

ATTACHMENT ONE 19-399
GENERATION SITING AND OPERATING AGREEMENT

This Agreement entered into as of the ____ day of _____, 2019 between ILLINOIS MUNICIPAL ELECTRIC AGENCY (“IMEA” or the “Agency”), a body politic and corporate, municipal corporation and unit of local government of the State of Illinois, and the CITY OF NAPERVILLE, ILLINOIS (“City”), a municipal corporation and home rule unit of local government created and existing under the laws of the State of Illinois.

WITNESSETH:

1. The foregoing Recitals are incorporated herein and made a part of this Agreement.

2. IMEA shall install, own, operate and maintain, or cause to be installed, owned, operated and maintained, at its expense, a solar generation facility to be connected to the City’s electric distribution system for use as a source of supply of electricity for the City’s citizens and businesses. The form of IMEA’s sponsorship on the solar project in Naperville shall be through the execution of a Power Purchase Agreement (“PPA”) with the contractor/supplier finally selected by IMEA to build, own and operate the project. The solar generation facility will consist of photovoltaic panels, inverters and related equipment designed to produce and rated at approximately 1000 kW. The PPA includes an option for IMEA to acquire ownership of the solar generation facility in the future.

3. The solar generation facility will be directly interconnected to the City’s electric distribution system. The power and energy from the solar generation facility will be delivered directly to the City for use by the City’s citizens and businesses. This power and energy will be used to supplement IMEA’s provision of electricity to meet the City’s requirements under the Power Sales Contract. The other attributes associated with the energy produced by the solar generation facility, including but not limited to capacity, ancillary services and credits associated with the renewable or non-carbon nature of the energy produced, shall be retained by IMEA for the benefit of all of its Members.

4. The City shall provide three parcels of land to be used for the site of the solar generation facility. Those three parcels shall be a total of 13.786+ acres consisting of Parcels 1 and 2 generally described as part of the Southwest Quarter of Section 12, Township 37 North, Range 9 East of the Third Principal Meridian, Will County, Illinois, and Parcel 3 generally described as part of the South Half of Section 12, Township 37 North, Range 9 East of the Third Principal Meridian, Will County, Illinois, and as shown in Attachment A hereto (the “Premises”). The solar generation facility is to be installed and maintained at the site on the Premises as identified and depicted on Attachment B hereto. The City shall provide IMEA unrestricted usage of and access to the Premises for all purposes related to the solar generation facility.

5. The City shall execute an appropriate instrument to grant IMEA an easement or similar rights to cause the Premises to be used as the site for the solar generation facility. The instrument shall have a reversion clause that automatically terminates the easement rights when the solar generation facility ceases to exist or is acquired by the City. The instrument shall be in a form and have such provisions as are reasonable and customary for instruments of its type and as shall be mutually agreeable to the parties. Upon execution, the instrument shall be recorded in the land records in the appropriate offices of Will County, Illinois. The easement shall be granted in exchange for a nominal consideration. The City shall charge no other fee for the use of the Premises.

6. IMEA shall have the right to grant one or more irrevocable, non-exclusive licenses running with the land for the Premises to the contractor/supplier selected to build, own and operate the solar generation facility for access to and for the purpose of installing, owning, operating and maintaining, and at appropriate times repairing, replacing and/or removing the solar generation facility and all related equipment on or from the Premises. IMEA may grant the holder of any such license the right to record a memorandum of license or other appropriate instrument in the land records in the appropriate offices of Will County, Illinois.

7. Real property owned by the City is exempt from property-related taxes as long as it is held or used for a public purpose. The production of energy to be used in the City's municipal electric utility is a public purpose. IMEA and its contractor/supplier should not be subject to property taxes or other fees, monetary contributions or taxes in lieu of property taxes in connection with the use of the Premises for placement of the solar generation facility or the ownership of the facility. The solar generation facility to be located on the Premises will serve the public purpose of being used in connection with the provision of electricity to the citizens and businesses of the City as part of the City's electric utility system, and as such, it is tax-exempt. The City agrees to use its best efforts to keep IMEA and its contractor/supplier from being made subject to any such property-related taxes, fees, monetary contributions or taxes in lieu in connection with the ownership of the solar generation facility or the use of the Premises.

