

5:30PM—Closed Session for Appointment, Employment, Compensation, Discipline,  
Performance or Dismissal of an Employee(s) and Pending Litigation

COMMUNITY UNIT SCHOOL DISTRICT NO. 205

Board of Education

7:00PM—Monday, June 10, 2019

932 Harrison Street – Galesburg, IL

Regular Meeting

AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

IV. RECOGNITION OF VISITORS

*(This is the time when visitors may request to address the Board of Education on any item germane to the role and function of the Board of Education. When the Board President so directs, persons should stand, give their name and begin their statements. Persons are asked to refrain from making any personal comments regarding any individual. The Board President reserves the right to limit presentations to five minutes.)*

A. Recognition of Joan Milam Kelley

B. Recognition of Crossing Guards

C. Recognition of Cole Petrie-IHSA State Baseball Finals National Anthem Singer

D. Recognition of Seal of Biliteracy and Commendation Recipients

E. Recognition of IESA State Medal Honors

F. Recognition of Art Award Recipients

V. PRESENTATIONS TO THE BOARD

A. Therapy Dog Program

B. 2019-2020 K-5 ORFF Music Program and IEMA

C. Student Council

VI. APPROVAL OF CONSENT AGENDA

A. Consider Approval of Minutes:

Monday, May 13, 2019, Regular Meeting

Monday, May 13, 2019, Closed Session

Thursday, May 16, 2019, Special Meeting

B. Consider Approval of Payroll and Claims

Balance Sheet

Treasurer's Report

Fund Balance Report

Revenue Report

Expense Report

Investment Performance Report

Accounts Payable  
Check Register

**VII. Focus Area #1: Relevant Skills that Lead to Employability**

- A. Administrative Report on Curriculum
- B. Building Reports
- C. Consider Approval of Delabar CTE Intergovernmental Agreement
- D. Special Education Report
- E. Therapy Dog Pilot Program Discussion

**VIII. Focus Area #2: Facilities That Assist in Skill Acquisition**

- A. Building Study Committees
- B. Update on District Building Projects
- C. Enrollment Report
- D. Consider Approval of Consolidated District Plan
- E. Consider Approval of Presence Learning Contract for Psychological Services
- F. Consider Approval of Power Purchase Agreements for Steele, Lombard, GHS and Lincoln

**IX. Focus Area #3: Responding to the Changing Needs of our Community**

- A. Consider Approval of Resolution Authorizing and Providing for an Installment Purchase Agreement for the Purpose of Paying the Cost of Purchasing Real or Personal Property, or both, in and for the District and for the Issue of \$17,025,000 Debt Certificates, Series 2019, of the District for the Purpose of Improving the Sites of, Building and Equipping Additions to and Altering, Repairing and Equipping School Buildings and Facilities of the District, and Authorizing the Sale of Said Certificates to Commerce Bank
- B. Consider Approval of Prevailing Wage Resolution
- C. Consider Approval of Hazardous Transportation Areas
- D. Consider Approval of PSIC Property Casualty
- E. Consider Approval of PSIC Workers Comp
- F. Discussion of Human Resources Position
- G. Consider Approval of Trip Request for FFA
- H. Discussion Regarding Health Insurance Plan

**X. PERSONNEL**

- A. Consider Approval of Personnel Report
- B. Grievance Update

**XI. COMMENTS BY BOARD OF EDUCATION**

**XII. FUTURE AGENDA ITEMS**

**XIII. FUTURE MEETING DATE(S) AND TIME**

- A. July 8, 2019, 7:00 PM

#### XIV. ADJOURN

# Curriculum Report

June 2019

1. **Writing Rubric:**

- a. The committee met on May 22 and developed a video outline.
- b. Completing video work with Matt J. on Wednesday, June 12th.

2. **Public Speaking Rubric Development:**

- a. The committee met on May 21st to work on our implementation plan and developed guidance for teachers.
- b. Completing video work with Matt J. on Wednesday, June 12th.

3. **K-5 District Curriculum Leaders:**

- a. We met on Monday, May 20th in my Office
- b. Discussed Push-In/Core Focus for 2019-2020 regarding MTSS and Tier 1 instruction.
- c. Discussed the possibility of a Ready Math Pilot which will be available for Fall 2019.
- d. Talked about Amplify rollout and delivery of materials to schools. Materials were sorted on Friday, May 31st and delivered to schools on Wednesday, June 5th. Teacher manuals were made available to teachers before leaving for the summer.
- e. Training for Amplify Science will be on August 14th.

4. **Gifted and Talented Education Committee:**

- a. We met on Monday, May 13th to review individual submissions of definitions and review/evaluation of other gifted, talented and accelerated plans.
- b. We also created an outline to develop our plan.
- c. Finalization of our plan took place on Monday, June 3rd with follow-up edits on June 4th.
- d. The plan is available for review:  
<https://docs.google.com/document/d/1dcXNTZP2Nze7sLpPhlfm7CilBukk9bSYQD4qzAxQe0w/edit?usp=sharing>

5. **Multi-Tiered System of Support:**

- a. We met on May 30th to continue our planning of MTSS Tier 1 Rollout
- b. We will be meeting on June 11th from 9:30am-1:30pm to finalize materials, provide direction for the fall, and create necessary documents to guide the development of our plan for Phase 1 of 3.

6. **District Improvement Team Meetings**

- a. We will have these meetings in September, January and May. We also discussed having different venues for the meetings.
- b. Meetings have not been determined as of yet.

7. **Instructional Coaching:**

- a. We are meeting on Friday, June 14th from 8am-3pm to discuss our plans for the fall, work on our instructional playbook and formulate plans and guiding documents.
- b. We are planning our rollout and details for the 2019-2020 school year and are excited about the opportunities ahead.

8. **Summer School:**

- a. June 10-July 18

- b. Located at Silas Willard Elementary School
- c. Kindergarten through 8th Grade will take English/Language Arts and Math, while students in grades 9-12 who are need of credit recovery.
- d. STEM is full, after a final email was sent to fill remaining slots. The response was great!

**9. Kindergarten Roundup-Class of 2032**

- a. We had our 1st collective Kindergarten Roundup for all incoming Kindergarten students on Tuesday, May 28th from 6-7pm at Galesburg High School.
- b. We also received positive feedback about this program and are excited about year 2!

Dr. Ashlee E. Spannagel  
System Director  
aspannagel@roe33.net



105 N. E St., Suite 1  
Monmouth, IL 61462  
(309) 734-7545

Dr. John Asplund, Superintendent  
Galesburg CUSD #205  
932 Harrison Street  
Galesburg, IL 61401

Dear John:

The Delabar CTE System Intergovernmental Agreement states the following with regard to its Board of Control in Article II – ORGANIZATION AND OPERATION Board of Control: *The BOARD OF CONTROL, hereinafter, referred to as the BOARD, will be composed of the superintendent or representative(s) designated by the Board of Education of each member district. Each member district will be afforded one vote. The Administrative Agent, if other than a member district, will be afforded one vote. In such instances, the Administrative Agent is not subject to the shared financial obligations of this Agreement. Community colleges serving the member districts will be entitled to one ex-officio membership on the BOARD, with no voting rights.*

On the enclosed form, please designate the name and position of the person from Galesburg CUSD #205 that will serve as its representative on the Delabar CTE System Board of Control. In the event that this individual is absent, please indicate those that are designated to vote in place of this representative. This designation form should be returned to the Delabar CTE System office by June 10, 2019.

Your attention to this request is greatly appreciated. If you have any questions, do not hesitate to contact me at 309-734-7545, or by email at [aspannagel@roe33.net](mailto:aspannagel@roe33.net).

Sincerely,

A handwritten signature in black ink that reads "Ashlee E. Spannagel". The signature is written in a cursive, flowing style.

Dr. Ashlee E. Spannagel

## Board of Control FY 2020 Member Designation Form

### Galesburg CUSD #205

According to the Delabar CTE System Intergovernmental Agreement, its Board of Control shall be organized and operated as follows:

#### Article II – ORGANIZATION AND OPERATION

##### Board of Control

The BOARD OF CONTROL, hereinafter, referred to as the BOARD, will be composed of the superintendent or representative(s) designated by the Board of Education of each member district. Each member district will be afforded one vote. The Administrative Agent, if other than a member district, will be afforded one vote. In such instances, the Administrative Agent is not subject to the shared financial obligations of this Agreement. Community colleges serving the member districts will be entitled to one ex-officio membership on the BOARD, with no voting rights.

In accordance with the agreement, the following individual from Galesburg CUSD #205 will serve on the Delabar CTE System Board of Control during FY 2020:

Dr. John Asphind Superintendent  
Name Position

In the absence of the above named member, the following individual(s) is(are) designated as voting representative(s) from Galesburg CUSD #205:

Mr. Jeff Houston Principal  
Name Position

Ms. Donna Abel GAVC Coordinator  
Name Position

\_\_\_\_\_  
Date

## **INTERGOVERNMENTAL AGREEMENT FOR THE DELABAR CTE SYSTEM**

This agreement is executed pursuant to the provisions of the Intergovernmental Cooperation Clause of the Illinois Constitution (Ill. Const. 1970, Art. VII, Sec. 10) as well as the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1985, Ch. 127, Par. 741, et seq.).

### **ARTICLE I - GENERAL PROVISIONS**

1.1 NAME - The name of this Regional Secondary Career and Technical Education System shall be the Delabar CTE System, hereinafter referred to as the "SYSTEM".

1.2 PURPOSE - The purpose of this Agreement is:

1.2.1 To provide for the establishment, administration and operation of a regional career and technical education system consistent with applicable federal, state and other laws, rules, regulations and policies.

1.2.2 To foster quality career and technical education programs in an efficient and equitable manner for students who reside within a member district.

1.2.3 To foster a systematic program of curriculum renewal and staff development.

1.2.4 To efficiently seek, obtain and administer funding for career and technical education programs and services.

1.3 MEMBERSHIP

1.3.1 Current members as of this amended Intergovernmental Agreement include the following:

Abingdon-Avon C.U.S.D. #276

ROWVA C.U.S.D. #208

Galesburg C.U.S.D. #205

United C.U.S.D. #304

Knoxville C.U.S.D. #202

West Central C.U.S.D. #235

Monmouth-Roseville C.U.S.D. #238

Williamsfield C.U.S.D. #210

1.3.2 New members who wish to join the SYSTEM after July 1, 1986, may be admitted by two-thirds (2/3) vote of the BOARD OF CONTROL. New members assume the assessment established by the BOARD OF CONTROL; including, but not necessarily limited to, a fair and equitable assessment for previous program development expenses.

1.3.3 Membership in the Agreement shall be continuing, provided that member districts may withdraw from this Agreement in accordance with the provisions of Article VII of this agreement.

1.3.4 Discussions of the BOARD OF CONTROL of questions of admission or withdrawal of school districts from the Agreement will be considered at regularly scheduled public meetings of the BOARD OF CONTROL.

### **ARTICLE II - ORGANIZATION AND OPERATION**

2.1 BOARD OF CONTROL - The BOARD OF CONTROL, herein after referred to as the "BOARD", will be composed of the superintendent or representative(s) designated by the Board of Education of



each member district. Each member district will be afforded one vote. The Administrative Agent, if other than a member district, will be afforded one vote. In such instances, the Administrative Agent is not subject to the shared financial obligations of this Agreement. The community colleges serving the member districts will be entitled to one ex-officio membership on the BOARD with no voting rights.

2.1.1 OFFICERS OF THE BOARD OF CONTROL - The BOARD will establish a rotation schedule for officers and establish policy to fill vacancies that may occur. The BOARD officers will consist of President, Vice-President and Secretary who will serve for a term of one year. The terms will commence July 1, of each year and end June 30, of the following year. In the case where a member district has a new superintendent, and that member district is due to hold the office of President, that member district's duties will be moved to the next member district in line. In the case where one or more districts reorganize, the new member district will enter the rotation schedule in alphabetical order, but will be exempt from the office of President for the first year of the member district's existence.

2.1.2 MEETINGS - The BOARD shall meet at least quarterly. The regular meeting date(s) shall be established by the BOARD at the regular June meeting. Special meetings of the BOARD may be called by the President or by any four (4) members who may request the Secretary to notify the members of the BOARD at least 48 hours in advance of any special meeting. Notice for the special meeting will specify the business to be conducted and will be limited to that purpose. Notice of all meetings will be held in accordance with the Open Meetings Act (Ill. Rev. Stat. 1985, Ch. 102, Par. 42, et seq).

2.1.3 QUORUM - A quorum of the BOARD will consist of a majority of its voting members. The passage of any action will require a quorum present.

2.1.4 DUTIES OF BOARD - The BOARD will:

2.1.4a Develop and approve general policies which are necessary for the efficient operation of the SYSTEM.

2.1.4b Be responsible for the adoption of an annual budget and provide for sound fiscal management. The Agreement's fiscal year shall function from July 1 to June 30.

2.1.4c Approve the employment of personnel at the SYSTEM level.

2.1.4d Act on recommendations of the Director relative to the operation of the SYSTEM.

2.1.4e Conduct its meetings as to the provisions of Robert's Rules of Order and the Illinois Open Meetings Act.

2.1.5 BYLAWS - The contents of this Agreement and accompanying Policies and Procedures Manual constitute the bylaws by which the SYSTEM will be governed.

2.2 ADMINISTRATIVE AGENT-The Regional Superintendent of the Henderson-Knox-Mercer-Warren Regional Office of Education #33 will serve as the Administrative Agent. The Administrative Agent under this Agreement may be changed by the BOARD upon approval of two-thirds (2/3) of the voting members. A vote to change the designation of the Administrative Agent must occur prior to March 31, in order to become effective for the upcoming fiscal year (July 1 – June 30). After a vote to change the Administrative Agent, all of the districts and the prior and new Administrative

Agent, may agree by stipulation to accelerate or postpone the effective date of the change.

## 2.3 ADMINISTRATIVE STRUCTURE

- 2.3.1 APPOINTMENT - The BOARD will employ a Director who shall possess an appropriate administrative certificate and other such qualifications as set forth by the Illinois State Board of Education.
- 2.3.2 DUTIES - The Director will be responsible for the day-to-day administration and operation under the Agreement in accordance with the bylaws, policies and other directives of the BOARD. The Director shall report directly to the BOARD.
- 2.3.3 BUDGET - The Director will prepare the annual budget to be approved by the BOARD and will make such other reports and perform such other duties as may be required by law, by the BOARD or by ISBE.

## 2.4 ADVISORY COMMITTEES

- 2.4.1 The BOARD may establish advisory committees as deemed necessary. These advisory committees may be standing or temporary.
- 2.4.2 The purpose of the advisory committees will be to advise the BOARD and Director on effective planning for the operation of the SYSTEM and the individual occupational areas.
- 2.4.3 Advisory committees will operate according to policies and procedures adopted by the BOARD. The composition and performance of the advisory committees will also adhere to all state and federal statutes, rules, regulations and guidelines.

# ARTICLE III - PROGRAMS AND SERVICES

## 3.1 PROGRAMS AND SERVICES

- 3.1.1 DETERMINED BY BOARD - Programs and services to be offered by the SYSTEM shall be determined by the BOARD upon recommendation by the Director or members of the BOARD. Nothing herein shall prevent a member district from offering, establishing or discontinuing a local program.
- 3.1.2 PROGRAMS AND SERVICES BASED ON NEEDS - Programs and services will be determined by the BOARD to meet the needs of students within the region. Selection of programs and services will be based upon recommendations of the Director or members of the BOARD utilizing sound planning, labor market information, student interest surveys, Advisory Committee recommendations and other pertinent information.
- 3.1.3 LOCAL DETERMINATION TO OFFER PROGRAMS AND SERVICES - Each member district may determine annually which programs and services will be offered and which of those same programs and services will be accessible to students from other member districts.
- 3.1.4 LOCAL DETERMINATION TO ACCESS PROGRAMS AND SERVICES - Each member district will determine the extent of participation of its students and its staff.

3.1.5 PROGRAM MANAGEMENT - The BOARD will have responsibility for program management including:

- a. Curriculum Development
- b. Program Coordination
- c. Program Evaluation
- d. Management of SYSTEM equipment and supplies

3.1.6 STAFFING - The SYSTEM will be staffed under two major provisions:

- a. SYSTEM staff who are employed by the BOARD and paid from SYSTEM funds on recommendation from the BOARD to perform centralized SYSTEM functions which benefit all member districts. The BOARD shall annually evaluate and determine salary and benefits for all SYSTEM staff.
- b. Program and service staff members who are employees of member districts performing SYSTEM functions assigned to them by the district through which they are employed.

#### **ARTICLE IV - HOUSING**

##### **4.1 DELIVERY SITES**

4.1.1 DETERMINATION OF LOCATIONS - The BOARD will determine sites for regional programs and services upon recommendation by the Director or members of the BOARD, subject to the provisions of Section 3.1.

4.1.2 INDEPENDENT PROGRAMS - Nothing in this Agreement shall prohibit or restrict the right of a member school district, or combination of districts, to provide any career and technical education course or program independently without approval or coordination by the BOARD. Such courses or programs may not be eligible for Illinois State Board of Education career and technical educational financial support. No SYSTEM funds or resources may be utilized for such courses or programs.

4.1.3 OFFICIAL OFFICE - The official office for the SYSTEM will be determined by the BOARD.

#### **ARTICLE V - FINANCE**

5.1 ORGANIZATION - The BOARD will be responsible for regulating all financial matters of the SYSTEM. The SYSTEM may, as necessary to cover approved operating costs, shortfalls or deficits, assess mutually agreed upon amounts from member districts.

5.2 ADMINISTRATIVE COSTS - Administrative costs will include the salaries and benefits of SYSTEM employees. Also included will be audit costs, printing, supplies and other costs associated with the operation of an administrative office. Administrative costs will be computed by determination of the percentage of student 9-12 ADA as of the close of the previous year as reported for claim on the End of Year report to the total student 9-12 ADA of all member districts. Each member district will then pay that percentage of the administrative costs.

5.3 CAPITAL OUTLAY ASSESSMENT - The BOARD may assess a capital outlay charge prorated to all member districts as a percentage of their student 9-12 ADA as of the close of the previous year as reported on the End of Year report to the total student 9-12 ADA of all member districts. Ownership of equipment purchased in this manner will remain the property of the SYSTEM and an inventory will be maintained.

- 5.4 SYSTEM PROGRAM TUITION COSTS - All SYSTEM program tuition costs will be considered a non-administrative and non-capital outlay costs and will be computed by the actual cost of all programs divided by the number of students participating regionally in all SYSTEM programs as specified in Section 3.1.
- 5.5 METHOD OF PAYMENT
- 5.5.1 Each member district will pay the SYSTEM such sums of money as are due as computed from the annual budget adopted by the BOARD.
- 5.5.2 Member districts will assume responsibility for timely payments.
- 5.6 ACCOUNTING PROCEDURES
- 5.6.1 All accounting procedures will conform to applicable state and federal laws, rules, regulations and guidelines.
- 5.6.2 The Administrative Agent will maintain SYSTEM accounts, income and expenditures and make available to members at BOARD meetings.
- 5.6.3 Contributions from private businesses, governmental and foundation sources will be deposited with the SYSTEM for use subject to approval of the BOARD.
- 5.7 AUDIT - An annual audit will be conducted in accordance with all applicable state and federal laws, rules, regulations and guidelines.
- 5.8 CHARGES TO NON-MEMBERS - Charges to non-member school districts, individuals and other governmental bodies for educational and training services provided by the SYSTEM will be established by the BOARD. In no cases will these charges be less than those made to member districts.
- 5.9 DISTRIBUTION OF INCOME
- 5.9.1 The BOARD may determine the amount of funds to be withheld from Illinois State Board of Education reimbursements for administrative or other costs, based on the annual budget prepared by the Director.
- 5.9.2 The balance of reimbursement funds shall be distributed to member districts in accordance with the formulas determined by each grant.
- 5.9.3 Other special revenue may be distributed to member districts subject to approval by the BOARD.

## **ARTICLE VI - TRANSPORTATION**

- 6.1 TRANSPORTATION
- 6.1.1 Transportation of students will be the responsibility of each participating school district of this Agreement and not the responsibility of the SYSTEM, unless determined by the BOARD.
- 6.1.2 Member districts may wish to enter into separate arrangements to facilitate the economical and efficient transportation of students.

## ARTICLE VII - WITHDRAWAL

### 7.1 WITHDRAWAL

- 7.1.1 Member districts may withdraw from participation in the SYSTEM provided they give written notice 12 months preceding the beginning of the fiscal year (July) in which they plan to withdraw. This notice will be given to the BOARD and to the Illinois State Board of Education.
- 7.1.2 If a member district gives written notice of withdrawal, that district is to continue participation and financial obligation until the withdrawal date of July 1.
- 7.1.3 If a district withdraws, all of the equipment purchased by the SYSTEM remains with the SYSTEM.

### 7.2 TERMINATION

- 7.2.1 This Agreement may be terminated in the event that two-thirds (2/3) of the members so agree. In such instances the vote to terminate must occur twelve months prior to the July 1, termination date and notice shall be given to the Illinois State Board of Education. In the event of termination of this agreement, any sites, facilities or equipment purchased wholly by a member district will remain the property of that district. Any SYSTEM sites, facilities or equipment acquired through the Administrative Agent for the SYSTEM or any assets derived therefrom will be distributed proportionately among member districts as recommended by the BOARD.

- 7.3 REMOVAL - A district, failing to abide by the provisions of this document, is subject to action by the remaining members of the SYSTEM. Such action shall begin at least 12 months prior to the proposed July 1, removal date and the Illinois State Board of Education shall be notified. A removal vote by two-thirds (2/3) of the participating boards of education will be necessary to remove a member.

- 7.4 REORGANIZATION - If a member district is involved in reorganization, that district is considered "dissolved" and automatically no longer considered a member district. If a district is considered "dissolved", all equipment acquired with SYSTEM funding shall be listed and brought before the BOARD. The BOARD will have discretion over how the equipment shall be retained by the SYSTEM or released to the reorganized district. If a member district becomes part of a newly reorganized district, and the reorganized district wishes to join the SYSTEM, that membership will automatically be granted.

## ARTICLE VIII - AMENDMENTS

### 8.1 AMENDMENTS

- 8.1.1 AMENDMENT APPROVAL - Any proposed amendment to this document must be submitted in writing to the Director for distribution to the BOARD 15 days in advance of the next regular meeting. If approved by a two-thirds (2/3) vote at a regular BOARD meeting, the proposed amendment will be submitted, along with a resolution, to each member Board of Education.
- 8.1.2 AMENDMENT RATIFICATION - A member Board of Education will have sixty (60) days in which to act on the proposed amendment and the resolution must be adopted by two-thirds (2/3) of the member Boards of Education within the 60 day period. The amendment will take effect upon ratification unless it provides otherwise.

*Adopted 1986*

*Revisions: June 3, 2014*

*August 25, 2015*

## INTERGOVERNMENTAL AGREEMENT RESOLUTION

Whereas, present statutes allow school districts to jointly offer programs for better educational advantages; and,

Whereas, the constitution of Illinois authorizes Intergovernmental agreements between several school districts, through their school boards to establish such programs:

Now, therefore, let it be resolved that Galesburg, District No. 205  
{Name of School District}

Galesburg, County/Countries of Knox, Illinois is  
{Town}

Authorized to enter into an Intergovernmental Career and Technical Education Agreement with other qualified and participating School Districts; and,

Be it further resolved that the President and Secretary of this BOARD are hereby authorized to direct and execute said working agreement, copy of which is attached hereto, and made part thereof; and,

Be it further resolved that Dr. John Asplund / Jeff Houston are hereby authorized as  
{Superintendent or Representative(s)}

the voting representative (s) for this school district.

### CERTIFICATION

I, Vickie Banks, Secretary of the Board of Education of Galesburg,  
District No. 205, Knox, County/Countries, Illinois, do hereby certify that the  
above and foregoing is a true and correct copy of a certain resolution which was duly passed by said  
BOARD at its regular meeting held on the 10, day of June, 2019.

ATTEST

{President of the BOARD}

CVSD 205/Knox  
{District No. and County/Countries}

Galesburg, IL  
{City and State}

{Secretary of the Board}

CVSD 205/Knox  
{District No. and County/Countries}

Galesburg, IL  
{City and State}

DATE: June 1, 2019

TO: Dr. Asplund

FROM: Dawn Michaud, Special Ed Director

SUBJECT: Special Education Update for the June 10<sup>th</sup> Board

Personnel: Staff Shortages

LBS 1 Special Education Teachers

Short 3 teachers – ED Silas K-1; ED Churchill – 2 positions

School Psychologists

School psych 2 positions

Paraprofessionals

Currently short 3 positions at Churchill for fall and a 1-1 position at Silas

Projects working:

- Staff projections and needs for next year
- Job descriptions updated all but paraprofessional, working on it
- Consolidated District Plan/Grants

Board report information:

- Special Education numbers no change from May, working numbers for next school year

Future Projects:

- District Behavior Point and Level Guide
- Social Work Guide
- Life Skills curriculum final document
- Update Multi-Tiered Systems Support (MTSS)/Response To Interventions (RTI)

Postings for next year:

School Psychologists

Special Education Teachers



# PresenceLearning

## Service Order Form

### Customer Name and Contact Information

Name: Galesburg CUSD 205 - IL

Address: PO BOX 1206 GALESBURG, IL

### Customer Primary Point of Contact

Name: Dawn Michaud

Email Address: dmichaud@galesburg205.org

### Customer Secondary Point of Contact

Name:

Email Address:

### PresenceLearning Contact Information

Name: Robert Stager

Email Address: robert.stager@presencelearning.com



## Service Order Form

### 1. Services

Service	Student Quantity	Price per Service
SLP Services	0	\$72.79
OT Services	0	\$72.79
BMH Services	0	\$72.79
Setup Fee	0	\$100.00

### 2. Assessments

Service	Student Quantity	Price per Service
SLP Assessment	0	\$412.90
OT Assessment	0	\$412.90
BMH Assessment	0	\$550.90
Assessment Bilingual SLP	0	\$550.90
Screenings by SLP	0	\$55.90
Screenings by OT	0	\$55.90
Screenings by SLP BI	0	\$100.90
Evaluation Review of Records by SLP	0	\$357.90
Evaluation Review of Records by OT	0	\$357.90
Evaluation Review of Records by BMH	0	\$357.90

### 3. Psychoeducational Assessments

Service	Student Quantity	Price per Service
Evaluation Coordination and Reporting	0	\$250.90
Review of Records by School Psychologist	0	\$200.90
Cognitive Selected Index	0	\$100.90
Processing Selected Index	0	\$100.90
Achievement Selected Index	0	\$100.90
Rating Scale Assessment	0	\$115.90
Classroom Observation	0	\$75.90
Achievement Standard Battery	0	\$200.90
Long Cognitive Battery	0	\$200.90
Additional Assessment by School Psychologist	0	\$200.90
Standard Processing Battery	0	\$200.90
Additional Requested Meetings	0	\$100.90
School Psych Consultation	0	\$72.79
Translation Services	0	\$100.90
Short Cognitive Battery	0	\$100.90
Select Spanish Index	0	\$200.90

Service	Student Quantity	Price per Service
Spanish Batlery	0	\$300.90

Document Camera	\$85.00 (each)
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## Service Order Form

Contracted Students	0
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Assessments Commitment	0
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Psychoeducational Assessment Commitment	\$60,000.00
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Monthly Commitment*	\$0.00	0 hours at \$72.79
December Commitment*	\$0.00	0 hours at \$72.79

\*This is the monthly minimum amount you will be invoiced during the contracted period.

