

RESOLUTION NO. 2704

**EAST NORRITON TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

**A RESOLUTION BY THE BOARD OF SUPERVISORS OF EAST NORRITON
TOWNSHIP APPROVING THE FINANCING AMOUNT, LEASE AGREEMENT AND
PROGRAM AGREEMENT AS PART OF THE REGIONAL STREET LIGHT
PROCUREMENT PROGRAM**

WHEREAS, The Township of East Norriton is located in Montgomery County, Pennsylvania (the “[**Township**]”); and

WHEREAS, the Township constitutes a “governmental unit” as such term is defined under Pennsylvania’s Guaranteed Energy Savings Act (62 Pa C.S. §3751 *et seq.*) (the “**Act**”); and

WHEREAS, the Delaware Valley Regional Planning Commission (“**DVRPC**”) has established a Regional Streetlight Procurement Program (the “**Program**”) to facilitate the implementation of “energy conservation measures” (“**ECMs**”) as such term is defined under the Act; and

WHEREAS, the Township, in its capacity as a governmental unit, has participated in the Program solicitation process to implement energy conservation measures contemplated by the Program; and

WHEREAS, pursuant to its resolution of April 26, 2016, the Township selected Johnson Controls, Inc. (“**JCI**”) as its contractor to design, engineer, procure, construct, install and commission the ECMs (the “**Construction Work**”) and entered into a Guaranteed Savings Agreement (“**GSA**”) with JCI, a copy of which is attached as Exhibit A hereto; and

WHEREAS, pursuant to its resolution of October 25, 2016, the Township accepted and approved the final investment grade energy use and savings analysis, including accompanying schedules (the “**Investment Grade Audit Report**”) for the Township that specifies the ECMs to be undertaken pursuant to the Guaranteed Savings Agreement (such ECMs, together, the “**Project**”) and delivered to JCI notice of acceptance of the Investment Grade Audit Report; and

WHEREAS, as part of the Program, and as contemplated by the GSA, in order to finance the Construction Price as such term is defined in the GSA, the [Borough] intends to enter into a financing lease (the “**Lease Agreement**”) under which it will borrow from the Pennsylvania Economic Development Authority (the “**Issuer**”) proceeds from the sale of the Issuer’s municipal bonds (the “**Bonds**”), issued pursuant to a Trust Indenture (the “**Indenture**”) between the Issuer and a financial institution approved by the Issuer (the “**Trustee**”), which proceeds will be deposited into an account for the Township established under the Indenture; and

WHEREAS, JCI has agreed that for each “**Savings Year**,” as such annual period is defined in the GSA, the amount of guaranteed energy savings (“**Guaranteed Savings**”) will be in an amount sufficient to pay all installment payments (the “**Lease Payments**”) under the Lease Agreement in accordance with the payment schedule set forth therein (the “**Lease Payment Schedule**”) [or, alternatively, as applicable, has agreed that the amount required to pay all Lease Payments during the term of the Lease Agreement will be less than the amount of Guaranteed Savings over the term of the GSA]; and

WHEREAS, as a condition of the financing under the Lease Agreement, and in satisfaction of the terms of the GSA, the Township is required to enter into a program agreement with the Foundation for Renewable Energy and Environment (“**FREE**”) and JCI (the “**Program Agreement**”).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby approves the Lease Agreement, such agreement to be in substantially the same form of the draft attached as Exhibit B hereto, with such changes and modifications therein as the Township’s authorized person or designee (an “**Authorized Person**”) deems necessary and approves, to be conclusively established by the Authorized Person’s execution of such agreement; and it is

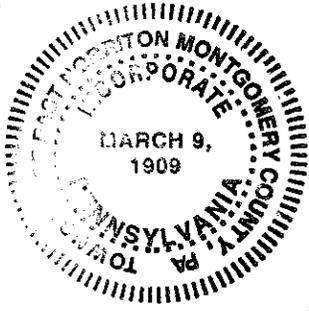
FURTHER RESOLVED that the Board of Supervisors hereby approves the borrowing by the Township in an amount not to exceed 102 percent of the Total Financed Amount as defined in the Investment Grade Audit Report approved by the Township to fulfill its obligations under the Guaranteed Savings Agreement and its obligations under the Lease Agreement; and it is

FURTHER RESOLVED that the Board of Supervisors approves the Program Agreement, such agreement to be in substantially the same form of the draft attached as Exhibit C hereto, with such changes and modifications therein as the Township’s Authorized Person deems necessary and approves, to be conclusively established by the Authorized Person’s execution of such agreement; and it is

FURTHER RESOLVED that the Council hereby authorizes and directs one or more of its Authorized Persons to take all such further actions and to execute and deliver all such instruments and other documents as such Authorized Persons may consider necessary or appropriate to enable the Township to carry out the intent and purposes of the foregoing resolutions and the transactions contemplated thereby.

DULY PRESENTED AND ADOPTED by the Board of Supervisors of East Norriton Township, Montgomery County, Pennsylvania, in a public meeting held this 25th day of October, 2016.

[Signatures on Following Page]



BOARD OF SUPERVISORS
EAST NORRITON TOWNSHIP

By: *Tina Howell*
Tina Howell, Chairwoman

ATTEST:

Robert R. Hart
Robert R. Hart, Secretary

Exhibit A

Guaranteed Savings Agreement

Exhibit B
Lease Agreement

LEASE AGREEMENT

between

[OWNER]

and

[ISSUER]

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LEASE AGREEMENT

This Lease Agreement (this “**Agreement**”) is entered into as of [_____, ____] by [_____] a [_____] (the “**Owner**”) and the Pennsylvania Economic Development Financing Authority (the “**Issuer**”).

Background

A. The Owner is [a “governmental unit” as defined in the Guaranteed Energy Savings Act (62 Pa C.S. §3751) (the “**Act**”) / [a non-profit organization under Section 501(c)(3) of the Internal Revenue Code].

B. The Owner is undertaking a project (the “**Project**”) consisting of the implementation of certain energy and water conservation measures at the Owner Facilities and has entered into a Guaranteed Savings Agreement dated as of [_____, ____] (the “**Guaranteed Savings Agreement**”) with [_____] a [_____] (the “**Contractor**”) pursuant to which the Contractor will (i) implement such conservation measures, (ii) guarantee that the Owner will realize a certain level of monetary savings resulting from such measures and (iii) provide certain measurement and verification services.

C. The Owner is initially financing the cost of the Project by participating in an energy efficiency financing program (the “**Program**”) administered by Foundation for Renewable Energy and Environment (“**FREE**”). As part of the Program, the Issuer is issuing its [_____] (the “**Series [] Bonds**”) pursuant to a Trust Indenture of even date herewith (the “**Indenture**”) between the Issuer and [_____] (the “**Trustee**”) and depositing the net proceeds thereof into various accounts established under the Indenture to fund the Project and similar projects being undertaken by certain other “program participants” (“**Other Participants**”).

D. In consideration of the undertaking of the Issuer to fund the cost of the Project, the Owner is entering into this Agreement, pursuant to which the Owner will make the Lease Payments described herein. The Lease Payments, in aggregation with similar payments from the Other Participants, will be applied to pay (i) the principal or redemption price of, and interest on, the Bonds, (ii) the annual fees of the Trustee and the Issuer and (iii) the program fees of FREE.