8. The City agrees to take all steps reasonably necessary under applicable building, zoning, site engineering and other regulations of all local government authorities, such that IMEA and/or its contractor/supplier will receive the necessary permits or other authorizations to install, operate, maintain and at the appropriate time to remove the solar generation facility.

9. If it has not already done so, the City will complete the IDNR (Illinois Department of Natural Resources) Ecological Compliance Assessment Tool (EcoCAT) Application for the host site within 15 calendar days of execution of this Agreement to initiate natural resource reviews for:

- a. [Illinois Endangered Species Protection Act](#) [520 ILCS 10/11(b)] and [Illinois Natural Areas Preservation Act](#) [525 ILCS 30/17] as set forth in procedures under [Title 17 Ill. Admin. Code Part 1075](#).
- b. [Interagency Wetland Policy Act of 1989](#) [20 ILCS 830] as set forth in procedures under [Title 17 Ill. Admin. Code Part 1090](#) when state agencies provide funding (including federal pass-through funding) or technical assistance.

IMEA will reimburse the City up to \$500 for the fee, if any, plus convenience fee costs associated with the EcoCAT application process. This EcoCAT report may be required by certain environmental Acts. The City will not be paid by IMEA for its staff or consulting time needed to complete such tasks. The City's obligations under this Agreement are subject to the receipt by IMEA or its contractor/supplier of all necessary permits, approvals and authorizations to install, own, operate and maintain the solar generation facility, including any necessary variance or similar action with respect to any restriction arising out of the EcoCAT process.

10. IMEA agrees to provide for environmental and other governmental and/or regulatory permitting and approvals, if any, other than that specified in Sections 8 and 9 immediately above, as required by law to install, own, operate and maintain the solar generating facility. IMEA's obligations under this Agreement are subject to the receipt by IMEA or its contractor/supplier of all necessary permits, approvals and authorizations to install, own, operate and maintain the solar generation facility.

11. The City shall not build or allow any structure of any kind to be built on, or make any other alterations to, the Premises or any adjoining parcel owned by the City that would block access to the sunlight by the solar generation facility or that would otherwise adversely affect, cause damage to or interfere with the construction, operation or maintenance of the solar generation facility. The City will enforce its currently effective building, zoning or other land use regulations and restrictions to ensure to the extent possible under such currently effective regulations and restrictions that no construction on or alteration of any adjoining parcels will be allowed to block access to the sunlight by the solar generation facility or that would otherwise interfere with the solar generation facility. The City will not make any changes to its currently effective building, zoning or other land use regulations and restrictions or grant any variance or exception thereto that would allow for any such construction on or alteration of any adjoining parcels. The City shall notify IMEA in a timely manner if it becomes aware of any plans for any such construction on an adjoining parcel. The City will also use its best efforts to encourage the landscape elements and vegetation control on all adjacent properties to be configured so as not to block access to sunlight or otherwise interfere with the solar generation facility.

12. The City shall remove any and all trees from the Premises that might interfere with the solar generation facility in a timely manner in coordination with IMEA and its contractor/supplier. IMEA or its contractor/supplier shall have the right and obligation to maintain all vegetation on the Premises that is at or inside the fence of the solar generation facility. The City grants IMEA or its contractor/supplier

permission to grade and/or provide drainage for the Premises subject to City review and approval.

13. The City shall install and maintain in accordance with prudent utility practice, at its expense, the necessary equipment to connect the solar generation facility to the City's electric distribution system, which interconnection equipment shall be owned by the City. The City-provided three phase equipment is depicted on Attachment C and shall consist of a 1500 (or greater) kVA, 12.47 (or as required for City's distribution system) kV_{LL} Wye – 480 V_{LL} Wye grounded step up transformer, high side fuses and load break disconnect switching, low side bidirectional, four quadrant revenue metering (preferably an Elster polyphase meter) with KYZ pulses, and associated high side cabling to extend the City's existing distribution feeder to the step up transformer. IMEA agrees to reimburse City for the cost of said metering. IMEA will cause its contractor/supplier to execute an appropriate interconnection agreement with the City.