Term	July 1, 2019 through June 30, 2020
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## Service Order Form

Except as expressly set forth in this Service Order, the parties agree to be bound by the terms of the PresenceLearning Master Services Agreement available at <https://www.presencelearning.com/tc/hourly-rate/>, which is incorporated herein by reference. This Service Order and the MSA together constitute the entire agreement between PresenceLearning and Customer governing the services and products referenced above (the "Agreement"), to the exclusion of all other terms. To the extent there is any conflict between this Service Order and the MSA, this Service Order shall govern. The signatory below represents that he or she has the authority to bind Customer to the terms of this Agreement. The terms of this Service Order are PresenceLearning confidential information.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of July 1, 2019 (Effective Date).

PresenceLearning, Inc.

By:

DocuSigned by:

Jack Phillips

2EB021BEDF4145A...

Name:

Jack Phillips

Title:

Senior Vice President, Revenue

Date:

2019-05-15

Customer

By:

Name:

Dawn Michaud

Title:

Director of Special Education

Date:

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

<b>Purchaser:</b>	Galesburg CUSD 205 JH	<b>Seller:</b>	Clean Energy Design Group, Inc.
<b>Name and Address</b>	Galesburg CUSD 205 932 Harrison Street Galesburg, IL 61402	<b>Name and Address</b>	Clean Energy Design Group, Inc. 1760 Wabash Avenue, #9050 Springfield, IL 62791
<b>Phone</b>	(309) 973-2101	<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>E-mail</b>	jasplund@galesburg205.org.	<b>E-mail</b>	<a href="mailto:dgriffin@cleanenergydesigngroup.com">dgriffin@cleanenergydesigngroup.com</a>
<b>Premises Ownership</b>	Purchaser [X] owns [ ] leases the Premises.  List Premises Owner, if different from Purchaser: _____	<b>Additional Seller Information</b>	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

<b><u>Exhibit 1</u></b>	Basic Terms and Conditions
<b><u>Exhibit 2</u></b>	System Description
<b><u>Exhibit 3</u></b>	Credit Information
<b><u>Exhibit 4</u></b>	General Terms and Conditions
<b><u>Exhibit 5</u></b>	Form of Memorandum of License

**Purchaser:** Galesburg CUSD 205

**Seller:** Clean Energy Design Group, Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: Dr. John Asplund

Printed Name: Mr. Daniel Griffin

Title: Superintendent

Title: Principal and Co-Founder

Date:

Date:

**Exhibit 1**  
**Basic Terms and Conditions**

1. **Initial Term:** Fifteen (15) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each (each an “Additional Term”).
3. **Environmental Incentives, Environmental Attributes, Renewable Energy Credits (“RECs”) and Tax Credits:** Accrue to Seller.
4. **Total Contract Price (Estimated for Initial 20 Year PPA Period):** \$196,199
5. **Initial Monthly Charge:**
  - a. **Late Payment** (>30 days): See 4(d) of Terms and Conditions
  - b. **Late Payment Interest:** See 4(d) of Terms and Conditions – 2.5% over prime
6. **Annual Escalation Rate:** 1%
7. **Initial PPA Price per kilowatt hour (“kWh”):** \$0.0265
8. **Final PPA Price per kWh:** \$0.03201
9. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. Interconnection costs for the System will not exceed \$[ N/A ] in the aggregate.
  - b. Statutory prevailing wage rates do X do not \_\_\_\_\_ apply.
  - c. A Performance Guaranty is \_\_\_\_\_ is not X being provided by Seller, but is X is not \_\_\_\_\_ being provided by equipment manufacturer.
10. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided, the Contract Price excludes the following:
  - a. Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including, but not limited to. client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).
  - b. Snow removal, tree trimming, mowing and any landscape improvements.
  - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including, but not limited to, painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - d. Removal of existing lighting, light poles, or concrete light post bases.
  - e. Roof membrane maintenance or reroofing work.
  - f. Structural upgrades to the Improvements, including ADA upgrades.
  - g. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
  - h. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

- 11. SMART Inverter Rebate:** Purchaser assigns all right, title and interest in the Smart Inverter Rebate associated with the distributed generation and Seller shall be entitled to any rebate therefor provided under Subsection 16-107.5(l) of the Public Utilities Act.
- 12. Estimated Conditional Satisfaction Date:** Q4-2019
- 13. Estimated Commercial Operation Date:** Q4-2019
- 14. Estimated System Life:** 25 Years

**Exhibit 2**  
**System Description**

1. **System Location:** 1480 W Main Street, Galesburg, IL 61401
2. **System Size (DC kW):** 328
3. **Expected First Year Energy Production (kWh):** \_\_\_\_\_
4. **Expected Annual Energy Degradation (%):** 0.05
5. **Expected Structure:** ☐ Ground Mount ☒ Roof Mount ☐ Parking Structure ☐ Other
6. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Seraphim 330W or Tier 1 Equivalent	~994

7. **Expected Inverter(s):**

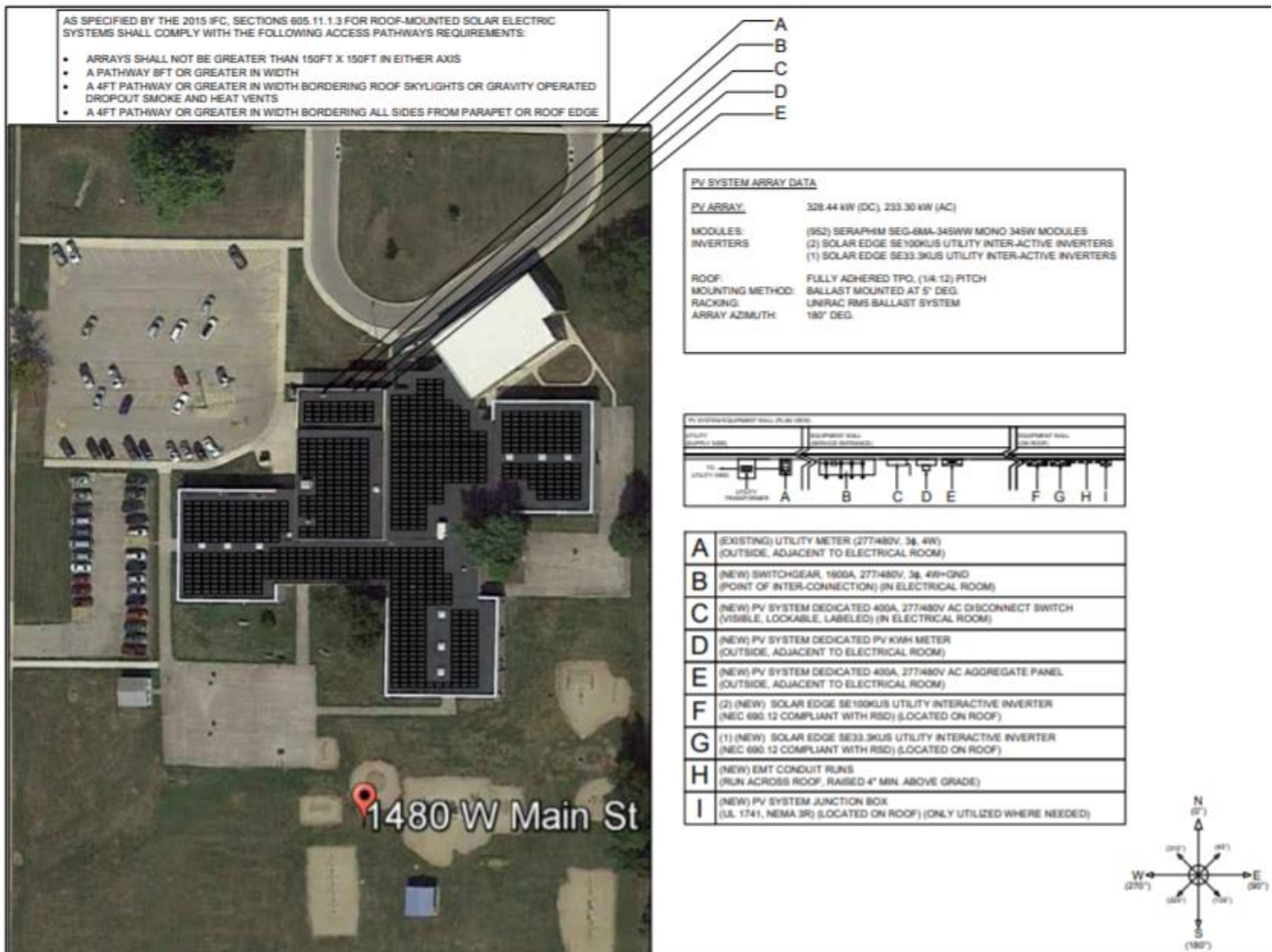
<u>Manufacturer/Model</u>	<u>Quantity</u>
SolarEdge SE100KUS or Tier 1 Equivalent	1

8. **Facility and System Layout:** See **Exhibit 2, Attachment A**
9. **Utility:** Ameren Illinois Company
10. **EPC (engineering, procurement, construction) Services Provider (Tentative):** Evergreen Solar Services (ESS), Inc. and/or Clean Energy Design Group (CEDG), Inc.



**Exhibit 2**  
**Attachment A:**  
Facility and System Layout

An Aerial Photograph of the Facility	See Below
Site Plan of the System	See Below
Delivery Point	See Below
Access Points	See Below



**Exhibit 3**  
**Credit Information**

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
<b>Name:</b> Galesburg CUSD 205					<b>Tax ID:</b>		
<b>Previous &amp; Other Names:</b> n/a				<b>Website:</b> http://ghs.galesburg205.org			
<b>Corporate Address:</b> 932 Harrison Street,							
<b>City, State, Zip</b> Galesburg, IL 61402							
<b>Phone Number:</b> (309) 973-2101				<b>Fax Number:</b>			
<b>Entity Type Check One:</b>	<b>S-Corp</b>	<b>C-Corp</b>	<b>Partnership</b>	<b>Sole Prop</b>	<b>Inc.</b>	<b>LLP</b>	<b>Other:</b> Elementary School
<b>Property Address for Solar Installation:</b> 1480 W Main Street			<b>City, State:</b> Galesburg, IL		<b>Zip Code:</b> 61401	<b>Property Owned by Applicant</b> [ X ] YES [ ] NO	
<b>Property Type</b> Elementary School		<b>Insurance Agent Name To Be Provided</b>		<b>Agents Phone: To Be Provided</b>	<b>Name of Property Owner if Not Applicant</b> n/a		
<b>Information Requested: Please submit the information required below via electronic format to:</b>							
<u>Corporate Records</u>  <input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).  <u>Financial Statements</u>  <input type="checkbox"/> Last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).  <u>Real Estate Documents</u>  <input type="checkbox"/> Lease with Premises Fee Owner  <input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises  Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.							

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that Seller and its Financing Parties are relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warrant and certify that the information provided herein is true, correct and complete. Seller and its Financing Parties are authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give Seller and its Financing Parties any information they may have about you. You authorize Seller and its Financing Parties to answer questions about their credit experience with you. Subject to any non-disclosure agreement between you and Seller and its Financing Parties, this form and any other information given to Seller and its Financing Parties shall be the property of Seller and its Financing Parties. If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Seller at \_\_\_\_\_. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller and its Financing Parties are an equal opportunity lender.

**Signature:**

**Title:**

**Date:**

**Exhibit 4**  
**Solar Power Purchase Agreement**  
**General Terms and Conditions**

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes, including, but not limited to, and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. The energy purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller.
3. **Term and Termination.**
  - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point and has permission to operate from the relevant Governmental Authority. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth on **Exhibit 2**. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current Additional Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The total number of monthly payments during the Initial Term is one hundred and eighty (180). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five dollar (\$25) handling charge will be added to each invoice.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System. Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System ("**Seller's Taxes**"). For purposes of this **Section 4(d)**, "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Taxes. In the event any sales of electric energy or Environmental Attributes, if any, hereunder are eligible to be exempted from or not subject to one or more Taxes, promptly upon Seller's request therefore Purchaser shall provide Seller with all necessary documentation to obtain such exemption or exclusion at no out of pocket cost to Purchaser.
- d. **Payment Terms.** All amounts due under this Agreement shall begin with the Commercial Operation Date and be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Seller is the owner of, and is entitled to the benefit of, all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include any right to any Environmental Attributes, Environmental Incentives, RECs or Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring to Seller all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for the same. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the Environmental Attributes, Environmental Incentives, RECs and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Attributes, Environmental Incentives, RECs and Tax Credits are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Tax Credits or RECs. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or

other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority. Environmental Incentives do not include Environmental Attributes, Tax Credits or RECs.

**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state Public Utilities Commission), or any arbitrator with authority to bind a party at law.

**“Tax Credits”** means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System. Tax Credits do not include Environmental Attributes, Environmental Incentives or RECs.

**“REC”** means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Environmental Attributes, Environmental Incentives or Tax Credits.

## **6. Conditions to Obligations.**

a. **Conditions to Seller’s Obligations.** Seller’s obligations under this Agreement are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the **“Premises”**) including, if applicable, geotechnical work, and real estate due diligence which demonstrates the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. **“Construction Agreement”** as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system.

b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then Seller may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement.

c. **Commencement of Construction.** Seller’s obligation to commence construction and installation of the System is conditioned on Seller’s receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller’s rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the solar lease and easement agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the **“Solar Lease and Easement Agreement”**).

## **7. Seller’s Rights and Obligations.**

a. **Permits and Approvals.** Seller, with Purchaser’s reasonable cooperation, shall use commercially reasonable efforts to obtain, at Seller’s sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility’s electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

## 8. **Purchaser's Rights and Obligations.**

- a. **License to the Premises; Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access

to, on, over, under and across the portions of the Premises shown on Exhibit 2, for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. At request of Seller, Purchaser shall execute a Memorandum of License, and which shall be in form and substance set forth Exhibit 5, or other form agreed to by the parties. Seller may, at its sole cost and expense, record such Memorandum of License with the appropriate land registry or recorder's office.

- b. **OSHA Compliance.** Each party shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in the performance of its respective duties and obligations under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall maintain the Facility and shall, at its sole cost and expense, maintain the Facility in good condition and repair. Seller may maintain the Facility under an independent Operations & Maintenance Agreement (O&M Agreement) with Seller or through Seller by a third-party under an O&M Agreement. Regardless of an O&M Agreement, Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not permit or cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System or the production of electricity from the System or the Utility grid.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility (including for the avoidance of doubt, to Purchaser's roof structures) without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes, Environmental Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with

respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes, Environmental Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 18.a, Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- g. **Security.** Seller acknowledges that the Facility and the System are located upon school real estate that is generally open to the public Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Seller. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.
- i. **Data Line.** Purchaser shall provide Seller a high-speed Internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

## 9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect



on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

**10. Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than One Hundred and Eighty (180) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition, to the extent reasonably practical (reasonable wear and tear, casualty and condemnation excepted); provided, however, that Seller shall not be required to re-contour the grade of the Premises to its original condition, including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Seller shall have no obligation to restore the Facility to the original contour or restore any improvements demolished and removed from the Facility and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

**11. Measurement.**

Seller shall install and own one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility to allow Seller to accurately receive, collect, calculate and transmit meter data for the Utility and calculating production, billing and invoicing purposes. Seller shall maintain the meter(s) in accordance with industry standards.

**12. Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “**Defaulting Party**”, the other Party shall be deemed to be the “**Non-Defaulting Party**”, and each event of default shall be a “**Default Event**”:
- i. Failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
  - ii. Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. Purchaser loses its rights to occupy and enjoy the Premises;

- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- vi. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

**b. Remedies.**

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon ten (10) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to commencement of System installation, a forty thousand dollars (\$40,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a federal tax rate of twenty one percent (21%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes, Environmental Incentives or RECs that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of 5%) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of 5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement

and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

D. Liquidated Damages. The Parties agree that, if either Party terminates this Agreement prior to the expiration of the Term pursuant to this Section 12, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 12 is a reasonable approximation of the damages suffered by the non-defaulting Party as a result of early termination of this Agreement and is not a penalty.

### 13. Representations, Warranties and Covenants.

a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- iii. Each Party is acting for its own account and has made its own independent decision to enter into this PPA and is not relying upon the advice or recommendations of the other Party in so doing.
- iv. Each Party represents and warrants that the various terms, obligations, charges and fees contained in this PPA are the result of arm's length transactions, or, to the extent that such charges and fees are not the result of arm's length transactions, represent market rate charges and fees and that the cost to the Seller is equivalent to fair market value.
- v. The Parties are independent and are not representing, endorsed by, or acting on behalf of, a utility, a consumer group, or a governmental body, unless specifically stated otherwise.

b. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

- i. License. Purchaser has title to or a leasehold or other property interest in the Premises that extends beyond the Term of this Agreement. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser is not the fee simple owner of the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.

- iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.

**14. System and Facility Damage and Insurance.**

**a. System and Facility Damage.**

- i. Seller's Obligations. If the **System** is damaged or destroyed other than by Purchaser's i) gross negligence or willful misconduct, or ii) breach of any terms of this Agreement, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) the sum of the amounts described in Section 12.b.iii.A)(1) and Section 12.b.iii.A)(3).
- ii. Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

**b. Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
- ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least One Million dollars (\$1,000,000) per occurrence and Two Million dollars (\$2,000,000) annual aggregate.

**c. Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

**d. Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

**e. Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance.

**15. Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, RECs and Tax Credits (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as may be evidenced by a UCC-1 or similar filing by the Seller or any Financing Party. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Ownership of SMART Inverter.** Throughout the Term of this Agreement Purchaser hereby grants all right, title and interest in and to SMART Inverter Rebates consistent with the provisions of 220 ILCS 5/16-107.6 to Seller. The value of the rebates offered will be consistent with the amounts specified in 220 ILCS 5/16-107.6 and with related Orders of the ICC. Seller shall own, operate and control the Smart Inverter associated with the distributed generation that is the subject of the rebate for the purpose of preserving reliability during distribution system reliability events. "SMART Inverter" means a device that converts direct current into alternating current and can autonomously contribute to grid support during excursions from normal operating voltage and frequency conditions by providing each of the following: dynamic reactive and real power support, voltage and frequency ride-through, ramp rate controls, communication systems with ability to accept external commands, and other functions from the electric utility.
- c. **Option to Purchase.** At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- d. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of five percent (5 %)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives, RECs and Tax Credits and factoring in future costs and expenses associated with the System avoided costs. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein and shall set forth such determination in a written opinion delivered to the

Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder. Alternatively, the parties may agree on a stipulated fair market value (FMV) in advance of any purchase option date, conducting and determining these terms stipulated in compliance with federal and state laws, and also meeting all the requirements outlined in the Exhibits and Articles that define this Agreement.

**16. Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from i) any third party actions relating to the breach of any representation or warranty set forth in Section 13, and ii) from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, the willful misconduct of, or the breach of the terms of this Agreement by, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 16(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 16(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
  - i. “**Hazardous Substance**” means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
  - i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 16 and damages that result from the willful misconduct of a Party, neither Party nor its directors,

officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of such Environmental Attributes, Environmental Incentives, RECs to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

- ii. Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 16 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made by Purchaser under this Agreement. The provisions of this Section (16)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.
- iii. Any action against Seller must be brought within one (1) year after the cause of action accrues. Any action against Purchaser must be brought within one (1) year after the cause of action accrues.

**17. Force Majeure.**

- a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of ninety (90) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

**18. Assignment and Financing.**

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the

System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 18(a)(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties. Purchaser agrees that it shall provide any publicly available data requested by Seller.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

19. **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the "**Receiving Party**") will hold in confidence any information concerning the affairs of the other Party (the "**Disclosing Party**") and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice. Notwithstanding the foregoing, each Party agrees that the other Party may disclose such data and information to its officers, directors, employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, on a "need to know" basis; provided, however, that such officers, directors, employees, agents, representatives and subcontractors will be advised of the confidentiality provisions hereof. Upon any termination or expiration of this Lease, the Receiving Party will promptly return to the Disclosing Party all such data and information in the Receiving Party's possession (or in the possession of any other person or entity permitted hereby to possess such information pursuant hereto) at such time, unless otherwise directed by the Disclosing Party.

20. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

21. **Miscellaneous Provisions**



- a. **Choice of Law and Jurisdiction.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach thereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.
- b. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- c. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, License to the Premises; Facility Access Rights (Section 8a), No Alteration of Facility (Section 8d), Change in Law (Section 9), Default, Remedies and Damages (Section 12), Representations, Warranties and Covenants (Section 13), Insurance Coverage (Section 14(b)), Indemnification and Limits of Liability (Section 16), Force Majeure (Section 17), Confidentiality and Publicity (Section 19), Choice of Law (Section 21(a)), Arbitration and Attorneys' Fees (**Error! Reference source not found.**) (Section 21), Notices (Section 21(b)), Comparative Negligence (Section 21(f)), Non-Dedication of Facilities (Section 21(g)), Service Contract (Section 21(i)), No Partnership (Section 21(j)) Entire Agreement, Modification, Invalidity, Counterparts, Captions (Section 21(k)), Forward Contract (Section 21(m)) and No Third Party Beneficiaries (Section 21(m)).
- d. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- e. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- f. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- g. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- h. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to

such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- i. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- j. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- k. **Entire Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- l. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- m. **No Third-Party Beneficiaries.** Except for assignees and Financing Parties, permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- n. **Counterparts.** The execution page to this Agreement (page one) may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

**Exhibit 5**  
**Form of Memorandum of License**

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [\_\_\_\_], notice is hereby given of that Solar Power Purchase Agreement dated as of [\_\_\_\_] for purchase and sale of electrical energy (the “**Solar Agreement**”), such Solar Agreement includes the grant of License to Seller, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Solar Agreement:

Seller:           Clean Energy Design Group, Inc.  
                    1760 Wabash Avenue, #9050  
                    Springfield, IL 62791

Purchaser :      Galesburg CUSD 205 Steele Elementary  
                    932 Harrison Street  
                    Galesburg, IL 61401

Date of Execution of Solar Agreement: [\_\_\_\_\_]

Description of Premises: See **Exhibit 5, Attachment A**

**TERM OF AGREEMENT:**

The term of the Solar Agreement shall be until the last day of the calendar month in which the twenty fifth (25th) anniversary of the Commercial Operation Date (as that term is defined in the Solar Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Agreement.

[signature pages follow]

IN WITNESS WHEREOF, this Memorandum of License has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 .

Seller:  
Clean Energy Design Group, Inc.

By: \_\_\_\_\_  
Print Name: Mr. Daniel Griffin  
Title: Principal and Co-Founder

Purchaser:  
Galesburg CUSD 205

By: \_\_\_\_\_  
Print Name: Dr. John Asplund  
Title: Superintendent

***[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]***

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of [\_\_\_\_] that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

***[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]***

**Exhibit 5**  
**Attachment A**  
Description of the Premises

To Be Provided

**End of Exhibit 5**

## **SOLAR FACILITIES SITE LEASE**

This Solar Facilities Site Lease (this “Lease”), dated as of \_\_\_\_\_, 2019 (the “Effective Date”), is entered into by and between Clean Energy Design Group, Inc., a Wyoming corporation (“Lessee”), and Galesburg CUSD 205 (“Lessor”). Each of Lessee and Lessor is referred to herein as a “Party” and collectively they are referred to as the “Parties”.

### **RECITALS**

WHEREAS, in order to develop, construct, own, operate and maintain one or more photovoltaic solar energy facilities (individually, on a Parcel (as defined herein) a “Facility” and collectively, the “System”), Lessee requires access to certain property owned or leased by Lessor as identified in Exhibit A hereto (collectively, the “Premises”); and

WHEREAS, in connection with the foregoing, Lessee desires to lease the Premises from Lessor in order to develop, construct, own, operate and maintain the System, and Lessor is willing to grant such lease to Lessee, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

- 1) **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way as shown on Exhibit A hereto for the purpose of constructing, operating and maintaining the System. Lessor grants access across, through, under or over premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary to develop, construct, own, operate and maintain, or otherwise access, the System or the Premises. The access to said right of way shall be subordinate to Lessor’s access.
- 2) **Rent.** During the Term of this Lease, Lessee shall pay Lessor the amounts set forth in Exhibit B (the “Rent”) as compensation in full for the rights with respect to the Premises, and such other rights, as set forth in this Lease. Said rent shall be payable on the first day of each month beginning on the first day of the month before installation mobilization. The further parties acknowledge that Lessor’s ability to enter into a Solar Power Purchase Agreement (the “PPA”), substantially similar to Exhibit D attached hereto shall be deemed part of the consideration for this Lease.
- 3) **System Development, Construction, Ownership, Operation and Maintenance.**
  - (a) Lessor hereby consents to the development, construction, ownership, operation and maintenance of the System and any component thereof by Lessee, its Affiliates and any employees, agents, representatives, subcontractors or other designees of any of the foregoing and any local electric utility personnel, on the Premises, including solar panels, mounting substrates or supports, wiring and

connections, power inverters, service equipment, metering equipment, utility interconnections and any other equipment or facilities related thereto.