E. On [_____, ____], the Owner adopted [Resolution No. ____] in which the Owner (i) determined that it would be in its best interest to enter into this Agreement and (ii) made the finding that funds to make the Lease Payments are projected to be available from funding that otherwise would have been used for the purchase of electrical, thermal, or other energy required by the Owner in the absence of the energy conservation measures to be implemented under the Guaranteed Savings Agreement.

Agreement

In consideration of the Background and the mutual covenants, undertakings and conditions set forth below, the parties, intending to be legally bound agree as follows:

**ARTICLE 1
DEFINITIONS; INTERPRETATION**

1.1. Definitions. Unless otherwise expressly defined herein, each capitalized term in this Agreement has the meaning given to it in this Section 1.1.

Act is defined in the Background.

Additional Bonds means bonds issued under the Indenture other than the Series [] Bonds.

Administrative Expense Fund is defined in the Indenture.

Administrative Expense Payments is defined in Section 2.3(b)(ii).

Agreement is defined in the Preamble.

Bond Fund is defined in the Indenture.

Bond Payments is defined in Section 2.3(b)(i).

Bonds means the Series [] Bonds and Additional Bonds, collectively.

Business Day is defined in the Indenture.

Commonwealth means the Commonwealth of Pennsylvania.

Construction Price is defined in the Guaranteed Savings Agreement.

Contractor is defined in the Background.

Dissemination Agent means [_____].

Guaranteed Savings Agreement is defined in the Background.

Final Completion is defined in the Guaranteed Savings Agreement.

Financial Advisor is defined in the Indenture.

FREE is defined in the Background.

Indemnitee is defined in Section 5.1(a).

Indenture is defined in the Background.

Initial Allocated Proceeds Amount means \$[_____].

Issuer is defined in the Preamble.

Issuer Expenses means (a) the expenses incurred by the Issuer in connection with its performance under the Indenture, this Agreement and the lease payment agreements between the Issuer and Other Participants, including reasonable attorneys' fees and expenses, amounts payable to a rebate agent, if any, and (b) the costs of the issuance of the Bonds.

Lease Payment is defined in Section 2.3(a).

Losses is defined in Section 5.1(a).

Other Participants is defined in the Background.

Owner is defined in the Preamble.

Owner Agreements is defined in Section 6.1(a).

Owner Allocable Bonds Amount means, at any time, the principal amount of outstanding Bonds at such time relating to the funding of the Project, calculated as follows:

- (a) the Initial Allocated Proceeds Amount; plus
- (b) for each issue of Additional Bonds, the principal amount of such Additional Bonds allocable to the funding of the Project as set forth in an Officer's Certificate (as defined in the Indenture) of the Issuer and the Owner; minus
- (c) the amount of principal repayments of the Bonds (including Additional Bonds) funded by Lease Payments made by the Owner; minus
- (d) the aggregate principal amounts of Bonds (including Additional Bonds) redeemed or defeased with funds deposited with the Trustee by the Owner other than funds constituting Lease Payments.

Owner Project Account means account established under the Indenture in the name of the Owner.

Owner Property is defined in the Guaranteed Savings Agreement.

Owner Proportionate Share means, on any date, the percentage determined by dividing (a) the Owner Allocable Bonds Amount on such date by (b) the aggregate principal amount of all Bonds (including any Additional Bonds) outstanding under the Indenture on such date.

Program is defined in the Background.

Project is defined in the Background.

Rebate Fund is defined in the Indenture.

Retained Rights means (i) the Issuer's right to obtain notices, reports, and indemnification, (ii) the Issuer's right to provide approvals and consents, (iii) the Issuer's right to receive payments under Section 4.5 below and (iv) the Issuer's nonexclusive right to enforce the

provisions of Section 3.5 below, provided that the Issuer will retain the exclusive right, as the taxpayer pursuant to the Internal Revenue Service Form 8038, which shall be completed by or on behalf of the Issuer in connection with the issuance of the Bonds, to communicate with the Internal Revenue Service in any investigation of the Bonds by the Internal Revenue Service.

Series [] Bonds is defined in the Background.

Trustee is defined in the Background.

Trustee Expenses means the expenses incurred by the Trustee in connection with the performance of its duties under the Indenture, including attorney fees and expenses.

1.2. Conventions. Unless otherwise expressly provided in this Agreement:

- (a) references to Persons include their successors and permitted assigns;
- (b) the term “include,” “includes” or “including” means, include, includes or including without limitation (as the case may be);
- (c) references to the Articles and Sections and Exhibits mean the articles and sections of, and the exhibits to, this Agreement;
- (d) the term “day” means a calendar day and includes Saturdays, Sundays and holidays, except that, if any obligation for the payment of money under this Agreement falls due on a Saturday, Sunday or a holiday on which State banks are not open for business, the payment will be due on the next Business Day thereafter;
- (e) all references to a statute, regulation, law, agreement or instrument mean such statute, regulation, law, agreement or instrument as it may be amended, amended and restated or supplemented from time to time, including (in the case of statutes, regulations or laws) by successor statutes, regulations or laws and (in the case of agreements or instruments) by waiver or consent;
- (f) references to a party means a party to this Agreement; and
- (g) a reference to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that or who succeeds to or performs substantially the same functions as those performed by such governmental agency, authority, department, board, commission or other public body or to a public officer.

ARTICLE 2 LEASE; BOND PROCEEDS; LEASE PAYMENTS

2.1. Lease. The Issuer agrees to lease to Owner, and Owner agrees to lease from the Issuer, the Project. The term of this Agreement shall commence on the date hereof and shall continue unless earlier terminated in accordance with its terms on the date of the last scheduled Lease Payment.

2.2. Bond Proceeds. The Issuer will cause the Trustee to deposit into the Owner Project Account the Initial Allocated Proceeds Amount less the Owner's Proportionate Share of the costs of issuance of the Series [] Bonds.

2.3. Lease Payments.

(a) Subject to Sections 2.4 and 2.7 below, the Owner shall make payments in the amounts and at the times set forth in Exhibit 1 (Lease Payments) (each, a "**Lease Payment**"). The Owner shall make the Lease Payments without the need for presentation by the Issuer of an invoice therefor. Notwithstanding any dispute between Owner and Contractor or Trustee or any other person, Owner shall make all payments when due and shall not withhold any payments, or portions thereof, for any reason whatsoever.

(b) The Lease Payments shall be paid directly to Trustee, as assignee of the Issuer's rights hereunder, as follows:

(i) the amounts described in column A shown in Exhibit 1 (Lease Payments) (the "**Bond Payments**") shall be paid to the Trustee for deposit into the Bond Fund held under the Indenture for application to the payment of the principal or redemption price of, and the interest on, the Bonds; and

(ii) the amounts described in column B shown in Exhibit 1 (Lease Payments) (the "**Administrative Expense Payments**") shall be paid to the Trustee for deposit in the Administrative Expense Fund under the Indenture for application to the payment of the annual fees of the Trustee and the Issuer and the program fee of FREE.

(c) The Owner shall pay, when due, to the Issuer, as additional rent, all governmental taxes, fees, assessments and charges paid, payable or required to be collected by Issuer, however designated, which are levied or based on the Lease Payments or other payment due under this Agreement, or on the possession, use, operation, lease, rental, sale, purchase, control or value of the Project, including without limitation, registration and license fees and assessments, recycling fees, appraisal fees, state and local privilege or excise taxes, documentary stamp taxes or assessments, sales and use taxes, personal and other property taxes.