14. The interconnection point between the solar project and the City's electric distribution system shall be made an additional Delivery Point for the City under its Power Sales Contract with IMEA and the power and energy delivered to the City from the solar generation facility shall be metered and billed to the City by IMEA in accordance with the Power Sales Contract. The City shall provide IMEA SCADA access to all output from the revenue metering and, as required, access to single phase 120/240 VAC power for IMEA SCADA communications at the site.

15. The City shall provide IMEA with access to monitoring points within the section of the City's electric distribution system serving the solar generation facility and reasonable City staff time for installation of monitoring devices for the purpose of studying real-time voltage and harmonic conditions as the solar generation facility output and substation regulation and loading vary; provided that no such devices shall be permitted if and to the extent they would create any safety concerns or limit the City's operational flexibility. IMEA or its contractor/supplier will provide the City with access to a public internet web site displaying real time and historic solar array output data from the solar generation facility, reported in user-defined time intervals. IMEA or its contractor/supplier shall also be responsible for providing the City information about the solar array, including but not limited to inverter status and weather information via a DNP Connection which shall be brought to the City's RTU. Breaker status and any other information that can only be provided via dry contact shall be wired to the City's RTU cabinet. Shunt trip and any other control points shall be provided and brought to the City's RTU cabinet.

16. The City shall at all times preserve and maintain the interconnection of the solar generation facility to its electric distribution system in accordance with prudent utility practice and shall receive the electricity produced by the solar generation facility into its electric distribution system. The City shall use its best efforts to cause the interconnection between its electric distribution system and the solar generation facility to be taken off line for no more than a total of forty-eight (48) daylight hours

per calendar year. The City shall notify IMEA at least forty-nine (49) hours in advance of the commencement of any scheduled outage and shall use its best efforts to notify IMEA immediately of any unscheduled or emergency outage.

17. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to continue to provide single phase, 120/240 VAC, minimum 100 Amp electric service at the site for the purpose of serving auxiliary power requirements of the solar generation facility, and IMEA agrees to reimburse the City for the cost of said auxiliary power.

18. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to provide or arrange for grounds maintenance for the solar generation facility, and IMEA agrees to reimburse the City for the reasonably incurred costs of doing so.

19. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to provide electric utility personnel to perform routine maintenance and to operate the solar generation facility at IMEA's direction. IMEA agrees to reimburse the City for use of municipal utility personnel at the City's then current hourly rates of compensation.

20. IMEA agrees to secure or to cause its contractor/supplier to secure the site by installing on the Premises, at its expense or at the expense of its contractor/supplier, yard lighting (Delivery Point area), substation quality fencing and lockable gate(s) accessible by IMEA or its contractor/supplier and by City personnel. Except where there is imminent risk of damage to persons or property, the City shall notify IMEA prior to entering the solar generating facility if required for purposes of operating or maintaining the utility system. The City shall give IMEA 24-hour notice prior to providing facility access to small public groups for educational and promotional purposes. Said groups shall be properly escorted and supervised by City utility personnel while in the facility. Notwithstanding the foregoing, no activities shall be allowed at the site or on the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the operation of the solar generating facility.

21. The City shall provide, at its expense, police and fire protection/emergency response for the solar generation facility, including any special training that may be needed for fire response at such a facility. IMEA or its contractor/supplier shall provide such emergency response personnel access to an emergency trip switch for the main low side breaker of the solar generation facility. Access to the emergency trip switch shall be secured by a lock box located immediately outside the facility fence.

22. The City shall make reasonable efforts to notify IMEA in a timely manner if it has knowledge of an emergency condition regarding or that may affect the solar generation facility. The City shall make reasonable efforts to notify IMEA in a timely

manner if it becomes aware of any other risk to, damage, or condition affecting the Premises or the solar generation facility. IMEA and the City shall designate personnel and establish procedures to allow such notifications at all times, twenty-four (24) hours per day, including weekends and holidays.