(b) Without limitation of the foregoing, Lessee shall also have the right during the Term hereof to access the Premises to:

- (i) clean, repair, replace and dispose of part or all of any System;
- (ii) access the Premises with guests for promotional purposes at times acceptable to the Lessor in its sole discretion; and
- (iii) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.

(c) Lessor acknowledges that the development, construction, ownership, operation and maintenance of all or a portion of the System may require construction, installation or other work to, above or below the ground, and Lessor hereby consents to all such installation.

4) **Access to Premises.** Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, construct, own, operate and maintain the System as contemplated herein or in the applicable PPA, including ingress and egress rights to the Premises for Lessee, its Affiliates and any employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, regulators and other designees of any of the foregoing and any local electric utility personnel, and access to the System to interconnect the System with the Premises' electrical wiring. Lessor shall provide such space and access as is reasonably requested by Lessee for laydown, for the temporary storage and staging of tools, materials, parts, supplies and equipment, for rigging and material handling, for the parking of vehicles and temporary trailers and facilities and for erecting an office or other structure, in each case as reasonably necessary or convenient for the development, construction, ownership, operation, and maintenance of the System or any portion thereof. Lessor and its authorized representatives shall at all times have access to, and the right to observe, the development, construction, ownership, operation and maintenance of the System on the Premises, subject to compliance with Lessee's safety rules; provided, however, that Lessor shall not interfere with the development, construction, ownership, operation and maintenance of the System or handle any Lessee equipment or the System without written authorization from Lessee. Notwithstanding the foregoing, Lessee agrees, upon request, to provide Lessor with the names and background check information for personnel, contractors, subcontractors and vendors requesting access to the Premises.

5) **System Output and Ownership**

(a) Lessor acknowledges and agrees that (i) Lessee or one of its Affiliates is and shall be the exclusive owner and operator of the System, (ii) all equipment and facilities comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or



may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises, and (iii) Lessor shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises.

- (b) As between Lessor and Lessee, Lessor acknowledges that Lessee or one of its Affiliates is and shall be the exclusive owner of all Energy Output of the System, of all Environmental Attributes related to the System and of any other tax or financial incentives related to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any such Energy Output, Environmental Attributes or tax or financial incentives.

### **Representations and Warranties, Covenants of Lessor.**

- (a) Powers; Authorization. Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessor represents and warrants to the best of its knowledge and belief, that the execution, delivery and performance by it of this Lease does not require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) Binding Obligation. Lessor represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Lessor's Title to Premises. Lessor represents, warrants and covenants to the best of its knowledge that Lessor has lawful title to the Premises and that Lessee shall have quiet and peaceful possession of the Premises in accordance with this Lease subject to any easements or rights of way which are a matter of public record without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in this Lease shall run with the Premises and survive any such transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or

party to whom a lien has been granted to execute and deliver to Lessee a document in form and substance satisfactory to Lessee, pursuant to which such party (i) acknowledges and consents to the Lessee's rights in the Premises as set forth herein, including an acknowledgement by the transferee that it has no interest in the System, the Energy Output, the Environmental Attributes or any other tax or financial incentive relating thereto, and shall not gain any interest in any of the foregoing by virtue of the Lessor's transfer, and (ii) expressly subordinates any lien it may have in and to any of the foregoing to Lessee's rights and interests hereunder.

- (e) No Interference with and Protection of System. Lessor will not conduct activities on, in, under, over or about the Premises, the System or any portion thereof that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessee acknowledges that the Premises are located upon school real estate and is generally open to the public. Lessee shall take all reasonable steps to limit access to the Premises to Lessee and Persons entitled to access the Premises on Lessee's behalf pursuant to this Lease. Lessor shall cooperate with Lessee to allow Lessee to implement and maintain reasonable and appropriate security measures on the Premises to prevent the public, Lessor's employees, invitees, agents and representatives, any third parties and animals, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- (f) Maintenance of Premises. Lessee shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) of which Lessor becomes aware. Lessee shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.
- (g) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor. Without limiting the foregoing, Lessor shall not (i) construct or otherwise permit to exist any structure on the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor (except for structures, if any, existing on the Premises as of the Effective Date), (ii) permit the growth of foliage, or (iii) emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, in each case that could adversely affect insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could

adversely affect insulation levels at the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing insulation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (A) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(h), (B) an award of damages would be inadequate to remedy such a breach, and (C) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(h).

- (h) Hazardous Materials. To the best of Lessor's knowledge, there are no hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises in violation of any Applicable Law or that might otherwise impair Lessee's ability to utilize the Premises as contemplated by this Lease. Lessor shall not introduce or use any hazardous, toxic or dangerous substances, chemicals, materials or wastes on, in, under or over the Premises in violation of any Applicable Law. If Lessor becomes aware of any hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises, Lessor shall promptly notify Lessee of the type and location of such substances, chemicals, materials or wastes in writing. Lessor agrees to assume full responsibility for (and shall protect, indemnify and defend the Lessee Indemnitees against) any liability or cleanup obligations for, and any interference with the operation of the System by, any such substances, chemicals, materials or wastes on, in, under or over the Premises, unless directly caused by the actions of Lessee.
- (i) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements that would (i) materially increase the cost of developing, constructing, owning, operating or maintaining the System at the planned locations on the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (ii) adversely affect the ability of the System as designed to produce Energy once installed.

**7) Representations and Warranties, Covenants of Lessee.**

- (a) Powers; Authorization. Lessee represents and warrants that it has all requisite power and authority to enter into this Lease, and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessee represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate (A) its organizational documents, or (B) any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.

- (c) Binding Obligation. Lessee represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law. If Lessee becomes aware of any such hazardous, toxic or dangerous materials on, in, under or over the Premises, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and shall protect, indemnify and defend Lessor Indemnitees against) any liability or cleanup obligations for any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law that are directly caused by the actions of Lessee.

**8) Term and Termination.**

- (a) Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall be in effect until the fifteenth (15<sup>th</sup>) anniversary of the date a Facility on a Parcel achieves commercial operation under the applicable PPA, or January 1, 2020, whichever is sooner, unless terminated earlier or extended in accordance with this Lease. Thereafter, the Term shall automatically extend for two (2) consecutive periods of five (5) years each, unless earlier terminated in accordance herewith. In addition, the then-current term of this Lease shall be extended if, and for the same period that, a related PPA is extended as a result of Force Majeure thereunder. Without limiting any other provisions of this Lease, Lessee may terminate this Lease in Lessee's sole discretion at any time upon three (3) months' written notice to Lessor without triggering the Event of Default provisions of Section 15 or incurring any liability under this Agreement whatsoever.
- (b) Removal of System at End of Term. Unless otherwise notified by Lessee, Lessor shall, upon termination of this lease, deconstruct, decommission, dismantle and remove the System from the Premises, and shall return the Premises to its original condition. Upon election and notice by Lessee, Lessee shall be entitled, within one hundred eighty (180) days following the end of the Term, and at Lessee's cost and expense, to decommission, deconstruct, dismantle and remove the System from the Premises. During such one hundred eighty (180) day period, Lessee, its Affiliates and any employees, agents, representatives, contractors, subcontractors and other designees of any of the foregoing and any local electric utility personnel shall continue to have access to the Premises and the System as otherwise provided in this Lease, without payment of further Rent or other consideration, for purposes of such decommissioning, deconstruction, dismantling and removal.

**9) Insurance.**

- (a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party will name and endorse the other Party as an additional insured in each such policy. For the avoidance of doubt, Lessee's property insurance shall cover the System and Lessor's property insurance shall cover the Premises.
- (b) Lessor shall provide and maintain insurance against any System Loss caused by the negligence or willful misconduct of Lessor or any of its employees, invitees, agents and representatives, not including business interruption insurance, in an amount not less than \$1,000,000, with loss payable to Lessee. The period of indemnity shall not be less than twelve (12) months. Each policy shall waive the insurer's right of subrogation, except that Lessor's policy shall provide that in the event of casualty or loss at the Premises affecting the System, Lessee's property insurer may proceed against the Lessor's insurer. Any such policies of insurance shall expressly provide that such insurance as to Lessee shall not be invalidated by any act, omission or neglect of Lessor and cannot be canceled without ten (10) Business Days' prior written notice to Lessee. As to each such policy, Lessor shall furnish to Lessee a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 9. In the event that Lessor is, notwithstanding the use of its commercially reasonable efforts, unable to obtain the insurance required by this Section 9, Lessee shall be entitled to obtain such insurance at Lessor's cost and expense. Lessor shall, promptly upon demand therefor from Lessee, reimburse Lessee for the full cost and expense of any such insurance that is obtained by Lessee.
- (c) The provisions of this Lease shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties hereunder shall not be limited or reduced by insurance.

**10) Taxes.**

- (a) Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof).
- (b) Lessor shall pay all (a) real and personal property taxes relating to the Premises, (b) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (c) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (d) taxes, fees, service payments, excises, assessments,

bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.

**11) Liability and Indemnity.**

- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless, Lessor, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessor Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessor, and damage or destruction of property, including property of Lessor, any utility company or Lessor, arising out of (i) the gross negligence or willful misconduct of Lessee, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessee or its Affiliates; or (ii) the material breach by Lessee of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessor Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessee’s obligations pursuant to this Section 11(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessor Indemnatee or the acts of third parties. Lessee shall pay any cost that may be incurred by any Lessor Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessee Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessee, and damage or destruction of property, including property of Lessee, any utility company or Lessee, arising out of (i) the gross negligence or willful misconduct of Lessor, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessor or its Affiliates; or (ii) the material breach by Lessor of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessee Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessor’s obligations pursuant to this Section 11(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessee Indemnatee or the acts of third parties. Lessor shall pay any cost that may be incurred by any Lessee Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out



of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Lease.

**12) Casualty or Condemnation; Force Majeure.**

- (a) In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor, effective as of a date specified in such notice. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction; provided, however, that, except as otherwise provided in this Lease (including Section 9 and Section 11(b)), Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by Applicable Law for its respective property interest appropriated as well as any damages suffered thereby.
- (b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Lease and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this Lease (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations hereunder; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11).

**13) Assignment.**

- (a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided, however, that Lessee may, in its sole discretion, without the consent of Lessor, assign any of its rights, duties or obligations under this Lease to (i) one or more parties providing

financing or refinancing in connection with the development, construction, ownership, operation or maintenance of the System, or any representative of such parties, (ii) any present or future purchaser(s) of all or any portion of the Energy Output or Environmental Attributes, (iii) any Person succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction. For the avoidance of doubt, changes in control of Lessee shall not be deemed to be assignments of this Lease.

- (b) In addition to the foregoing, Lessee may, in its sole discretion, without the consent of Lessor, assign its rights and obligations hereunder with respect to all or a portion of the Premises to any of its Affiliates. In the event that Lessee assigns its rights and obligations hereunder with respect to a portion of the Premises (the “Assigned Portion”) to any of its Affiliates (the “Assigned Portion Affiliate”) then, if Lessee or such Affiliate so requests, Lessor shall execute (i) with Lessee, an amendment to this Lease reflecting the removal of the Assigned Portion from the Premises for purposes of this Lease, and (ii) with the Assigned Portion Affiliate, a new lease agreement (the “Assigned Portion Lease”) in the form of, and on the same term and conditions set forth in, this Lease. Upon execution of the Assigned Portion Lease, Lessee shall have no obligations in respect of the Assigned Portion and the Assigned Portion Affiliate shall have no obligations in respect of the remaining Premises subject to this Lease.
- (c) Any assignee of Lessee (other than any financing party or any representative thereof to whom this Lease is assigned in connection with the foregoing Section 13(a)(i) or any Assigned Portion Affiliate that has executed an Assigned Portion Lease) or Lessor agrees to assume the obligations of the assignor under, and to be bound by the terms of, this Lease to the extent of such assignment.

14) **Cooperation with Financing.** Lessor acknowledges that Lessee may be financing or refinancing all or a portion of the development, construction, ownership, operation or maintenance of the System. Lessor agrees that it shall provide publicly available data requested by Lessee.

15) **Defaults and Remedies.**

- (a) **Default.** An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:
  - (i) the failure to make, when due, any payment required under this Lease if such failure is not remedied within ten (10) Business Days after the receipt by the Defaulting Party of a Notice of Default;
  - (ii) the failure to perform any material covenant or obligation set forth in this Lease (except to the extent constituting a separate Event of Default), if such failure is not cured within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the



exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;

- (iii) any representation or warranty of the Defaulting Party is untrue or inaccurate in any material respect, which untruth or inaccuracy has a material adverse effect on the other Party, and the Defaulting Party fails to cure such material adverse effect within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;
  - (iv) such Party becomes Bankrupt;
  - (v) such Party fails to provide or maintain in full force and effect any insurance required under this Lease, if such failure is not remedied within thirty (30) calendar days after receipt by the Defaulting Party of a Notice of Default;
  - (vi) Lessor makes a transfer or assignment of its rights under this Lease other than in accordance with the terms and conditions hereof; or
  - (vii) without limitation of any of the foregoing, Lessor fails to perform any covenant or obligation set forth in this Lease, failure which materially interferes with the System's development, construction, ownership, operation or maintenance of the System for more than thirty (30) consecutive days.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.
- (c) Remedies. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease, all of which remedies

shall be cumulative. Such remedies shall include the right of the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**16) Dispute Resolution.**

- (a) Notice of Dispute/Negotiated Resolution. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the ten (10) Business Day period following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.
- (b) Jurisdiction. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.

**17) Miscellaneous.**

- (a) Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices will be made in writing except where this Lease expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section. Initial addresses for notice shall be as follows:

Lessor:

Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

With a copy to:

Dr. John Asplund  
Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

Lessee:

Clean Energy Design Group, Inc.  
1760 Wabash Avenue, #9050  
Springfield, IL 62791  
Attn: Mr. Daniel Griffin, Principal and Co-Founder  
Email: [dgriffin@cleanenergydesigngroup.com](mailto:dgriffin@cleanenergydesigngroup.com)

- 18) **Governing Law/Venue.** This Lease will be governed by the laws of the State of Illinois without giving effect to principles of conflicts of laws that would require the application of the law of another jurisdiction.
- 19) **Entire Agreement; Amendments.** This Lease and, if applicable, any PPA between Lessor and Lessee (including the exhibits, any written schedules, supplements or amendments hereto or thereto) constitute the entire agreement between the Parties and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof or thereof. Any amendment, modification or change to this Lease will be void unless in writing and signed by both Parties.
- 20) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.
- 21) **Severability.** If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

- 22) **No Third-Party Beneficiaries.** Nothing in this Lease will provide any benefit to any third party or entitle any third party (other than any Lessor Indemnitee or Lessee Indemnitee) to any claim, cause of action, remedy or right of any kind.
- 23) **No Recourse to Affiliates.** This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 24) **Relationships of Parties.** This Lease shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.
- 25) **Attorneys' Fees.** If any arbitration or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such arbitration or proceeding or enforcing any decision granted therein.
- 26) **Counterparts.** This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Lease received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.
- 27) **Further Assurances.** The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Lease.
- 28) **Construction of Agreement.** This Lease and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against both Parties and shall further be construed and interpreted without reference to the identity of the Party preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Lease or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist.
- 29) **Exhibits and Schedules; Headings; Defined Terms.** Any and all exhibits and schedules referenced herein or attached hereto are hereby incorporated into this Lease by reference. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Capitalized terms used herein shall have the corresponding meanings given to such terms in Exhibit C.

- 30) **Survival.** The provisions of Sections 8, 11, 12, 14, 15, 16 and 17 hereof will survive any expiration or termination of this Lease.
- 31) **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the “Receiving Party”) will hold in confidence any information concerning the affairs of the other Party (the “Disclosing Party”) and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, (B) the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or (C) such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice.
- 32) **Estoppel.** Either Party, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party:
- (a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
  - (b) whether or not to the knowledge of such Party there are then existing any defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
  - (c) such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to the facts contained in the certificate.

- 33) **Waiver of Sovereign Immunity.** With the specific exception of Illinois Local Governmental and Employees Tort Immunity Act: 745 ILCS 10/1et seq., Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, to enforce any liability or obligation related to or arising from this Lease, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby

expressly and irrevocably waives any such immunity to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

Attest:

Galesburg CUSD 205, Lessor:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Dr. John Asplund

Title: Superintendent

Clean Energy Design Group, Inc., Lessee

By: \_\_\_\_\_

Name: Mr. Daniel Griffin

Title: Principal and Co-Founder

## **EXHIBIT A**

### **Description of Premises**

The Premises consist of the parcels described below (each, a “Parcel”), each owned, operated and managed by Lessor in and around the city of Galesburg, Illinois. All of the Premises will be leased to Lessee for the purpose of developing, constructing, owning, operating and maintaining the System, and as otherwise described in the Lease.

Parcel Designation	Description	Location
	5.5 Acres	1135 W. Fremont Street Galesburg, IL 61401

**EXHIBIT B**

**RENT**

Lessee shall pay Rent to Lessor according to the following schedule:

\$833.33 Rent x 5.5 Acres = \$4,583.32 beginning on the First Day of the Month before mobilization



## EXHIBIT C

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

**1) Definitions.** The definitions provided below and elsewhere in this Lease will apply to the defined terms used in this Lease:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Assigned Portion” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Affiliate” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Lease” shall have the meaning ascribed in Section 13(b).

“Bankrupt” means that a Person: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (g) has insolvency, receivership, reorganization, bankruptcy, or similar proceedings commenced against it and such proceedings remain undismissed or unstayed for a period of ninety (90) days.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means a calendar day excluding Saturdays, Sundays and days that are official holidays of the United States or the State of Maryland.

“Claiming Party” shall have the meaning ascribed in Section 12(b).

“Defaulting Party” shall have the meaning ascribed to it in Section 15(a).

“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under a PPA.

“Disclosing Party” shall have the meaning ascribed to it in Section 17(q).

“Effective Date” shall have the meaning ascribed to it in the preamble.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of electrical energy generated by the System and delivered to the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Applicable Law, and to a federal or state agency or any other Person at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future Applicable Law, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

“Event of Default” shall have the meaning ascribed to it in Section 15(a).

“Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance is not within the reasonable control, or the result of the negligence, of the Claiming Party. Economic hardship of either Party shall not constitute Force Majeure.

“Insolation” shall have the meaning ascribed to it in Section 6(h).

“Lease” shall have the meaning ascribed to it in the preamble.

“Lessee” shall have the meaning ascribed to it in the preamble.

“Lessee Indemnitees” shall have the meaning ascribed to it in Section 11(b).

“Lessor” shall have the meaning ascribed to it in the preamble.

“Lessor Indemnitees” shall have the meaning ascribed to it in Section 11(a).

“Lessor’s Landlord” shall have the meaning ascribed to it in Section 6(d).

“Metering Device” means any and all meters at or before any Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

“Notice of Default” shall have the meaning ascribed to it in Section 14(b).

“Notice of Intent to Arbitrate” shall have the meaning ascribed to it in Section 15(b)(ii).

“Parcel” shall have the meaning ascribed to it in Exhibit A.

“Party” and “Parties” shall have the meaning ascribed to it in the preamble.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“PPA” means a power purchase agreement entered into between Lessee and another Person, pursuant to which Lessee sells all or any portion of the Electrical Output or all or any portion of the Environmental Attributes to such other Person.

“Premises” shall have the meaning ascribed to it in the recitals.

“Receiving Party” shall have the meaning ascribed to it in Section 17(g).

“Rent” shall have the meaning ascribed to it in Section 2.

“System” shall have the meaning ascribed to it in the recitals.

“System Loss” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty and condemnation) other than (a) Lessee’s negligence or intentional misconduct, (b) Lessee’s breach of maintenance obligations under the PPA, or (c) normal wear and tear of the System.

“Term” shall have the meaning ascribed to it in Section 8(a).

**2) Rules of Interpretation.** In this Lease, unless expressly provided otherwise:

- a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Lease and a reference to a recital, Article, Section, subsection or paragraph of this Lease or any other

agreement is a reference to a recital, Article, Section, subsection or paragraph of this Lease or other agreement in which it is used unless otherwise stated;

- b) references to this Lease, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- d) a reference to this Lease, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Lease or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this Lease expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) a reference to time is a reference to the time in effect in Washington, DC on the relevant date; and
- q) if a payment prescribed under this Lease to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day.
- r) in the event of a conflict in the interpretation of this Agreement and the PPA, this Agreement shall control.

## **SOLAR FACILITIES SITE LEASE**

This Solar Facilities Site Lease (this “Lease”), dated as of \_\_\_\_\_, 2019 (the “Effective Date”), is entered into by and between Clean Energy Design Group, Inc., a Wyoming corporation (“Lessee”), and Galesburg CUSD 205 (“Lessor”). Each of Lessee and Lessor is referred to herein as a “Party” and collectively they are referred to as the “Parties”.

### **RECITALS**

WHEREAS, in order to develop, construct, own, operate and maintain one or more photovoltaic solar energy facilities (individually, on a Parcel (as defined herein) a “Facility” and collectively, the “System”), Lessee requires access to certain property owned or leased by Lessor as identified in Exhibit A hereto (collectively, the “Premises”); and

WHEREAS, in connection with the foregoing, Lessee desires to lease the Premises from Lessor in order to develop, construct, own, operate and maintain the System, and Lessor is willing to grant such lease to Lessee, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

- 1) **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way as shown on Exhibit A hereto for the purpose of constructing, operating and maintaining the System. Lessor grants access across, through, under or over premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary to develop, construct, own, operate and maintain, or otherwise access, the System or the Premises. The access to said right of way shall be subordinate to Lessor’s access.
- 2) **Rent.** During the Term of this Lease, Lessee shall pay Lessor the amounts set forth in Exhibit B (the “Rent”) as compensation in full for the rights with respect to the Premises, and such other rights, as set forth in this Lease. Said rent shall be payable on the first day of each month beginning on the first day of the month before installation mobilization. The further parties acknowledge that Lessor’s ability to enter into a Solar Power Purchase Agreement (the “PPA”), substantially similar to Exhibit D attached hereto shall be deemed part of the consideration for this Lease.
- 3) **System Development, Construction, Ownership, Operation and Maintenance.**
  - (a) Lessor hereby consents to the development, construction, ownership, operation and maintenance of the System and any component thereof by Lessee, its Affiliates and any employees, agents, representatives, subcontractors or other designees of any of the foregoing and any local electric utility personnel, on the Premises, including solar panels, mounting substrates or supports, wiring and

connections, power inverters, service equipment, metering equipment, utility interconnections and any other equipment or facilities related thereto.

(b) Without limitation of the foregoing, Lessee shall also have the right during the Term hereof to access the Premises to:

- (i) clean, repair, replace and dispose of part or all of any System;
- (ii) access the Premises with guests for promotional purposes at times acceptable to the Lessor in its sole discretion; and
- (iii) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.

(c) Lessor acknowledges that the development, construction, ownership, operation and maintenance of all or a portion of the System may require construction, installation or other work to, above or below the ground, and Lessor hereby consents to all such installation.

4) **Access to Premises.** Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, construct, own, operate and maintain the System as contemplated herein or in the applicable PPA, including ingress and egress rights to the Premises for Lessee, its Affiliates and any employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, regulators and other designees of any of the foregoing and any local electric utility personnel, and access to the System to interconnect the System with the Premises' electrical wiring. Lessor shall provide such space and access as is reasonably requested by Lessee for laydown, for the temporary storage and staging of tools, materials, parts, supplies and equipment, for rigging and material handling, for the parking of vehicles and temporary trailers and facilities and for erecting an office or other structure, in each case as reasonably necessary or convenient for the development, construction, ownership, operation, and maintenance of the System or any portion thereof. Lessor and its authorized representatives shall at all times have access to, and the right to observe, the development, construction, ownership, operation and maintenance of the System on the Premises, subject to compliance with Lessee's safety rules; provided, however, that Lessor shall not interfere with the development, construction, ownership, operation and maintenance of the System or handle any Lessee equipment or the System without written authorization from Lessee. Notwithstanding the foregoing, Lessee agrees, upon request, to provide Lessor with the names and background check information for personnel, contractors, subcontractors and vendors requesting access to the Premises.

5) **System Output and Ownership**

(a) Lessor acknowledges and agrees that (i) Lessee or one of its Affiliates is and shall be the exclusive owner and operator of the System, (ii) all equipment and facilities comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or

may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises, and (iii) Lessor shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises.

- (b) As between Lessor and Lessee, Lessor acknowledges that Lessee or one of its Affiliates is and shall be the exclusive owner of all Energy Output of the System, of all Environmental Attributes related to the System and of any other tax or financial incentives related to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any such Energy Output, Environmental Attributes or tax or financial incentives.

### **Representations and Warranties, Covenants of Lessor.**

- (a) Powers; Authorization. Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessor represents and warrants to the best of its knowledge and belief, that the execution, delivery and performance by it of this Lease does not require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) Binding Obligation. Lessor represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Lessor's Title to Premises. Lessor represents , warrants and covenants to the best of its knowledge that Lessor has lawful title to the Premises and that Lessee shall have quiet and peaceful possession of the Premises in accordance with this Lease subject to any easements or rights of way which are a matter of public record without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in this Lease shall run with the Premises and survive any such transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or



party to whom a lien has been granted to execute and deliver to Lessee a document in form and substance satisfactory to Lessee, pursuant to which such party (i) acknowledges and consents to the Lessee's rights in the Premises as set forth herein, including an acknowledgement by the transferee that it has no interest in the System, the Energy Output, the Environmental Attributes or any other tax or financial incentive relating thereto, and shall not gain any interest in any of the foregoing by virtue of the Lessor's transfer, and (ii) expressly subordinates any lien it may have in and to any of the foregoing to Lessee's rights and interests hereunder.