(d) Upon thirty (30) days' prior written notice from the Owner to the Issuer, and provided that there is no Event of Default, or an event with which notice or lapse of time, or both, could become an Event of Default, then existing, the Owner will have the right to terminate the Owner's continued obligation to make Lease Payments as specified in Exhibit 1 (Lease Payments) to Issuer or its assignee on the purchase of the Project by payment to Issuer or its assigns of the Concluding Payment (as set forth on Exhibit 1 (Lease Payments) hereto) and any accrued outstanding payments. Upon satisfaction by Owner of such purchase conditions, Issuer shall henceforth have no rights, title and interest in the Project.

2.4. Nature of Owner's Obligations. The Owner's obligations under this Agreement are absolute and unconditional and will remain in full force and effect until all Lease Payments have been paid in full and will not be affected, modified or impaired by the occurrence of any event or circumstance, including termination of the Guaranteed Savings Agreement for any reason, including the default or failure of the Contractor fully to perform any of its obligations

under the Guaranteed Savings Agreement. Notwithstanding the foregoing, any Lease Payments owed by the Owner pursuant to this Agreement are subject to the annual appropriation of funds for such purpose by the [Pennsylvania General Assembly/Owner¹], and there can be no assurance that such funds will be appropriated in any fiscal year of the [Commonwealth/Owner]. The [Commonwealth/Owner] may choose not to appropriate funds necessary to make Lease Payments under this Agreement and thereby terminate the Owner's obligations under this Agreement as described in Section 2.7 below.

2.5. No Set-Off. The Owner shall pay all Lease Payments without set-off, reduction, counterclaim, abatement or recoupment, notwithstanding any obligation owed by the Contractor to the Owner under the Guaranteed Savings Agreement or otherwise.

2.6. Transfer of Title. Title to the Project will at all times remain in the Issuer unless and until the Owner pays all Lease Payments and other amounts due in full. Upon payment in full of the Lease Payments, whether as and when due or by prepayment to the extent permitted by Section 3.3 below, and any additional amounts due hereunder, title to the Project will vest in the Owner without the requirement of further action or payment.

2.7. Nonappropriation of Funds.

(a) In the event no funds or insufficient funds are appropriated and budgeted for any [Commonwealth/Owner] fiscal period for payments due under this Agreement, then, as more fully set out in clause (b) of this Section, Owner will notify Issuer and Trustee or their assignees of such occurrence and this Agreement shall terminate as of the last day of [Commonwealth's/Owner's] fiscal period for which appropriations were received without penalty or expense to the [Commonwealth or the Owner/Owner] of any kind whatsoever. In the event of such termination, Owner agrees to peaceably surrender possession of the Project in good operating condition, subject to normal wear and tear, to the Issuer or its assignee on the date of such termination. Issuer or its assignee will have all legal and equitable rights and remedies to take possession of the Project

(b) If, on the thirtieth (30th) day after the commencement of any fiscal period of the [Commonwealth/Owner], sufficient funds have not been appropriated for the purpose of making all of the Lease Payments scheduled to be paid in such fiscal period, Owner shall cause to be delivered written notice thereof (a "notice of nonappropriation") to the Issuer and the Trustee or their assignees within ten (10) calendar days after such thirtieth (30th) day. Upon Issuer's receipt of a notice of nonappropriation, this Agreement shall terminate as of the end of the [Commonwealth's/Owner's] fiscal period just ended with the effect set forth in clause (a) of this Section; provided, however, such termination shall not become effective as of the end of such [Commonwealth/Owner] fiscal period just ended if, within ten (10) calendar days of the thirtieth (30th) day after the end of such fiscal period just completed, Owner shall cause to be

¹ In Sections 2.4 and 2.7 bracketed references should be to the Commonwealth for state agencies and to Owner for governmental units that do not receive state appropriations. Governmental units that receive state appropriations and also have independent revenue sources should consult with the PennSEF Program as to the appropriate approach to completing these Sections.

delivered to the Issuer and the Trustee or their assignees a written statement to the effect that it reasonably expects sufficient funds for the then-current [Commonwealth/Owner] fiscal period to be appropriated for this Agreement, and in such event the term shall continue into the then-current [Commonwealth/Owner] fiscal period so long, but only so long, as an appropriation becomes available for which to make the payments.

(c) Notwithstanding the foregoing, Owner agrees that (i) it will not cancel this Agreement under the provisions of this Section 2.7 if any funds are appropriated to it, or by it, for the acquisition, retention, or operation of the Project or other equipment and property performing functions similar to the Project for the fiscal period following the fiscal period in which funds were appropriated; and (ii) it will not during the term of this Agreement give priority in the application of funds to any other functionally similar project.

ARTICLE 3 MATTERS RELATING TO THE BONDS

3.1. Consent to Assignment. In consideration of the Issuer issuing the Bonds and making a portion of the proceeds thereof available to the Owner to fund the Project, the Owner hereby:

(a) consents to the pledge to the Trustee by the Issuer of the Issuer's right, title and interest in and to this Agreement, including the right to receive the Lease Payments but excluding the Retained Rights;

(b) acknowledges that the Trustee and Issuer have entered into the Indenture and related documents in reliance on, among other things, the execution, delivery and performance by the Owner of this Agreement;

(c) acknowledges the right of the Trustee to exercise its rights and remedies under the Indenture if an event of default occurs thereunder, to make all demands, give all notices, take all actions and exercise all rights and obligations of the Issuer under this Agreement (except the Retained Rights);

(d) agrees that it will not, without the prior written consent of the Trustee and the Issuer, assign or delegate its obligations under this Agreement;

(e) agrees that it will pay all amounts payable by it under this Agreement (except the Retained Rights) directly to the Trustee at an address and account number to be specified by the Trustee to the Owner in writing, or to such other person at such other address and account number as may be specified by the Trustee in writing; and

(f) agrees to deliver, on the date on which the Bonds are issued, an opinion of its counsel covering the enforceability of this Agreement against the Owner and such other matters as the Issuer or the underwriter of the Bonds may reasonably request.

3.2. Additional Bonds. If the proceeds of the Bonds deposited into the Owner Project Account are insufficient to complete the Project and the Issuer determines that Additional Bonds can be marketed on terms acceptable to the Owner, then, at the request of the Owner, the Issuer

shall use commercially reasonable efforts to issue Additional Bonds subject to the following conditions:

(a) the Owner executes and delivers to the Issuer an amendment to this Agreement, in form and substance satisfactory to the Issuer and the Trustee, by which Exhibit 1 (Lease Payments) is revised to increase the amounts and timing of the Lease Payments such that the Lease Payments will be sufficient to pay the principal or redemption price of, and interest on, the Owner Proportionate Share of all outstanding Bonds (after giving effect to the issuance of such Additional Bonds) when due, as confirmed by a certificate of a Financial Advisor;

(b) the Contractor and the Owner enter into an amendment to the Guaranteed Savings Agreement to increase the Construction Price accordingly;

(c) the requirements in the Indenture for the issuance of Additional Bonds are met;

(d) the Owner pays all costs of issuance of the Owner Proportionate Share of such costs to the extent not paid out of the proceeds of the Additional Bonds;

(e) the Owner delivers to the Issuer and the Trustee an instrument executed by an authorized representative of FREE in which FREE consents to the issuance of Additional Bonds; and

(f) if the proceeds of such Additional Bonds also will be used to fund the projects of Other Participants, the foregoing conditions are satisfied by each such Other Participants.