23. IMEA agrees to procure and maintain such policies of liability insurance and to cause any third party to which it has granted use rights to procure and maintain such policies of liability insurance as shall be necessary in accordance with prudent utility practice to insure against any claim or claims of damage arising by reason of property damage, personal injury or death occasioned directly or indirectly in connection with the operation of the solar generation facility on the Premises. At a minimum, such policies shall include: (a) property insurance on the solar generation facility for the replacement cost thereof; (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (c) employer's liability insurance with coverage of at least \$1,000,000; and (d) workers' compensation insurance as required by law. In addition, IMEA currently has in place and shall continue to maintain an overall umbrella policy with a face amount of at least \$5,000,000. Beyond any such insurance, IMEA shall not be liable to the City for any damage to the Premises or any injury or damage occurring on the Premises in connection with the operation of the solar generation project or otherwise, unless caused by the gross negligence or intentional misconduct of IMEA or its agents. The City agrees to procure and maintain such policies of liability insurance as are commercially reasonable as the owner of the Premises or to maintain such self-insurance mechanisms to provide substantially the same level of coverage.

24. The City shall indemnify, defend and hold harmless IMEA and its contractor/supplier 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 IMEA or its contractor/supplier or any of their contractors or agents. IMEA shall indemnify, defend and hold harmless the City (or IMEA shall cause its contractor/supplier to indemnify, defend and hold harmless the City) 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 to the extent deposited, spilled or otherwise caused by IMEA's contractor/supplier 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 any deposit, spill or release of any Hazardous Substance.

25. The PPA may require IMEA to obtain certain acknowledgements and agreements from the City as it relates to the Premises and the solar generation facility. The City agrees that the solar generation facility is and shall retain its legal status as personal property and shall not attach to or be deemed a part of, or fixture to, the Premises. The City shall place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the solar generation facility and its legal status and classification as personal property. If there is at any time during the term of this

Agreement any mortgage, pledge, lien, charge, security interest, encumbrance, fixture filing or other claim of any nature against the Premises which could reasonably be construed as prospectively attaching to the solar generation facility as a fixture of the Premises, Purchaser shall provide a disclaimer or release from the holder of such interests or claims. The City consents to the filing of a disclaimer by IMEA's contractor/supplier of the solar generation facility as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises is located. If requested by IMEA's contractor/supplier, the City agrees to deliver a non-disturbance agreement between itself and IMEA or between the holder of any of the foregoing interests or claims and IMEA in a form reasonably acceptable to IMEA's contractor/supplier.

26. Unless otherwise agreed to by IMEA and City, at the end of the initial term, or any extension thereof, IMEA agrees to promptly remove all of its removable equipment from the Premises or cause the same to be removed and use reasonable efforts to restore the site to its condition prior to installing the solar generation facility. Additionally, the City shall have the right to compel removal of the solar generation facility if the plant becomes commercially unviable and IMEA or its contractor/supplier have not taken reasonable steps to repair or otherwise cause the plant to be returned to a commercially viable state. Commercially unviable is defined as a capacity factor over a 12-month period of less than 1%. Capacity factor is defined as output from the solar generation facility in kWh for the 12-month period divided by the nameplate rating of the plant in kW multiplied by 8760 hours. Reasonable periods for repairs required as a result of the significant damage from events typically understood to be force majeure events shall be excluded from the foregoing.

27. The initial term of this Agreement shall commence upon its execution and continue until the date that is one hundred twenty (120) days following the date of expiration or termination of IMEA's PPA with the contractor/supplier who owns the solar generation facility; provided however, if the power supply portions of the PPA terminate earlier than 20 years after the Commercial Operation Date (as defined in the PPA) because IMEA acquired ownership of the solar generation facility during the term of the PPA, then the initial term of this Agreement shall continue until the date that is twenty years and one hundred twenty days after such Commercial Operation Date. Thereafter, this Agreement shall continue in full force and effect until terminated by one hundred and twenty (120) days written notice from either party. Notwithstanding the foregoing, this Agreement shall terminate if the solar generation facility is removed from the Premises.