- (e) No Interference with and Protection of System. Lessor will not conduct activities on, in, under, over or about the Premises, the System or any portion thereof that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessee acknowledges that the Premises are located upon school real estate and is generally open to the public. Lessee shall take all reasonable steps to limit access to the Premises to Lessee and Persons entitled to access the Premises on Lessee's behalf pursuant to this Lease. Lessor shall cooperate with Lessee to allow Lessee to implement and maintain reasonable and appropriate security measures on the Premises to prevent the public, Lessor's employees, invitees, agents and representatives, any third parties and animals, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- (f) Maintenance of Premises. Lessee shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) of which Lessor becomes aware. Lessee shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.
- (g) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor. Without limiting the foregoing, Lessor shall not (i) construct or otherwise permit to exist any structure on the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor (except for structures, if any, existing on the Premises as of the Effective Date), (ii) permit the growth of foliage, or (iii) emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, in each case that could adversely affect insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could

adversely affect insulation levels at the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing insulation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (A) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(h), (B) an award of damages would be inadequate to remedy such a breach, and (C) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(h).

- (h) Hazardous Materials. To the best of Lessor's knowledge, there are no hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises in violation of any Applicable Law or that might otherwise impair Lessee's ability to utilize the Premises as contemplated by this Lease. Lessor shall not introduce or use any hazardous, toxic or dangerous substances, chemicals, materials or wastes on, in, under or over the Premises in violation of any Applicable Law. If Lessor becomes aware of any hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises, Lessor shall promptly notify Lessee of the type and location of such substances, chemicals, materials or wastes in writing. Lessor agrees to assume full responsibility for (and shall protect, indemnify and defend the Lessee Indemnitees against) any liability or cleanup obligations for, and any interference with the operation of the System by, any such substances, chemicals, materials or wastes on, in, under or over the Premises, unless directly caused by the actions of Lessee.
- (i) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements that would (i) materially increase the cost of developing, constructing, owning, operating or maintaining the System at the planned locations on the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (ii) adversely affect the ability of the System as designed to produce Energy once installed.

**7) Representations and Warranties, Covenants of Lessee.**

- (a) Powers; Authorization. Lessee represents and warrants that it has all requisite power and authority to enter into this Lease, and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessee represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate (A) its organizational documents, or (B) any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.

- (c) Binding Obligation. Lessee represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law. If Lessee becomes aware of any such hazardous, toxic or dangerous materials on, in, under or over the Premises, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and shall protect, indemnify and defend Lessor Indemnitees against) any liability or cleanup obligations for any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law that are directly caused by the actions of Lessee.

**8) Term and Termination.**

- (a) Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall be in effect until the fifteenth (15<sup>th</sup>) anniversary of the date a Facility on a Parcel achieves commercial operation under the applicable PPA, or January 1, 2020, whichever is sooner, unless terminated earlier or extended in accordance with this Lease. Thereafter, the Term shall automatically extend for two (2) consecutive periods of five (5) years each, unless earlier terminated in accordance herewith. In addition, the then-current term of this Lease shall be extended if, and for the same period that, a related PPA is extended as a result of Force Majeure thereunder. Without limiting any other provisions of this Lease, Lessee may terminate this Lease in Lessee's sole discretion at any time upon three (3) months' written notice to Lessor without triggering the Event of Default provisions of Section 15 or incurring any liability under this Agreement whatsoever.
- (b) Removal of System at End of Term. Unless otherwise notified by Lessee, Lessor shall, upon termination of this lease, deconstruct, decommission, dismantle and remove the System from the Premises, and shall return the Premises to its original condition. Upon election and notice by Lessee, Lessee shall be entitled, within one hundred eighty (180) days following the end of the Term, and at Lessee's cost and expense, to decommission, deconstruct, dismantle and remove the System from the Premises. During such one hundred eighty (180) day period, Lessee, its Affiliates and any employees, agents, representatives, contractors, subcontractors and other designees of any of the foregoing and any local electric utility personnel shall continue to have access to the Premises and the System as otherwise provided in this Lease, without payment of further Rent or other consideration, for purposes of such decommissioning, deconstruction, dismantling and removal.

**9) Insurance.**

- (a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party will name and endorse the other Party as an additional insured in each such policy. For the avoidance of doubt, Lessee's property insurance shall cover the System and Lessor's property insurance shall cover the Premises.
- (b) Lessor shall provide and maintain insurance against any System Loss caused by the negligence or willful misconduct of Lessor or any of its employees, invitees, agents and representatives, not including business interruption insurance, in an amount not less than \$1,000,000, with loss payable to Lessee. The period of indemnity shall not be less than twelve (12) months. Each policy shall waive the insurer's right of subrogation, except that Lessor's policy shall provide that in the event of casualty or loss at the Premises affecting the System, Lessee's property insurer may proceed against the Lessor's insurer. Any such policies of insurance shall expressly provide that such insurance as to Lessee shall not be invalidated by any act, omission or neglect of Lessor and cannot be canceled without ten (10) Business Days' prior written notice to Lessee. As to each such policy, Lessor shall furnish to Lessee a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 9. In the event that Lessor is, notwithstanding the use of its commercially reasonable efforts, unable to obtain the insurance required by this Section 9, Lessee shall be entitled to obtain such insurance at Lessor's cost and expense. Lessor shall, promptly upon demand therefor from Lessee, reimburse Lessee for the full cost and expense of any such insurance that is obtained by Lessee.
- (c) The provisions of this Lease shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties hereunder shall not be limited or reduced by insurance.

**10) Taxes.**

- (a) Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof).
- (b) Lessor shall pay all (a) real and personal property taxes relating to the Premises, (b) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (c) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (d) taxes, fees, service payments, excises, assessments,

bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.

**11) Liability and Indemnity.**

- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless, Lessor, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessor Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessor, and damage or destruction of property, including property of Lessor, any utility company or Lessor, arising out of (i) the gross negligence or willful misconduct of Lessee, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessee or its Affiliates; or (ii) the material breach by Lessee of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessor Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessee’s obligations pursuant to this Section 11(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessor Indemnatee or the acts of third parties. Lessee shall pay any cost that may be incurred by any Lessor Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessee Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessee, and damage or destruction of property, including property of Lessee, any utility company or Lessee, arising out of (i) the gross negligence or willful misconduct of Lessor, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessor or its Affiliates; or (ii) the material breach by Lessor of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessee Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessor’s obligations pursuant to this Section 11(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessee Indemnatee or the acts of third parties. Lessor shall pay any cost that may be incurred by any Lessee Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out

of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Lease.

**12) Casualty or Condemnation; Force Majeure.**

- (a) In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor, effective as of a date specified in such notice. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction; provided, however, that, except as otherwise provided in this Lease (including Section 9 and Section 11(b)), Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by Applicable Law for its respective property interest appropriated as well as any damages suffered thereby.
- (b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Lease and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this Lease (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations hereunder; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11).

**13) Assignment.**

- (a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided, however, that Lessee may, in its sole discretion, without the consent of Lessor, assign any of its rights, duties or obligations under this Lease to (i) one or more parties providing



financing or refinancing in connection with the development, construction, ownership, operation or maintenance of the System, or any representative of such parties, (ii) any present or future purchaser(s) of all or any portion of the Energy Output or Environmental Attributes, (iii) any Person succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction. For the avoidance of doubt, changes in control of Lessee shall not be deemed to be assignments of this Lease.

- (b) In addition to the foregoing, Lessee may, in its sole discretion, without the consent of Lessor, assign its rights and obligations hereunder with respect to all or a portion of the Premises to any of its Affiliates. In the event that Lessee assigns its rights and obligations hereunder with respect to a portion of the Premises (the “Assigned Portion”) to any of its Affiliates (the “Assigned Portion Affiliate”) then, if Lessee or such Affiliate so requests, Lessor shall execute (i) with Lessee, an amendment to this Lease reflecting the removal of the Assigned Portion from the Premises for purposes of this Lease, and (ii) with the Assigned Portion Affiliate, a new lease agreement (the “Assigned Portion Lease”) in the form of, and on the same term and conditions set forth in, this Lease. Upon execution of the Assigned Portion Lease, Lessee shall have no obligations in respect of the Assigned Portion and the Assigned Portion Affiliate shall have no obligations in respect of the remaining Premises subject to this Lease.
- (c) Any assignee of Lessee (other than any financing party or any representative thereof to whom this Lease is assigned in connection with the foregoing Section 13(a)(i) or any Assigned Portion Affiliate that has executed an Assigned Portion Lease) or Lessor agrees to assume the obligations of the assignor under, and to be bound by the terms of, this Lease to the extent of such assignment.

14) **Cooperation with Financing.** Lessor acknowledges that Lessee may be financing or refinancing all or a portion of the development, construction, ownership, operation or maintenance of the System. Lessor agrees that it shall provide publicly available data requested by Lessee.

15) **Defaults and Remedies.**

- (a) **Default.** An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:
  - (i) the failure to make, when due, any payment required under this Lease if such failure is not remedied within ten (10) Business Days after the receipt by the Defaulting Party of a Notice of Default;
  - (ii) the failure to perform any material covenant or obligation set forth in this Lease (except to the extent constituting a separate Event of Default), if such failure is not cured within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the

exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;

- (iii) any representation or warranty of the Defaulting Party is untrue or inaccurate in any material respect, which untruth or inaccuracy has a material adverse effect on the other Party, and the Defaulting Party fails to cure such material adverse effect within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;
  - (iv) such Party becomes Bankrupt;
  - (v) such Party fails to provide or maintain in full force and effect any insurance required under this Lease, if such failure is not remedied within thirty (30) calendar days after receipt by the Defaulting Party of a Notice of Default;
  - (vi) Lessor makes a transfer or assignment of its rights under this Lease other than in accordance with the terms and conditions hereof; or
  - (vii) without limitation of any of the foregoing, Lessor fails to perform any covenant or obligation set forth in this Lease, failure which materially interferes with the System's development, construction, ownership, operation or maintenance of the System for more than thirty (30) consecutive days.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.
- (c) Remedies. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease, all of which remedies



shall be cumulative. Such remedies shall include the right of the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**16) Dispute Resolution.**

- (a) Notice of Dispute/Negotiated Resolution. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the ten (10) Business Day period following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.
- (b) Jurisdiction. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.

**17) Miscellaneous.**

- (a) Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices will be made in writing except where this Lease expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section. Initial addresses for notice shall be as follows:

Lessor:

Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

With a copy to:

Dr. John Asplund  
Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

Lessee:

Clean Energy Design Group, Inc.  
1760 Wabash Avenue, #9050  
Springfield, IL 62791  
Attn: Mr. Daniel Griffin, Principal and Co-Founder  
Email: [dgriffin@cleanenergydesigngroup.com](mailto:dgriffin@cleanenergydesigngroup.com)

- 18) **Governing Law/Venue.** This Lease will be governed by the laws of the State of Illinois without giving effect to principles of conflicts of laws that would require the application of the law of another jurisdiction.
- 19) **Entire Agreement; Amendments.** This Lease and, if applicable, any PPA between Lessor and Lessee (including the exhibits, any written schedules, supplements or amendments hereto or thereto) constitute the entire agreement between the Parties and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof or thereof. Any amendment, modification or change to this Lease will be void unless in writing and signed by both Parties.
- 20) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.
- 21) **Severability.** If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

- 22) **No Third-Party Beneficiaries.** Nothing in this Lease will provide any benefit to any third party or entitle any third party (other than any Lessor Indemnitee or Lessee Indemnitee) to any claim, cause of action, remedy or right of any kind.
- 23) **No Recourse to Affiliates.** This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 24) **Relationships of Parties.** This Lease shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.
- 25) **Attorneys' Fees.** If any arbitration or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such arbitration or proceeding or enforcing any decision granted therein.
- 26) **Counterparts.** This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Lease received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.
- 27) **Further Assurances.** The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Lease.
- 28) **Construction of Agreement.** This Lease and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against both Parties and shall further be construed and interpreted without reference to the identity of the Party preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Lease or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist.
- 29) **Exhibits and Schedules; Headings; Defined Terms.** Any and all exhibits and schedules referenced herein or attached hereto are hereby incorporated into this Lease by reference. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Capitalized terms used herein shall have the corresponding meanings given to such terms in Exhibit C.

- 30) **Survival.** The provisions of Sections 8, 11, 12, 14, 15, 16 and 17 hereof will survive any expiration or termination of this Lease.
- 31) **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the “Receiving Party”) will hold in confidence any information concerning the affairs of the other Party (the “Disclosing Party”) and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, (B) the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or (C) such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice.
- 32) **Estoppel.** Either Party, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party:
- (a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
  - (b) whether or not to the knowledge of such Party there are then existing any defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
  - (c) such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to the facts contained in the certificate.

- 33) **Waiver of Sovereign Immunity.** With the specific exception of Illinois Local Governmental and Employees Tort Immunity Act: 745 ILCS 10/1et seq., Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, to enforce any liability or obligation related to or arising from this Lease, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby

expressly and irrevocably waives any such immunity to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

Attest:

Galesburg CUSD 205, Lessor:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Dr. John Asplund

Title: Superintendent

Clean Energy Design Group, Inc., Lessee

By: \_\_\_\_\_

Name: Mr. Daniel Griffin

Title: Principal and Co-Founder

## **EXHIBIT A**

### **Description of Premises**

The Premises consist of the parcels described below (each, a “Parcel”), each owned, operated and managed by Lessor in and around the city of Galesburg, Illinois. All of the Premises will be leased to Lessee for the purpose of developing, constructing, owning, operating and maintaining the System, and as otherwise described in the Lease.

Parcel Designation	Description	Location
	5.5 Acres	1135 W. Fremont Street Galesburg, IL 61401

**EXHIBIT B**

**RENT**

Lessee shall pay Rent to Lessor according to the following schedule:

\$833.33 Rent x 5.5 Acres = \$4,583.32 beginning on the First Day of the Month before mobilization

## EXHIBIT C

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

**1) Definitions.** The definitions provided below and elsewhere in this Lease will apply to the defined terms used in this Lease:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Assigned Portion” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Affiliate” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Lease” shall have the meaning ascribed in Section 13(b).

“Bankrupt” means that a Person: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (g) has insolvency, receivership, reorganization, bankruptcy, or similar proceedings commenced against it and such proceedings remain undismissed or unstayed for a period of ninety (90) days.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means a calendar day excluding Saturdays, Sundays and days that are official holidays of the United States or the State of Maryland.

“Claiming Party” shall have the meaning ascribed in Section 12(b).

“Defaulting Party” shall have the meaning ascribed to it in Section 15(a).



“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under a PPA.

“Disclosing Party” shall have the meaning ascribed to it in Section 17(q).

“Effective Date” shall have the meaning ascribed to it in the preamble.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of electrical energy generated by the System and delivered to the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Applicable Law, and to a federal or state agency or any other Person at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future Applicable Law, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

“Event of Default” shall have the meaning ascribed to it in Section 15(a).

“Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance is not within the reasonable control, or the result of the negligence, of the Claiming Party. Economic hardship of either Party shall not constitute Force Majeure.

“Insolation” shall have the meaning ascribed to it in Section 6(h).

“Lease” shall have the meaning ascribed to it in the preamble.

“Lessee” shall have the meaning ascribed to it in the preamble.

“Lessee Indemnitees” shall have the meaning ascribed to it in Section 11(b).

“Lessor” shall have the meaning ascribed to it in the preamble.

“Lessor Indemnitees” shall have the meaning ascribed to it in Section 11(a).

“Lessor’s Landlord” shall have the meaning ascribed to it in Section 6(d).

“Metering Device” means any and all meters at or before any Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

“Notice of Default” shall have the meaning ascribed to it in Section 14(b).

“Notice of Intent to Arbitrate” shall have the meaning ascribed to it in Section 15(b)(ii).

“Parcel” shall have the meaning ascribed to it in Exhibit A.

“Party” and “Parties” shall have the meaning ascribed to it in the preamble.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“PPA” means a power purchase agreement entered into between Lessee and another Person, pursuant to which Lessee sells all or any portion of the Electrical Output or all or any portion of the Environmental Attributes to such other Person.

“Premises” shall have the meaning ascribed to it in the recitals.

“Receiving Party” shall have the meaning ascribed to it in Section 17(g).

“Rent” shall have the meaning ascribed to it in Section 2.

“System” shall have the meaning ascribed to it in the recitals.

“System Loss” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty and condemnation) other than (a) Lessee’s negligence or intentional misconduct, (b) Lessee’s breach of maintenance obligations under the PPA, or (c) normal wear and tear of the System.

“Term” shall have the meaning ascribed to it in Section 8(a).

**2) Rules of Interpretation.** In this Lease, unless expressly provided otherwise:

- a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Lease and a reference to a recital, Article, Section, subsection or paragraph of this Lease or any other

agreement is a reference to a recital, Article, Section, subsection or paragraph of this Lease or other agreement in which it is used unless otherwise stated;

- b) references to this Lease, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- d) a reference to this Lease, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Lease or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this Lease expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) a reference to time is a reference to the time in effect in Washington, DC on the relevant date; and
- q) if a payment prescribed under this Lease to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day.
- r) in the event of a conflict in the interpretation of this Agreement and the PPA, this Agreement shall control.

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

<b>Purchaser:</b>	Galesburg CUSD 205 JH	<b>Seller:</b>	Clean Energy Design Group, Inc.
<b>Name and Address</b>	Galesburg CUSD 205 932 Harrison Street Galesburg, IL 61402	<b>Name and Address</b>	Clean Energy Design Group, Inc. 1760 Wabash Avenue, #9050 Springfield, IL 62791
<b>Phone</b>	(309) 973-2101	<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>E-mail</b>	<a href="mailto:jasplund@galesburg205.org">jasplund@galesburg205.org</a>	<b>E-mail</b>	<a href="mailto:dgriffin@cleanenergydesigngroup.com">dgriffin@cleanenergydesigngroup.com</a>
<b>Premises Ownership</b>	Purchaser [X] owns [ ] leases the Premises.  List Premises Owner, if different from Purchaser: _____	<b>Additional Seller Information</b>	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

<b><u>Exhibit 1</u></b>	Basic Terms and Conditions
<b><u>Exhibit 2</u></b>	System Description
<b><u>Exhibit 3</u></b>	Credit Information
<b><u>Exhibit 4</u></b>	General Terms and Conditions
<b><u>Exhibit 5</u></b>	Form of Memorandum of License

**Purchaser:** Galesburg CUSD 205

**Seller:** Clean Energy Design Group, Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: Dr. John Asplund

Printed Name: Mr. Daniel Griffin

Title: Superintendent

Title: Principal and Co-Founder

Date:

Date:

**Exhibit 1**  
**Basic Terms and Conditions**

1. **Initial Term:** Fifteen (15) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each (each an “Additional Term”).
3. **Environmental Incentives, Environmental Attributes, Renewable Energy Credits (“RECs”) and Tax Credits:** Accrue to Seller.
4. **Total Contract Price (Estimated for Initial 20 Year PPA Period):** \$371,620
5. **Initial Monthly Charge:**
  - a. **Late Payment** (>30 days): See 4(d) of Terms and Conditions
  - b. **Late Payment Interest:** See 4(d) of Terms and Conditions – 2.5% over prime
6. **Annual Escalation Rate:** 1%
7. **Initial PPA Price per kilowatt hour (“kWh”):** \$0.0265
8. **Final PPA Price per kWh:** \$0.0320
9. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. Interconnection costs for the System will not exceed \$[ N/A ] in the aggregate.
  - b. Statutory prevailing wage rates do X do not \_\_\_\_\_ apply.
  - c. A Performance Guaranty is \_\_\_\_\_ is not X being provided by Seller, but is X is not \_\_\_\_\_ being provided by equipment manufacturer.
10. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided, the Contract Price excludes the following:
  - a. Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including, but not limited to. client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).
  - b. Snow removal, tree trimming, mowing and any landscape improvements.
  - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including, but not limited to, painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - d. Removal of existing lighting, light poles, or concrete light post bases.
  - e. Roof membrane maintenance or reroofing work.
  - f. Structural upgrades to the Improvements, including ADA upgrades.
  - g. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
  - h. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

- 11. SMART Inverter Rebate:** Purchaser assigns all right, title and interest in the Smart Inverter Rebate associated with the distributed generation and Seller shall be entitled to any rebate therefor provided under Subsection 16-107.5(l) of the Public Utilities Act.
- 12. Estimated Conditional Satisfaction Date:** Q4-2019
- 13. Estimated Commercial Operation Date:** Q4-2019
- 14. Estimated System Life:** 25 Years

**Exhibit 2**  
**System Description**

1. **System Location:** 220 East Knox Street, Galesburg, IL 61401
2. **System Size (DC kW):** 606
3. **Expected First Year Energy Production (kWh):** 899,158
4. **Expected Annual Energy Degradation (%):** 0.05
5. **Expected Structure:** ☒ Ground Mount ☐ Roof Mount ☒ Parking Structure ☐ Other
6. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Seraphim 330W or Tier 1 Equivalent	~2725

7. **Expected Inverter(s):**

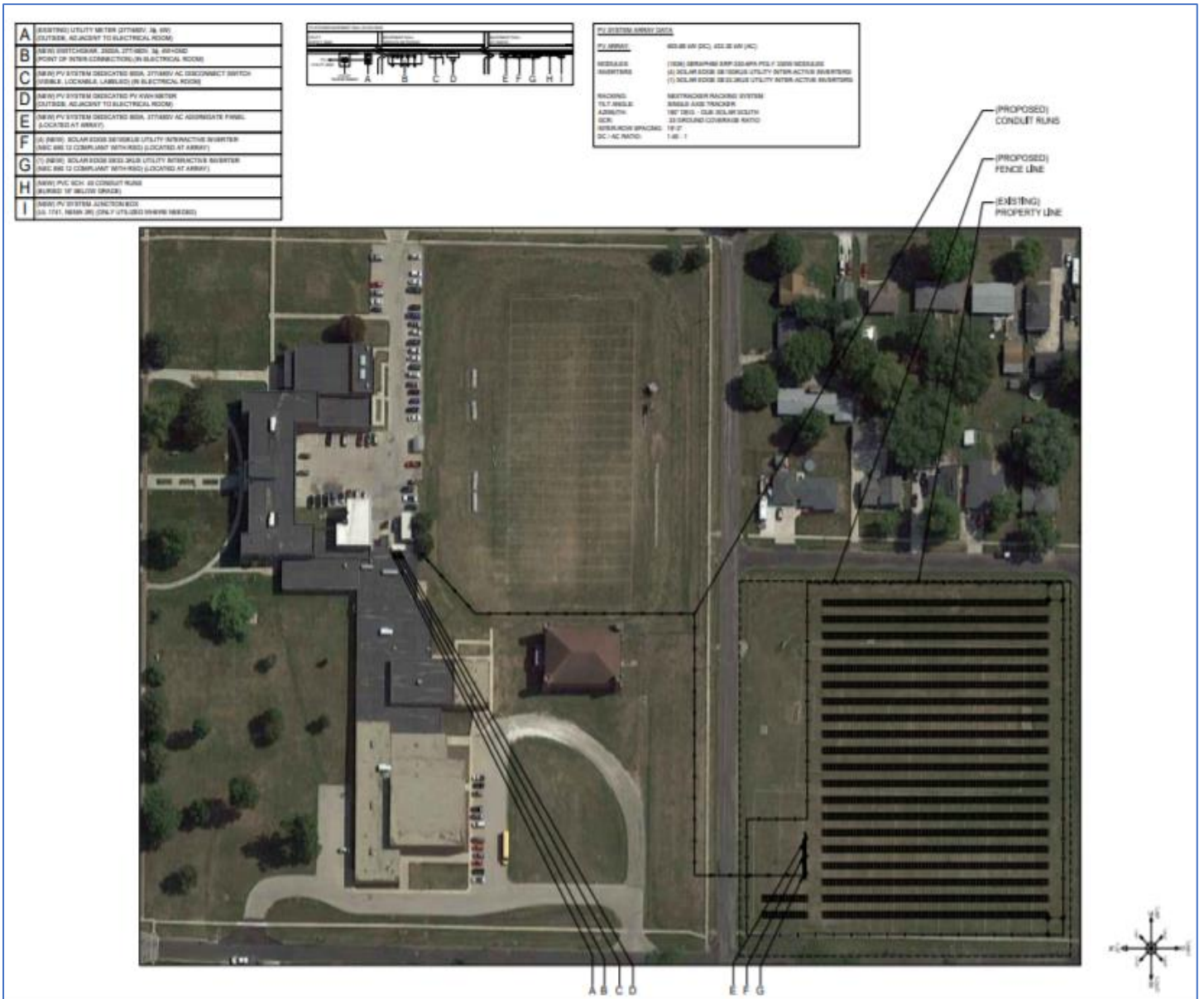
<u>Manufacturer/Model</u>	<u>Quantity</u>
SolarEdge SE100KUS or Tier 1 Equivalent	~2

8. **Facility and System Layout:** See **Exhibit 2, Attachment A**
9. **Utility:** Ameren Illinois Company [Commonwealth Edison Company/MidAmerican Energy Company]
10. **EPC (engineering, procurement, construction) Services Provider (Tentative):** Evergreen Solar Services (ESS), Inc. and/or Clean Energy Design Group (CEDG), Inc.



**Exhibit 2**  
**Attachment A:**

An Aerial Photograph of the Facility	See Below
Site Plan of the System	See Below
Delivery Point	See Below
Access Points	See Below



**Exhibit 3**  
**Credit Information**

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
<b>Name:</b> Galesburg CUSD 205					<b>Tax ID:</b>		
<b>Previous &amp; Other Names:</b> n/a				<b>Website:</b> http://ghs.galesburg205.org			
<b>Corporate Address:</b> 932 Harrison Street,							
<b>City, State, Zip</b> Galesburg, IL 61402							
<b>Phone Number:</b> (309) 973-2101				<b>Fax Number:</b>			
<b>Entity Type Check One:</b>	<b>S-Corp</b>	<b>C-Corp</b>	<b>Partnership</b>	<b>Sole Prop</b>	<b>Inc.</b>	<b>LLP</b>	<b>Other:</b> Junior High School
<b>Property Address for Solar Installation:</b> 220 East Knox Street			<b>City, State:</b> Galesburg, IL		<b>Zip Code:</b> 61401	<b>Property Owned by Applicant</b> [ X ] YES [ ] NO	
<b>Property Type</b> Junior High School		<b>Insurance Agent Name To Be Provided</b>		<b>Agents Phone: To Be Provided</b>	<b>Name of Property Owner if Not Applicant</b> n/a		
<b>Information Requested: Please submit the information required below via electronic format to:</b>							
<u>Corporate Records</u>  <input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).  <u>Financial Statements</u>  <input type="checkbox"/> Last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).  <u>Real Estate Documents</u>  <input type="checkbox"/> Lease with Premises Fee Owner  <input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises  Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.							

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that Seller and its Financing Parties are relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warrant and certify that the information provided herein is true, correct and complete. Seller and its Financing Parties are authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give Seller and its Financing Parties any information they may have about you. You authorize Seller and its Financing Parties to answer questions about their credit experience with you. Subject to any non-disclosure agreement between you and Seller and its Financing Parties, this form and any other information given to Seller and its Financing Parties shall be the property of Seller and its Financing Parties. If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Seller at \_\_\_\_\_. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller and its Financing Parties are an equal opportunity lender.

**Signature:**

**Title:**

**Date:**

**Exhibit 4**  
**Solar Power Purchase Agreement**  
**General Terms and Conditions**

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes, including, but not limited to, and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. The energy purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller.
3. **Term and Termination.**
  - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point and has permission to operate from the relevant Governmental Authority. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth on **Exhibit 2**. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current Additional Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The total number of monthly payments during the Initial Term is one hundred and eighty (180). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five dollar (\$25) handling charge will be added to each invoice.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System. Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System ("**Seller's Taxes**"). For purposes of this **Section 4(d)**, "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Taxes. In the event any sales of electric energy or Environmental Attributes, if any, hereunder are eligible to be exempted from or not subject to one or more Taxes, promptly upon Seller's request therefore Purchaser shall provide Seller with all necessary documentation to obtain such exemption or exclusion at no out of pocket cost to Purchaser.
- d. **Payment Terms.** All amounts due under this Agreement shall begin with the Commercial Operation Date and be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Seller is the owner of, and is entitled to the benefit of, all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include any right to any Environmental Attributes, Environmental Incentives, RECs or Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring to Seller all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for the same. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the Environmental Attributes, Environmental Incentives, RECs and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Attributes, Environmental Incentives, RECs and Tax Credits are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Tax Credits or RECs. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or

other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority. Environmental Incentives do not include Environmental Attributes, Tax Credits or RECs.

**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state Public Utilities Commission), or any arbitrator with authority to bind a party at law.

**“Tax Credits”** means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System. Tax Credits do not include Environmental Attributes, Environmental Incentives or RECs.

**“REC”** means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Environmental Attributes, Environmental Incentives or Tax Credits.

## **6. Conditions to Obligations.**

a. **Conditions to Seller’s Obligations.** Seller’s obligations under this Agreement are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the **“Premises”**) including, if applicable, geotechnical work, and real estate due diligence which demonstrates the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. **“Construction Agreement”** as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system.

b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then Seller may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement.

c. **Commencement of Construction.** Seller’s obligation to commence construction and installation of the System is conditioned on Seller’s receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller’s rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the solar lease and easement agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the **“Solar Lease and Easement Agreement”**).

## **7. Seller’s Rights and Obligations.**

a. **Permits and Approvals.** Seller, with Purchaser’s reasonable cooperation, shall use commercially reasonable efforts to obtain, at Seller’s sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility’s electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's gross negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

## 8. **Purchaser's Rights and Obligations.**

- a. **License to the Premises; Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access

to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. At request of Seller, Purchaser shall execute a Memorandum of License, and which shall be in form and substance set forth **Exhibit 5**, or other form agreed to by the parties. Seller may, at its sole cost and expense, record such Memorandum of License with the appropriate land registry or recorder's office.

- b. **OSHA Compliance.** Each party shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in the performance of its respective duties and obligations under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall maintain the Facility and shall, at its sole cost and expense, maintain the Facility in good condition and repair. Seller may maintain the Facility under an independent Operations & Maintenance Agreement (O&M Agreement) with Seller or through Seller by a third-party under an O&M Agreement. Regardless of an O&M Agreement, Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not permit or cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System or the production of electricity from the System or the Utility grid.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility (including for the avoidance of doubt, to Purchaser's roof structures) without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes, Environmental Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy

that would have been produced during the outage; (iii) revenues from Environmental Attributes, Environmental Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 18.a, Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- g. **Security.** Seller acknowledges that the Facility and the System are located upon school real estate that is generally open to the public. Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Seller. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.
- i. **Data Line.** Purchaser shall provide Seller a high-speed Internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

## 9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.



If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

**10. Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than One Hundred and Eighty (180) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition, to the extent reasonably practical (reasonable wear and tear, casualty and condemnation excepted); provided, however, that Seller shall not be required to re-contour the grade of the Premises to its original condition, including the removal of System mounting pads or other support structures. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Seller shall have no obligation to restore the Facility to the original contour or restore any improvements demolished and removed from the Facility and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

**11. Measurement.**

Seller shall install and own one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility to allow Seller to accurately receive, collect, calculate and transmit meter data for the Utility and calculating production, billing and invoicing purposes. Seller shall maintain the meter(s) in accordance with industry standards.

**12. Default, Remedies and Damages.**

- a. Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “**Defaulting Party**”, the other Party shall be deemed to be the “**Non-Defaulting Party**”, and each event of default shall be a “**Default Event**”:
- i. Failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
  - ii. Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. Purchaser loses its rights to occupy and enjoy the Premises;
  - v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or

- vi. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

**b. Remedies.**

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon ten (10) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to commencement of System installation, a forty thousand dollars (\$40,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a federal tax rate of twenty one percent (21%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes, Environmental Incentives or RECs that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of 5%) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of 5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
  - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting

Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

- D. Liquidated Damages. The Parties agree that, if either Party terminates this Agreement prior to the expiration of the Term pursuant to this Section 12, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 12 is a reasonable approximation of the damages suffered by the non-defaulting Party as a result of early termination of this Agreement and is not a penalty.

**13. Representations, Warranties and Covenants.**

- a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- iii. Each Party is acting for its own account and has made its own independent decision to enter into this PPA and is not relying upon the advice or recommendations of the other Party in so doing.
- iv. Each Party represents and warrants that the various terms, obligations, charges and fees contained in this PPA are the result of arm's length transactions, or, to the extent that such charges and fees are not the result of arm's length transactions, represent market rate charges and fees and that the cost to the Seller is equivalent to fair market value.
- v. The Parties are independent and are not representing, endorsed by, or acting on behalf of, a utility, a consumer group, or a governmental body, unless specifically stated otherwise.

- b. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

- i. License. Purchaser has title to or a leasehold or other property interest in the Premises that extends beyond the Term of this Agreement. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser is not the fee simple owner of the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

- v. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.

**14. System and Facility Damage and Insurance.**

**a. System and Facility Damage.**

- i. Seller's Obligations. If the **System** is damaged or destroyed other than by Purchaser's i) gross negligence or willful misconduct, or ii) breach of any terms of this Agreement, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) the sum of the amounts described in Section 12.b.iii.A)(1) and Section 12.b.iii.A)(3).
- ii. Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

**b. Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
- ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least One Million dollars (\$1,000,000) per occurrence and Two Million dollars (\$2,000,000) annual aggregate.
- c. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
- d. Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance.

**15. Ownership; Option to Purchase.**

- a. Ownership of System. Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, RECs and Tax Credits (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as may be evidenced by a UCC-1 or similar filing by the Seller or any Financing Party. Purchaser covenants

that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

- b. **Ownership of SMART Inverter.** Throughout the Term of this Agreement Purchaser hereby grants all right, title and interest in and to SMART Inverter Rebates consistent with the provisions of 220 ILCS 5/16-107.6 to Seller. The value of the rebates offered will be consistent with the amounts specified in 220 ILCS 5/16-107.6 and with related Orders of the ICC. Seller shall own, operate and control the Smart Inverter associated with the distributed generation that is the subject of the rebate for the purpose of preserving reliability during distribution system reliability events. "SMART Inverter" means a device that converts direct current into alternating current and can autonomously contribute to grid support during excursions from normal operating voltage and frequency conditions by providing each of the following: dynamic reactive and real power support, voltage and frequency ride-through, ramp rate controls, communication systems with ability to accept external commands, and other functions from the electric utility.
- c. **Option to Purchase.** At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- d. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of five percent (5 %)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives, RECs and Tax Credits and factoring in future costs and expenses associated with the System avoided costs. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder. Alternatively, the parties may agree on a stipulated fair market value (FMV) in advance of any purchase option date, conducting and determining these terms stipulated in compliance with federal and state laws, and also meeting all the requirements outlined in the Exhibits and Articles that define this Agreement.

16. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from i) any third party actions relating to the breach of any representation or warranty set forth in Section 13, and ii) from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, the willful misconduct of, or the breach of the terms of this Agreement by, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 16(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 16(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. “**Hazardous Substance**” means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 16 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of

such Environmental Attributes, Environmental Incentives, RECs to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

- ii. Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 16 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made by Purchaser under this Agreement. The provisions of this Section (16)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.
- iii. Any action against Seller must be brought within one (1) year after the cause of action accrues. Any action against Purchaser must be brought within one (1) year after the cause of action accrues.

## **17. Force Majeure.**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of ninety (90) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

## **18. Assignment and Financing.**

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser

has been provided with reasonable proof that the proposed assignee (x) has experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**Financing Parties**” means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 18(a)(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties. Purchaser agrees that it shall provide any publicly available data requested by Seller.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

19. **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the “**Receiving Party**”) will hold in confidence any information concerning the affairs of the other Party (the “**Disclosing Party**”) and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice. Notwithstanding the foregoing, each Party agrees that the other Party may disclose such data and information to its officers, directors, employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, on a “need to know” basis; provided, however, that such officers, directors, employees, agents, representatives and subcontractors will be advised of the confidentiality provisions hereof. Upon any termination or expiration of this Lease, the Receiving Party will promptly return to the Disclosing Party all such data and information in the Receiving Party’s possession (or in the possession of any other person or entity permitted hereby to possess such information pursuant hereto) at such time, unless otherwise directed by the Disclosing Party.

20. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

## 21. **Miscellaneous Provisions**

- a. **Choice of Law and Jurisdiction.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach thereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.
- b. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised



delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

- c. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, License to the Premises; Facility Access Rights (Section 8a), No Alteration of Facility (Section 8d), Change in Law (Section 9), Default, Remedies and Damages (Section 12), Representations, Warranties and Covenants (Section 13), Insurance Coverage (Section 14(b)), Indemnification and Limits of Liability (Section 16), Force Majeure (Section 17), Confidentiality and Publicity (Section 19), Choice of Law (Section 21(a)), Arbitration and Attorneys' Fees (**Error! Reference source not found.**) (Section 21), Notices (Section 21(b)), Comparative Negligence (Section 21(f)), Non-Dedication of Facilities (Section 21(g)), Service Contract (Section 21(i)), No Partnership (Section 21(j)) Entire Agreement, Modification, Invalidity, Counterparts, Captions (Section 21(k)), Forward Contract (Section 21(m)) and No Third Party Beneficiaries (Section 21(m)).
- d. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- e. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- f. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- g. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- h. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the

requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- i. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- j. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- k. **Entire Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- l. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- m. **No Third-Party Beneficiaries.** Except for assignees and Financing Parties, permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- n. **Counterparts.** The execution page to this Agreement (page one) may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

**Exhibit 5**  
**Form of Memorandum of License**

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [\_\_\_\_], notice is hereby given of that Solar Power Purchase Agreement dated as of [\_\_\_\_] for purchase and sale of electrical energy (the “**Solar Agreement**”), such Solar Agreement includes the grant of License to Seller, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Solar Agreement:

Seller:           Clean Energy Design Group, Inc.  
                    1760 Wabash Avenue, #9050  
                    Springfield, IL 62791

Purchaser :      Galesburg CUSD 205 JH  
                    932 Harrison Street  
                    Galesburg, IL 61401

Date of Execution of Solar Agreement: [\_\_\_\_\_]

Description of Premises: See **Exhibit 5, Attachment A**

**TERM OF AGREEMENT:**

The term of the Solar Agreement shall be until the last day of the calendar month in which the twenty fifth (25th) anniversary of the Commercial Operation Date (as that term is defined in the Solar Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Agreement.

[signature pages follow]

IN WITNESS WHEREOF, this Memorandum of License has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 .

Seller:  
Clean Energy Design Group, Inc.

By: \_\_\_\_\_  
Print Name: Mr. Daniel Griffin  
Title: Principal and Co-Founder

Purchaser:  
Galesburg CUSD 205

By: \_\_\_\_\_  
Print Name: Dr. John Asplund  
Title: Superintendent

***[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]***

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of [\_\_\_\_] that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

***[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]***

**Exhibit 5**  
**Attachment A**  
Description of the Premises

To Be Provided

**End of Exhibit 5**

## **SOLAR FACILITIES SITE LEASE**

This Solar Facilities Site Lease (this “Lease”), dated as of \_\_\_\_\_, 2019 (the “Effective Date”), is entered into by and between Clean Energy Design Group, Inc., a Wyoming corporation (“Lessee”), and Galesburg CUSD 205 (“Lessor”). Each of Lessee and Lessor is referred to herein as a “Party” and collectively they are referred to as the “Parties”.

### **RECITALS**

WHEREAS, in order to develop, construct, own, operate and maintain one or more photovoltaic solar energy facilities (individually, on a Parcel (as defined herein) a “Facility” and collectively, the “System”), Lessee requires access to certain property owned or leased by Lessor as identified in Exhibit A hereto (collectively, the “Premises”); and

WHEREAS, in connection with the foregoing, Lessee desires to lease the Premises from Lessor in order to develop, construct, own, operate and maintain the System, and Lessor is willing to grant such lease to Lessee, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

- 1) **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way as shown on Exhibit A hereto for the purpose of constructing, operating and maintaining the System. Lessor grants access across, through, under or over premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary to develop, construct, own, operate and maintain, or otherwise access, the System or the Premises. The access to said right of way shall be subordinate to Lessor’s access.
- 2) **Rent.** During the Term of this Lease, Lessee shall pay Lessor the amounts set forth in Exhibit B (the “Rent”) as compensation in full for the rights with respect to the Premises, and such other rights, as set forth in this Lease. Said rent shall be payable on the first day of each month beginning on the first day of the month before installation mobilization. The further parties acknowledge that Lessor’s ability to enter into a Solar Power Purchase Agreement (the “PPA”), substantially similar to Exhibit D attached hereto shall be deemed part of the consideration for this Lease.
- 3) **System Development, Construction, Ownership, Operation and Maintenance.**
  - (a) Lessor hereby consents to the development, construction, ownership, operation and maintenance of the System and any component thereof by Lessee, its Affiliates and any employees, agents, representatives, subcontractors or other designees of any of the foregoing and any local electric utility personnel, on the Premises, including solar panels, mounting substrates or supports, wiring and

connections, power inverters, service equipment, metering equipment, utility interconnections and any other equipment or facilities related thereto.

(b) Without limitation of the foregoing, Lessee shall also have the right during the Term hereof to access the Premises to:

- (i) clean, repair, replace and dispose of part or all of any System;
- (ii) access the Premises with guests for promotional purposes at times acceptable to the Lessor in its sole discretion; and
- (iii) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.

(c) Lessor acknowledges that the development, construction, ownership, operation and maintenance of all or a portion of the System may require construction, installation or other work to, above or below the ground, and Lessor hereby consents to all such installation.

4) **Access to Premises.** Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, construct, own, operate and maintain the System as contemplated herein or in the applicable PPA, including ingress and egress rights to the Premises for Lessee, its Affiliates and any employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, regulators and other designees of any of the foregoing and any local electric utility personnel, and access to the System to interconnect the System with the Premises' electrical wiring. Lessor shall provide such space and access as is reasonably requested by Lessee for laydown, for the temporary storage and staging of tools, materials, parts, supplies and equipment, for rigging and material handling, for the parking of vehicles and temporary trailers and facilities and for erecting an office or other structure, in each case as reasonably necessary or convenient for the development, construction, ownership, operation, and maintenance of the System or any portion thereof. Lessor and its authorized representatives shall at all times have access to, and the right to observe, the development, construction, ownership, operation and maintenance of the System on the Premises, subject to compliance with Lessee's safety rules; provided, however, that Lessor shall not interfere with the development, construction, ownership, operation and maintenance of the System or handle any Lessee equipment or the System without written authorization from Lessee. Notwithstanding the foregoing, Lessee agrees, upon request, to provide Lessor with the names and background check information for personnel, contractors, subcontractors and vendors requesting access to the Premises.

5) **System Output and Ownership**

(a) Lessor acknowledges and agrees that (i) Lessee or one of its Affiliates is and shall be the exclusive owner and operator of the System, (ii) all equipment and facilities comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or



may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises, and (iii) Lessor shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises.

- (b) As between Lessor and Lessee, Lessor acknowledges that Lessee or one of its Affiliates is and shall be the exclusive owner of all Energy Output of the System, of all Environmental Attributes related to the System and of any other tax or financial incentives related to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any such Energy Output, Environmental Attributes or tax or financial incentives.

6) **Representations and Warranties, Covenants of Lessor.**

- (a) **Powers; Authorization.** Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) **No Conflict.** Lessor represents and warrants to the best of its knowledge and belief, that the execution, delivery and performance by it of this Lease does not require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) **Binding Obligation.** Lessor represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) **Lessor's Title to Premises.** Lessor represents, warrants and covenants to the best of its knowledge that Lessor has lawful title to the Premises and that Lessee shall have quiet and peaceful possession of the Premises in accordance with this Lease subject to any easements or rights of way which are a matter of public record without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in this Lease shall run with the Premises and survive any such transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or

party to whom a lien has been granted to execute and deliver to Lessee a document in form and substance satisfactory to Lessee, pursuant to which such party (i) acknowledges and consents to the Lessee's rights in the Premises as set forth herein, including an acknowledgement by the transferee that it has no interest in the System, the Energy Output, the Environmental Attributes or any other tax or financial incentive relating thereto, and shall not gain any interest in any of the foregoing by virtue of the Lessor's transfer, and (ii) expressly subordinates any lien it may have in and to any of the foregoing to Lessee's rights and interests hereunder.

- (e) No Interference with and Protection of System. Lessor will not conduct activities on, in, under, over or about the Premises, the System or any portion thereof that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessee acknowledges that the Premises are located upon school real estate and is generally open to the public. Lessee shall take all reasonable steps to limit access to the Premises to Lessee and Persons entitled to access the Premises on Lessee's behalf pursuant to this Lease. Lessor shall cooperate with Lessee to allow Lessee to implement and maintain reasonable and appropriate security measures on the Premises to prevent the public, Lessor's employees, invitees, agents and representatives, any third parties and animals, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- (f) Maintenance of Premises. Lessee shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) of which Lessor becomes aware. Lessee shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.
- (g) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor. Without limiting the foregoing, Lessor shall not (i) construct or otherwise permit to exist any structure on the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor (except for structures, if any, existing on the Premises as of the Effective Date), (ii) permit the growth of foliage, or (iii) emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, in each case that could adversely affect insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could

adversely affect insulation levels at the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing insulation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (A) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(h), (B) an award of damages would be inadequate to remedy such a breach, and (C) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(h).

- (h) Hazardous Materials. To the best of Lessor's knowledge, there are no hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises in violation of any Applicable Law or that might otherwise impair Lessee's ability to utilize the Premises as contemplated by this Lease. Lessor shall not introduce or use any hazardous, toxic or dangerous substances, chemicals, materials or wastes on, in, under or over the Premises in violation of any Applicable Law. If Lessor becomes aware of any hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises, Lessor shall promptly notify Lessee of the type and location of such substances, chemicals, materials or wastes in writing. Lessor agrees to assume full responsibility for (and shall protect, indemnify and defend the Lessee Indemnitees against) any liability or cleanup obligations for, and any interference with the operation of the System by, any such substances, chemicals, materials or wastes on, in, under or over the Premises, unless directly caused by the actions of Lessee.
- (i) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements that would (i) materially increase the cost of developing, constructing, owning, operating or maintaining the System at the planned locations on the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (ii) adversely affect the ability of the System as designed to produce Energy once installed.

**7) Representations and Warranties, Covenants of Lessee.**

- (a) Powers; Authorization. Lessee represents and warrants that it has all requisite power and authority to enter into this Lease, and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessee represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate (A) its organizational documents, or (B) any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.

- (c) Binding Obligation. Lessee represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law. If Lessee becomes aware of any such hazardous, toxic or dangerous materials on, in, under or over the Premises, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and shall protect, indemnify and defend Lessor Indemnitees against) any liability or cleanup obligations for any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law that are directly caused by the actions of Lessee.

**8) Term and Termination.**

- (a) Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall be in effect until the fifteenth (15<sup>th</sup>) anniversary of the date a Facility on a Parcel achieves commercial operation under the applicable PPA, or January 1, 2020, whichever is sooner, unless terminated earlier or extended in accordance with this Lease. Thereafter, the Term shall automatically extend for two (2) consecutive periods of five (5) years each, unless earlier terminated in accordance herewith. In addition, the then-current term of this Lease shall be extended if, and for the same period that, a related PPA is extended as a result of Force Majeure thereunder. Without limiting any other provisions of this Lease, Lessee may terminate this Lease in Lessee's sole discretion at any time upon three (3) months' written notice to Lessor without triggering the Event of Default provisions of Section 15 or incurring any liability under this Agreement whatsoever.
- (b) Removal of System at End of Term. Unless otherwise notified by Lessee, Lessor shall, upon termination of this lease, deconstruct, decommission, dismantle and remove the System from the Premises, and shall return the Premises to its original condition. Upon election and notice by Lessee, Lessee shall be entitled, within one hundred eighty (180) days following the end of the Term, and at Lessee's cost and expense, to decommission, deconstruct, dismantle and remove the System from the Premises. During such one hundred eighty (180) day period, Lessee, its Affiliates and any employees, agents, representatives, contractors, subcontractors and other designees of any of the foregoing and any local electric utility personnel shall continue to have access to the Premises and the System as otherwise provided in this Lease, without payment of further Rent or other consideration, for purposes of such decommissioning, deconstruction, dismantling and removal.

**9) Insurance.**

- (a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party will name and endorse the other Party as an additional insured in each such policy. For the avoidance of doubt, Lessee's property insurance shall cover the System and Lessor's property insurance shall cover the Premises.
- (b) Lessor shall provide and maintain insurance against any System Loss caused by the negligence or willful misconduct of Lessor or any of its employees, invitees, agents and representatives, not including business interruption insurance, in an amount not less than \$1,000,000, with loss payable to Lessee. The period of indemnity shall not be less than twelve (12) months. Each policy shall waive the insurer's right of subrogation, except that Lessor's policy shall provide that in the event of casualty or loss at the Premises affecting the System, Lessee's property insurer may proceed against the Lessor's insurer. Any such policies of insurance shall expressly provide that such insurance as to Lessee shall not be invalidated by any act, omission or neglect of Lessor and cannot be canceled without ten (10) Business Days' prior written notice to Lessee. As to each such policy, Lessor shall furnish to Lessee a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 9. In the event that Lessor is, notwithstanding the use of its commercially reasonable efforts, unable to obtain the insurance required by this Section 9, Lessee shall be entitled to obtain such insurance at Lessor's cost and expense. Lessor shall, promptly upon demand therefor from Lessee, reimburse Lessee for the full cost and expense of any such insurance that is obtained by Lessee.
- (c) The provisions of this Lease shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties hereunder shall not be limited or reduced by insurance.

**10) Taxes.**

- (a) Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof).
- (b) Lessor shall pay all (a) real and personal property taxes relating to the Premises, (b) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (c) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (d) taxes, fees, service payments, excises, assessments,

bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.

**11) Liability and Indemnity.**

- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless, Lessor, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessor Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessor, and damage or destruction of property, including property of Lessor, any utility company or Lessor, arising out of (i) the gross negligence or willful misconduct of Lessee, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessee or its Affiliates; or (ii) the material breach by Lessee of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessor Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessee’s obligations pursuant to this Section 11(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessor Indemnatee or the acts of third parties. Lessee shall pay any cost that may be incurred by any Lessor Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessee Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessee, and damage or destruction of property, including property of Lessee, any utility company or Lessee, arising out of (i) the gross negligence or willful misconduct of Lessor, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessor or its Affiliates; or (ii) the material breach by Lessor of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessee Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessor’s obligations pursuant to this Section 11(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessee Indemnatee or the acts of third parties. Lessor shall pay any cost that may be incurred by any Lessee Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out



of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Lease.

**12) Casualty or Condemnation; Force Majeure.**

- (a) In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor, effective as of a date specified in such notice. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction; provided, however, that, except as otherwise provided in this Lease (including Section 9 and Section 11(b)), Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by Applicable Law for its respective property interest appropriated as well as any damages suffered thereby.
- (b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Lease and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this Lease (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations hereunder; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11).

**13) Assignment.**

- (a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided, however, that Lessee may, in its sole discretion, without the consent of Lessor, assign any of its rights, duties or obligations under this Lease to (i) one or more parties providing

financing or refinancing in connection with the development, construction, ownership, operation or maintenance of the System, or any representative of such parties, (ii) any present or future purchaser(s) of all or any portion of the Energy Output or Environmental Attributes, (iii) any Person succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction. For the avoidance of doubt, changes in control of Lessee shall not be deemed to be assignments of this Lease.

- (b) In addition to the foregoing, Lessee may, in its sole discretion, without the consent of Lessor, assign its rights and obligations hereunder with respect to all or a portion of the Premises to any of its Affiliates. In the event that Lessee assigns its rights and obligations hereunder with respect to a portion of the Premises (the “Assigned Portion”) to any of its Affiliates (the “Assigned Portion Affiliate”) then, if Lessee or such Affiliate so requests, Lessor shall execute (i) with Lessee, an amendment to this Lease reflecting the removal of the Assigned Portion from the Premises for purposes of this Lease, and (ii) with the Assigned Portion Affiliate, a new lease agreement (the “Assigned Portion Lease”) in the form of, and on the same term and conditions set forth in, this Lease. Upon execution of the Assigned Portion Lease, Lessee shall have no obligations in respect of the Assigned Portion and the Assigned Portion Affiliate shall have no obligations in respect of the remaining Premises subject to this Lease.
- (c) Any assignee of Lessee (other than any financing party or any representative thereof to whom this Lease is assigned in connection with the foregoing Section 13(a)(i) or any Assigned Portion Affiliate that has executed an Assigned Portion Lease) or Lessor agrees to assume the obligations of the assignor under, and to be bound by the terms of, this Lease to the extent of such assignment.

14) **Cooperation with Financing.** Lessor acknowledges that Lessee may be financing or refinancing all or a portion of the development, construction, ownership, operation or maintenance of the System. Lessor agrees that it shall provide publicly available data requested by Lessee.

15) **Defaults and Remedies.**

- (a) **Default.** An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:
  - (i) the failure to make, when due, any payment required under this Lease if such failure is not remedied within ten (10) Business Days after the receipt by the Defaulting Party of a Notice of Default;
  - (ii) the failure to perform any material covenant or obligation set forth in this Lease (except to the extent constituting a separate Event of Default), if such failure is not cured within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the



exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;

- (iii) any representation or warranty of the Defaulting Party is untrue or inaccurate in any material respect, which untruth or inaccuracy has a material adverse effect on the other Party, and the Defaulting Party fails to cure such material adverse effect within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;
  - (iv) such Party becomes Bankrupt;
  - (v) such Party fails to provide or maintain in full force and effect any insurance required under this Lease, if such failure is not remedied within thirty (30) calendar days after receipt by the Defaulting Party of a Notice of Default;
  - (vi) Lessor makes a transfer or assignment of its rights under this Lease other than in accordance with the terms and conditions hereof; or
  - (vii) without limitation of any of the foregoing, Lessor fails to perform any covenant or obligation set forth in this Lease, failure which materially interferes with the System's development, construction, ownership, operation or maintenance of the System for more than thirty (30) consecutive days.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.
- (c) Remedies. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease, all of which remedies

shall be cumulative. Such remedies shall include the right of the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**16) Dispute Resolution.**

- (a) Notice of Dispute/Negotiated Resolution. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the ten (10) Business Day period following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.
- (b) Jurisdiction. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.

**17) Miscellaneous.**

- (a) Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices will be made in writing except where this Lease expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section. Initial addresses for notice shall be as follows:

Lessor:

Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

With a copy to:

Dr. John Asplund  
Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

Lessee:

Clean Energy Design Group, Inc.  
1760 Wabash Avenue, #9050  
Springfield, IL 62791  
Attn: Mr. Daniel Griffin, Principal and Co-Founder  
Email: [dgriffin@cleanenergydesigngroup.com](mailto:dgriffin@cleanenergydesigngroup.com)

- 18) **Governing Law/Venue.** This Lease will be governed by the laws of the State of Illinois without giving effect to principles of conflicts of laws that would require the application of the law of another jurisdiction.
- 19) **Entire Agreement; Amendments.** This Lease and, if applicable, any PPA between Lessor and Lessee (including the exhibits, any written schedules, supplements or amendments hereto or thereto) constitute the entire agreement between the Parties and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof or thereof. Any amendment, modification or change to this Lease will be void unless in writing and signed by both Parties.
- 20) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.
- 21) **Severability.** If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

- 22) **No Third-Party Beneficiaries.** Nothing in this Lease will provide any benefit to any third party or entitle any third party (other than any Lessor Indemnitee or Lessee Indemnitee) to any claim, cause of action, remedy or right of any kind.
- 23) **No Recourse to Affiliates.** This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 24) **Relationships of Parties.** This Lease shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.
- 25) **Attorneys' Fees.** If any arbitration or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such arbitration or proceeding or enforcing any decision granted therein.
- 26) **Counterparts.** This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Lease received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.
- 27) **Further Assurances.** The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Lease.
- 28) **Construction of Agreement.** This Lease and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against both Parties and shall further be construed and interpreted without reference to the identity of the Party preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Lease or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist.
- 29) **Exhibits and Schedules; Headings; Defined Terms.** Any and all exhibits and schedules referenced herein or attached hereto are hereby incorporated into this Lease by reference. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Capitalized terms used herein shall have the corresponding meanings given to such terms in Exhibit C.

- 30) **Survival.** The provisions of Sections 8, 11, 12, 14, 15, 16 and 17 hereof will survive any expiration or termination of this Lease.
- 31) **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the “Receiving Party”) will hold in confidence any information concerning the affairs of the other Party (the “Disclosing Party”) and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, (B) the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or (C) such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice.
- 32) **Estoppel.** Either Party, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party:
- (a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
  - (b) whether or not to the knowledge of such Party there are then existing any defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
  - (c) such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to the facts contained in the certificate.

- 33) **Waiver of Sovereign Immunity.** With the specific exception of Illinois Local Governmental and Employees Tort Immunity Act: 745 ILCS 10/1et seq., Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, to enforce any liability or obligation related to or arising from this Lease, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby

expressly and irrevocably waives any such immunity to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

Attest:

Galesburg CUSD 205, Lessor:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Dr. John Asplund

Title: Superintendent

Clean Energy Design Group, Inc., Lessee

By: \_\_\_\_\_

Name: Mr. Daniel Griffin

Title: Principal and Co-Founder

## **EXHIBIT A**

### **Description of Premises**

The Premises consist of the parcels described below (each, a “Parcel”), each owned, operated and managed by Lessor in and around the city of Galesburg, Illinois. All of the Premises will be leased to Lessee for the purpose of developing, constructing, owning, operating and maintaining the System, and as otherwise described in the Lease.

Parcel Designation	Description	Location
	5.5 Acres	1135 W. Fremont Street Galesburg, IL 61401

**EXHIBIT B**

**RENT**

Lessee shall pay Rent to Lessor according to the following schedule:

\$833.33 Rent x 5.5 Acres = \$4,583.32 beginning on the First Day of the Month before mobilization



## **EXHIBIT C**

### **SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION**

**1) Definitions.** The definitions provided below and elsewhere in this Lease will apply to the defined terms used in this Lease:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Assigned Portion” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Affiliate” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Lease” shall have the meaning ascribed in Section 13(b).

“Bankrupt” means that a Person: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (g) has insolvency, receivership, reorganization, bankruptcy, or similar proceedings commenced against it and such proceedings remain undismissed or unstayed for a period of ninety (90) days.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means a calendar day excluding Saturdays, Sundays and days that are official holidays of the United States or the State of Maryland.

“Claiming Party” shall have the meaning ascribed in Section 12(b).

“Defaulting Party” shall have the meaning ascribed to it in Section 15(a).

“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under a PPA.

“Disclosing Party” shall have the meaning ascribed to it in Section 17(q).

“Effective Date” shall have the meaning ascribed to it in the preamble.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of electrical energy generated by the System and delivered to the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Applicable Law, and to a federal or state agency or any other Person at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future Applicable Law, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

“Event of Default” shall have the meaning ascribed to it in Section 15(a).

“Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance is not within the reasonable control, or the result of the negligence, of the Claiming Party. Economic hardship of either Party shall not constitute Force Majeure.

“Insolation” shall have the meaning ascribed to it in Section 6(h).

“Lease” shall have the meaning ascribed to it in the preamble.

“Lessee” shall have the meaning ascribed to it in the preamble.

“Lessee Indemnitees” shall have the meaning ascribed to it in Section 11(b).

“Lessor” shall have the meaning ascribed to it in the preamble.

“Lessor Indemnitees” shall have the meaning ascribed to it in Section 11(a).

“Lessor’s Landlord” shall have the meaning ascribed to it in Section 6(d).

“Metering Device” means any and all meters at or before any Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

“Notice of Default” shall have the meaning ascribed to it in Section 14(b).

“Notice of Intent to Arbitrate” shall have the meaning ascribed to it in Section 15(b)(ii).

“Parcel” shall have the meaning ascribed to it in Exhibit A.

“Party” and “Parties” shall have the meaning ascribed to it in the preamble.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“PPA” means a power purchase agreement entered into between Lessee and another Person, pursuant to which Lessee sells all or any portion of the Electrical Output or all or any portion of the Environmental Attributes to such other Person.

“Premises” shall have the meaning ascribed to it in the recitals.

“Receiving Party” shall have the meaning ascribed to it in Section 17(g).

“Rent” shall have the meaning ascribed to it in Section 2.

“System” shall have the meaning ascribed to it in the recitals.

“System Loss” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty and condemnation) other than (a) Lessee’s negligence or intentional misconduct, (b) Lessee’s breach of maintenance obligations under the PPA, or (c) normal wear and tear of the System.

“Term” shall have the meaning ascribed to it in Section 8(a).

**2) Rules of Interpretation.** In this Lease, unless expressly provided otherwise:

- a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Lease and a reference to a recital, Article, Section, subsection or paragraph of this Lease or any other

agreement is a reference to a recital, Article, Section, subsection or paragraph of this Lease or other agreement in which it is used unless otherwise stated;

- b) references to this Lease, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- d) a reference to this Lease, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Lease or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this Lease expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) a reference to time is a reference to the time in effect in Washington, DC on the relevant date; and
- q) if a payment prescribed under this Lease to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day.
- r) in the event of a conflict in the interpretation of this Agreement and the PPA, this Agreement shall control.

## **SOLAR FACILITIES SITE LEASE**

This Solar Facilities Site Lease (this “Lease”), dated as of \_\_\_\_\_, 2019 (the “Effective Date”), is entered into by and between Clean Energy Design Group, Inc., a Wyoming corporation (“Lessee”), and Galesburg CUSD 205 (“Lessor”). Each of Lessee and Lessor is referred to herein as a “Party” and collectively they are referred to as the “Parties”.

### **RECITALS**

WHEREAS, in order to develop, construct, own, operate and maintain one or more photovoltaic solar energy facilities (individually, on a Parcel (as defined herein) a “Facility” and collectively, the “System”), Lessee requires access to certain property owned or leased by Lessor as identified in Exhibit A hereto (collectively, the “Premises”); and

WHEREAS, in connection with the foregoing, Lessee desires to lease the Premises from Lessor in order to develop, construct, own, operate and maintain the System, and Lessor is willing to grant such lease to Lessee, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

- 1) **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way as shown on Exhibit A hereto for the purpose of constructing, operating and maintaining the System. Lessor grants access across, through, under or over premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary to develop, construct, own, operate and maintain, or otherwise access, the System or the Premises. The access to said right of way shall be subordinate to Lessor’s access.
- 2) **Rent.** During the Term of this Lease, Lessee shall pay Lessor the amounts set forth in Exhibit B (the “Rent”) as compensation in full for the rights with respect to the Premises, and such other rights, as set forth in this Lease. Said rent shall be payable on the first day of each month beginning on the first day of the month before installation mobilization. The further parties acknowledge that Lessor’s ability to enter into a Solar Power Purchase Agreement (the “PPA”), substantially similar to Exhibit D attached hereto shall be deemed part of the consideration for this Lease.
- 3) **System Development, Construction, Ownership, Operation and Maintenance.**
  - (a) Lessor hereby consents to the development, construction, ownership, operation and maintenance of the System and any component thereof by Lessee, its Affiliates and any employees, agents, representatives, subcontractors or other designees of any of the foregoing and any local electric utility personnel, on the Premises, including solar panels, mounting substrates or supports, wiring and

connections, power inverters, service equipment, metering equipment, utility interconnections and any other equipment or facilities related thereto.

(b) Without limitation of the foregoing, Lessee shall also have the right during the Term hereof to access the Premises to:

- (i) clean, repair, replace and dispose of part or all of any System;
- (ii) access the Premises with guests for promotional purposes at times acceptable to the Lessor in its sole discretion; and
- (iii) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.

(c) Lessor acknowledges that the development, construction, ownership, operation and maintenance of all or a portion of the System may require construction, installation or other work to, above or below the ground, and Lessor hereby consents to all such installation.

4) **Access to Premises.** Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, construct, own, operate and maintain the System as contemplated herein or in the applicable PPA, including ingress and egress rights to the Premises for Lessee, its Affiliates and any employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, regulators and other designees of any of the foregoing and any local electric utility personnel, and access to the System to interconnect the System with the Premises' electrical wiring. Lessor shall provide such space and access as is reasonably requested by Lessee for laydown, for the temporary storage and staging of tools, materials, parts, supplies and equipment, for rigging and material handling, for the parking of vehicles and temporary trailers and facilities and for erecting an office or other structure, in each case as reasonably necessary or convenient for the development, construction, ownership, operation, and maintenance of the System or any portion thereof. Lessor and its authorized representatives shall at all times have access to, and the right to observe, the development, construction, ownership, operation and maintenance of the System on the Premises, subject to compliance with Lessee's safety rules; provided, however, that Lessor shall not interfere with the development, construction, ownership, operation and maintenance of the System or handle any Lessee equipment or the System without written authorization from Lessee. Notwithstanding the foregoing, Lessee agrees, upon request, to provide Lessor with the names and background check information for personnel, contractors, subcontractors and vendors requesting access to the Premises.

5) **System Output and Ownership**

(a) Lessor acknowledges and agrees that (i) Lessee or one of its Affiliates is and shall be the exclusive owner and operator of the System, (ii) all equipment and facilities comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or

may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises, and (iii) Lessor shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises.

- (b) As between Lessor and Lessee, Lessor acknowledges that Lessee or one of its Affiliates is and shall be the exclusive owner of all Energy Output of the System, of all Environmental Attributes related to the System and of any other tax or financial incentives related to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any such Energy Output, Environmental Attributes or tax or financial incentives.

6) **Representations and Warranties, Covenants of Lessor.**

- (a) **Powers; Authorization.** Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) **No Conflict.** Lessor represents and warrants to the best of its knowledge and belief, that the execution, delivery and performance by it of this Lease does not require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) **Binding Obligation.** Lessor represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) **Lessor's Title to Premises.** Lessor represents , warrants and covenants to the best of its knowledge that Lessor has lawful title to the Premises and that Lessee shall have quiet and peaceful possession of the Premises in accordance with this Lease subject to any easements or rights of way which are a matter of public record without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in this Lease shall run with the Premises and survive any such transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or



party to whom a lien has been granted to execute and deliver to Lessee a document in form and substance satisfactory to Lessee, pursuant to which such party (i) acknowledges and consents to the Lessee's rights in the Premises as set forth herein, including an acknowledgement by the transferee that it has no interest in the System, the Energy Output, the Environmental Attributes or any other tax or financial incentive relating thereto, and shall not gain any interest in any of the foregoing by virtue of the Lessor's transfer, and (ii) expressly subordinates any lien it may have in and to any of the foregoing to Lessee's rights and interests hereunder.

- (e) No Interference with and Protection of System. Lessor will not conduct activities on, in, under, over or about the Premises, the System or any portion thereof that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessee acknowledges that the Premises are located upon school real estate and is generally open to the public. Lessee shall take all reasonable steps to limit access to the Premises to Lessee and Persons entitled to access the Premises on Lessee's behalf pursuant to this Lease. Lessor shall cooperate with Lessee to allow Lessee to implement and maintain reasonable and appropriate security measures on the Premises to prevent the public, Lessor's employees, invitees, agents and representatives, any third parties and animals, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- (f) Maintenance of Premises. Lessee shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) of which Lessor becomes aware. Lessee shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.
- (g) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor. Without limiting the foregoing, Lessor shall not (i) construct or otherwise permit to exist any structure on the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor (except for structures, if any, existing on the Premises as of the Effective Date), (ii) permit the growth of foliage, or (iii) emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, in each case that could adversely affect insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could

adversely affect insulation levels at the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing insulation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (A) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(h), (B) an award of damages would be inadequate to remedy such a breach, and (C) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(h).

- (h) Hazardous Materials. To the best of Lessor's knowledge, there are no hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises in violation of any Applicable Law or that might otherwise impair Lessee's ability to utilize the Premises as contemplated by this Lease. Lessor shall not introduce or use any hazardous, toxic or dangerous substances, chemicals, materials or wastes on, in, under or over the Premises in violation of any Applicable Law. If Lessor becomes aware of any hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises, Lessor shall promptly notify Lessee of the type and location of such substances, chemicals, materials or wastes in writing. Lessor agrees to assume full responsibility for (and shall protect, indemnify and defend the Lessee Indemnitees against) any liability or cleanup obligations for, and any interference with the operation of the System by, any such substances, chemicals, materials or wastes on, in, under or over the Premises, unless directly caused by the actions of Lessee.
- (i) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements that would (i) materially increase the cost of developing, constructing, owning, operating or maintaining the System at the planned locations on the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (ii) adversely affect the ability of the System as designed to produce Energy once installed.

**7) Representations and Warranties, Covenants of Lessee.**

- (a) Powers; Authorization. Lessee represents and warrants that it has all requisite power and authority to enter into this Lease, and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessee represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate (A) its organizational documents, or (B) any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.

- (c) Binding Obligation. Lessee represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law. If Lessee becomes aware of any such hazardous, toxic or dangerous materials on, in, under or over the Premises, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and shall protect, indemnify and defend Lessor Indemnitees against) any liability or cleanup obligations for any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law that are directly caused by the actions of Lessee.

**8) Term and Termination.**

- (a) Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall be in effect until the fifteenth (15<sup>th</sup>) anniversary of the date a Facility on a Parcel achieves commercial operation under the applicable PPA, or January 1, 2020, whichever is sooner, unless terminated earlier or extended in accordance with this Lease. Thereafter, the Term shall automatically extend for two (2) consecutive periods of five (5) years each, unless earlier terminated in accordance herewith. In addition, the then-current term of this Lease shall be extended if, and for the same period that, a related PPA is extended as a result of Force Majeure thereunder. Without limiting any other provisions of this Lease, Lessee may terminate this Lease in Lessee's sole discretion at any time upon three (3) months' written notice to Lessor without triggering the Event of Default provisions of Section 15 or incurring any liability under this Agreement whatsoever.
- (b) Removal of System at End of Term. Unless otherwise notified by Lessee, Lessor shall, upon termination of this lease, deconstruct, decommission, dismantle and remove the System from the Premises, and shall return the Premises to its original condition. Upon election and notice by Lessee, Lessee shall be entitled, within one hundred eighty (180) days following the end of the Term, and at Lessee's cost and expense, to decommission, deconstruct, dismantle and remove the System from the Premises. During such one hundred eighty (180) day period, Lessee, its Affiliates and any employees, agents, representatives, contractors, subcontractors and other designees of any of the foregoing and any local electric utility personnel shall continue to have access to the Premises and the System as otherwise provided in this Lease, without payment of further Rent or other consideration, for purposes of such decommissioning, deconstruction, dismantling and removal.

**9) Insurance.**

- (a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party will name and endorse the other Party as an additional insured in each such policy. For the avoidance of doubt, Lessee's property insurance shall cover the System and Lessor's property insurance shall cover the Premises.
- (b) Lessor shall provide and maintain insurance against any System Loss caused by the negligence or willful misconduct of Lessor or any of its employees, invitees, agents and representatives, not including business interruption insurance, in an amount not less than \$1,000,000, with loss payable to Lessee. The period of indemnity shall not be less than twelve (12) months. Each policy shall waive the insurer's right of subrogation, except that Lessor's policy shall provide that in the event of casualty or loss at the Premises affecting the System, Lessee's property insurer may proceed against the Lessor's insurer. Any such policies of insurance shall expressly provide that such insurance as to Lessee shall not be invalidated by any act, omission or neglect of Lessor and cannot be canceled without ten (10) Business Days' prior written notice to Lessee. As to each such policy, Lessor shall furnish to Lessee a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 9. In the event that Lessor is, notwithstanding the use of its commercially reasonable efforts, unable to obtain the insurance required by this Section 9, Lessee shall be entitled to obtain such insurance at Lessor's cost and expense. Lessor shall, promptly upon demand therefor from Lessee, reimburse Lessee for the full cost and expense of any such insurance that is obtained by Lessee.
- (c) The provisions of this Lease shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties hereunder shall not be limited or reduced by insurance.

**10) Taxes.**

- (a) Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof).
- (b) Lessor shall pay all (a) real and personal property taxes relating to the Premises, (b) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (c) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (d) taxes, fees, service payments, excises, assessments,

bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.

**11) Liability and Indemnity.**

- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless, Lessor, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessor Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessor, and damage or destruction of property, including property of Lessor, any utility company or Lessor, arising out of (i) the gross negligence or willful misconduct of Lessee, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessee or its Affiliates; or (ii) the material breach by Lessee of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessor Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessee’s obligations pursuant to this Section 11(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessor Indemnatee or the acts of third parties. Lessee shall pay any cost that may be incurred by any Lessor Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its Affiliates, and any officers, agents and employees of any of the foregoing (the “Lessee Indemnitees”) from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessee, and damage or destruction of property, including property of Lessee, any utility company or Lessee, arising out of (i) the gross negligence or willful misconduct of Lessor, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessor or its Affiliates; or (ii) the material breach by Lessor of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessee Indemnatee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessor’s obligations pursuant to this Section 11(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of any Lessee Indemnatee or the acts of third parties. Lessor shall pay any cost that may be incurred by any Lessee Indemnatee in enforcing this indemnity, including reasonable attorneys’ fees.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out

of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Lease.

**12) Casualty or Condemnation; Force Majeure.**

- (a) In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor, effective as of a date specified in such notice. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction; provided, however, that, except as otherwise provided in this Lease (including Section 9 and Section 11(b)), Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by Applicable Law for its respective property interest appropriated as well as any damages suffered thereby.
- (b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Lease and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this Lease (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations hereunder; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11).

**13) Assignment.**

- (a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided, however, that Lessee may, in its sole discretion, without the consent of Lessor, assign any of its rights, duties or obligations under this Lease to (i) one or more parties providing



financing or refinancing in connection with the development, construction, ownership, operation or maintenance of the System, or any representative of such parties, (ii) any present or future purchaser(s) of all or any portion of the Energy Output or Environmental Attributes, (iii) any Person succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction. For the avoidance of doubt, changes in control of Lessee shall not be deemed to be assignments of this Lease.

- (b) In addition to the foregoing, Lessee may, in its sole discretion, without the consent of Lessor, assign its rights and obligations hereunder with respect to all or a portion of the Premises to any of its Affiliates. In the event that Lessee assigns its rights and obligations hereunder with respect to a portion of the Premises (the “Assigned Portion”) to any of its Affiliates (the “Assigned Portion Affiliate”) then, if Lessee or such Affiliate so requests, Lessor shall execute (i) with Lessee, an amendment to this Lease reflecting the removal of the Assigned Portion from the Premises for purposes of this Lease, and (ii) with the Assigned Portion Affiliate, a new lease agreement (the “Assigned Portion Lease”) in the form of, and on the same term and conditions set forth in, this Lease. Upon execution of the Assigned Portion Lease, Lessee shall have no obligations in respect of the Assigned Portion and the Assigned Portion Affiliate shall have no obligations in respect of the remaining Premises subject to this Lease.
- (c) Any assignee of Lessee (other than any financing party or any representative thereof to whom this Lease is assigned in connection with the foregoing Section 13(a)(i) or any Assigned Portion Affiliate that has executed an Assigned Portion Lease) or Lessor agrees to assume the obligations of the assignor under, and to be bound by the terms of, this Lease to the extent of such assignment.

14) **Cooperation with Financing.** Lessor acknowledges that Lessee may be financing or refinancing all or a portion of the development, construction, ownership, operation or maintenance of the System. Lessor agrees that it shall provide publicly available data requested by Lessee.

15) **Defaults and Remedies.**

- (a) **Default.** An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:
  - (i) the failure to make, when due, any payment required under this Lease if such failure is not remedied within ten (10) Business Days after the receipt by the Defaulting Party of a Notice of Default;
  - (ii) the failure to perform any material covenant or obligation set forth in this Lease (except to the extent constituting a separate Event of Default), if such failure is not cured within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the

exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;

- (iii) any representation or warranty of the Defaulting Party is untrue or inaccurate in any material respect, which untruth or inaccuracy has a material adverse effect on the other Party, and the Defaulting Party fails to cure such material adverse effect within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;
  - (iv) such Party becomes Bankrupt;
  - (v) such Party fails to provide or maintain in full force and effect any insurance required under this Lease, if such failure is not remedied within thirty (30) calendar days after receipt by the Defaulting Party of a Notice of Default;
  - (vi) Lessor makes a transfer or assignment of its rights under this Lease other than in accordance with the terms and conditions hereof; or
  - (vii) without limitation of any of the foregoing, Lessor fails to perform any covenant or obligation set forth in this Lease, failure which materially interferes with the System's development, construction, ownership, operation or maintenance of the System for more than thirty (30) consecutive days.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.
- (c) Remedies. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease, all of which remedies



shall be cumulative. Such remedies shall include the right of the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**16) Dispute Resolution.**

- (a) Notice of Dispute/Negotiated Resolution. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the ten (10) Business Day period following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.
- (b) Jurisdiction. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties the matter may be resolved in the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.

**17) Miscellaneous.**

- (a) Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices will be made in writing except where this Lease expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section. Initial addresses for notice shall be as follows:

Lessor:

Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

With a copy to:

Dr. John Asplund  
Galesburg CUSD 205  
932 Harrison Street  
Galesburg, IL 61402

Lessee:

Clean Energy Design Group, Inc.  
1760 Wabash Avenue, #9050  
Springfield, IL 62791  
Attn: Mr. Daniel Griffin, Principal and Co-Founder  
Email: [dgriffin@cleanenergydesigngroup.com](mailto:dgriffin@cleanenergydesigngroup.com)

- 18) **Governing Law/Venue.** This Lease will be governed by the laws of the State of Illinois without giving effect to principles of conflicts of laws that would require the application of the law of another jurisdiction.
- 19) **Entire Agreement; Amendments.** This Lease and, if applicable, any PPA between Lessor and Lessee (including the exhibits, any written schedules, supplements or amendments hereto or thereto) constitute the entire agreement between the Parties and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof or thereof. Any amendment, modification or change to this Lease will be void unless in writing and signed by both Parties.
- 20) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.
- 21) **Severability.** If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

- 22) **No Third-Party Beneficiaries.** Nothing in this Lease will provide any benefit to any third party or entitle any third party (other than any Lessor Indemnitee or Lessee Indemnitee) to any claim, cause of action, remedy or right of any kind.
- 23) **No Recourse to Affiliates.** This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 24) **Relationships of Parties.** This Lease shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.
- 25) **Attorneys' Fees.** If any arbitration or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such arbitration or proceeding or enforcing any decision granted therein.
- 26) **Counterparts.** This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Lease received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.
- 27) **Further Assurances.** The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Lease.
- 28) **Construction of Agreement.** This Lease and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against both Parties and shall further be construed and interpreted without reference to the identity of the Party preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Lease or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist.
- 29) **Exhibits and Schedules; Headings; Defined Terms.** Any and all exhibits and schedules referenced herein or attached hereto are hereby incorporated into this Lease by reference. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Capitalized terms used herein shall have the corresponding meanings given to such terms in Exhibit C.

- 30) **Survival.** The provisions of Sections 8, 11, 12, 14, 15, 16 and 17 hereof will survive any expiration or termination of this Lease.
- 31) **Confidentiality.** Except to the extent that Lessor as a government entity is required to disclose any information, documents, or records under applicable law (including but not limited to the Illinois Freedom of Information Act 5 ILCS 140/1 et seq., each Party (the “Receiving Party”) will hold in confidence any information concerning the affairs of the other Party (the “Disclosing Party”) and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, (B) the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or (C) such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice.
- 32) **Estoppel.** Either Party, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party:
- (a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
  - (b) whether or not to the knowledge of such Party there are then existing any defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
  - (c) such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to the facts contained in the certificate.

- 33) **Waiver of Sovereign Immunity.** With the specific exception of Illinois Local Governmental and Employees Tort Immunity Act: 745 ILCS 10/1et seq., Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, to enforce any liability or obligation related to or arising from this Lease, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby

expressly and irrevocably waives any such immunity to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

Attest:

Galesburg CUSD 205, Lessor:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Dr. John Asplund

Title: Superintendent

Clean Energy Design Group, Inc., Lessee

By: \_\_\_\_\_

Name: Mr. Daniel Griffin

Title: Principal and Co-Founder

## **EXHIBIT A**

### **Description of Premises**

The Premises consist of the parcels described below (each, a “Parcel”), each owned, operated and managed by Lessor in and around the city of Galesburg, Illinois. All of the Premises will be leased to Lessee for the purpose of developing, constructing, owning, operating and maintaining the System, and as otherwise described in the Lease.

Parcel Designation	Description	Location
	5.5 Acres	1135 W. Fremont Street Galesburg, IL 61401

**EXHIBIT B**

**RENT**

Lessee shall pay Rent to Lessor according to the following schedule:

\$833.33 Rent x 5.5 Acres = \$4,583.32 beginning on the First Day of the Month before mobilization

## EXHIBIT C

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

**1) Definitions.** The definitions provided below and elsewhere in this Lease will apply to the defined terms used in this Lease:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Assigned Portion” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Affiliate” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Lease” shall have the meaning ascribed in Section 13(b).

“Bankrupt” means that a Person: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (g) has insolvency, receivership, reorganization, bankruptcy, or similar proceedings commenced against it and such proceedings remain undismissed or unstayed for a period of ninety (90) days.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means a calendar day excluding Saturdays, Sundays and days that are official holidays of the United States or the State of Maryland.

“Claiming Party” shall have the meaning ascribed in Section 12(b).

“Defaulting Party” shall have the meaning ascribed to it in Section 15(a).



“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under a PPA.

“Disclosing Party” shall have the meaning ascribed to it in Section 17(q).

“Effective Date” shall have the meaning ascribed to it in the preamble.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of electrical energy generated by the System and delivered to the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Applicable Law, and to a federal or state agency or any other Person at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future Applicable Law, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

“Event of Default” shall have the meaning ascribed to it in Section 15(a).

“Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance is not within the reasonable control, or the result of the negligence, of the Claiming Party. Economic hardship of either Party shall not constitute Force Majeure.

“Insolation” shall have the meaning ascribed to it in Section 6(h).

“Lease” shall have the meaning ascribed to it in the preamble.

“Lessee” shall have the meaning ascribed to it in the preamble.

“Lessee Indemnitees” shall have the meaning ascribed to it in Section 11(b).

“Lessor” shall have the meaning ascribed to it in the preamble.

“Lessor Indemnitees” shall have the meaning ascribed to it in Section 11(a).

“Lessor’s Landlord” shall have the meaning ascribed to it in Section 6(d).

“Metering Device” means any and all meters at or before any Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

“Notice of Default” shall have the meaning ascribed to it in Section 14(b).

“Notice of Intent to Arbitrate” shall have the meaning ascribed to it in Section 15(b)(ii).

“Parcel” shall have the meaning ascribed to it in Exhibit A.

“Party” and “Parties” shall have the meaning ascribed to it in the preamble.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“PPA” means a power purchase agreement entered into between Lessee and another Person, pursuant to which Lessee sells all or any portion of the Electrical Output or all or any portion of the Environmental Attributes to such other Person.

“Premises” shall have the meaning ascribed to it in the recitals.

“Receiving Party” shall have the meaning ascribed to it in Section 17(g).

“Rent” shall have the meaning ascribed to it in Section 2.

“System” shall have the meaning ascribed to it in the recitals.

“System Loss” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty and condemnation) other than (a) Lessee’s negligence or intentional misconduct, (b) Lessee’s breach of maintenance obligations under the PPA, or (c) normal wear and tear of the System.

“Term” shall have the meaning ascribed to it in Section 8(a).

**2) Rules of Interpretation.** In this Lease, unless expressly provided otherwise:

- a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Lease and a reference to a recital, Article, Section, subsection or paragraph of this Lease or any other

agreement is a reference to a recital, Article, Section, subsection or paragraph of this Lease or other agreement in which it is used unless otherwise stated;

- b) references to this Lease, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- d) a reference to this Lease, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Lease or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this Lease expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) a reference to time is a reference to the time in effect in Washington, DC on the relevant date; and
- q) if a payment prescribed under this Lease to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day.
- r) in the event of a conflict in the interpretation of this Agreement and the PPA, this Agreement shall control.

RESOLUTION  
ESTABLISHING PREVAILING WAGES  
(Certificate of Compliance)

WHEREAS, The State of Illinois has enacted "An Act regulating wages of laborers, mechanics, and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works," approved June 26, 1941, codified as amended, 820 ILCS 130/1 et seq. (1993), formerly Ill. Rev. Stat., Ch. 48, par. 39s-1 et seq. and

WHEREAS, the aforesaid Act requires that the Community Unit School District #205 of the Knox-Warren Counties investigate and ascertain the prevailing rate of wages as defined in said Act for laborers, mechanics and other workers in the locality of Knox and Warren Counties employed in performing construction of public works, for said Community Unit School District #205.

NOW THEREFORE, BE IT ORDAINED BY PRESIDENT AND BOARD OF COMMUNITY UNIT SCHOOL DISTRICT #205:

SECTION 1: To the extent and as required by "An Act regulating wages of laborers, mechanics and other workers employed in any public works by State, county, city or any public body or any political subdivision or by anyone under contract for public works," approved June 26, 1941, as amended, the general prevailing rate of wages in this locality for laborers, mechanics, and other workers engaged in construction of public works coming under the jurisdiction of Community Unit School District #205 is hereby ascertained to be the same as the prevailing rate of wages for construction work in Knox and Warren Counties as determined by the Department of Labor of the State of Illinois as of August of 2018 and April of 2019 - a copy of that determination being attached hereto and incorporated herein by reference. As required by said Act, any and all revisions of the prevailing rate of wages by the Department of Labor of the State of Illinois shall supersede the Department's June determination and apply to any and all public works construction undertaken by Community Unit School District #205. The definition of any terms appearing in the Ordinance which are also used in aforesaid Act shall be same as in said Act.

SECTION 2: Nothing herein contained shall be construed to apply said general prevailing rate of wages as herein ascertained to any work or employment except public works construction of Community Unit School District #205 to the extent required by the aforesaid Act.

SECTION 3: Community Unit School District #205 shall publicly post or keep available for inspection by any interested party in the main office of Community Unit School District #205 this determination or any revisions of such prevailing rate of wage. A copy of this determination or of the current revised determination of prevailing rate of wages then in effect shall be attached to all contract specifications.

SECTION 4: Community Unit School District #205 shall mail a copy of this determination to any employer, and to any association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates.

SECTION 5: Community Unit School District #205 shall promptly file a certified copy of this Ordinance with both the Secretary of State Index Division and the Department of Labor of the State of Illinois.

SECTION 6: Community Unit School District #205 shall cause to be published in a newspaper of general circulation within the area a copy of this Ordinance, and such publication shall constitute notice that the determination is effective and that this is the determination of this public body.

PASSED THIS 10<sup>th</sup> Day of June, 2019

APPROVED:

\_\_\_\_\_  
Dr. John Asplund, Superintendent

AFFIX SEAL

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ms. Vickie Banks, Secretary  
Board of Education

\_\_\_\_\_  
Ms. Tianna Cervantez, President  
Board of Education

Effective Date	Trade	County	Regio	Type	Base Wage	Foreman Wage	OT M-F	OT Sa	OT Su	Hol	H/W	Pension	Vacation	Training
8/15/2018	ASBESTOS	Knox	All	BLD	30.14	31.14	1.5	1.5	1.5	2	2	8.92	14.66	0 0.8
8/15/2018	ASBESTOS	Knox	All	HWY	29.69	30.44	1.5	1.5	1.5	2	2	8.92	14.32	0 0.8
8/15/2018	ASBESTOS	Knox	All	BLD	22.7	23.7	1.5	1.5	1.5	2	2	6.7	5.05	0 0.65
8/15/2018	BOILERMA	Knox	All	BLD	40	43	2	2	2	2	2	7.07	18.19	0 0.4
8/15/2018	BRICK MA	Knox	All	BLD	34.1	35.6	1.5	1.5	1.5	2	2	10.35	11.32	0 0.82
4/5/2019	CARPENTE	Knox	All	BLD	32.46	34.71	1.5	1.5	1.5	2	2	8.55	18	0 0.54
4/5/2019	CARPENTE	Knox	All	HWY	34.66	36.91	1.5	1.5	1.5	2	2	8.55	18.6	0 0.52
4/5/2019	CEMENT N	Knox	All	ALL	30.02	30.52	1.5	1.5	1.5	2	2	6.3	13.95	0 0.6
8/15/2018	CEMENT N	Knox	All	HWY	29.75	31.25	1.5	1.5	1.5	2	2	31.25	13.95	0 0.6
8/15/2018	CERAMIC	Knox	All	BLD	31.78	31.78	1.5	1.5	1.5	2	2	10.35	11.32	0 0.8
8/15/2018	ELECTRIC	Knox	All	ALL	45.09	56.52	1.5	1.5	1.5	2	2	7.1	12.62	0 0.45
8/15/2018	ELECTRIC	Knox	All	ALL	30.81	56.52	1.5	1.5	1.5	2	2	6.67	8.62	0 0.31
8/15/2018	ELECTRIC	Knox	All	ALL	50.11	56.52	1.5	1.5	1.5	2	2	7.25	14.03	0 0.5
8/15/2018	ELECTRIC	Knox	All	ALL	32.32	56.52	1.5	1.5	1.5	2	2	6.72	9.05	0 0.32
4/5/2019	ELECTRIC	Knox	All	BLD	32	34.5	1.5	1.5	1.5	2	2	7.35	11.73	0 0.8
4/5/2019	ELECTRON	Knox	All	BLD	28.25	30.25	1.5	1.5	1.5	2	2	7.35	12	0 0.4
8/15/2018	ELEVATOR	Knox	All	BLD	44.78	50.38	2	2	2	2	2	15.43	16.61	3.58 0.61
8/15/2018	GLAZIER	Knox	All	BLD	29.21	0	1.5	1.5	1.5	1.5	1.5	6.94	7.67	0 0.65
4/5/2019	HT/FROST	Knox	All	BLD	30.41	31.61	1.5	1.5	1.5	2	2	6.35	12.8	0 1.1
8/15/2018	IRON WORN	Knox	All	ALL	30.75	33.21	1.5	1.5	1.5	2	2	9.79	12.94	1.8 0.69
8/15/2018	IRON WORSE	Knox	All	BLD	32.41	34.31	1.5	1.5	1.5	2	2	10.66	15.47	0 0.54
8/15/2018	IRON WORSE	Knox	All	HWY	36.82	38.82	1.5	1.5	1.5	2	2	10.66	15.47	0 0.64
8/15/2018	IRON WORSW	Knox	All	ALL	26.25	28.5	1.5	1.5	1.5	2	2	8.13	14.37	0 0.6
4/5/2019	LABORER	Knox	All	BLD	29.14	30.14	1.5	1.5	1.5	2	2	8.92	14.66	0 0.8
8/15/2018	LABORER	Knox	All	HWY	28.69	29.44	1.5	1.5	1.5	2	2	8.92	14.32	0 0.8
4/5/2019	LABORER,	Knox	All	BLD	29.14	30.14	1.5	1.5	1.5	2	2	8.92	14.66	0 0.8
4/5/2019	LABORER,	Knox	All	HWY	28.69	29.44	1.5	1.5	1.5	2	2	8.92	14.32	0 0.8
8/15/2018	LATHER	Knox	All	BLD	32.46	34.71	1.5	1.5	1.5	2	2	8.55	18	0 0.54
8/15/2018	MACHINEFSE	Knox	All	HWY	36.82	38.82	1.5	1.5	1.5	2	2	10.66	15.47	0 0.64
8/15/2018	MACHINIS	Knox	All	BLD	48.38	50.88	1.5	1.5	1.5	2	2	7.23	8.95	1.85 1.47
8/15/2018	MARBLE F	Knox	All	BLD	31.78	31.78	1.5	1.5	1.5	2	2	10.35	11.32	0 0.8
8/15/2018	MARBLE N	Knox	All	BLD	34.02	35.27	1.5	1.5	1.5	2	2	10.35	11.32	0 0.82

8/15/2018	Knox	MILLWRIG All	BLD	32.24	34.49	1.5	1.5	1.5	2	2	2	8.55	18.57	0	0.54
8/15/2018	Knox	MILLWRIG All	HWY	35.01	37.26	1.5	1.5	1.5	2	2	2	8.55	18.8	0	0.52
8/15/2018	Knox	OPERATIN All	BLD	40.01	43.01	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
8/15/2018	Knox	OPERATIN All	BLD	37.07	43.01	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
8/15/2018	Knox	OPERATIN All	BLD	32.21	43.01	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
10/26/2018	Knox	OPERATIN All	HWY	40.02	43.02	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
4/5/2019	Knox	OPERATIN All	HWY	37.08	43.02	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
8/15/2018	Knox	OPERATIN All	HWY	32.22	43.02	1.5	1.5	1.5	2	2	2	10	19.73	0	3.3
4/5/2019	Knox	PAINTER All	ALL	28.42	29.67	1.5	1.5	1.5	1.5	2	2	6.05	8.9	0	0.3
8/15/2018	Knox	PAINTER O All	ALL	30.42	32.75	1.5	1.5	1.5	1.5	1.5	1.5	5.6	7.15	0	0.52
8/15/2018	Knox	PAINTER P All	ALL	28.92	31.25	1.5	1.5	1.5	1.5	1.5	1.5	5.6	7.15	0	0.52
8/15/2018	Knox	PILEDRIVE All	BLD	33.46	35.71	1.5	1.5	1.5	2	2	2	8.55	18	0	0.54
8/15/2018	Knox	PILEDRIVE All	HWY	34.66	36.91	1.5	1.5	1.5	2	2	2	8.55	18.6	0	0.52
8/15/2018	Knox	PIPEFITTE All	ALL	39.6	43.56	1.5	1.5	1.5	2	2	2	7.05	14.35	0	1.34
8/15/2018	Knox	PLASTEREF All	BLD	29.91	31.16	1.5	1.5	1.5	2	2	2	8.65	17.24	0	0.8
4/5/2019	Knox	PLUMBER All	ALL	39.6	43.56	1.5	1.5	1.5	2	2	2	7.05	14.35	0	1.34
4/5/2019	Knox	ROOFER All	BLD	28.25	29.5	1.5	1.5	1.5	2	2	2	9.44	7.62	0	0.52
4/5/2019	Knox	SHEETMET All	BLD	32.93	35.2	1.5	1.5	1.5	2	2	2	7.14	13.91	0	0.7
8/15/2018	Knox	SIGN HANSE	HWY	36.82	38.82	1.5	1.5	1.5	2	2	2	10.66	15.47	0	0.64
8/15/2018	Knox	SPRINKLER All	BLD	37.12	39.87	1.5	1.5	1.5	2	2	2	8.42	8.5	0	0.35
8/15/2018	Knox	STEEL ERESE	HWY	36.82	38.82	1.5	1.5	1.5	2	2	2	10.66	15.47	0	0.64
8/15/2018	Knox	STONE MA All	BLD	34.1	35.6	1.5	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Knox	TERRAZZO All	BLD	31.78	31.78	1.5	1.5	1.5	2	2	2	10.35	11.32	0	0.8
8/15/2018	Knox	TERRAZZO All	BLD	34.02	35.27	1.5	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Knox	TILE MASO All	BLD	34.02	35.27	1.5	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Knox	TRUCK DRI All	ALL	37.06	41.07	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Knox	TRUCK DRI All	ALL	37.6	41.07	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Knox	TRUCK DRI All	ALL	37.85	41.07	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Knox	TRUCK DRI All	ALL	38.2	41.07	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TRUCK DRI All	ALL	39.21	41.07	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TRUCK DRI All	O&C	29.65	32.86	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TRUCK DRI All	O&C	30.08	32.86	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TRUCK DRI All	O&C	30.28	32.86	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TRUCK DRI All	O&C	30.56	32.86	1.5	1.5	1.5	2	2	2	12.65	6.12	0	0.25



8/15/2018	Knox	TRUCK DRI	O&C	31.37	32.86	1.5	1.5	2	2	12.65	6.12	0	0.25
8/15/2018	Knox	TUCKPOIN	BLD	34.1	35.6	1.5	1.5	2	2	10.35	11.32	0	0.82
8/15/2018	Warren	ASBESTOS	BLD	30.14	31.14	1.5	1.5	2	2	8.92	14.66	0	0.8
8/15/2018	Warren	ASBESTOS	HWY	29.69	30.44	1.5	1.5	2	2	8.92	14.32	0	0.8
8/15/2018	Warren	ASBESTOS	BLD	22.7	23.7	1.5	1.5	2	2	6.7	5.05	0	0.65
8/15/2018	Warren	BOILERMA	BLD	40	43	2	2	2	2	7.07	18.19	0	0.4
8/15/2018	Warren	BRICK MA	BLD	34.1	35.6	1.5	1.5	2	2	10.35	11.32	0	0.82
1/11/2019	Warren	CARPENTE	BLD	33.02	35.27	1.5	1.5	2	2	8.55	17.5	0	0.54
4/5/2019	Warren	CARPENTE	HWY	35.76	38.01	1.5	1.5	2	2	8.55	17.5	0	0.52
4/5/2019	Warren	CEMENT N	ALL	30.02	30.52	1.5	1.5	2	2	6.3	13.95	0	0.6
8/15/2018	Warren	CEMENT N	HWY	29.75	31.25	1.5	1.5	2	2	31.25	13.95	0	0.6
8/15/2018	Warren	CERAMIC T	BLD	31.78	31.78	1.5	1.5	2	2	10.35	11.32	0	0.8
8/15/2018	Warren	ELECTRIC F	ALL	45.09	56.52	1.5	1.5	2	2	7.1	12.62	0	0.45
8/15/2018	Warren	ELECTRIC F	ALL	30.81	56.52	1.5	1.5	2	2	6.67	8.62	0	0.31
8/15/2018	Warren	ELECTRIC F	ALL	50.11	56.52	1.5	1.5	2	2	7.25	14.03	0	0.5
8/15/2018	Warren	ELECTRIC F	ALL	32.32	56.52	1.5	1.5	2	2	6.72	9.05	0	0.32
8/15/2018	Warren	ELECTRIC F	BLD	32	34.5	1.5	1.5	2	2	7.35	11.73	0	0.8
8/15/2018	Warren	ELECTRON A	BLD	28.25	30.25	1.5	1.5	2	2	7.35	12	0	0.4
8/15/2018	Warren	ELEVATOR A	BLD	44.78	50.38	2	2	2	2	15.43	16.61	3.58	0.61
8/15/2018	Warren	GLAZIER	ALL	29.21	31.25	1.5	1.5	2	2	6.94	8.92	0	0.45
4/5/2019	Warren	HT/FROST	BLD	30.41	31.61	1.5	1.5	2	2	6.35	12.8	0	1.1
4/5/2019	Warren	IRON WOR	ALL	26.25	28.5	1.5	1.5	2	2	8.13	14.37	0	0.6
4/5/2019	Warren	LABORER	BLD	29.14	30.14	1.5	1.5	2	2	8.92	14.66	0	0.8
8/15/2018	Warren	LABORER	HWY	28.69		1.5	1.5	2	2	8.2	11.89	3.17	0.8
4/5/2019	Warren	LABORER,	ALL	29.14	30.14	1.5	1.5	2	2	8.92	14.66	0	0.8
4/5/2019	Warren	LABORER,	HWY	28.69	29.44	1.5	1.5	2	2	8.92	14.32	0	0.8
8/15/2018	Warren	LATHER	ALL	33.02	35.27	1.5	1.5	2	2	8.55	17.5	0	0.54
8/15/2018	Warren	MACHINIS	BLD	48.38	50.88	1.5	1.5	2	2	7.23	8.95	1.85	1.47
8/15/2018	Warren	MARBLE F	BLD	31.78	31.78	1.5	1.5	2	2	10.35	11.32	0	0.8
8/15/2018	Warren	MARBLE N	BLD	34.02	35.27	1.5	1.5	2	2	10.35	11.32	0	0.82
8/15/2018	Warren	MILLWRIG	BLD	32.24	34.49	1.5	1.5	2	2	8.55	18.57	0	0.54
8/15/2018	Warren	MILLWRIG	HWY	35.01	37.26	1.5	1.5	2	2	8.55	18.8	0	0.52
8/15/2018	Warren	OPERATI	BLD	40.01	43.01	1.5	1.5	2	2	10	19.73	0	3.3
8/15/2018	Warren	OPERATI	BLD	37.07	43.01	1.5	1.5	2	2	10	19.73	0	3.3

8/15/2018	Warren OPERATING	ALL	BLD	32.21	43.01	1.5	1.5	2	2	2	10	19.73	0	3.3
4/5/2019	Warren OPERATING	ALL	HWY	40.02	43.02	1.5	1.5	2	2	2	10	19.73	0	3.3
8/15/2018	Warren OPERATING	ALL	HWY	37.08	43.02	1.5	1.5	2	2	2	10	19.73	0	3.3
10/26/2018	Warren OPERATING	ALL	HWY	32.12		1.5	1.5	2	2	2	8.5	6.5	0	3.59
8/15/2018	Warren PAINTER	ALL	ALL	28.42	29.67	1.5	1.5	1.5	2	2	6.05	8.9	0	0.3
8/15/2018	Warren PAINTER	O&C	ALL	30.42	32.75	1.5	1.5	1.5	1.5	2	5.6	7.15	0	0.52
8/15/2018	Warren PAINTER	P&C	ALL	28.92	31.25	1.5	1.5	1.5	1.5	2	5.6	7.15	0	0.52
8/15/2018	Warren PILEDRIVE	ALL	BLD	34.02	36.27	1.5	1.5	2	2	2	8.55	17.5	0	0.54
8/15/2018	Warren PILEDRIVE	ALL	HWY	35.76	38.01	1.5	1.5	2	2	2	8.55	17.5	0	0.52
8/15/2018	Warren PIPEFITTER	ALL	ALL	39.6	43.56	1.5	1.5	2	2	2	7.05	14.35	0	1.34
8/15/2018	Warren PLASTER	ALL	BLD	29.91	31.16	1.5	1.5	2	2	2	8.65	17.24	0	0.8
4/5/2019	Warren PLUMBER	ALL	ALL	39.6	43.56	1.5	1.5	2	2	2	7.05	14.35	0	1.34
8/15/2018	Warren ROOFER	ALL	BLD	28.25	29.5	1.5	1.5	2	2	2	9.44	7.62	0	0.52
4/5/2019	Warren SHEETMET	ALL	BLD	32.93	35.2	1.5	1.5	2	2	2	7.14	13.91	0	0.7
8/15/2018	Warren SPRINKLER	ALL	BLD	37.12	39.87	1.5	1.5	2	2	2	8.42	8.5	0	0.35
8/15/2018	Warren STONE	MA	ALL	34.1	35.6	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Warren TERRAZZO	ALL	BLD	31.78	31.78	1.5	1.5	2	2	2	10.35	11.32	0	0.8
8/15/2018	Warren TERRAZZO	ALL	BLD	34.02	35.27	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Warren TILE	MASO	ALL	34.02	35.27	1.5	1.5	2	2	2	10.35	11.32	0	0.82
8/15/2018	Warren TRUCK	DRI	ALL	37.06	41.07	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Warren TRUCK	DRI	ALL	37.6	41.07	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Warren TRUCK	DRI	ALL	37.85	41.07	1.5	1.5	2	2	2	12.65	6.12	0	0.25
4/5/2019	Warren TRUCK	DRI	ALL	38.2	41.07	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	ALL	39.21	41.07	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	O&C	29.65	32.86	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	O&C	30.08	32.86	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	O&C	30.28	32.86	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	O&C	30.56	32.86	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TRUCK	DRI	O&C	31.37	32.86	1.5	1.5	2	2	2	12.65	6.12	0	0.25
8/15/2018	Warren TUCKPOINT	ALL	BLD	34.1	35.6	1.5	1.5	2	2	2	10.35	11.32	0	0.82

## Memorandum

Date: May 24, 2019

To: Jen Hamm

From: Paulette Earp

Re: Hazardous Areas for Transportation K-8

It is recommended that the hazardous transportation areas be approved for the 2019-2020 school year. The only change is the hazardous area that was approved for Nielson due to the Farnham Street bridge closure will not be in place for the 19-20 school year.

Once approved at the June board meeting, I will keep the resolution on file as we no longer have to forward the resolution to the Illinois State Board of Education. The required map is also on file in my office.

**PRAIRIE STATE INSURANCE COOPERATIVE**  
**2019-2020 PROPERTY/CASUALTY PROGRAM COST COMPARISON**

**District: Galesburg Community Unit School District#205**

<b>FIXED COSTS</b>	<b>2018-2019 EXPIRING</b>	<b>2019-2020 PROPOSED</b>
Package premium - includes actuarial debit/credit in [ ] *	[20.0%] \$26,923	[20.0%] \$28,377
Excess Property	\$29,941	\$30,455
Boiler & Machinery	\$4,959	\$5,047
Pollution Liability	\$2,024	\$2,282
Excess Liability (\$18,000,000 xs \$2,000,000)	\$7,684	\$8,067
Student Accident – Mandatory (\$25,000)	\$21,929	\$21,927
Student Accident – Catastrophic (\$5,000,000 xs \$25,000)	\$6,598	\$6,327
Cyber Liability/Identity Theft	\$4,941	\$4,941
Crisis Protect – Enhanced VMA	\$4,808	\$4,749
AJ Gallagher Administration/Brokerage Fee	\$12,591	\$12,968
Associated Risk Managers of Illinois Local Agents' Fee	\$12,591	\$12,968
Gallagher Bassett Claims Administration Fee	\$2,656	\$2,733
Gallagher Bassett Loss Control Fee	\$1,008	\$1,008
PSIC Operating Expense Fee	\$560	\$0
<b>Total Fixed Costs</b>	<b>\$139,213</b>	<b>\$141,849</b>
<b>% of Change</b>		<b>2%</b>

<b>VARIABLE COSTS</b>	<b>2018-2019 EXPIRING</b>	<b>2019-2020 PROPOSED</b>
Loss Fund– Package -includes actuarial debit/credit in [ ] *	[10.0%] \$56,846	[10.0%] \$70,014
<b>Total Program Contribution on a Maximum Cost Basis</b>	<b>\$196,059</b>	<b>\$211,863</b>
<b>% of Change</b>		<b>8%</b>

<b>Statistical Information</b>	<b>2018-2019 EXPIRING</b>	<b>2019-2020 PROPOSED</b>	<b>% CHANGE</b>
Total Insurable Values (Includes Auto Physical Damage)	\$213,184,458	\$216,917,180	2%
Pre-K/Elementary/Junior Students	3,055	2,976	-3%
High School Students	1,202	1,242	3%
Teachers	314	313	-0%
Buses	7	7	0%
All Other Vehicles	17	17	0%

\*Please note, the actuarial debit/credit system for the 2019/2020 renewal is based on 2018/2019 individual member annual contribution. This system is based on 5 years of incurred losses by member as well as 2019/2020 exposures by member.

Prairie State Insurance Cooperative

**Individual Member Property/Casualty Loss Ratio**

**As of December 31, 2018**

**Member: Galesburg Community Unit School District#205**

<b>Policy Term</b>	<b>Total Paid &amp; Reserved Losses</b>	<b>PSIC Loss Fund Collected</b>	<b>Loss Ratio</b>
2013/14	\$15,864	\$35,902	44%
2014/15	\$66,934	\$31,417	213%
2015/16	\$60,725	\$31,707	192%
2016/17	\$161,590	\$37,779	428%
2017/18	\$0	\$44,262	0%
<b>5-Year Total</b>	<b>\$305,113</b>	<b>\$181,067</b>	<b>175%</b>

Please note the above figures do not contain any trending or development factors that are known to increase open claims.

In addition, the 12/31/18 loss data was utilized in the calculation of the 2019/2020 debit/credit allocations.



**PRAIRIE STATE INSURANCE COOPERATIVE**  
**2019-2020 WORKERS' COMPENSATION PROGRAM COST COMPARISON**

**District: Galesburg Community Unit School District #205**

<b>PAYROLL INFORMATION</b> (Payroll information is unaudited)	<b>2018-2019</b>	<b>2019-2020</b>	<b>% Increase/ Decrease</b>
7380 Drivers	\$159,616	\$102,524	-36%
8868 School: Professional Employees	\$20,036,131	\$26,407,598	32%
9082 Cafeteria	\$808,531	\$810,285	0%
9101 School: All Other (Maintenance)	\$1,259,399	\$983,911	-22%
<b>Total Payroll</b>	<b>\$22,263,677</b>	<b>\$28,304,318</b>	<b>27%</b>
<b>Experience Modification Factor</b>	<b>1.51</b>	<b>1.27</b>	
<b>Modified Premium</b>	<b>\$218,952</b>	<b>\$167,449</b>	<b>-24%</b>

<b>FIXED COSTS</b>	<b>2018-2019 Expiring</b>	<b>2019-2020 Proposed</b>
Workers' Compensation Premium	\$17,297	\$15,238
York Risk Claims Service Fee	\$5,007	\$5,005
Gallagher Administration/Brokerage Fee	\$13,852	\$14,268
Associated Risk Managers of Illinois Local Agents' Fee	\$13,852	\$14,268
PSIC Management Operating Expense	\$637	\$0
Gallagher Bassett Loss Control Service Unit Days	(4 Days) \$4,000	(4 Days) \$4,000
<b>Total Fixed Costs</b>	<b>\$54,645</b>	<b>\$52,779</b>
<b>% of Increase/Decrease</b>		<b>0%</b>

<b>VARIABLE COSTS</b>	<b>2018-2019 Expiring</b>	<b>2019-2020 Proposed</b>
Loss Fund – Workers Compensation	\$303,411	\$354,081
<b>Total Workers' Compensation Program Contribution</b>	<b>\$358,056</b>	<b>\$406,860</b>
<b>% of Increase/Decrease</b>		<b>14%</b>

<b>LOSS FUND</b>	<b>2018-2019</b>	<b>2019-2020</b>
Loss Fund – 100% (without Actuarial Debit/Credit)	\$248,218	\$283,265
Actuarial Debit/Credit	22.2%	25.0%
Loss Fund – 100% (with Actuarial Debit/Credit)	\$303,411	\$354,081

\*Please note, the actuarial debit/credit system for the 2019/2020 renewal is based on 2018/2019 individual member annual contribution. This system is based on 5 years of incurred losses by member as well as 2019/2020 exposures by member.

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Prairie State Insurance Cooperative

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**Individual Member Workers Compensation Loss Ratio**  
**As of December 31, 2018**

Member: Galesburg Community Unit School District #205

<b>Policy Term</b>	<b>Total Paid &amp; Reserved Losses</b>	<b>PSIC Loss Fund Collected</b>	<b>Loss Ratio</b>
2013/14	\$91,321	\$154,392	59%
2014/15	\$365,857	\$164,264	223%
2015/16	\$210,670	\$156,874	134%
2016/17	\$371,428	\$195,169	190%
2017/18	\$69,427	\$265,898	26%
<b>5 Year Total</b>	<b>\$1,108,703</b>	<b>\$936,597</b>	<b>127%</b>

Please note the above figures do not contain any trending or development factors that are known to increase open claims.

In addition, the 12/31/18 loss data was utilized in the calculation of the 2019/2020 debit/credit allocations

**\* Board Approval Needed! See Attachment \***

## COMMUNITY UNIT SCHOOL DISTRICT #205

Galesburg, IL 61402-1206

## Field Trip Request Form – Submit to Transportation Office

This request is for a ☐ Walking Field Trip or a Field Trip that ☒ Requires Transportation (Check One)

If this request is for a "Walking Field Trip" – Complete applicable requested information. (You do not need to complete bus information.)

FROM: Corrine Wascher  
Teacher NameGHS  
SchoolTODAY'S DATE: 5/29/19Date Bus is Needed: 7/21-23/19 Number of Buses Needed: 1

Indicate Special Needs (Transporting equipment, etc.):

Number of Student Riders: 7Number of Wheelchair Riders: 0Number of Adult Riders: 1Total Riders: 8Name of Group (BE SPECIFIC): Galesburg FFADestination of Field Trip: \* Gary Indiana - Chapter Officer Retreat

\*If trip is out of town, give address &amp; directions to the location the bus is to drop off students.

ATTACH LIST OF STUDENTS PARTICIPATING, DENOTING IF THEY ARE A REGULAR BUS RIDER.

List any/all curricular objectives that will be achieved by this visit: Galesburg FFA Officersand I will be traveling to Gary Indiana to a Lake House  
on Lake Michigan to make plans for the upcoming year @ our  
Annual Officer retreatDEPARTURE TIME: 7:30am DEPARTURE LOCATION: Vol. lotRETURN TIME: 3:00pm RETURN LOCATION: \_\_\_\_\_

Estimated Cost: \_\_\_\_\_ (Building Principal)

Approved by Building Principal: [Signature]Date: 5/31/19

All field trip requests must be submitted to the transportation office 3 weeks prior to the date of the trip.

All field trips require parental notification/approval.

Send all copies to the central office, pink copy will be returned to you as your confirmation.

## FOR USE BY TRANSPORTATION OFFICE

Trans. Office

Trip Assigned To: ☐ CUSD #205 Minibus  
☐ First Student

Approved by Asst. Supt. for Instruction: \_\_\_\_\_ Date: \_\_\_\_\_



# Summer Travel Plans

## Galesburg FFA

### Galesburg FFA Officer Retreat

**When:** July 21st-July 23rd

**Transportation Needs:** Activity Bus

**Where:** Gary, Indiana

**Why:** Galesburg FFA will be traveling to Gary, Indiana for our annual officer retreat. The chapter will be staying in a Lake House near Ogden Dunes State Park. The plan for the officer retreat is to set officer expectations, set the chapter goals and calendar, as well as work on team building and leadership skills. Students will also get a chance to hike at the dunes and spend some down time at the beach which is located a few blocks from our rental home.

### State FFA Leadership Camp

**When:** July 23rd-July 26th

**Transportation Needs:** Van

**Where:** Monticello, Illinois (4H Leadership Camp Grounds)

**Why:** Galesburg FFA will be traveling to Monticello, Illinois for the State FFA Convention. While at leadership camp, members will learn more about serving their chapters and communities, how to better serve in their officer positions, and will get the chance to network with students from all across the state. Students will participate in activities such as a team building course, ag olympics, a talent show, alumni dinner, and much more. This is a great opportunity to learn more about themselves and grow in the leadership styles and abilities.

## **PERSONNEL ITEMS FOR BOARD APPROVAL JUNE 10, 2019**

### **CERTIFIED STAFF**

#### **APPOINTMENTS:**

*Please note: The following new appointments are pending completion of all certification requirements, citizenship, and clearance on the state & FBI required background investigation. Final salaries are pending verification of transcripts and employment verification.*

Megan Molloy, English teacher at Galesburg High School, effective August 14, 2019. (Replacing Flor Frau)

Salary: \$35,603.00 (BA+0, Step 1)

Mason Hultgren, 5<sup>th</sup> Grade teacher at Nielson Elementary School, effective August 14, 2019. (Replacing Khristi Kramer)

Salary: \$48,535.00 (BA+0, Step 10)

Nicole Lincoln, Life Skills teacher at Steele Elementary School, effective August 14, 2019. (Replacing Laci Washabaugh)

Salary: \$43,783.00 (BA+16, Step 6)

Devin Cano, 0.75 FTE Music teacher at Gale Elementary School and 0.25 Band teacher at Galesburg High School, effective August 14, 2019. (Replacing Belle Kestner)

Salary: \$35,603.00 (BA+0, Step 1)

Rachel Williams, EBD teacher at Silas Willard Elementary School, effective August 14, 2019. (Replacing Kelly Hannam)

Salary: \$35,603.00 (BA+0, Step 1)

Peter Duquette, Math teacher at Churchill Jr. High School, effective August 14, 2019. (Replacing Kandy Lindsey)

Salary: \$72,119.00 (MA+0, Step 26)

Rachel Kellogg, 3<sup>rd</sup> Grade teacher at Steele Elementary School, effective Augusts 14, 2019. (Replacing Jodi Johnson)

Salary: \$35,603.00 (BA+0, Step 1)

James Wagner, EBD teacher at Galesburg High School, effective August 14, 2019. (Replacing Scott Hamrick)

Salary: \$42,604.00 (BA+0, Step 6)

Matthew Avery, PE teacher 0.5 FTE at Churchill Jr. High School, and 0.5 FTE at Lombard Middle School, effective August 14, 2019. (Replacing Jay Barshinger)

Salary: \$50,290.00 (MA+0, Step 8)

Carin Stroup, English Language Learner teacher at Steele Elementary School, effective August 14, 2019. (Replacing Violeta Ortega)

Salary: \$48,535.00 (BA+0, Step 10)

Lori Duquette, English teacher at Lombard Middle School, effective August 14, 2019. (Replacing Barbara Baker)

Salary: \$72,119.00 (MA+0, Step 33)

Kevin Vysoky, English teacher at Churchill Jr. High School, effective August 14, 2019. (Replacing Tara Michels)

Salary: \$39,639.00 (BA+9, Step 4)

Matthew Russell, Science teacher at Galesburg High School, effective August 14, 2019. (Replacing Nathan Gayheart)

Salary: \$39,639.00 (BA+0, Step 4)

### **TRANSFERS/CHANGE OF EMPLOYMENT STATUS:**

#### **2019-2020 School Year**

Alicia Condreay, 3<sup>rd</sup> Grade teacher at Gale Elementary School, voluntarily transferring to 5<sup>th</sup> Grade teacher at Gale Elementary School, effective August 14, 2019. (Replacing Mindy Matthews)

Christine Shannon, Paraprofessional (Library Para) at Gale Elementary School, voluntarily transfer to Life Skills teacher at Steele Elementary School, effective August 14, 2019. (New Position)

Salary: \$58,276.00 (MA+30, Step 11)

Semenya "Vicki" McCord, Choir teacher 0.5 FTE at Churchill Jr. High School and 0.5 FTE at Lombard Middle School, transferring to 1.0 FTE Choir teacher at Galesburg High School, effective August 14, 2019. (New Position)

Sarah Marvel, 0.5 FTE Cross Categorical teacher and 0.5 FTE Instructional Interventionist at Gale Elementary School, voluntarily transferring to Cross Categorical teacher at King Elementary School, effective August 14, 2019. (Replacing Cheryl Hager)

### **EXTENDED TIME/OVERLOADS—2019-2020 SCHOOL YEAR:**

Scott Mellem, Psychologist	10 days	\$4,796.39
Jasmine Rickard, Social Worker	8 days	\$1,747.39
Alyssa Martin, Social Worker	8 days	\$2,464.12
Karen Kistler, Social Worker	8 days	\$2,464.12
Rebecca Harrell, Social Worker	8 days	\$3,075.20
Jennifer Ferguson, Social Worker	8 days	\$2,464.12
Debra Cratty, Special Ed. Coordinator	20 days	\$7,143.75
Luan Statham, Special Ed. Coordinator	20 days	\$8,253.57
Benjamin Bredemeier, Counselor	10 days	\$3,741.62
Sarah Larimer, Counselor	10 days	\$3,656.86
Laura Plummer, Counselor	10 days	\$2,368.40
Catherine Shenaut, Counselor	10 days	\$4,681.25
Sarah Wills, Counselor	10 days	\$3,047.37
Amy Gugliotta, Alt. Inst. Service Facilitator	10 days	\$2,439.47
Jennifer Bredemeier, Dean	2 days	\$ 765.32
Tina Imes, Dean	2 days	\$ 523.46
Michael Reynolds, Dean	2 days	\$ 745.25
Corrine Wascher, GHS / Ag teacher	Up to 20 days	\$6,638.64

### **CONTRACTUAL RENEWAL:**

Jonathan Bradburn, Principal at Silas Willard Elementary School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Mindi Ritchie, Assistant Principal at Galesburg High School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Jennifer Graves, Principal at Steele Elementary School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Thomas Hawkins, Principal at Churchill Jr. High School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Dawn Michaud, Director of Special Education for Galesburg CUSD #205, the Board hereby employs for a period of one (3) year, commencing July 1, 2019 and ending June 30, 2022.

Thomas Michels, Assistant Principal at Churchill Jr. High School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Sarah Rozny, Principal at Gale Elementary School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Tiffany Springer, Director of Curriculum and Instruction for Galesburg CUSD #205, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Nicholas Young, Principal at Lombard Middle School, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

Jason Spring, Principal at Galesburg High School North, the Board hereby employs for a period of one (1) year, commencing July 1, 2019 and ending June 30, 2020.

**DIFFERENTIAL/APPOINTMENT/RESIGNATIONS:**

Tyson Parks, 7<sup>th</sup> Grade Boys Basketball Coach at Lombard Middle School, resigning effective May 21, 2019.

Dawn Malcolm, 8<sup>th</sup> Grade Team Leader at Churchill Jr. High School, effective August 14, 2019.  
(Replacing Virginia Crowl)  
Salary: \$2,063.57 (Step 1)

Matthew Hawkins, Boys Varsity Assistant Football Coach at Galesburg High School, effective August 14, 2019. (Replacing Bradley Swanson)  
Salary: \$5,031.17 (Step 1)

Craig Luptak, Boys Varsity Assistant Track Coach at Galesburg High School, resigning effective May 30, 2019.

Mary Raes, Geography Bowl Co-Advisor at Gale Elementary School, effective August 14, 2019.  
(Replacing Laura Saey)

Salary: \$245.66 (Step 1)

Raymond VanHootegeem, Co-Project Graduation Sponsor at Galesburg High School, resigning effective June 4, 2019.

Matthew Russell, Boys Varsity Assistant Football Coach at Galesburg High School, effective August 14, 2019. (Replacing Jay Barshinger)

Salary: \$5,031.17 (Step 1)

Curtis Kramer, Co-Project Graduation Sponsor at Galesburg High School, retired effective May 30, 2019.

### **RESIGNATION / TERMINATION / RETIREMENT:**

Jennifer Guenther, Social Studies teacher at Galesburg High School, resigning effective at the end of the 2018-2019 school year.

Tara Michels, English teacher at Churchill Jr. High School, resigning effective at the end of the 2018-2019 school year.

Anthony Bentley, Social Studies teacher at Galesburg High School North, resigning effective June 7, 2019.

Dawn Michaud, Director of Special Education for Galesburg CUSD #205, retiring June 30, 2022.

Kandy Lindsey, Math teacher at Churchill Jr. High School, resigning at the end of the 2018-2019 school year.

Julie Van Dyke, EBD teacher at Silas Willard Elementary School, resigning at the end of the 2018-2019 school year.

## **2019-2020 School Year**

Mackenzie Haas, Science teacher at Galesburg High School resigning effective May 13, 2019.

### **SUPPORT STAFF:**

#### **APPOINTMENTS:**

*Please note: The following appointments are pending clearance on the state & FBI required background investigation and/or verification of citizenship, college credits or paraprofessional certification as position requires.*

Lindsey Kabat, Food Service (Cook's Helper) at Lombard School, effective May 14, 2019. (Replacing Ashley Hammitt)

Salary: \$9.60 / hr. (28.75 hours / week)

*Page 6 ~ June 10, 2019*

Devin Bodenhamer, Food Service (Noontime Helper) at Silas Willard Elementary School, effective May 28, 2019. (Replacing Demetrius Turner)

Salary: \$9.60 / hr. (10 hours / week)

Rebellion Dupoy, Food Service (Summer School Noontime Helper) at Silas Willard Elementary School, effective June 10, 2019.

Salary: \$9.60 / hr. (24 days at 2 hours / day)

Melissa Worden, Food Service (Summer School Cook) at Silas Willard Elementary School, effective June 10, 2019.

Salary: \$12.44 / hr. (24 days at 4 hours / day)

Lee Ann Johnson, Food Service (Summer School Head Cook) at Silas Willard Elementary School, effective June 10, 2019.

Salary: \$13.18 / hr. (24 days at 5 hours / day)

Brandi Fox, Food Service (Summer School Cook's Helper) at Silas Willard Elementary School, effective June 10, 2019.

Salary: \$9.60 / hr. (24 days at 4 hours / day)

Tracey Christy Butts, Food Service (Summer School Cook) at Silas Willard Elementary School, effective June 10, 2019.

Salary: \$15.30 / hr. (24 days at 5 hours / day)

## **2019-2020 School Year**

Janet Kilgore, Paraprofessional (Life Skills) at Lombard School, effective August 15, 2019. (Replacing Julie Fox)

Salary: \$13.07 / hr. (33.75 hours / week)

### **TRANSFERS/CHANGE OF EMPLOYMENT STATUS:**

## **2018-2019 School Year**

Amanda Decker, Food Service (Noontime Helper) at King Elementary, transferring to Food Service (4 hour Cooks Helper) at Galesburg High School, effective May 31, 2019. (Replacing Christine Robinson)

## **2019-2020 School Year**

Denise Beall, Paraprofessional (Personal Attendant) at Steele Elementary School, voluntarily transferring to Paraprofessional (Life Skills) at Steele Elementary School, effective August 15, 2019. (New Position)

Shelley Hanson, Paraprofessional (EBD) at Churchill Jr. High School, voluntarily transferring to Paraprofessional (Cross Categorical) at Churchill Jr. High School, effective August 15, 2019. (Replacing Amanda Brunswig)

*Page 7 ~ June 10, 2019*

Sarah Ray, Paraprofessional (Personal Attendant) at Bright Futures Pre-School, voluntarily transferring to Paraprofessional (Attendant) at Bright Futures Pre-School, effective August 15, 2019. (Open Position)

Rebekah Fawcett, Paraprofessional (Kindergarten Aide) at Nielson Elementary School, voluntarily transferring to Paraprofessional (Life Skills) at Steele Elementary School, effective August 15, 2019. (Replacing Amber Herslow)

Jeff Orwig, Paraprofessional (Individual Attendant) at Galesburg High School, voluntarily transferring to Paraprofessional (EBD) at Galesburg High School, effective August 15, 2019. (Replacing Linda Dean)

Linda Dean, Paraprofessional (EBD) at Galesburg High School, involuntarily transferring to Paraprofessional (Cross Categorical) at Churchill Jr. High School, effective August 15, 2019. (Replacing Cheryl John)

Tuesday Spinks, Paraprofessional (Library) at King Elementary School, voluntarily transferring to Paraprofessional (Attendant) at Bright Futures Pre-School, effective August 15, 2019. (Replacing Cassidy Hazlett)

Ashley Hardine, Paraprofessional (Personal Attendant) at Gale Elementary School, transferring to Paraprofessional (Instructional Aide) at Steele Elementary School, effective August 15, 2019. (Replacing Mary McNeil)

#### **LEAVE OF ABSENCE:**

Mike Malmrose, Custodian at Bright Futures Pre-School, requesting a discretionary leave of absence beginning May 3, 2019 until he is released for full duty or until his 191.5 sick days are exhausted.

#### **RESIGNATION / TERMINATION / RETIREMENT:**

LaShawn James, Kindergarten Aide at Steele Elementary School, resigning due to job abandonment effective May 24, 2019.

Christine Robinson, Food Service (Cook's Helper) at Galesburg High School, resignation due to job abandonment, effective May 16, 2019.

Amanda VanTreeck, Food Service (Cook's Helper) at Galesburg High School, resigning effective May 28, 2019.

Ryan Woods, Custodian at Galesburg High School, resigning effective May 21, 2019.

Lisa Motz, Food Service (Cook) at Galesburg High School, terminated for inability to work, effective May 20, 2019.

Alexandria Dodson, Paraprofessional (Kindergarten Aide) at Silas Willard Elementary School, resigning effective June 6, 2019.

Curtis Kramer, Administrative Assistant for Special Programs / Safety / Security at Galesburg High School, retired effective May 30, 2019.

*Page 8 ~ June 10, 2019*

#### **VACANCIES POSTED FOR 2019-20:**

Anticipated Elementary Teachers  
Family & Consumer Science Teacher  
Middle School Keyboarding Teacher

C.U.S.D. #205 Elementary Schools  
C.U.S.D. #205 Middle Schools  
C.U.S.D. #205 Middle Schools

Science Teacher  
Social Studies Teacher  
Social Studies Teacher  
Instructor  
Part-Time Cross Categorical Teacher  
ED Special Education Teacher  
ED Special Education Teachers (2)  
School Psychologist

Galesburg High School  
Galesburg High School  
Galesburg High School North  
Mary Davis Home  
Gale Elementary School  
Silas Willard Elementary School  
Churchill Junior High School  
C.U.S.D. #205 Schools

Posted on District website, IASA Job Bank (if applicable), on District Social Media Sites as Needed.  
Recruiting Trip made for 18-19 & 19-20 Vacancies: EIU on 11/7/18, WIU on 2/15/19, NIU on 2/25/19,  
EIU on 3/4/19, and ISU on 3/5/19.