3.3. Redemption of Bonds.

(a) At the request of the Owner, the Issuer shall cause the Trustee to redeem or defease Bonds as and when permitted under the terms of the Indenture in such principal amount as the Owner may request, provided that the Owner delivers funds to the Trustee in the amount necessary to make such redemption or defeasance.

(b) Following any such redemption or defeasance, the Issuer and the Owner shall amend this Agreement to reduce the amount of the Lease Payments to an amount that, after giving effect to such amendment, will be sufficient to pay the principal or redemption price of, and interest on, the Owner Proportionate Share of all outstanding Bonds (after giving effect to the redemption or defeasance of Bonds pursuant to subsection (a) above), when due, as confirmed by a certificate of a Financial Advisor.

3.4. Excess Proceeds. If any funds remain in the Owner Project Account after Final Completion, the Owner may instruct the Trustee to disburse such funds to the Owner to pay costs of an eligible project (with a favorable opinion of bond counsel) as provided in Section [●] of the Indenture.

3.5. Tax Matters.

(a) The Trustee shall deliver to the Owner a statement setting forth the amount of the Owner Proportionate Share of any “arbitrage rebate” under the Internal Revenue Code, if any. The Owner shall deposit such amount with the Trustee for deposit into the Rebate Fund established under the Indenture within five Business Days after the Owner’s receipt of such invoice.

(b) For the purpose of ensuring the exclusion from gross income for federal income tax purposes of the interest on the Bonds, the Owner hereby makes the further representations, covenants and agreements set forth in Exhibit 2 (Tax Representations, Covenants and Agreements). Such representations, covenants and agreements are made for the sole benefit of the Issuer and may be waived by the Issuer or modified by agreement of the Owner and the Issuer, provided that such waiver or agreement is accompanied by a written opinion of nationally recognized bond counsel to the effect that such waiver or agreement will not adversely affect the exclusion from gross income for federal income taxes of the interest on the Bonds.

ARTICLE 4 COVENANTS

4.1. The Project. The Owner shall proceed with commercially reasonable diligence with the acquisition, installation and construction of the Project in accordance with the Guaranteed Savings Agreement. Except as contemplated by Section 3.4 above with respect to excess funds in the Owner Project Account, the Owner shall use amounts on deposit in the Owner Project Account (including amounts on deposit in the Capitalized Interest Subaccount thereof) only to pay (a) the Construction Price, (b) costs incurred by the Owner in connection with the financing of the Project, (c) Lease Payments due in respect of interest on the Bonds prior to Final Completion, (d) any other amounts required to be paid by the Owner under this Agreement prior to Final Completion other than pursuant to Section 5.1 below and (e) the program fees of FREE. The Owner shall operate and maintain the Project in accordance with the requirements of the Guaranteed Savings Agreement and comply with its other obligations thereunder at all times.

4.2. Inspection; Information; Annual Statements.

(a) The Owner shall permit the Issuer and the Trustee and their respective invitees to inspect the Project and Construction Work, at reasonable times and in a reasonable manner, so long as they do not unreasonably interfere with the performance of the Contractor’s work under the Guaranteed Savings Agreement. Neither the Issuer nor the Trustee will have any duty or obligation to inspect the Project or Construction Work.

(b) The Owner shall make available to the Issuer and the Trustee current financial statements, budgets, proof of appropriation for the ensuing fiscal period, and such other financial information as may be requested by the Issuer or the Trustee or any assignee relating to the ability of the Owner to continue to make Lease Payments and other sums due under this Agreement.

(c) The Owner shall provide to the Issuer and the Trustee any information relating to the Project as they may reasonably request.

4.3. Final Completion. The Owner shall give notice to the Trustee when Final Completion has been determined to have been achieved.

4.4. Notice of Contractor Default; Termination. The Owner shall give notice to the Issuer and the Trustee of (i) an occurrence of an event of default by the Contractor under the Guaranteed Savings Agreement and the cessation of such event of default, (ii) any subsequent termination of the Guaranteed Savings Agreement, (iii) the Owner having entered into a replacement Guaranteed Savings Agreement, (iv) any nonappropriation of funds in accordance with Section 2.7 above, and (v) the institution of any dispute resolution procedures under the Guaranteed Savings Agreement and the resolution thereof, in each case, concurrently with the delivery of any such notice to the Contractor.

4.5. Fees and Expenses. The Owner shall pay to the Trustee or the Issuer (as applicable) the Owner Proportionate Share of all Trustee Expenses and Issuer Expenses.

4.6. Continuing Disclosure. Within six months following the end of the Owner's fiscal year, the Owner shall provide to the Dissemination Agent an update of the type of information included in [Appendix __ to the Official Statement in the text and tables under the heading "[NAME OF OWNER]."]

4.7. Hazardous Materials.

(a) Owner shall not engage in operations at the Owner Property which involve the unlawful generation, manufacture, refining, treatment, usage or disposal of "hazardous substances" or "hazardous waste" including in particular but without limitation as such terms are defined in 42 U.S.C. Section 9601 (14) or 35 P.S. section 6018.103 or 25 Pa. Code Section 75.260 and 75.261 as amended from time to time (collectively, "**Hazardous Materials**") in violation of any and all federal, state or local laws, statutes, ordinances, rules, regulations, standards, policies or other requirements relating to pollution or protection of human health and safety and the environment ("**Environmental Laws**"). Owner further covenants that it will not cause or permit to exist as the result of an intentional or unintentional action or omission on its part, the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping from, on or about the Owner Property of any Hazardous Materials in violation of Environmental Laws. Notwithstanding the foregoing, Owner shall be permitted to use and dispose of any Hazardous Materials customarily used in Owner's business operations from the Owner Property in accordance with Environmental Laws.

(b) In the event of Owner's failure to comply in full with this Section, Issuer may, at its option, without limiting Issuer's remedies otherwise provided herein, perform any and all of Owner's obligations upon thirty (30) days prior written notice to Owner, except in the case of emergency in which case no prior notice shall be required, and all reasonable costs and expenses incurred by Owner in the exercise of this right shall be deemed to be additional rent payable on demand and with interest until payment in full at the lesser of five percent (5%) or the maximum amount allowed by applicable law. Further, Owner shall indemnify, defend and hold

Issuer harmless from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses, including attorney's fees and the cost to cure, arising by reason of Owner's violation of this Section 4.7(b).

(c) This Section 4.7 shall survive the expiration or sooner termination of this Agreement.

4.8. Liens. Owner will not cause or permit any levies, liens or encumbrances to be filed against the Project and will promptly discharge the same if any charge, claim or any proceeding for the enforcement thereof is filed or commenced; provided, however, that Owner shall have the right to contest in good faith and with due diligence the validity of any such charge, lien or claim if (a) such contest (or the posting of statutory security) prevents the foreclosure of such lien, or (b) Owner deposits security in form and amount reasonably satisfactory to Issuer. If Owner fails to pay said charges when due, Issuer shall have the right, but shall not be obligated, to pay said charges. If Issuer pays any charges for which Owner is responsible or liable under this Agreement, Owner shall reimburse Issuer therefor.