28. If the Power Sales Contract between IMEA and the City expires and is not extended or replaced during the term of the PPA, then the PPA between IMEA and its contractor/supplier shall be assigned by IMEA to the City. The City shall accept such assignment, and thereafter the City shall be fully responsible for all obligations and shall be entitled to all rights under the PPA. If IMEA has acquired ownership of the solar generation facility prior to such expiration of the Power Sales Contract, then

IMEA agrees to transfer ownership of the solar generation facility to the City upon such expiration, subject to the City paying IMEA an amount equal to the then current net book value of the solar generation facility.

29. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic internet mail (“e-mail”). E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) a confirmation e-mail is sent by the recipient to the sender confirming receipt of e-mail notice. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 13, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Naperville
Attention: Director of Department of Public Utilities – Electric
1392 Aurora Ave
Naperville, Illinois 60540

With a copy to: City of Naperville
Attention: City Attorney
400 South Eagle Street
Naperville, Illinois 60540

Notices and communications to the IMEA shall be addressed to, and delivered at, the following address:

IMEA
Attention: President & CEO
3400 Conifer Drive
Springfield, IL 62711

30. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

31. Non-Waiver. The Parties shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to the Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Party's right to enforce that right or any other right, except as otherwise set forth herein.

32. Written Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing. Verbal consent, permission, authorization, approval acknowledgement or similar indication of assent is acceptable for routine matters affecting the Premises or routine access thereto.

33. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Venue for disputes arising from or related to this Agreement, the Development, or the Subject Property shall be in the Illinois Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

34. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

35. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

36. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

37. Amendments and Modifications. An amendment or modification to this Agreement shall not be effective until it is reduced to writing and approved and executed by all Parties in accordance with all requirements of law.

38. Changes in Laws. Unless otherwise provided in this Agreement, any reference to the requirements of law shall be deemed to include any modifications of, or amendments to, the requirements of law that may occur in the future.

39. Compliance with Laws. The IMEA agrees to comply with all requirements of law when performing any Services under this Agreement.

40. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

41. Freedom of Information Act. IMEA and the City are each public bodies subject to the Freedom of Information Act. Each party agrees to maintain, without charge, all records and documents concerning or relating to this Agreement, the Subject Property, the Development, and the City in accordance with the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1, et seq. Upon request by the requesting party, the other party, who shall be referred to in this Section as the producing party, shall produce all records requested by the requesting party within the timeframe requested by the requesting party, and if additional time is needed to compile the requested records, the producing party shall promptly notify the requesting party. In the event that either Party is found to have not complied with FOIA due to the other Party's failure to produce documents or otherwise appropriately respond to a request under the Act, then the Party failing to produce and/or respond shall indemnify and hold harmless the other Party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys' fees and penalties.

Pursuant to 5 ILCS 140/7(2) of the FOIA, records in the possession of others whom a public body has contracted with to perform a governmental function are covered by the FOIA and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension, or such time frame as might otherwise be agreed upon in writing by the requester). Upon notification from the requesting party that it has received a FOIA request that calls for records within the producing party's control, the producing party shall promptly provide all requested records to the requesting party so that the requesting party may comply with the request within the required timeframe. The City and the IMEA shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, are applicable. Each party shall follow its established protocol and procedures to properly process inquiries and FOIA requests.

The IMEA may seek to have proprietary information, including proprietary information of its contractor/supplier, submitted by it to the City withheld from disclosure to third-parties to the extent that such information falls within the definition and provisions of Section 7(1)(g) of FOIA so long as such information has been furnished to the City under a proprietary claim as provided in said Act. IMEA

and the City each reserve their right to assert any other exemption that may be applicable to a particular FOIA request.

42. Savings Clause. If any provision of this Agreement, or the application of such provision, is rendered or declared invalid by a court of competent jurisdiction, the remaining parts or portions of this Agreement shall remain in full force and effect.

43. Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any officer, agent, or employee of the City or any individual officer, agent, or employee of the IMEA.

ILLINOIS MUNICIPAL ELECTRIC AGENCY

By: _____

Kevin M. Gaden
President & CEO

ATTEST:

CITY OF NAPERVILLE, ILLINOIS

By: _____

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk