Agreement. Supplier shall be responsible for all payments and obligations as between Supplier and its subcontractors, and Governmental Aggregator shall not be responsible for payments to Supplier's subcontractor(s). Government Aggregator may subcontract the performance of certain obligations under this Agreement. However, no subcontract shall relieve Government Aggregator of any of its obligations and/or liabilities under this Agreement. Government Aggregator shall be responsible for all payments and obligations as between Government Aggregator and its subcontractors, and Supplier shall not be responsible for payments to Government Aggregator's subcontractor(s), except with regard to Energy Agent Fees as specifically provided for in the RFP and section 10.2 hereof.

ARTICLE 3

Termination, Succession, Assignment

- 3.1 Termination. This Agreement may be terminated, in compliance with this Agreement's provisions, if (a) either Party defaults and fails to cure same, as set forth in Article 7 herein; (b) Supplier fails to maintain its BPU electric power supplier license in good standing; or (c) any of the situations described in paragraphs 3.2 or 3.3 occur and the Parties are unable to mutually negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the events set forth in paragraphs 3.2 or 3.3.

3.2 Regulatory Contingencies.

- (a) Regulatory Events. The following will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

(i) Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Purchase of Receivables and Consolidated Billing. If the BPU adopts changes to guidelines or rules pertaining to purchase of Third Party Supplier receivables by the EDC that are materially adverse to Supplier, or if the EDC no longer provides consolidated billing for Third Party Supplier customers.

(iii) Adverse Government Action. A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially or adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) takes action that materially impacts the cost of providing Electric Generation Service under this Agreement and similarly impacts the cost of Basic Generation Service under the EDC's BGS tariff, and such cost impact was not known at the time that a contract award is made to Supplier or (D) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed and the change or modification is not deemed a "Force Majeure Event" under Article 8 herein.

- (b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall give written notice to the other Party that such event has occurred and, in the case of iii (C) above, shall in addition to providing written notice at least 30 days in advance of any proposed adjustment to the Contract Price, provide reasonable documentation and quantification of the cost impact of the Adverse Government Action to the other Party at least 30 days in advance of any

proposed adjustment to the Contract Price. In the case of iii (C) above, a verified change in price, up to the amount of price increase in the EDC's BGS tariff attributable to the same Adverse Government Action, shall be permitted. If the Parties are unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon sixty (60) days' prior written notice, to terminate this Agreement, pursuant to Section 3.3., and close out its obligations hereunder. In such an event, Supplier shall be entitled to payment from each LCEA Participant for service provided prior to the effective date of termination but for which each LCEA Participant has not already made payment, at the Contract Price. If however, the Parties are able to reach agreement to a price change due to an adverse Regulatory Event, then supplier shall also be obligated to notify all Participating Members in writing, at least 30 days prior to implementing a change in price due to a Regulatory Event.

- 3.3 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its best efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the term, each individual LCEA Participant will be provided written notification from the terminating Party of the termination of the Agreement at least sixty (60) days prior to termination and in compliance with other regulatory or legal requirements, and Participating Members will also be notified of their right to return to the EDC or to select an alternate electric power supplier. These and any other notification(s) shall be in accordance with BPU requirements.
- 3.4 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld. However, transfer or assignment to an affiliate or subsidiary of Supplier shall be permitted without express written permission of Government Aggregator, provided that: a) Supplier provides a minimum 60 days prior written notice to Government Aggregator of the proposed transfer or assignment; and b) the Supplier and transferee/assignee both certify in such written notification that transferee or assignee will maintain Supplier's Government Energy Aggregation and Electric Generation Service capabilities. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.
- 3.5 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement including, in the case of Supplier, payment of Administrative Fees to the Government Aggregator or payment of Energy Agent Fees included in the Contract Price and collected by Supplier via monthly customer bills to the Government Aggregator's Energy Agent, as applicable.
- 3.6 Change in Sales and Use Tax. The Contract Price includes the 6.625% New Jersey State Sales and Use Tax. If a change in the applicable New Jersey State Sales and Use Tax rate is enacted by the New Jersey Legislature and becomes effective during the term of this Agreement, the Contract Price shall be adjusted to reflect such change.

ARTICLE 4

Energy Scheduling, Transmission, Pricing and Delivery

- 4.1 Scheduling, Transmission and Delivery of Power. Supplier shall schedule energy as required by the transmission supplier and the EDC and shall arrange for transmission and distribution service to LCEA Participants. Supplier will arrange for necessary electric distribution and transmission rights for delivery of such electricity at levels of firmness as necessary to provide the Electric Generation Service hereunder and subject to the understanding that Supplier has an obligation to make firm deliveries to LCEA Participants as set forth in Paragraph 2.2.1. Delivery of firm energy shall not be curtailed or interrupted by Supplier except as a result of a Force Majeure Event as defined hereunder. Supplier is not responsible

for services supplied by the EDC or PJM ISO, or for the consequences of the failure to provide such services.

- 4.2 Failure to Supply Electric Generation Service. In the event that Supplier fails to provide Electric Generation Service sufficient to meet the needs of LCEA Participant(s) as set forth herein and Supplier's failure is not due to a Force Majeure Event as defined hereunder, Supplier shall be liable for any resultant direct damages to LCEA Participants, as defined in Section 9.1. Moreover, LCEA Participants shall not be held responsible for any penalties assessed by the EDC or the PJM ISO as a result of Supplier's failure to provide Electric Generation Service.

ARTICLE 5
Metering, Billing, and Payments

- 5.1 Switching Fee. It is the Parties' understanding that the BPU does not permit and the EDC does not assess switching fees. Should the BPU permit and the EDC indicate that it will charge a switching fee, Supplier will pay the switching fee on behalf of the LCEA Participants. In no event shall LCEA Participants be responsible for the switching fees.
- 5.2 Billing. Billing shall be provided by the EDC under a consolidated billing format pursuant to the EDC's tariff provisions and BPU rules applicable to LCEA Participants, including N.J.A.C. 14:4-7.7.
- 5.3 Payments. Supplier retains the right to terminate Electric Generation Service to any individual LCEA Participant that fails to pay amounts due to the EDC within the specified time period for said payments in accord with the EDC's tariff and BPU regulations, and as a result is rejected by the EDC from consolidated billing eligibility or the EDC otherwise stops timely payment to Supplier for Electric Generation Service rendered to such LCEA Participant as a result of slow payment or non-payment by the LCEA Participant.
- 5.4 Budget Billing. Supplier shall provide Budget Billing to certain Participating Residential Accounts, in accordance with its obligations concerning budget billing as set forth in the RFP and otherwise consistent with applicable BPU rules. For those Participating Residential Accounts receiving Budget Billing from Seller, a true-up mechanism shall be incorporated, in accordance with applicable BPU rules and the specifications in the RFP, that will implement a periodic true-up adjustment of the budget amount based upon actual usage in accordance with the RFP, and require a final cash-out either at the end of the term of this Agreement or, in the event that the customer opts-out before the end of the Agreement. The periodic true-up adjustment(s) and cash-out is intended to assure that said customer pays for actual Electric Generation Service provided by Supplier. In the event that there is a positive amount owed (i.e., metered usage times the Contract Price is greater than actual amount paid by the customer to date under the Budget Billing arrangement), then under the cash-out Supplier may charge the customers for the outstanding positive balance. In the event that there is a credit balance (i.e., metered usage times Contract Price is less than actual amount paid by the customer under the Budget Billing arrangement), then under the cash-out Supplier shall provide a credit or issue a check, as determined in consultation with Government Aggregator, to the customer for the outstanding credit balance.

ARTICLE 6
Government Energy Aggregation Administrative Services

- 6.1 The Governmental Aggregator has selected Supplier to perform certain administrative services in support of the development and implementation of the LCEA program, and Government Aggregator hereby agrees to perform certain tasks in support of those administrative services, as follows:
- 6.2 Government Aggregator shall perform the following tasks in support of the administrative services to be performed by Supplier:

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- 6.2.1 Send notice of its selection of Supplier as a result of the RFP to the EDC in a timely manner, in accordance with N.J.A.C. 14:4-6.6(o);
 - 6.2.2 Cooperate with Supplier to develop and finalize the form of opt-out notice in a timely manner, in accordance with the provisions of the RFP;
 - 6.2.3 Upon receipt of residential customer-specific information from the EDC, including name, address and account number, in accordance with N.J.A.C. 14:4-6.6(p), provide such information to Supplier in a timely manner in accordance with the provisions of the RFP;
 - 6.2.4 Maintain a local exchange telephone number that the Township's residents can call to ask and receive answers concerning the opt-out notice, or subsequent questions regarding the LCEA program.
- 6.3 Supplier shall perform the following administrative services, at its own cost and expense, in accordance with the applicable provisions of the RFP:
- 6.3.1 Cooperate with the Government Aggregator to develop and finalize the form of opt-out notice in a timely manner;
 - 6.3.2 Reproduce sufficient copies of the final form of opt-out notice, and mail a copy of the opt-out notice in a timely manner to each residential customer on the list provided by the EDC and Government Aggregator, including the initial LCEA program "opt-out" enrollment process and any supplemental LCEA program "opt-out" enrollment implemented in accordance with sections 2.2.3 and 6.3.7 of this Agreement, and reproduce and have available to send to requesting residential customers a Spanish version language version of the LCEA program description in accordance with applicable BPU rules;
 - 6.3.3 Maintain a toll-free telephone number during the term of this Agreement which is sufficiently staffed during normal business hours to field and answer questions from the Township's residents regarding the opt-out notice and the terms and conditions of Electric Generation Service under the LCEA program;
 - 6.3.4 Provide a physical address where completed opt-out notice forms can be returned, accepted, and maintained, and create an electronic database of all returned opt-out notice forms;
 - 6.3.5 At the conclusion of the required 30-day opt-out period in accordance with N.J.A.C. 14:4-6.6(t), Supplier shall provide an electronic file of residential customers who have opted out of the PCEA program to the Government Aggregator, and shall submit enrollment requests to the EDC via electronic data interchange ("EDI") for all remaining residential customers whose names and account numbers have been provided by the EDC and have not opted out of the LCEA program, in an EDI format consistent with applicable BPU rules and EDC protocols, including specifically EDI protocols that require that enrollment requests be flagged as GEA customers, for Electric Generation Service commencing with the July 2024 meter read dates (consistent with the start date specified in the Award Letter) for each account;
 - 6.3.6 Maintain logs of customers that drop-out of the LCEA program or are terminated by Supplier over the term of this Agreement and provide in a timely manner reports of such logs in an Excel Spreadsheet format or other appropriate electronic format as specified upon request from the Government Aggregator;
 - 6.3.7 Upon consultation and with the concurrence of the Government Aggregator, Supplier may periodically request from the EDC an updated list of residential accounts in the Township that are not being served by a TPS, for the purpose of identifying: a) new residential accounts that have been created as a result of a new resident moving into an existing dwelling; b) new residential accounts that have been created as a result of the completion and occupation of new construction; or c) residential customers that have ended their TPS contract and not entered a new one since the beginning of the LCEA program. If such updated information is obtained from the EDC, Supplier may, in consultation with and upon approval from the Government Aggregator, begin a refreshed opt-out process in accordance with applicable BPU rules for purposes of

possible enrollment of the new residential accounts in the LCEA program, at the Contract Price for the remaining term of this Agreement.

- 6.3.8 Compliance with the provision of Section H of the RFP, specifically that in the event that changes in BGS-Tariff Price after the award and during the term of the contract, result in the actual average annual BGS-RSCP tariff price dropping below the contract price, the Supplier shall be responsible for providing written notification to each LCEA Participant, and shall cooperate with the Government Aggregator to develop and finalize a notice notifying each LCEA Participant of the drop in the BGS-RSCP tariff price and of their ability to opt out of the program, and Supplier shall reproduce sufficient copies of the final form of such notice, and mail a copy of the notice in a timely manner to each LCEA Participant, as directed by the Government Aggregator. Upon a change in the BGS Tariff Price that results in the actual average annual BGS-RSCP Tariff Price dropping below the contract price, Supplier shall suspend enrollment of new LCEA Participants until such time, if any, when the average annual BGS-RSCP Tariff Price increases above the contract price.
- 6.3.9 Provide to Government Aggregator in a timely manner all requested information in Supplier's possession concerning the LCEA program, including LCEA Participant account information, list of customers and accounts that have opted-out of the LCEA program and other information that may be necessary for Government Aggregator to continue to administer the LCEA program, including historical aggregate monthly energy usage, aggregate capacity and transmission obligations of LCEA Participants, and identification of equal payment plan customers. This information will be provided in a timely fashion and in Excel format, according to the request of Government Aggregator.

ARTICLE 7

Default and Remedies

- 7.1 **Default.** Any Party failing to comply with any material terms or conditions of this Agreement which non-compliance is not excused as a Force Majeure Event, as described in Article 8 herein, shall be in Default of this Agreement.
- 7.2 **Notice and Remedies.** Subject to other provisions of this Agreement, if a Party believes that the other Party is in material breach of this Agreement (i.e. default), the Party claiming breach shall give notice in writing to the offending party believed to be in breach detailing the alleged violations and requesting specific relief that is in accord with the terms and conditions of this Agreement. The Party receiving the notice of violation shall respond in writing within five (5) business days of receipt affirming or denying the alleged violation(s) and detailing how any such breach of this Agreement will be cured. If the Party claiming breach is not satisfied that an alleged breach(s) of this Agreement has been cured within twenty-five (25) business days from the notice of breach hereunder, the Party claiming breach shall be free to seek legal redress and take such other actions, including termination, as it sees fit, without prejudice to any rights and remedies of the non-defaulting Party and any other remedies that a Party may have under the law or this Agreement.

ARTICLE 8

Force Majeure

- 8.1 **Excused Failure to Comply.** Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. Despite its commercially reasonable efforts, if the Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such Force Majeure period. The Party claiming excuse due to a Force Majeure event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period

shall be no longer than that necessarily affected by the Force Majeure event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure event. Nothing contained in this section shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

- 8.2 Force Majeure Event. For purposes of this Agreement, a Force Majeure Event shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to: Acts of God, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides and other natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities including the electric transmission grid or EDC distribution system, except that a failure of a generator, whether or not owned by a Supplier, would not qualify as a Force Majeure Event or relieve the Supplier of its obligation to provide Electric Generation Services at the agreed-upon price unless such generator failure resulted in a grid outage (i.e. inability to deliver); otherwise a generator failure would be considered an economic event not subject to Force Majeure; governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. A change in economic electric power market conditions shall not constitute a Force Majeure Event. A failure of a generator, whether or not owned by Supplier, shall not constitute a Force Majeure Event unless such generator failure results in an interruption of the power grid and resultant inability to provide Electric Generation Service; otherwise such failure would be considered an economic event and not a Force majeure Event. Failure or interruptions, including without limitation government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying energy under this Agreement shall constitute a Force Majeure Event provided that Supplier has arranged for service on these systems at a level of firmness as required to provide the Electric Generation Service agreed upon herein.
- 8.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party by electronic and telephonic means as soon as possible, and shall provide written notification no later than seventy-two (72) hours after the start of the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

ARTICLE 9

Damages

- 9.1 Damages. The sole remedy for the Government Aggregator and/or LCEA Participants for a failure of Supplier to provide Electric Generation Service in accordance with this Agreement shall be the liability of Supplier for direct damages, defined as estimated volumes by LCEA Participants over the remaining contract term applied to the positive difference, if any, between the cost of Electric Generation Service obtained and received by LCEA Participants to replace the Electric Generation Service that Supplier failed to provide, and the Contract Price, provided that the cost of such replacement Electric Generation Service shall not exceed the applicable BGS tariff price.

ARTICLE 10

Payment of Administrative Fees

- 10.1 Government Aggregator Out-of-Pocket, Reimbursable Expenses. Within thirty (30) days of the Effective Date, Supplier shall remit payment in full of the Administrative Fee to Government Aggregator.

- 10.2 Energy Agent Fees. Within thirty (30) days of the Effective Date, Supplier shall enter into an energy agent agreement with Energy Agent under which it will make either monthly or quarterly payments to the Energy Agent equal to the Energy Agent Fees collected through the Contract Price from LCEA Participants.

ARTICLE 11

Limitation of Liability

- 11.1 LIABILITY. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A LCEA PARTICIPANT OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE. SUPPLIER SHALL INDEMNIFY AND HOLD GOVERNMENT AGGREGATOR HARMLESS FROM ALL LIABILITIES, DAMAGES AND COSTS ASSOCIATED WITH THE PROVISION OF ELECTRIC GENERATION SERVICE BY SUPPLIER TO LCEA PARTICIPANTS.
- 11.2 DISCLAIMER. SUPPLIER DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF FIRM ENERGY TO LCEA PARTICIPANTS DURING FORCE MAJEURE EVENTS. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

ARTICLE 12

Confidential Information

- 12.1 Confidential Information. Any Confidential Information, as defined in Paragraph 12.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as "**Confidential**" shall be held in confidence by each of the Parties as well as the Parties' subcontractors, if any, to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated as Confidential Information shall not be covered by the protection contemplated herein. Information stamped by Supplier as "Confidential" and provided to the Government Aggregator may still be released by Government Aggregator, in response to a request made under the Open Public Records Act ("OPRA"), if Government Aggregator determines that such information does not fall within any of the exceptions set forth in the OPRA or other applicable law, regulation, requirement or executive order.
- 12.2 Confidential Information Defined. "Confidential Information" means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the "Disclosing Party") to the other Party ("the "Recipient") regarding itself, its business, the business of its affiliates, and/or the LCEA program or LCEA Participants. Confidential Information includes customer name, address, account number and usage information obtained from the EDC. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient or another third party; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient's possession prior to disclosure by the Disclosing Party (unless the information is already in the possession of the Recipient but has been claimed confidential by the party providing it to Recipient, in which case the confidential designation would be retained).

- 12.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives and subcontractors, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation; for example, in response to a request made under the Open Public Records Act. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party in writing if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The OPRA requires a response by Government Aggregator within seven (7) business days; accordingly, any challenge to the Government Aggregator disclosing requested government records which are not exempt by OPRA must be made by Supplier before that seven (7) day period. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter. In addition, and notwithstanding the foregoing, Supplier agrees that customer-specific information provided to Supplier by the EDC and/or the Aggregator in connection with the LCEA program, as provided for in the RFP and this Agreement, shall be used by the selected Supplier for the sole purpose of administering the LCEA program, and information for residential customers who opt-out of the program or that remain in the program shall not be used by the Supplier for any other purpose, and shall be treated in a confidential manner pursuant to N.J.A.C. 14:4-6.3(f) and 14:4-6.10(a).
- 12.4 Proprietary Rights. Neither Party makes any representation as to the accuracy or completeness of the Confidential Information, but shall make reasonable efforts to ensure that all Confidential Information disclosed to Recipient is accurate and not misleading. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information.
- 12.5 Press Releases. The Parties shall collaborate on the issuance of an initial press release announcing the selection of Supplier by Government Aggregator as the LCEA program supplier. After the release of the initial press release, Supplier may advertise its identity as the LCEA program supplier without the need for prior approval from Government Aggregator, and Government Aggregator may advertise that Supplier is the LCEA program supplier without the need for prior approval from Supplier. Otherwise neither Party shall utilize the name of the other in advertisements or marketing without the approval of the Party.
- 12.6 Data. All raw data, reports, data aggregations and analyses, product and service ideas, and other information, without limitation, collected and/or generated by Governmental Aggregator pursuant to this Agreement shall remain the sole and exclusive property of the Governmental Aggregator. All reports, data aggregations and analyses, product and service ideas, and other information, without limitation, collected and/or generated by Supplier pursuant to this Agreement shall remain the sole and exclusive property of Supplier, except as otherwise specifically provided for in this Agreement or except as otherwise provided for by applicable law, including but not limited to the OPRA. Each Party may use all such information furnished by the other Party solely for purposes of this Agreement.

ARTICLE 13

Dispute Resolution

- 13.1 Dispute Resolution. Prior to litigation, the Parties shall mutually attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement or the transactions contemplated hereby ("Dispute(s)") promptly, by negotiations between Supplier and Governmental Aggregator, including but not limited to through non-binding formal dispute resolution methods, such as non-binding mediation, if agreeable to both Parties. The Parties may mutually modify these requirements herein and select any manner of dispute resolution that is agreeable to both Parties, including but not limited to binding formal dispute resolution methods, such as binding arbitration. If the Parties choose to be referred to Arbitration, the arbitration shall be in accordance with the American Arbitration Association Arbitration Rules in effect at the time of the dispute resolution, unless the Parties mutually select some other rules.

The place of arbitration shall be in the County of Ocean, State of New Jersey. The arbitrator(s) shall be empowered to order specific performance of this Agreement, but shall not be empowered to award damages beyond those provided for under Article 9 of this Agreement, including a prohibition against the award of punitive damages. The arbitrator(s) function shall be limited to the functions mutually agreeable to both Parties; however, the arbitrator(s) shall not have the power to change, add to, subtract, or amend or modify in any way any provision(s) of this Agreement, unless otherwise agreed to by the parties. If the Parties cannot resolve any dispute or claim through negotiations between the Supplier and Governmental Aggregator and either Party rejects formal binding dispute resolution methods, a Party may file a legal action or proceeding. The RFP and contractual terms and conditions of the MPA shall be construed in accordance with the laws of the State of New Jersey, without recourse to provisions governing choice of law. Any action brought in law or equity with respect to the RFP and/or terms and conditions of the MPA shall only be filed in the Superior Court of New Jersey. Venue shall be laid in Ocean County, New Jersey.

13.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey without recourse to provisions governing choice of law.

13.3 Parties to Continue Performance. Subject to the other provisions of this Agreement, including but not limited to the termination and early termination provision, the Parties shall in good faith continue to perform their respective obligations under this Agreement while the Parties attempt to resolve the Dispute(s) as set forth in this Article 13. Both Parties shall continue to abide by all applicable statutes, administrative rules, tariffs, and codes of conduct during the term of this Agreement.

ARTICLE 14
Miscellaneous

14.1 Notices. Any notices, requests or demands regarding the Services provided under this Agreement shall be deemed to be properly given or made five (5) business days after postmark date if sent by U.S. Postal Service mail to the other Party at the address shown below. The address of a party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party according to the terms set forth in Paragraph 13.2, Service of Process.

SUPPLIER:

GOVERNMENTAL AGGREGATOR
Veronica Laureigh
Municipal Administrator
818 W. Lacey Road
Municipal Building
Forked River, NJ 08731

Phone:
Fax: N/A
Email:

Phone: 609-693-1100 ext. 2200
Fax: N/A
Email: admin@laceytownship.org

14.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior or contemporaneous oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver. In the event of ambiguity or a conflict between the terms of this Agreement and RFP, the terms of this Agreement shall prevail.

- 14.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the Party to whom the request is directed. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.
- 14.4 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of this Agreement shall control.
- 14.5 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.
- 14.6 Authorization. Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound by the Agreement.
- 14.7 Recitals. The Parties hereto agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.
- 14.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

SUPPLIER:

Signed: _____

Printed Typed Name:

Title: _____

Date: _____

GOVERNMENT AGGREGATOR:

Signed: _____

Printed Typed Name:

Title: _____

Date: _____