4.9. Payment. Owner reasonably believes that funds can be obtained sufficient to make all Lease Payments during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funds, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved.

ARTICLE 5 INSURANCE; INDEMNIFICATION

5.1. Insurance.

(a) During the term of this Agreement, Owner shall obtain and maintain and promptly pay all premiums for the following types of insurance in the amounts specified and in the form provided herein: (i) any insurance required pursuant to the Guaranteed Savings Agreement; and (ii) "All-risk" fire and extended coverage casualty insurance including flood, earthquake and riot, insuring the Project, the building(s) in which the Project (or any part thereof) is installed, and all trade fixtures, merchandise and personal property from time to time in, on or upon the Owner Property. All such insurance coverage shall be in amounts not less than one hundred percent (100%) of the full replacement cost from time to time during the Term of this Agreement, providing protection against perils included within the standard state form of fire and extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief. Owner assumes all risk of loss of any or all of the Owner Property, Owner's personal property, and the Project.

(b) Accord 27 Certificates (or comparable certificates, as reasonably determined by Issuer) of all policies of insurance shall be delivered to Issuer within five (5) business days after request therefor and shall provide that the coverage of such policies may not be canceled, modified or reduced without thirty (30) days prior written notice to Trustee. Each

policy of insurance Owner is required to maintain shall be written as a primary policy which does not contribute to and is not in excess of coverage which Owner may carry. If Owner fails to maintain such insurance or to deliver any of the certificates as required in this Lease, Issuer, in addition to any other remedies, may upon thirty (30) days prior written notice to Owner, procure such insurance at the expense of Owner and Owner shall immediately reimburse to Issuer the cost thereof. Such cost shall be deemed additional rent and shall be payable by Owner to Issuer immediately upon demand. The proceeds from any insurance of Owner shall be used to repair the damage to the Project.

(c) All policies of insurance required hereunder shall be issued by an insurance company qualified to do business in the Commonwealth and reasonably satisfactory to Trustee, and each and every policy shall name Trustee as an additional insured.

5.2. Indemnification.

(a) The Owner shall indemnify the Issuer, the Trustee and each of their respective officers, employees, agents or any other party acting for or on behalf of either of them (each, an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee (collectively, “**Losses**”), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of:

- (i) the Project;
- (ii) any untrue statement or alleged untrue statement by the Owner of any material fact or omission or alleged omission by the Owner to state a material fact necessary to make the statements made, in light of the circumstances under which it was made, not misleading, in the preliminary or final official statement used in connection with the offer or sale of the Bonds;
- (iii) any actual or alleged presence or release of hazardous materials on, at, to or from the Owner Property;
- (iv) the use of the proceeds from the sale of the Bonds that were deposited into the Owner Project Account;
- (v) the execution and delivery of, or the performance under, this Agreement or any agreement or instrument contemplated hereby or thereby (other than the Indenture);
- (vi) the execution and delivery of, or the performance under, the Indenture or any agreement or instrument contemplated thereby (other than this Agreement); or
- (vii) any amount owed or alleged to be owed to a taxing agency or a holder of a Bond because of a determination or allegation that any of the Bonds are not exempt from federal [**or State**] taxation;

provided that:

(A) in each case, such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee; and

(B) with respect to clauses (vi) and (vii), such indemnity will only be available to the extent that (I) the events described therein resulted from an action or omission of, or is otherwise related to the Owner or (II) if such event did not result from an action or omission of, or is otherwise unrelated to the Owner and cannot be attributed to an Other Participants, the indemnity will only cover the Owner Proportionate Share of the related Losses.

(b) To the fullest extent permitted by applicable law, the Owner shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Program Agreement or any agreement or instrument contemplated hereby or the use of the proceeds of the Bonds.

(c) All amounts due under this Section 5.2 will be payable not later than five Business Days after written demand therefor.

5.3. Agreements with Other Participants. The Issuer agrees that it will include the provisions of this Article 5 in the lease agreements that the Issuer enters into with Other Participants in connection with the Bonds.

ARTICLE 6 REPRESENTATIONS

6.1. Representations and Warranties. The Owner represents and warrants that:

(a) it is a [_____] and has all requisite power and authority to enter into and perform its obligations under this Agreement, the Guaranteed Savings Agreement and the Program Agreement (the “**Owner Agreements**”) and to carry out the terms thereof and the transactions contemplated thereby;

(b) the execution, delivery and performance by Owner of the Owner Agreements have been duly authorized by all necessary action on the part of Owner and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of the Owner, except as has been obtained;

(c) each Owner Agreement (i) has been duly executed and delivered on behalf of Owner by authorized officers of Owner, and constitutes the legal, valid and binding obligation of Owner, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, moratorium, and other similar laws applicable to creditors’ rights generally and also subject to

any limitations on enforceability which may be imposed by application of equitable principles, (ii) is in full force and effect and (iii) has not been assigned by the Owner;

(d) to knowledge of Owner, there is no action, suit, proceeding or investigation pending or threatened against the Owner or its properties before or by any court, administrative agency, environmental council, arbitrator or governmental authority, body or agency that could adversely affect the performance by Owner of its obligations under any Owner Agreement or that questions the validity, binding effect or enforceability of any Owner Agreement, any action taken or to be taken pursuant thereto or any of the transactions contemplated thereby;

(e) the execution, delivery and performance by Owner of the Owner Agreements and the consummation of the transactions contemplated thereby, do not and will not conflict with, or result in any violation of, any term of its organizational documents, or of any contract or agreement applicable to it or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation presently applicable to it or any of its properties or by which it or its properties may be bound or affected;

(f) no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution and delivery by the Owner of the Owner Agreements, except those that have been obtained; and

(g) neither the Owner nor, to the knowledge of the Owner, the Contractor has declared a default under the Guaranteed Savings Agreement.

ARTICLE 7 DEFAULT; REMEDIES

7.1. Default. Each of the following will constitute an “Event of Default” under this Agreement:

(a) failure to pay any Lease Payment on or before the date specified therefor in Exhibit 1 (Lease Payments); or

(b) failure of the Owner to perform any other covenant to be performed hereunder which failure goes unremedied for 30 days.

7.2. Remedies. Upon the occurrence of any Event of Default, the Trustee and the Issuer (with respect to the Retained Rights) may take any available action at law or in equity to enforce its rights hereunder but may not accelerate the remaining Lease Payments or terminate this Agreement.

**ARTICLE 8
MISCELLANEOUS**

8.1. No Personal Recourse. No covenant, obligation or agreement of a party hereunder will be deemed to be a covenant, stipulation, obligation or agreement of any past, present or future member, officer, agent, attorney or employee of such party in other than his or her official capacity, and none of the members, officers, agents, attorneys or employees, past, present or future of a party will be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of such party in this Agreement.

8.2. Amendment of the Indenture. The Issuer covenants that, except as may be necessary to protect the tax-exempt status of the Bonds, it will take no action to amend or supplement the Indenture in any manner that would adversely affect the interests of the Owner without obtaining the prior consent of the Owner.

8.3. Notices, Etc. All notices, consents, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to the Issuer:	With a copy to:
If to the Owner:	With a copy to:

Each party may change the address to which its communications are delivered by giving notice to the other parties. Any communication given in accordance with this Section 8.3 will be deemed to have been given to a party upon its receipt thereof.

8.4. Assignment. Neither party may assign this Agreement directly or by merger or otherwise by operation of law without the prior consent of the other party, except that, without such consent, the Issuer may assign this Agreement to the Trustee as security for the payment of the Bonds with the current right to all payments and rights to enforcement under the Agreement. Any purported assignment of this Agreement in violation of this Section 8.4 will be null and void.

8.5. Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties as to the subject matter hereof. This Agreement may not be amended or modified except by a written instrument signed by the parties.

8.6. Governing Law. This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the Commonwealth (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each party consents to jurisdiction and venue in courts of the Commonwealth in jurisdictions in which the Owner is located.

8.7. WAIVER OF JURY TRIAL. OWNER AND ISSUER EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT DOCUMENT RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

8.8. Counterparts. This Agreement may be executed in counterparts that, taken together, will constitute one and the same agreement.

[Signature Page to Follow]

As evidence of their intent to be legally bound, the Owner and the Issuer have each caused this Lease Agreement to be duly executed by their duly authorized representatives as of the day and year first written above.

[ISSUER]

By: _____
Name:
Title:

[OWNER]

By: _____
Name:
Title:

[SIGNATURE PAGE TO THE LEASE PAYMENT AGREEMENT]

EXHIBIT 2

TAX REPRESENTATIONS, COVENANTS AND AGREEMENTS

Exhibit C
Program Agreement

Sept. 23, 2016

PROGRAM AGREEMENT

among

FOUNDATION FOR RENEWABLE ENERGY AND ENVIRONMENT

[OWNER]

and

[CONTRACTOR]

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PROGRAM AGREEMENT

This Program Agreement (this “**Agreement**”) is entered into as of [_____] [____], 20[____] by the Foundation for Renewable Energy and Environment (“**FREE**”), a Delaware Non-profit Corporation, [_____] a [_____] (the “**Contractor**”), and [_____] a [_____] (the “**Owner**”).

Background

A. The Owner is a “governmental unit” as defined in the Guaranteed Energy Savings Act (62 Pa C.S. §3751) (the “**Act**”).

B. The Owner is undertaking a project (the “**Project**”) consisting of the implementation of certain energy conservation measures (as further defined below, “**ECMs**”) and has entered into a Guaranteed Savings Agreement dated as of [_____] [____], 20[____] (the “**Guaranteed Savings Agreement**”) with the Contractor pursuant to which the Contractor will (i) implement such conservation measures, (ii) guarantee that the Owner will realize a certain level of monetary savings resulting from such measures and (iii) provide certain measurement and verification services. The Guaranteed Savings Agreement constitutes a “guaranteed energy savings contract” as defined in §3752 of the Act.

C. FREE, in partnership with the Pennsylvania Treasury Department, and with the financial support of the West Penn Power Sustainable Energy Fund, has established a program (the “**Program**”) to facilitate the implementation and financing of ECMs by governmental units and non-profit organizations in the Commonwealth of Pennsylvania and the Owner has determined that it would be in its best interest to implement such measures by participating in the Program.

D. As part of the Program, the Pennsylvania Economic Development Financing Authority (the “**Issuer**”) will issue its [_____] (the “**Bonds**”) under an Indenture (the “**Indenture**”) between the Issuer and a financial institution approved by the Issuer in its capacity as trustee for the owners of the Bonds (the “**Trustee**”) and depositing a portion of proceeds thereof in an account (the “**Project Account**”) held by the Trustee for the use of the Owner to fund the Project. In consideration thereof, the Owner is entering into an agreement (the “**Lease Agreement**”), pursuant to which the Owner will make payments (“**Lease Payments**”) to be applied to the payment of a portion of (i) the principal or redemption price of, and interest on, the Bonds, (ii) the annual fees of the Issuer and the Trustee [and (iii) any other special fees of the Issuer].

E. In consideration of FREE’s facilitating the Project, the Owner and the Contractor are entering into this Agreement to set forth, among other things, certain rights and obligations of the parties relating to the Project and the Program.

Agreement

In consideration of the Background and the mutual covenants, undertakings and conditions set forth below, the parties, intending to be legally bound, agree as follows:

ARTICLE 1
DEFINITIONS; CONVENTIONS

1.1. Definitions. Each capitalized term set forth below in this Section 1.1 has the meaning set forth, or is defined in a referenced location given, in this Section 1.1.

Act is defined in Paragraph A of the Background.

Agreement is defined in the Preamble.

Bonds is defined in Paragraph D of the Background.

Closing means the closing of the issuance of the Bonds.

Commonwealth means the Commonwealth of Pennsylvania.

Contractor is defined in the Preamble.

Contractor Agreements is defined in Section 3.1(a).

ECMs means energy and water conservation measures, including equipment and software foundations and interconnections.

Energy and Water Savings means, for any Savings Year, the energy and water savings for such Savings Year, as calculated in accordance with the Savings Measurement & Verification Plan; Methodology to Adjust Baseline attached as Schedule F to the Guaranteed Savings Agreement.

FREE is defined in the Preamble.

Guaranteed Savings Agreement is defined in Paragraph B of the Background.

Indenture is defined in Paragraph D of the Background.

Issuer is defined in Paragraph D of the Background.

Issuer Indemnified Parties is defined in Section 4.1.

Lease Agreement is defined in Paragraph D of the Background.

Lease Payments is defined in Paragraph D of the Background.

Losses is defined in Section 4.1.

Operating Period Payments means the Measurement and Verification Fee [plus the Operations and Maintenance Fee] plus any other agreed upon payments to FREE.

Owner is defined in the Preamble.

Owner Agreements is defined in Section 3.2(a).

Person means any individual, partnership, corporation, association, business, trust, government or political subdivision thereof, governmental agency or other entity.

Program is defined in Paragraph C of the Background.

Project is defined in Paragraph B of the Background.

Project Account is defined in Paragraph D of the Background.

Trustee is defined in Paragraph D of the Background.

All other capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Guaranteed Savings Agreement as in effect on the date hereof.

1.2. Conventions. Unless otherwise expressly provided in this Agreement:

- (a) references to Persons include their successors and permitted assigns;
- (b) the term “include,” “includes” or “including” means, include, includes or including without limitation (as the case may be);
- (c) references to the Articles and Sections mean the articles and sections of this Agreement;
- (d) the term “day” means a calendar day and includes Saturdays, Sundays and holidays, except that, if any obligation for the payment of money under this Agreement falls due on a Saturday, Sunday or a holiday on which State banks are not open for business, the payment will be due on the next business day thereafter;
- (e) all references to a statute, regulation, law, agreement or instrument mean such statute, regulation, law, agreement or instrument as it may be amended, amended and restated or supplemented from time to time, including (in the case of statutes, regulations or laws) by successor statutes, regulations or laws and (in the case of agreements or instruments) by waiver or consent;
- (f) references to a party means a party to this Agreement;
- (g) a reference to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that or who succeeds to or performs substantially the same functions as those performed by such governmental agency, authority, department, board, commission or other public body or to a public officer; and
- (h) terms defined in the singular have the corresponding plural meaning when used in the plural, and terms defined in the plural have the corresponding singular meaning when used in the singular.

ARTICLE 2 COVENANTS

2.1. Project Funding. The Contractor and the Owner acknowledge that the funds disbursed at Closing and deposited in the Project Account for the Owner's benefit ("Owner Bond Proceeds") are the only funds advanced to the Owner through the Program, and that none of the Issuer, FREE or the Commonwealth has any obligation to advance funds for the implementation of the Project or to pay any portion the Construction Price (as defined in Section 1.1 (Definitions) of the Guaranteed Savings Agreement) other than the Owner Bond Proceeds as and when paid under the terms of the Indenture.

2.2. [Special Fees.] The Owner shall pay a fee to the Issuer in an amount equal to the Owner Proportionate Share (as defined in Section 1.1 (Definitions) of the Lease Agreement) of any special fees of the Issuer as set forth in the Indenture.]

2.3. Inspection. The Owner and the Contractor shall permit representatives of FREE to inspect the Project, at reasonable times and in a reasonable manner, so long as they do not unreasonably interfere with the Contractor's work or the operations of the Owner. FREE will not have any duty or obligation to inspect the Project. Any inspections conducted by FREE are solely for its benefit and may not be relied upon by the Owner or the Contractor for any purpose.

2.4. Information. (a) The Owner shall deliver to the Trustee and FREE:

(i) notice when Final Completion (as defined in Section 1.1 (Definitions) of the Guaranteed Savings Agreement) is achieved;

(ii) notices of (i) an occurrence of an event of default under the Guaranteed Savings Agreement and the cessation of such event of default, (ii) any subsequent termination of the Guaranteed Savings Agreement, (iii) the Owner having entered into a replacement Guaranteed Savings Agreement and (iv) the institution of any dispute resolution proceedings under the Guaranteed Savings Agreement and the resolution thereof; and

(iii) such other information relating to the Project as the Trustee may reasonably request.

(b) The Contractor shall deliver to FREE:

(i) on a quarterly basis throughout the Construction period and upon Final Completion, a report in a format provided by FREE, stating the number of laborers, workers or mechanics employed for the performance of the Construction Work in accordance with Section 4.3 (Work Force) of the Guaranteed Savings Agreement, which report shall contain a process and mechanism for tracking:

(A) the number of hours each direct Contractor employee works, including technical, engineering, and management personnel;

(B) the number of hours each Subcontractor employee works on a [daily][weekly][monthly] basis, *provided* that prior to the execution of the Guaranteed Savings Agreement, the Contractor shall deliver to FREE an estimate of the projected number of hours each Subcontractor employee will work during both the next [three months] and during the Construction period;

(C) whether a Subcontractor is a resident of the Commonwealth;

(D) each Subcontractor's trade area; and

(E) such other information relating to the Project as FREE may reasonably request; and

(ii) the report delivered at Final Completion shall contain the final calculations for all items described in Section 2.4(b)(i)(A) – (D) and shall reflect data from the current quarter covering the period beginning on the date of the report for the immediately prior quarter and ending on the Final Completion Date.

(c) The Contractor and the Owner each understand that FREE and the Commonwealth and its agencies may make use of the information provided to FREE in accordance with Section 2.4(b) to promote the Program or other energy efficiency and sustainability initiatives.

2.5. Measurement and Verification; Annual Savings Statements.

(a) In accordance with Section 11.6 (Additional Monitoring) of the Guaranteed Savings Agreement, with respect to Energy Savings, the Contractor shall deliver to the Owner and FREE copies of all Annual Savings Statements (as defined in Section 11.5(b) (Energy Savings Reporting) of the Guaranteed Savings Agreement) and any and all data in the Contractor's possession necessary to verify the calculations the Contractor provided in the Annual Savings Statements.

(b) In addition to the Annual Savings Statements and any other data it receives from the Contractor, the Owner will provide to FREE in accordance with Section 2.5(a) all other information that it needs for purposes of conducting its verification review pursuant to Section 2.5(a), including all monthly utility usage and cost data.

(c) The Contractor and the Owner each understand that FREE and the Commonwealth and its agencies may make use of the information provided to FREE in accordance with Section 2.5 to promote the Program or other energy efficiency and sustainability initiatives.

2.6. [Amendments to Guaranteed Savings Agreement.] The Contractor and the Owner shall not amend the Guaranteed Savings Agreement to reduce the amount of the Guaranteed Savings below the amount of the Lease Payments and the Operating Period Payments without the consent of the Trustee and then, only if the Owner causes the Trustee to redeem Bonds in accordance with Section 3.3 (Redemption of Bonds) of the Lease Agreement

such that, after giving effect to such amendment, the Guaranteed Savings will not be less than the amount of the Lease Payments and the Operating Period Payments.]

2.7. Termination of the Guaranteed Savings Agreement.

(a) If the Guaranteed Savings Agreement is terminated prior to Final Completion:

(i) the Owner shall give FREE and the Trustee notice thereof concurrently with the delivery of a termination notice to the Contractor;

(ii) within 30 days after delivery of such notice, the Owner, in its discretion, shall either:

(A) enter into a new Guaranteed Savings Agreement and cause the new contractor to execute and deliver to FREE and the Trustee a joinder to this Agreement by which it becomes a party hereto; or

(B) notify FREE and the Trustee that it does not intend to enter into such a new Guaranteed Savings Agreement.

The Owner shall deliver to the Issuer and the Trustee a copy of its notice of termination of the Guaranteed Savings Agreement at the same time as it delivers it to the Contractor.

(b) If the Owner enters into a new Guaranteed Savings Agreement, it shall deliver to FREE a certificate stating that funds then on deposit in the Owner Project Account (as defined in Section 1.1 (Definitions) of the Guaranteed Savings Agreement), together with the Owner's own funds appropriated for the purpose, will be sufficient to complete the Project.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1. Representations and Warranties of the Contractor. The Contractor represents and warrants that:

(a) the Contractor is duly organized and in good standing in the jurisdiction of its organization and, if not organized in the Commonwealth, is licensed to conduct business as a foreign corporation in the Commonwealth and has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement and the Guaranteed Savings Agreement (together, the "**Contractor Agreements**") and to carry out the terms thereof and the transactions contemplated thereby;

(b) the execution, delivery and performance by the Contractor of the Contractor Agreements have been duly authorized by all necessary action on the part of the Contractor and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of the Contractor, except as has been obtained;

(c) each Contractor Agreement (i) has been duly executed and delivered on behalf of Contractor by authorized officers of the Contractor, and constitutes the legal, valid and binding obligation of the Contractor, enforceable against Contractor in accordance with its terms subject to applicable bankruptcy, insolvency, moratorium, and other similar laws applicable to creditors' rights generally and also subject to any limitations on enforceability that may be imposed by application of equitable principles, (ii) is in full force and effect and (iii) has not been assigned by the Contractor;

(d) to the knowledge of the Contractor, there is no action, suit, proceeding or investigation pending or threatened against the Contractor or its properties before or by any court, administrative agency, environmental council, arbitrator or governmental authority, body or agency that could adversely affect the performance by Contractor of its obligations under any Contractor Agreement or that questions the validity, binding effect or enforceability of any Contractor Agreement, any action taken or to be taken pursuant thereto or any of the transactions contemplated thereby;

(e) the execution, delivery and performance by the Contractor of the Contractor Agreements and the consummation of the transactions contemplated thereby, do not and will not conflict with, or result in any violation of, any term of its organizational documents, or of any contract or agreement applicable to it or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation presently applicable to it or any of its properties or by which it or its properties may be bound or affected;

(f) no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution and delivery by the Contractor of the Contractor Agreements, except those that have been obtained; and

(g) neither the Contractor nor, to the knowledge of the Contractor, the Owner has declared a default under the Guaranteed Savings Agreement.

3.2. Representations and Warranties of the Owner. The Owner represents and warrants that:

(a) the Owner is a [_____] and has all requisite power and authority to enter into and perform its obligations under this Agreement, the Guaranteed Savings Agreement and the Lease Agreement (collectively, the "**Owner Agreements**") and to carry out the terms thereof and the transactions contemplated thereby;

(b) the execution, delivery and performance by the Owner of the Owner Agreements have been duly authorized by all necessary action on the part of the Owner and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of the Owner, except as has been obtained;

(c) each Owner Agreement (i) has been duly executed and delivered on behalf of the Owner by authorized officers of the Owner, and constitutes the legal, valid and

binding obligation of the Owner, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, moratorium, and other similar laws applicable to creditors' rights generally and also subject to any limitations on enforceability which may be imposed by application of equitable principles, (ii) is in full force and effect and (iii) has not been assigned by the Owner;

(d) to the knowledge of the Owner, there is no action, suit, proceeding or investigation pending or threatened against the Owner or its properties before or by any court, administrative agency, environmental council, arbitrator or governmental authority, body or agency that could adversely affect the performance by the Owner of its obligations under any Owner Agreement or that questions the validity, binding effect or enforceability of any Owner Agreement, any action taken or to be taken pursuant thereto or any of the transactions contemplated thereby;

(e) the execution, delivery and performance by the Owner of the Owner Agreements and the consummation of the transactions contemplated thereby, do not and will not conflict with, or result in any violation of, any term of its organizational documents, or of any contract or agreement applicable to it or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation presently applicable to it or any of its properties or by which it or its properties may be bound or affected;

(f) no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution and delivery by the Owner of the Owner Agreements, except those that have been obtained; and

(g) neither the Owner nor, to the knowledge of the Owner, the Contractor has declared a default under the Guaranteed Savings Agreement.

ARTICLE 4
RELEASE AND INDEMNIFICATION

4.1. Contractor Release and Indemnification. The Contractor hereby agrees to defend the Issuer, the Pennsylvania Treasury Department, the Trustee, FREE and each agency, officer, employee, agent or any other party acting for or on behalf of any of them (the “**Issuer Indemnified Parties**”) from, and indemnify and hold each of them harmless against, any and all losses, liabilities (including settlement costs and amounts, transfer taxes, documentary taxes, or assessments or charges made by any governmental authority), claims, damages, interest judgments, costs, or expenses, including without limitation, reasonable fees and expenses of the Issuer Indemnified Parties’ legal counsel or other professionals (“**Losses**”) arising out of (a) the Contractor’s negligence or willful misconduct or (b) the Contractor’s participation in the Program, provided that the Contractor will not be liable to the extent such Losses arise from gross negligence or willful misconduct on the part of the Issuer Indemnified Parties as determined in a final and nonappealable judgment of a court or competent jurisdiction.

4.2. Owner Release and Indemnification. The Owner hereby agrees to defend the Issuer Indemnified Parties from, and indemnify and hold each of them harmless against, any and all Losses arising out of (a) the Owner’s negligence or willful misconduct or (b) the Owner’s participation in the Program, provided that the Owner will not be liable to the extent such Losses arise from gross negligence or willful misconduct on the part of an Issuer Indemnified Party as determined in a final and nonappealable judgment of a court or competent jurisdiction.

4.3. Limitation of Liability. Except as provided in Section 4.1, in no event will any party be liable for any indirect, special, punitive, incidental or consequential damages, including loss of anticipated profits, whether in contract or tort (including the negligence or strict liability of the party whose liability has been so limited) or otherwise.

4.4. No Personal Recourse. No covenant, obligation or agreement of a party hereunder will be deemed to be a covenant, stipulation, obligation or agreement of any past, present or future member, officer, agent, attorney or employee of such party in other than his or her official capacity, and none of the members, officers, agents, attorneys or employees, past, present or future of a party will be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of such party in this Agreement.

ARTICLE 5
MISCELLANEOUS

5.1. Notices, Etc. All notices, consents, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to the Contractor:

With a copy to:

If to FREE:

With a copy to:

If to the Owner:

With a copy to:

Each party may change the address to which its communications are delivered by giving notice to the other parties. Any communication given in accordance with this Section 5.1 will be deemed to have been given to a party upon its receipt thereof.

5.2. Assignment. This Agreement may not be assigned by any party, directly or by merger or other operation of law, without the consent of the other parties, which consent may not be unreasonably withheld. In the event of any permitted assignment by the Contractor of the Guaranteed Savings Agreement, this Agreement shall be assigned concurrently therewith. Any purported assignment of this Agreement in violation of this Section 5.2 will be null and void.

5.3. Relationship of the Parties. Nothing herein will be deemed to establish a relationship of principal and agent between or among any party or any of their respective agents or employees, and this Agreement may not be construed as creating any form of legal association or arrangement that would impose liability upon one party for the act or failure to act of the other party.

5.4. No Waiver. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right.

5.5. Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as may, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions hereof will, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

5.6. Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior

agreements, negotiations, discussions and understandings, written or oral, between the parties as to the subject matter hereof. This Agreement may not be amended or modified except by a written instrument signed by the parties.

5.7. Governing Law. This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the Commonwealth (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each party consents to jurisdiction and venue in courts of the Commonwealth in the jurisdiction in which the Owner is located.

5.8. No Third-Party Beneficiaries. Nothing in this Agreement provides any benefit to any third party or entitles any third party to any claim, cause of action, remedy or right of any kind; provided that the Issuer and the Trustee are each intended beneficiaries of the respective obligations owed to them under this Agreement by the Owner or the Contractor.

5.9. Headings. Headings used in this Agreement are for the purpose of convenience only, and no heading may be construed to modify or be used to interpret the text of any Section.

5.10. Further Assurances. The Contractor and the Owner agree to execute and deliver all such instruments and take all such action as may be reasonably necessary to effectuate fully the purposes of this Agreement.

5.11. Successors and Assigns. All the covenants, promises and agreements in this Agreement by or on behalf of a party hereto will bind and inure to the benefit of its successors and permitted assigns, whether so expressed or not.

5.12. Counterparts. This Agreement may be executed in counterparts that, taken together, will constitute one and the same agreement.

[Signature Page to Follow]

As evidence of their intent to be legally bound, FREE, the Owner and the Contractor have each caused this Program Agreement to be duly executed by their duly authorized representatives as of the day and year first written above.

FOUNDATION FOR RENEWABLE ENERGY
AND ENVIRONMENT

By: _____
Name:
Title:

[CONTRACTOR]

By: _____
Name:
Title:

[OWNER]

By: _____
Name:
Title: