

REQUEST FOR PROPOSALS

for

ENERGY RELATED FACILITIES IMPROVEMENTS

**PER THE TERMS OF THE PENNSYLVANIA GUARANTEED ENERGY SAVINGS ACT 163 OF 2016 (AS
AMENDED)**

for the

Upper Darby School District

**8201 Lansdowne Avenue
Upper Darby, PA 19082**

July 3, 2025

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Exhibit A – Solar for Schools Program Grant Contract

Exhibit B – Required Payment & Performance Bonds

1. OWNER CONTACT and OWNER'S REPRESENTATIVE:

1.1 Owner Contact

Maureen Williams, Supervisor of Procurement
Upper Darby School District
8201 Lansdowne, Ave
Upper Darby, PA 19072
610.789.7200; ext: 3317
mawilliams@upperdarbysd.org

Special Notice: The Owner contact named above shall be the sole point of contact for interested firms. Interested firms shall have no contact with any Owner employees or selection committee members about any matters relating to this solicitation. Any breach of this provision will be grounds for disqualification from the selection process.

1.2 Owner's Representative

1.2.1 The Owner has engaged NV5's Clean Energy Group to serve as its representative. Interested firms shall have no contact with the Owner's Representative about any matters relating to this solicitation. Any breach of this provision will be grounds for disqualification from the selection process.

2. INTRODUCTION

- 2.1 The Upper Darby School District (hereinafter referred to as Owner) seeks proposals from interested Energy Services Companies (ESCOs) to provide a performance-based operating cost reduction program under the guidelines of the Pennsylvania Guaranteed Energy Savings Act (GESA). The program will focus on developing and implementing a data driven approach to deploying renewable energy, and potentially implementing energy efficient facility renovations, improvements, and retrofits.
- 2.2 The intent of this RFP is to solicit proposals from qualified ESCOs to provide a capital improvement program that addresses the Owner's goals and opportunities while complementing the ongoing maintenance and operations of the district buildings, under the terms of the GESA. The program will include the installation of one or more solar photovoltaic generating facilities (along with appurtenances including but not limited to modules, inverters, racking, and interconnection facilities) (Solar Facilities) and potentially other Energy Conservation Measures (ECMs), such as battery energy storage systems (BESS), lighting improvements, building automation system upgrades, building envelope, HVAC replacements, and other projects allowed under the GESA statute, as necessary and economically beneficial. This RFP outlines the selection process with the understanding that flexibility, speed of delivery, transparency, and overall approach will be central to the selection of the ESCO partner. These qualifications are further detailed in section 7.3 of this RFP document.
- 2.3 The Owner reserves the right to modify the terms of this RFP and the areas of any buildings to be considered during the RFP process.

- 2.4 Costs associated with developing a proposal will not be reimbursed by the Owner.

3. GENERAL RESULTS DESIRED

- 3.1 Primarily, the Owner seeks to implement the Solar Facilities in accordance with its Solar for Schools Grant Award. Additional details related to the application, facilities, system size (kW), and the grant awards (\$) are included in Section 8.0. The District is seeking to engage an ESCO to provide all management, tools, supplies, services, design, and all else necessary to successfully deliver this project. Owner is a nontaxable entity, so this shall include rapidly initiating construction of the project to maximize all applicable incentives including without limitation federal and state tax credits including the Clean Electricity Investment Credit Direct Pay provision, 26 U.S.C § 48E (CEIC) (of federal tax credits) authorized under the Inflation Reduction Act of 2022 (for ease of reference, “CEIC Direct Payment”), depreciation under Modified Accelerated Cost Recovery System, rebates, utility programs, property tax abatements, fees in lieu of taxes or similar property tax instrument, and/or marketing and monetization of environmental attributes like renewable energy credits (collectively, “Incentives”), and the benefits of the.
- 3.2 Secondly, the Owner may also be seeking to engage one or more ESCOs to deliver other ECMs and provide a broad range of services and capital improvements to modernize the Owner’s existing buildings while reducing the consumption and related costs of energy and water use in the facilities addressed. An overview of the District facilities is listed in Section 8.0 of this RFP.
- 3.3 These future projects will be provided through a GESA agreement under which the Owner may finance or self-fund to achieve the following goals:
- 3.3.1 offset the initial capital costs of the program by achieving significant long-term capital and operating cost savings
 - 3.3.2 achieve a guarantee for energy savings, water savings, and operations and maintenance (O&M) savings;
 - 3.3.3 leverage federal, state, local, and other funding sources including rebates and utility programs;
 - 3.3.4 engage students and enhance the Owner’s educational programs;
 - 3.3.5 obtain consistent levels of occupant comfort, building functionality and reliability of energy service; and
 - 3.3.6 capture ancillary benefits that may accrue as a direct result of such energy-related services and capital improvements, etc.

4. PROCUREMENT PROCESS

- 4.1 The evaluation and selection of an ESCO and the negotiation and procurement of services will proceed as follows:

- 4.1.1 Solicitation: Owner advertises the Request for Proposals for Energy Related Facility Improvements per the terms of the Pennsylvania Guaranteed Energy Savings Act, soliciting proposals from qualified ESCOs.
- 4.1.2 Site Visits: Site visits are not mandatory. Site visits will be held as detailed in Section 6.0 below.
- 4.1.3 Submission of Proposals: ESCOs that wish to participate must submit an electronic version (searchable PDF) of the Proposal to the Owner by the Proposal Due Date in Section 6.0. All submissions become the property of the Owner. All costs associated with submission and preparation will be borne by the submitting ESCO. Responses must be prepared as described in Section 7.0 of this RFP.
- 4.1.4 Proposal Review and Selection of Finalists: Owner will establish a Selection Committee to review and evaluate the written responses to this RFP. Owner reserves the right to reject any or all submissions, to waive informalities and minor irregularities in submissions received, and to accept any submissions if deemed in the best interest of Owner to do so.
- 4.1.5 ESCO Ranking: Based on results from the proposal response to the RFP, the Selection Committee Team will select the highest evaluated ESCO(s) so that contract negotiations may proceed. The Owner reserves the right to award contracts to multiple ESCOs, who would have individual scopes at different district buildings, and to award contracts at different times. The Owner also reserves the right to reject all proposals.
- 4.1.6 Preliminary Contract Negotiations: Owner has the right to reject the highest evaluated ESCO in its sole discretion if the Owner determines that it is in the Owner's best interest. The Owner reserves the right to negotiate with more than one ESCO at the same time. The Owner reserves the right to award multiple contracts or no contract at all.

5. PROJECT PHASES

- 5.1 Investment Grade Audit: The selected ESCO will perform an Investment Grade Audit (IGA) of a group of buildings to identify a potential scope of work to achieve the Owner's goals. For each Energy Conservation Measure (ECM), the IGA deliverable shall include a detailed scope of work; guaranteed energy, water, or operational savings; fixed firm pricing; ;plans for permitting, interconnection, monetization of incentives, commissioning, measurement, and verification; training; and on-going operations and maintenance. The IGA process shall include collaboration among the Owner, the ESCO, and the Owner's Representative with interim deliverables to be agreed upon as part of the Investment Grade Audit Agreement (IGAA).
- 5.2 Contracting and Financing Phase: Provided the Owner agrees in principle with the proposed IGA, the Owner may enter a GESA contract with the ESCO(s) to implement the ECMs. The Owner reserves the right to evaluate all forms of payment for the GESA including, but not limited to its own capital funds, financing, and/or a combination of both.

- 5.3 Project Implementation: Work will commence upon execution of the GESA contract. Progress meetings will be conducted by the ESCO for the duration of the construction period.
- 5.4 Measurement and Verification: Savings are verified via the International Performance Measurement & Verification Protocol (IPMVP) with the specific approach to be negotiated during the IGA and agreed to in the contract.

6. PROPOSED PROJECT SCHEDULE

- 6.1 The following schedule is the proposed schedule and may change during the project.

<u>ACTIVITY:</u>	<u>DATE:</u>
Pre-Solicitation Notice	June 27, 2025
Public Notice	No later than July 3, 2025
RFP Available	No later than July 7, 2025
Non-Mandatory Pre-Proposal Meeting	July 8, 2025
Non-Mandatory Site Visits	July 9, 2025
Questions Due	July 10, 2025
Questions Answered via Addendum	July 14, 2025
Proposals Due	July 28, 2025
Interviews (As Needed)	August 4, 2025
BOE Meeting to Appoint ESCO & Authorize Purchase of Materials	August 12, 2025

6.2 Non-Mandatory Pre-Proposal Meeting

- 6.2.1 A virtual Pre-Proposal Meeting will be held at 9:00 AM local time on the date listed above. **Proposers must pre-register to attend by emailing the Owner Contact in Section 1.0 no later than 3:00 p.m. local time on the day before the meeting.** A virtual link will be distributed to registrants no later than 5:00 p.m. local time the day before the meeting.
- 6.2.2 During the Pre-Proposal meeting, the Owner and its Owner's Representative (NV5) will provide an overview of the RFP and review the project goals. Proposers will be given the opportunity to ask questions regarding this solicitation, the Solar PV GESA project, and comprehensive GESA project(s).

6.3 Non-Mandatory Site Visits

- 6.3.1 The Owner will host non-mandatory site visits on the date listed above at the times listed below for the indicated sites. During these times, the Proposers will have access to the facilities to assess the feasibility of the proposed Solar PV arrays only. Access will be limited to roofs and electrical infrastructure at each facility.

<u>BUILDING:</u>	<u>TIME:</u>
Stonehurst ES	8:00 AM – 10:00 AM
Bywood ES	9:00 AM – 11:00 AM

Primos ES	10:00 AM – 12:00 PM
Westbrook Park ES	11:00 AM – 1:00 PM
Hillcrest ES	12:00 PM – 2:00 PM
Drexel Hill MS	1:00 PM – 3:00 PM

6.4 Proposal Submission

- 6.4.1 A searchable PDF electronic version of the Proposal is due and must be received by the date specified above at 4:00 PM local time. Late Proposals will be returned unopened. Proposals should be emailed to mawilliams@upperdarbysd.org with the subject line, "{ENTERCOMPANYNAME}: Upper Darby School District GESA Proposal."

7. ESCO RESPONSE

Proposals must be submitted in the format outlined in this section.

7.1 Section 1: Executive Summary

7.2 Section 2: ESCO Profile

7.2.1 General Firm Information:

Firm Name: _____

Mailing Address: _____

Physical Address: _____

Date Prepared: _____

- 7.2.2 Type of Firm: (Corporation, Partnership, Limited Liability Company, Joint Venture, etc.?)

7.2.3 Firm Name: _____

7.2.4 Mailing Address: _____

7.2.5 Physical Address: _____

7.2.6 Date Prepared: _____

7.2.7 Federal Employer ID#: _____

7.2.8 Year Firm Established: _____

- 7.2.9 Most recent 5-year summary of contract values for GESA projects entered into by your firm:

2024 \$ _____

2023 \$ _____

2022 \$ _____

2021 \$ _____

2020 \$ _____

7.2.10 Corporate Background

- (a) How many years has your firm been in business under its present business name?
- (b) How many years has your firm been providing performance contracting services?
- (c) Indicate the number of energy savings performance contracts administered by your firm and identify how many of those include development of commissioned solar PV facilities.
- (d) Provide audited financial statements from the past three (3) years

7.3 Section 3: ESCO Qualifications and Project Approach

7.3.1 Similar Projects and References

- (a) Briefly describe five (5) Guaranteed Energy Savings Agreements (GESAs) or Energy Savings Performance Contracts (ESPCs) which your firm has managed within the last five (5) years:
- (b) Include the following information on each project:
 - (i) Project Identification: Name the project owner and location (city, state)
 - (ii) Project Dates: Project Actual Construction Start and End Dates
 - (iii) Project Size: Number of buildings and total square footage.
 - (iv) Project Dollar Amount: Provide the total contract amount
 - (v) Project Savings: Provide the total annual savings broken down by energy, water, O&M, energy-related cost savings, and capital cost avoidance.
 - (vi) Project Schedule: Indicate if the project was completed on schedule. If not, please explain.
 - (vii) List of Improvements: List the retrofits and operational improvements related to energy, water, and O&M cost savings.
 - (viii) If the list includes development of commissioned solar PV facilities, state the direct current nameplate rating of those facilities, and, if there were issues with interconnection and/or

permitting, including related to the costs of interconnection facilities and network upgrades, state how ESCO handled those issues.

- (ix) For each referenced Project, summarize savings results verified via Measurement & Verification (if applicable) including all applicable Incentives.
- (x) Comments: Comment on any special highlights, features, services, conditions, etc.
- (xi) References: Provide the names and telephone numbers of the representatives that can supply references.

7.3.2 Project Team

- (a) Provide the following information as it relates to your approach to the proposed project(s).
 - (i) Identify project team members who will have primary responsibility for each phase and individual tasks, as applicable. For each of the individuals listed, include resumes.
 - (ii) Describe the nature of work generally self-performed by the ESCO or conducted by subcontractors and discuss your flexibility in hiring subcontractors recommended by Owner or in selecting local subcontractors in Owner's geographic area.

7.3.3 ESCO Areas of Expertise

- (a) List all areas of expertise related to GESA Agreements. Include specialized areas of expertise that you believe are relevant and are differentiators for your firm.
- (b) Describe your experience with permitting and interconnection of distributed energy resources like solar PV, BESS, and other microgrid technologies. In your answer, identify and describe, as applicable, issues that were resolved and issues that could not be resolved.
- (c) Describe your experience with developing projects that are eligible for Incentives. In your answer, identify and describe, as applicable, the particular Incentives that applied and any issues that were resolved and issues that could not be resolved.

7.3.4 General Approach

- (a) Investment Grade Audit (IGA): Briefly summarize your overall approach to an IGA. The Owner reserves the right to request a sample IGA report from the references provided in Section 7.3.1.
- (b) Baseline Calculation Methodology: Describe in detail the methodology your firm normally uses to compute baseline energy and water use as well as performance.

- (c) Rebates, Incentives, and Grants: Summarize your approach to maximizing potential Incentives, grants, and rebates to the Owner as part of the GESA project, and, in your answer, identify and describe anticipated issues that may arise in eligibility for the same.
- (d) Engineering Design and Construction: Describe your firm's approach to the technical design of past projects and approach to the implementation stage of the GESA projects.
- (e) Measurement & Verification: Summarize your overall approach to M&V including your approach to developing the M&V Plan. The Owner reserves the right to request a sample M&V plan and/or report for any of the references provided in Section 7.3.1.
- (f) Commissioning, Training, and Operations & Maintenance Plans: Briefly summarize your overall approach to developing and implementing these critical plans for GESA projects
- (g) Curriculum Enhancement: Provide a brief description of your proposed approach to engaging students and enhancing the Owner's curriculum. Specifically, describe your proposed plan to ensure the Solar Arrays serve as a learning tool.

7.3.5 Financial Approach

- (a) Project Cost Breakdown: In the table below, provide your company's proposed maximum percentage for each category listed. This format is required and must be completed in its entirety. Use only the categories shown; ranges are not acceptable. Please complete the table and applicable columns: (1) Solar Only GESA consistent with the Solar For Schools Grant Application (SOLAR ONLY) and (2) a more comprehensive GESA project with multiple ECMs across any or all of the facilities listed in Section 8.0 (COMPREHENSIVE GESA).

	Project Budget	SOLAR ONLY	COMPREHENSIVE GESA
a	Subcontractor Costs (Contractor Costs to ESCO)	N/A	N/A
b	Other Direct Purchases of Equipment, Material, Supplies (Supplier Costs to ESCO), costs of interconnection (studies, construction of interconnection facilities, network upgrades)	N/A	N/A
c	Total of Hard Costs	$c = a + b$	$c = a + b$
d	Project Development	%	%
e	Design/Engineering	%	%
f	Project Management	%	%
g	Permits	%	%
h	Performance Bond	%	%

i	Payment Bond	%	%
j	Commissioning	%	%
K	Measurement & Verification	%	%
l	Training	%	%
m	Contingency	%	%
n	Warranty Service	%	%
o	Total of Hard Costs & ESCO Fees (%)	$o = c + \text{sum}(d:n)$	$o = c + \text{sum}(d:n)$
p	Overhead	%	%
q	Profit	%	%
r	PROJECT PRICE SUB TOTAL w/OH & P (%)	$r = o + p + q$	$r = o + p + q$

Assumptions for Project Cost Breakdown Above

Rows A & B will be provided transparently via Open Book Pricing (see below)

Rows D - N are calculated as a percentage of Row C

Rows P & Q are calculated as a percentage of Row O

- (b) Open Book Pricing: Open book pricing is required and will be utilized to analyze subcontractor costs, self-performed work, and other direct purchases of equipment, materials or supplies, as delineated in the Project Cost Breakdown table above. Describe your firm's approach and experience in providing open-book pricing. To the extent permitted by law, Owner will honor the confidentiality of all information that is marked "confidential" by the ESCO, pursuant to Section 10.6, below.
- (c) Maximum Annual Fees: For each category below, describe how that annual cost is determined, how the fee is charged to the Project, and when it is applied. For the Solar Only project, please provide a proposed plan for Measurement & Verification and Operations & Maintenance. Markups on fees are not allowable.

Annual Fees	SOLAR ONLY	COMPREHENSIVE GESA
Measurement & Verification	% of Annual Savings	% of Annual Savings
Operations & Maintenance	\$ / W DC per year	N/A

- (d) Investment Grade Audit Fee: Identify your maximum fee to conduct the Investment Grade Audit (IGA), on a cost per square foot basis. In the event that the Owner and ESCO execute a GESA contract within one (1) year of the receipt of the IGA report, the IGA fee shall be credited in the ESCO's project.

	SOLAR ONLY	COMPREHENSIVE GESA
Investment Grade Audit	\$/SQFT	\$/SQFT

Estimated SQFT	546,348	1,454,757
Total \$	\$	\$

7.3.6 Solar-Specific Approach

Utilizing the information in Section 8.0 and the assumptions below, Proposers shall provide the below requested information

(a) Project Assumptions:

- (i) Roofs: For purposes of the RFP, roofs shall be considered new. ESCO shall be responsible for investigation of existing conditions and collaboration with the Owner during the Investment Grade Audit (IGA) phase. ESCO will be responsible for Roof Warranty Continuation procedures, costs, and coordination with Roof Warranty Holder. ESCOs are encouraged to investigate conditions during site visits.
- (ii) At the ESCO's cost, a Structural Analysis will be completed during the IGA, with final certification during the design and permitting stage. For purposes of this proposal, assume all roofs have sufficient PSF to support the weight of a ballast-mounted system. Avoid roof penetrations wherever possible. ESCOs are encouraged to investigate conditions during site visits.
- (iii) Electrical Infrastructure: For purposes of the RFP, ESCO shall assume adequate electrical infrastructure exists for tie-in. ESCOs are encouraged to investigate conditions during site visits, but this will be further investigated and collaborated on during the IGA phase.
- (iv) ESCOs shall be responsible for costs of complying with all relevant code and interconnection requirements from the relevant Authorities Having Jurisdiction (AHJs). All interconnection costs shall be covered in the total Project Cost of the GESA.
- (v) ESCO shall comply with all requirements of the PA Solar For Schools Grant Program project guidelines, dated October 2024 and the all terms and conditions of the Solar for Schools Program Grant Contract issued by the Commonwealth Financing Authority, including, but not limited to, bonding, insurance, nondiscrimination, Pennsylvania labor laws, and reporting requirements. Exhibit A includes a sample Solar For Schools Program Grant Contract.
- (vi) ESCO shall comply with the law and IRS guidelines to maximize CEIC Direct Payment for the District as shown in Section 8.0. This includes, but is not limited to, compliance with Prevailing Wage Requirements, Domestic Content Requirements, Apprentice participation, and energy community or the Low-Income Community bonus for select schools.

(vii) This project may be subject to federal guidance and the requirements of 2 CFR Part 200, among other applicable laws.

(b) Provide a Guaranteed Maximum Price (GMP). The final project cost will be evaluated and negotiated throughout the IGA process via Open Book Pricing Analysis consistent with the Section 7.3.5.a above. Complete the chart below to provide a Guaranteed Maximum Price (\$/W) inclusive of all project-related costs:

Facility Name	System Size (kW DC)	Guaranteed Maximum Price (\$/kiloWatt)	Guaranteed Maximum Price (\$)
Bywood ES	199		
Drexel Hill MS	743		
Hillcrest ES	275		
Primos ES	206		
Stonehurst ES	221		
Westbrook ES	266		
Total	1910		

(c) Provide Guaranteed Minimum Annual Savings. Complete the charts below. Per Section 8.0, electric and demand rates shall be assumed \$.06/kWh and \$9.20/kW, respectively. Updated baseline rates will be evaluated during the IGA phase.

Facility Name	System Size (kW DC)	Performance (kWh/kW DC)	Energy Savings (kWh/yr)	Energy Savings (\$/yr)
Bywood ES	199			
Drexel Hill MS	743			
Hillcrest ES	275			
Primos ES	206			
Stonehurst ES	221			
Westbrook ES	266			
Total	1910			

Facility Name	System Size (kW DC)	Demand Savings (kW/yr)	Demand Savings (\$/yr)
Bywood ES	199		
Drexel Hill MS	743		
Hillcrest ES	275		
Primos ES	206		
Stonehurst ES	221		
Westbrook ES	266		
Total	1910		

Facility Name	Energy Savings (\$/yr)	Demand Savings (\$/yr)	Total Savings (\$/yr)
Bywood ES			
Drexel Hill MS			
Hillcrest ES			
Primos ES			
Stonehurst ES			
Westbrook ES			
<u>Total</u>			

- (d) Provide a 20-yr Cash Flow Pro Forma for the Project using the assumptions below:
- (i) Year Zero shall include Proposer's Guaranteed Maximum Price less the Solar For Schools Grant Award Amount (\$2,395,725). Owner intends to fund the project through a combination of cash and Solar For Schools Grant monies. This will be reviewed during the IGA.
 - (ii) CEIC Direct Payment will be realized in Year 1 based on percentage (%) in Section 8.0.
 - (iii) PECO Solar Incentive shall be assumed \$.10/kWh based on solar kWh production over Year 1 period. PECO Solar Incentive will be realized in Year 2.
 - (iv) Solar Renewable Energy Credits (SREC) shall be assumed to be worth \$36/SREC (\$.036/kWh)
 - (v) Escalation Rates shall be assumed at 3.5% for both Energy and Operations & Maintenance (O&M) costs.
 - (vi) Panel Degradation Rate shall be based upon manufacturer specifications.
 - (vii) Annual Costs for Measurement & Verification and Operations & Maintenance shall be included and consistent with Section 7.3.5.d
 - (viii) Include budgets for wholesale inverter replacements at the end of useful life. This shall be a separate line item from the Annual O&M Expenses.
- (e) Provide cut sheets of proposed products and equipment to be installed. This shall include panels, inverters, racking, data acquisition system (DAS), etc.
- (f) In accordance with Sections 7.3.5a and 7.3.5d, provide the following:
- (i) Measurement & Verification Plan for guaranteed energy and demand savings in accordance with IPMVP.
 - (ii) Commissioning Plan
 - (iii) Training Plan
 - (iv) Operations & Maintenance Plan

- (g) Propose a preliminary project schedule inclusive of completion of the IGA, Design, Construction, and Close-out/Commissioning. Specifically, respondents shall highlight a critical path to purchasing materials and starting construction of the Solar Facilities, in accordance with IRS guidelines for the CEIC Direct Payment.
- (h) Describe any relevant purchasing strategies that may be offered by your firm to assist the Owner with starting construction, in accordance with IRS Guidelines. In order to maximize the potential benefits from the CEIC Direct Payment, the Owner seeks to purchase materials as soon as possible. This may include cooperative purchasing strategies and/or other contracting strategies in compliance with relevant laws and regulations.
- (i) Describe and identify (1) any anticipated costs of interconnection such as study costs and/or construction costs of interconnection facilities and network upgrades and (2) any anticipated security requirements and timelines and/or delays related thereto.

8. SITE SPECIFIC INFORMATION

8.1 The information in this technical facility profile is provided for informational purposes only. The ESCO is responsible for verifying the accuracy throughout the IGA process.

8.2 Solar For Schools Sites

8.2.1 In May 2025, the Owner received a formal commitment of award from the Department of Community and Economic Development (DCED) for the following school sites. The below information is provided for Proposers to utilize in the development of the Site-Specific Approach requested in Section 7.3.6 above. Upon selection, the ESCO will collaborate with the Owner and Owner's Representative to verify the below assumptions:

Facility Name	System Size (kW DC)	Maximum S4S Grant Award (1)	CEIC Direct Pay (%)
Bywood ES	199	\$323,212	50%
Drexel Hill MS	743	\$500,000	40%
Hillcrest ES	275	\$446,713	40%
Primos ES	206	\$334,913	40%
Stonehurst ES	221	\$359,288	50%
Westbrook ES	266	\$431,600	50%
Total	1910	\$2,395,725	N/A

(1) - The S4S Grant Award shall be calculated in accordance with the Program Guidelines dated October 2024. The District's Market Value/Personal Income Aid Ratio (MV/PI AR) shall be assumed greater than

.70. Accordingly, the S4S Grant Award shall be calculated to be the lesser of \$500,000 or 50% of the Project Cost at a Maximum Amount as shown above.

Facility Name	Estimated Square Feet (SQFT)	Baseline Consumption (kWh/yr)	Baseline Costs (\$/yr)	Assumed Utility Rate (\$/kWh)	Assumed Demand Rate (\$/kW)
Bywood ES	51,050	341,400	\$33,830	\$.06	\$9.20
Drexel Hill MS	232,640	1,197,600	\$127,980		
Hillcrest ES	98,600	467,520	\$47,116		
Primos ES	63,652	353,760	\$36,673		
Stonehurst ES	53,406	376,320	\$37,620		
Westbrook ES	47,000	444,240	\$52,797		
Total	546,348	3,180,840	\$336,016		

8.3 Comprehensive List of Sites

8.3.1 As discussed previously, the primary goal of this RFP is to rapidly engage an ESCO and implement a GESA program in alignment with the Owner's Solar For Schools Grant Award. In potential subsequent or parallel phases and at the Owner's discretion, an ESCO may be requested to perform a comprehensive IGA and implement a GESA at some or all of the below facilities. At the Owner's discretion, this GESA may include any and all energy-related improvements allowed under GESA.

Facility Name	Address	Estimated Square Feet (SQFT)
Kindergarten	3200 State Rd	32,100
Aronimink	4611 Bond Ave	54,500
Bywood	330 Avon Rd	51,050
Garrettford	3830 Garrett Rd	62,920
Highland Park	8301 West Chester Pike	65,508
Hillcrest	2601 Bond Ave	98,600
Stonehurst	7051 Ruskin Lane	53,406
Westbrook Park	199 Westbrook Drive	47,000
Primos	861 Bunting Lane	63,652
Senkow	15 E Lamont Ave	19,000
Charles Kelly	3400 Dennison Ave	30,000
Beverly Hills	1400 Garrett Rd	163,164
Drexel Hill	3001 State Rd	232,640
Upper Darby HS	601 N Lansdowne Ave	481,217
Total		1,454,757

9. REQUIRED AFFIDAVITS AND SECURITY CLEARANCE

- 9.1 The following clearance documents are required for an ESCO or subcontractor working in or on the grounds of a school facility. Participating ESCOs are responsible for the completion and submittal of all necessary forms for Child Abuse Clearance and Criminal Record Checks. All clearances must be current and must have been completed within 1 year of the date submitted to the Owner.
- 9.1.1 PA State E-Patch – apply at the following link: <https://epatch.state.pa.us/>
- 9.1.2 Act 34 Criminal History Clearance
- 9.1.3 FBI Federal Criminal History Clearance – this requires the employee to be fingerprinted. www.identogo.com
- 9.1.4 New PDE Certification Form - PDE-6004 Act 151 PA Child Abuse History Clearance Form at the following link: <https://www.compass.state.pa.us/cwis/public/home>
- 9.2 The Non-Collusion Affidavit shown in subsection 9.3 below shall be completed and submitted with this proposal.
- 9.2.1 This Non-Collusion Affidavit is material to any contract pursuant to a proposal. According to the Pennsylvania Anti-bid-Rigging Act, 62 Pa. C.S.A § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals, such as the Proposal submitted by the ESCO.
- 9.2.2 This Non-Collusion Affidavit must be executed by a member officer or employee of the ESCO who is authorized to legally bind the ESCO. In addition, a separate Non-Collusion Affidavit must be executed by a member, officer, or employee authorized to bind each Sub-contractor listed in the Proposal.
- 9.2.3 Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the Non-Collusion Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the ESCO with responsibilities for the preparation, approval, or submission of the Proposal.
- 9.2.4 If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
- 9.2.5 The term “complementary proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process and includes the knowing submission of a proposal higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.

9.2.6 Failure to file a Non-Collusion Affidavit in compliance with these instructions may result in disqualification of the Proposal.

9.3 Non-Collusion Affidavit

9.3.1 Complete the Non-Collusion Affidavit found on the following page and submit with the proposal.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____; being first duly sworn, deposes and says that:

1. He/She is _____ of _____ ("ESCO"), the ESCO has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither the said ESCO nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other ESCO, firm or person to submit a collusive or sham proposal or complementary proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other ESCO, firm or person to fix the price or prices in the attached Proposal or of any other ESCO, or to fix any overhead, profit or cost element of the prices in the Proposal or the price of any other ESCO, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Owner or any person interested in the proposed Contract;
5. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the ESCO or any of its agents, representatives, owners, employees, or parties in interest, including this affiant; and,
6. Neither the said ESCO nor any of its officers, partners, owners, agents, or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the Owner.

I state that _____ **(Name of ESCO)** understands and acknowledges that the above representations are material and important and will be relied on by the Owner in awarding the Contract(s) for which the Proposal is submitted. I understand and the ESCO understands that any misstatement in this Non-Collusion Affidavit is and shall be treated as fraudulent concealment from the Owner of the true facts relating to the submission of proposals for this Contract. _____ **(Name and Company Position)**

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20____

Notary Public Commission Expires _____

10. ADDITIONAL INSTRUCTIONS AND TERMS AND CONDITIONS

- 10.1 All proposals submitted are valid for acceptance by Owner and may not be withdrawn for a period of one hundred twenty (120) days after the actual date of the opening thereof.
- 10.2 Proposers may submit requests for additional information, clarifications, and/or questions via email prior to deadline listed in Section 6.0. Proposers shall not rely on any verbal answers to questions, requests for information, or issues; Proposers may only rely on written responses from the Owner's contact and/or addenda issued. Addenda issued by the Owner shall be distributed to all ESCOs who have registered with the Owner.
- 10.3 This project is subject to the Pennsylvania Prevailing Wage Law, approved August 15, 1961 (Act No. 442), as amended, and reference is made to the prevailing minimum wage rates applicable to this project which have been promulgated by the Secretary of Labor and Industry.
- 10.4 Owner reserves the right to modify the terms of this RFP and the areas of the buildings to be considered during the RFP process. All such changes will be made by written addendum issued to all registered ESCOs.
- 10.5 Any Proposal may be withdrawn or modified by written request of the ESCO, provided such request is received by Owner at the above email address prior to the date and time set for receipt of proposals.
- 10.6 The Pennsylvania Right to Know Law ("RTKL") provides for public access to documents considered "public records" under the law. Pursuant to the RTKL, any proposal submitted will become a "public record," subject to public review, once a contract is awarded. Owner is not requesting, and does not require, confidential, proprietary information or trade secrets to be included as part of ESCOs' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, ESCOs should not label proposal submissions as confidential or proprietary or trade secret protected. Any ESCO who determines that it must divulge such information as part of its proposal must submit a signed written statement requesting exemption from disclosure and explaining why the material is exempt from public disclosure and must further provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets.
- 10.7 Right to Reject Proposals: This RFP does not commit the Owner to award a contract, pay any cost incurred in the preparation of a proposal in response to this RFP, or to procure or contract for any services. Owner intends to award one or multiple contracts on the basis of the best interest and advantage to Owner in the sole judgment of the Board of School Directors and the Owner Administration, and reserves the right to: accept or reject any or all Proposals received as a result of this request (in entirety or partial); negotiate with any/all qualified ESCOs; or cancel this RFP in part or in its entirety, if it is in the best interest of Owner to do so. Owner also reserves the right to reject, as non-responsive, any Proposals that do not contain the information requested. In addition, Owner reserves the right to reject, as non-responsive, any Proposals that are not organized and formatted as described in this RFP. Owner further reserves the right to waive any irregularity or informality in this RFP process or any proposal and to award an IGA other than the proposer submitting the

best financial proposal (low proposer). Owner reserves the right to request additional information from any or all proposers.

- 10.8 Cost of Proposal Preparation: The cost of proposal development, including site visits and preliminary engineering analyses, will not be reimbursed by Owner.
- 10.9 E-Verify: The ESCO and its Subcontractors (as defined in the act) are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637).
- 10.10 Pre-proposal Inspections: The ESCO shall not at any time after the submission of its proposal, make any claim whatsoever based on insufficient data or a misunderstanding of the requirements, nature, conditions, or extent of the work under the contract. Prior to any ESCO, sub-contractor, or supplier visiting the site for the purposes of acquainting itself with the conditions, the contractor shall contact Owner's designated agent for notification and approval of their scheduled visit. The premises shall be left in the same condition as before the contractor's visit.
- 10.11 Addenda: During the Proposal period, ESCOs may be furnished bulletins for additions, corrections, or modifications to this RFP. These "Addenda" are to be acknowledged in the Proposal and are to be part of this RFP and the resultant performance-based contract. Failure of the ESCO to acknowledge any/all Addenda on its Proposal may be sufficient cause for rejection of the Proposal.
- 10.12 Owner prefers proposals based on a 20-year period. It will be a Guaranteed Maximum Price contract.
- 10.13 Assignment/Sub-Contractors: It is mutually understood and agreed that the successful ESCO shall not assign, transfer, convey, sublet, or otherwise dispose of any contract, or its right, title, or interest therein, or its power to execute such contract to any other person, company, corporation, or other entity without the prior written consent of Owner. Owner may withhold its consent in its sole and absolute discretion, for any reason or for no reason at all. ESCO proposals should include complete information on all sub-contractors to be used on this project and shall require that they follow all required laws and IRS guidance relative to achieving the full CEIC Direct Payment benefit, including following the prevailing wage and apprenticeship requirements and any other applicable requirements. Owner must approve any changes in sub- contractors before/after contract award.
- 10.14 Performance Interference: ESCO should notify Owner immediately of any occurrence or conditions that interfere with the full performance of the contract and confirm it in writing within twenty-four (24) hours.
- 10.15 Safety Standards: All items supplied pursuant to the GESA contract shall comply with the then-current applicable Occupational Safety and Health Standards of the State of Pennsylvania Industrial Commission, the National Electrical Code, the National Fire Protection Association Standards and the Administrative Code, the Pennsylvania Uniform Construction Code, and any applicable local, state, or federal laws, codes, regulations, or ordinances.

10.16 Indemnity and Hold Harmless: ESCO agrees to and shall indemnify, defend, and hold harmless Owner, and its respective officers, agents, and employees against: any and all claims, demands, actions, damages, losses, expenses and liabilities of any nature whatsoever, (including, without limitation, for personal injury, death, or property damage) based upon, arising out of, or as a consequence of, any work performed under the contract by ESCO, its subcontractors, or their respective agents or employees; any and all expenses related to claims or lawsuits resulting from the above, including court costs and attorney(s) fees; and any and all penalties and damages incurred by reason of contractor's failure to obtain any permit or license under, or comply with any applicable laws, ordinances, or regulations.

10.17 Insurance: Before the contract is awarded, and unless otherwise approved by the School District's representative in writing, the Contractor shall, at its sole cost and expense, procure the following minimum types and limits of insurance, on forms reasonably acceptable to the School District. Such insurance shall be maintained in full force and effect until completion of the Services or final acceptance of the entire Project or the completion of all post-acceptance warranty or related work by Contractor, whichever is later. Coverage shall be obtained from reputable insurance carriers authorized to transact that class of business in the state where the work will be performed, or otherwise acceptable to School District, having an A.M. Best Rating of A- VII or better. All insurance required herein shall be written on an "occurrence" basis, not "claims-made," with the exception of Professional Liability insurance, unless specifically approved by the School District. Contractor's commercial general liability and property damage policy, in conjunction with any umbrella or excess liability policy or policies, shall not contain exclusions relating to (a) gravity related injuries; (b) injuries sustained by an employee of an insured or any additional insured; (c) height limitations; (d) residential exclusions, if applicable; (e) cross-party liability; or (f) any exclusion relating to the work being performed by the Contractor or the Project as a whole, without the express consent of the Owner.

10.17.1 **General Liability**: Commercial General Liability, written on an occurrence basis, including contractual liability; explosion, collapse, and underground hazard coverage (X, C, U); bodily injury, including death; and/or property damage to third parties, which may arise from ongoing and completed operations under the contract, whether such operations are performed by the Contractor or its subcontractors/subconsultants, anyone directly or indirectly employed by them, or anyone for whom they may be liable, with limits not less than:

Each Occurrence – Per Project	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Products/Completed Operations Aggregate	\$2,000,000
Aggregate	\$2,000,000
Damage to Rented Premises	\$ 50,000
Medical Payments	\$ 10,000
Abuse/Molestation (if applicable to services provided)	\$1,000,000

Any deductible under this coverage shall be no more than \$10,000 without School District approval and shall be the sole responsibility of the Contractor.

- 10.17.2 **Business Automobile Liability:** Business Automobile Liability coverage for bodily injury and property damage arising out of the ownership, maintenance, or use of owned, non-owned, hired, and leased vehicles, including uninsured/underinsured motorists' coverage, with limits not less than:

Combined Single Limit	\$1,000,000
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- 10.17.3 **Workers' Compensation and Employers Liability:** Workers' Compensation and Employers Liability as required by the state in which the work will be performed, including "other states" coverage (if applicable), and USL&H and Jones Act coverage (if applicable), with limits not less than:

Workers' Compensation	Statutory
Bodily Injury, each Employee	\$500,000
Bodily Injury, each Accident	\$500,000
Disease, each Employee	\$500,000

If Contractor is an exempt self-insurer, sole proprietor, or independent contractor in Pennsylvania, a current exemption certificate shall be provided in lieu of evidence of Workers' Compensation coverage.

- 10.17.4 **Umbrella Liability:** Umbrella Liability applying excess of the General Liability, Automobile Liability, and Employers Liability policies, on a following-form basis, with limits not less than:

Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

Hazardous work may require higher limits, as requested by the School District.

- 10.17.5 **All Risk Builders Risk (if applicable):** All Risk (Special Form) Builders Risk insurance, including Earthquake and Flood to the extent reasonably commercially available, providing protection for building, structures, and materials or equipment to be installed in the project, while in the course of construction, in transit to the project site, and while being retained in off-site storage.

The Builders Risk policy shall be written to cover 100% of the completed value of the project, at replacement cost valuation, with an agreed amount provision (coinsurance waived).

Any deductible under this coverage shall be no more than \$10,000 without School District approval and shall be the sole responsibility of the Contractor.

The policy shall cover the insurable interests of the School District, Contractor and Subcontractors in the Work. The School District and Contractor waive all rights against each other for damages caused by fire or other perils to the extent payment is actually made under insurance provided under this paragraph, except such rights as they may have to the proceeds of such insurance held by the School District. The Contractor shall require similar waivers by Subcontractors.

In the alternative, Upper Darby School District may procure this coverage, at its sole option.

- 10.17.6 Professional Liability/Errors & Omissions Insurance (if applicable):** All Contractors/Providers who will perform, or retain others to perform, professional services in connection with the work (including but not limited to Consultants, Architects, Engineers, Design-Build, Project/Construction Managers) shall provide Professional Liability insurance covering negligent acts, errors, or omissions in the performance of their work, with limits not less than:

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

If coverage is written on a claims-made basis, an Extended Reporting Period, or tail coverage, shall be provided for two (2) years following completion of the insured's services. In the alternative, the Professional Liability policy shall be renewed for not less than two years following completion. The policy retroactive date shall be no later than the effective date of this Agreement.

Any deductible under this coverage shall be no more than \$10,000 without School District approval and shall be the sole responsibility of the Contractor.

10.17.7 Contractors Pollution Liability (if applicable)

All Contractors who will perform environmental services (including but not limited to asbestos or lead abatement, testing or remediation) shall provide Contractors Pollution Liability with limits not less than:

Each Claim or Occurrence	\$3,000,000
Annual Aggregate	\$3,000,000

The Contractors Pollution Liability policy shall include coverage for Emergency Response Costs, Contingent Transportation, Non-Owned Disposal Sites, and Natural Resource Damage. If coverage is written on a claims-made basis, an Extended Reporting Period, or tail coverage, shall be provided for two (2) years following completion of the insured's services. In the alternative, the Contractors Pollution Liability policy shall be renewed for not less than two years following

completion. The policy retroactive date shall be no later than the effective date of this Agreement.

10.17.8 General Insurance Provisions

All policies required hereunder other than Workers' Compensation, Professional Liability and Builders Risk shall name the Upper Darby School District, and their officers, directors, agents, employees, consultants, and volunteers as additional insureds on a primary and noncontributory basis, for losses arising from the negligence of the Contractor or its subcontractors, or anyone for whom they may be liable. Additional insured status shall apply to Completed Operations.

All policies shall provide a Waiver of Subrogation in favor of the Upper Darby School District, and their officers, directors, agents, employees, and volunteers, and/or other parties designated by the School District.

Policies shall not be canceled, terminated, or non-renewed unless sixty (60) days prior written notice is sent by the insurer to the insured Contractor. Contractor shall immediately forward any such notice to Upper Darby School District,

Contractor shall furnish to the Owner certificates of insurance prior to the start of work, evidencing that the below requirements have been met, and detailing the insurers providing coverage, types and limits of coverage, any deductible(s), class of operations covered, and effective and expiration dates of coverage. Certificates shall specifically confirm the terms of coverage required herein, including additional insured status, waiver of subrogation, and that coverage is included for Abuse/Molestation (if applicable). A copy of the Additional Insured, Waiver of Subrogation, and Abuse/Molestation policy provisions or endorsements must be submitted with the certificate. A renewal certificate must be provided to School District prior to the expiration date thereof.

10.17.9 Subcontractors/Subconsultants

Contractor shall require each subcontractor or subconsultant to provide insurance as outlined above. Such policies shall name the Upper Darby School District; Contractor; and the officers, directors, employees, agents, consultants and volunteers of both, as additional insureds on a primary/noncontributory basis, for losses arising from the negligence of the subcontractor/subconsultant. Additional insured status shall apply to Completed Operations.

All policies shall provide a Waiver of Subrogation in favor of the Additional Insured parties.

Contractor shall be responsible for securing and maintaining certificates of insurance from all subcontractors/subconsultants evidencing the insurance coverages required herein.

The insurance coverages and limits required herein are designed to meet the minimum requirements of the School District. They are not designed as a

recommended insurance program for Contractor or its subcontractors/subconsultants. **Meeting these minimum requirements shall in no way limit or relieve the Contractor's liability and obligations under any other provision of the Contract.** The Contractor shall acquire, at its own expense, any other additional insurance coverage it deems necessary for the protection of its work under this contract.

10.17.10 Self-Insurance

If Contractor maintains a self-insured program or a limited self-insurance program for any or all of the coverages listed above, a complete description of the program, with information on excess carriers and funding arrangements, and a copy of the Provider's most recent audited financial statement, must be provided to School District for review and approval, such approval not to be unreasonably withheld.

If School District grants such approval, Contractor understands and agrees that Upper Darby School District, and their officers, directors, agents, employees, and volunteers shall receive the same coverages and benefits under Contractor's self-insurance program that they would have received had the insurance requirements set forth above been satisfied with coverage provided by a commercial insurance company.

- 10.18 Licenses and Permits: ESCO shall maintain in current status all federal, state, and local licenses and permits required for the operation of the businesses conducted by the ESCO, including but not limited to those specific to this project. ESCO shall be responsible for obtaining any and all permits required to perform this installation, including, but not limited to, permits for interconnection. The installation shall be in complete compliance with all federal, state, and local building codes, electrical codes, plumbing codes, fire codes, and state fire marshal codes. The ESCO shall be responsible for the costs of all permits.

10.19 CONTRACTOR RESPONSIBILITY PROVISIONS.

- 10.19.1 Each ESCO must certify, for itself and all subcontractors, that as of the date of its execution of its proposal (the "Execution Date"), that neither the ESCO, nor any subcontractors or suppliers or vendors are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the ESCO cannot so certify, then it agrees to submit, along with its proposal, a written explanation of why such certification cannot be made.

- 10.19.2 Each ESCO must also certify, in writing, that as of the Execution Date, it has no delinquent federal or state tax liabilities or other obligations to any federal or state governmental body ("Governmental Obligations").

- 10.19.3 The ESCO's obligations pursuant to these provisions will commence on the Execution Date. The ESCO shall have an obligation to inform the School District, at any time and from time to time, prior to the proposal deadline: (i) if such ESCO becomes delinquent in its Governmental Obligations, or (ii) if such ESCO or any of its subcontractors or suppliers and vendors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental

entity. Moreover, the Contractor shall have an obligation to inform the School District, at any time and from time to time from the submission of a Proposal through the completion of the work of the GESA contract: (i) if such ESCO becomes delinquent in its Governmental Obligations, or (ii) if such ESCO or any of its subcontractors or suppliers and vendors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made by written notice to the School District within fifteen (15) days of the date of such delinquency, suspension or debarment.

10.19.4 The failure of the ESCO to notify the School District of any delinquency, suspension or debarment as described in Section I-15.3. of this RFP shall constitute an event of default under the PDA and Savings Contract.

10.19.5 A current list of suspended and debarred Commonwealth contractors may be obtained at [Commonwealth of Pennsylvania - Debarment and Suspension List](#) or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
Fax No. (717) 787-9138

10.20 Performance and Payment Bonds:

10.20.1 The successful proposer will be required to provide a Payment Bond and a Performance Bond equal to 100% of the Contract Sum within ten (10) days of notification of award of the GESA contract. The bonds shall be in the form attached hereto as Exhibit B, or such other form as is acceptable to Owner.. A bond is not required for the annual energy savings guarantee during the guarantee period.

10.20.2 The Attorney-in-Fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of its Power of Attorney, authorizing said Attorney-in-Fact to act on behalf of the surety. The Power of Attorney must be dated the same date as the bond, and both the bond and Power of Attorney shall have affixed the raised corporate seal of the surety. The bond form must be executed by a surety licensed and authorized to conduct business within the Commonwealth of Pennsylvania and named in the current list of companies holding Certificates of Authority as acceptable sureties on federal bonds and/or as acceptable reinsuring companies as published in Circular 570 (as amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, with an AM Best Rating or "A-" or better and financial rating of Class "X" or higher . The amount of the bond shall not exceed the underwriting risk of such surety set forth in said circular or revision thereof.

10.20.3 Contractor shall furnish a Maintenance Bond in an amount equal to ten percent (10%) of the Contract including Change Orders. This Maintenance Bond shall be

effective for a period of one (1) year following the date established by the certificate of Substantial Completion.

- 10.20.4 If the Surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to School District.
- 10.21 Site Inspections: ESCOs shall visit the sites and familiarize themselves with all conditions that may affect performance and prices. Submission of a proposal will constitute an agreement by the ESCO that the ESCO did, in fact, review the Request for Proposal in detail and is aware of all conditions affecting performance and prices.
- 10.22 Asbestos and Hazardous Materials: Any asbestos and/or hazardous materials encountered that would be affected by any proposed retrofits must immediately be brought to the attention of Christopher Rossiter, Assistant Manager of Facilities, (610) 352-7111, crossiter@upperdarbysd.org. Notification must be confirmed in writing within twenty-four (24) hours. The ESCO selected will not be responsible for the removal of any encountered asbestos.
- 10.23 Telephone, Telegraph and Facsimile Proposals: Telephone, telegraph and/or facsimile proposals will not be accepted. Only written RFP information is valid, i.e., verbal or telephonic information is not valid.
- 10.24 Evaluation: Proposal evaluation will be made by the Owner. Owner may award the proposal that it deems in the best interest of Owner in its sole judgment. Owner reserves the right to make an "all or nothing" award.
- 10.25 Discrimination Prohibited: The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. § 951, et seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability by employers, employment agencies, labor organizations, contractors, and others. The Contractor shall agree to comply with the provisions of this Act as amended which are hereby made part of this specification. Your attention is directed to the language of the Commonwealth's non-discrimination clause in 16 PA. Code 49.101.
- 10.25.1 In addition, the ESCO agrees that: In the hiring of employees for the performance of the work under the contract, or any sub-contract hereunder, the contractor or subcontractor shall not, by any reason of race, color, religious creed, ancestry, age, sex, national origin, handicap, or disability, discriminate against any citizen of the United States of America who is qualified and available to perform the work to which the employment related;
- 10.25.2 Neither the contractor or sub-contractor, nor any person on his behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, or color; and

- 10.25.3 The contract may be cancelled or terminated by Owner and all money due or owing may be forfeited, for a second or any subsequent violation of the terms or conditions of this portion of the contract.
- 10.26 Disputes and Claims: All disputes, claims, and other matters pertaining to this RFP or resulting contract shall be construed and interpreted and the rights of the parties hereto shall be determined in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions to the contrary. Jurisdiction and venue for any dispute, controversy or claim arising out of or relating to this RFP or resulting contract shall lie solely in the court of Common Pleas of Delaware County, Commonwealth of Pennsylvania. The parties hereto agree to and consent to the exclusive jurisdiction of said court in any such action or proceeding and waive any objection to venue. Owner reserves all rights and privileges applicable to it pursuant to the doctrine of nullum tempus occurrit regi. ESCO expressly waives any right to penalties, interest, and attorney's fees pursuant to the prompt payment provisions of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S. §§ 3931 et seq.
- 10.27 Proposal materials: Proposals and other materials submitted shall become the property of Owner. Owner shall bear no cost for the Proposal presentations on the part of the vendor.
- 10.28 Standard of Quality: Any various materials and products specified by name or description are given to establish a standard of quality and cost for Proposal purposes. It is not the intent to limit the ESCO, the Proposals, or the evaluation of the Proposals to any one material or product specified, but rather to describe a minimum standard that is acceptable. Where the proprietary names are used, they shall assume to be followed by the words "or alternatives of quality to meet specification." A Proposal containing an alternative that does not meet specifications may be declared non-responsive. A proposal containing an alternative may be accepted, but if an award is made to that ESCO, the ESCO will be required to replace any alternative which does not meet the specification.
- 10.29 Prevention of Environmental Pollution: In the performance of the contract, ESCO shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. ESCO shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by DEP. These include but are not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Drillers Act, Water Works Act and Atomic Energy Act, all as amended to date. ESCO is responsible for any violations and shall secure all required permits.
- 10.30 Waiver of Damages: ESCO waives claims against Owner for consequential, incidental, indirect, exemplary, and punitive damages arising out of or relating to the contract, including, but not limited to, damages incurred by the ESCO for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the work.
- 10.31 Costs and expenses caused by delays or improperly-timed activities or defective construction shall be borne by the parties responsible therefore. Notwithstanding the

foregoing, Owner and its employees, agents and representatives shall not be liable to any contractor, subcontractor or sub-subcontractor for claims or damages whatsoever, caused by or arising out of delays in the project, and the claimant's sole remedy for delays shall be the allowance to a successful claimant of additional time for completion of such claimant's work.

10.32 Provision for the Use of Steel and Steel Products Made in the U.S.:

10.32.1 In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the Contract, only those produced in the United States as defined therein shall be used or supplied in the performance of the Contract or any subcontracts thereunder.

10.32.2 In accordance with Act 161 of 1982, cast iron products shall also be included and produced in the United States. Act 141 of 1984 further defines "steel products" to include machinery and equipment. The act also provides clarifications and penalties.

10.33 Prohibition Against the Use of Certain Steel and Aluminum Products: In accordance with the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. § 773.101 et seq.), ESCO cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted.

10.33.1 BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.

10.33.2 SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.

10.33.3 SOUTH KOREA: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.

10.33.4 ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

10.33.5 Penalties for violations of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years. Note: This provision in no way relieves the contractor of its

responsibility to comply with those provisions of this RFP that prohibit the use of foreign-made steel and cast-iron products.

- 10.34 No cash allowances: Cash allowances are not to be included in the proposal.
- 10.35 As Built Drawings: ESCO must provide two (2) complete sets of reproducible "as built" and record drawings of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals to be submitted within 30 days of the completed installation.
- 10.36 Taxes: ESCO shall be responsible for and shall pay all applicable sales, use, excise, or other taxes required by law on all materials, tools, equipment, fixtures, services, incidentals and otherwise which may be purchased or used in connection with the project or portions thereof. ESCO's proposal and any resulting contract shall be made in accordance with such laws and shall include all applicable taxes in the contract amounts.
- 10.37 Access to Accounting Records: ESCO shall check all materials, equipment and labor entering into the project, and shall keep such full and detailed accounts as may be necessary for IRS guidelines, the PA Solar for Schools Grant Program, proper financial management of the project, and the savings guarantee. Owner, its agents and representatives shall be afforded access to, including the right to photocopy, all of the ESCO's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the project, and the ESCO shall preserve all such records for a period of three (3) years, or for such longer period as may be required by law, after the end of the term of the contract. ESCO shall include access to accounting records rights in all contracts with subcontractors related to the project.
- 10.38 Open book pricing will be required, such that the ESCO will fully disclose all costs, including all costs of subcontractors and vendors. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Costs will be evaluated by the Owner and its consultants through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical price benchmarks. Stated cost markups will be clearly applied. ESCO will provide access to records and preserve them during the construction phase of the project
- 10.39 ESCO shall guarantee that the total program costs shall be one hundred percent (100%) covered by the Owner-approved energy, capital avoidance, planned maintenance/renovation, and operational cost savings. This guarantee shall apply to each year during which the contract for guaranteed energy savings is in effect. If not, the ESCO shall pay Owner the difference each year. Note: Owner may utilize additional capital, and/or may, at its sole discretion, opt to supplement the program, or secure its own financing.
- 10.40 Reconciliation of guaranteed sums shall be on an annual basis and include full descriptions of cost reduction achievements commencing one (1) year from the date of completion of total program and equipment installation and continuing for the duration of the guarantee period or until cancelled by Owner at their option. Measurement and verification

procedures shall be consistent with accepted standards with the International Performance Measurement & Verification Protocol (IPMVP) as the accepted standard.

- 10.41 Annual Guaranteed Cost Savings. An annual contractual guarantee with the associated annual M&V report will be provided by the ESCO for every year of the contract term. However, the Owner reserves the right to terminate the Guarantee after the first performance year from the date of project acceptance. If the Owner exercises that option, the ESCO will have no more savings guarantee requirements. Any savings guarantee shall be made available as a continued option for each subsequent year of the contract term. The Owner may cancel the guarantee at any time after the minimum requirement period.
- 10.42 Interim Savings during Construction Period. Savings accrued during the construction period will not be allocated to the annual savings of any year unless the Owner directs the selected ESCO to include it. See "Annual Savings Exceed Annual Costs" above. Any interim cost savings realized are retained by the Owner.
- 10.43 Excess Savings (beyond the guaranteed amount). Excess savings will be retained by Owner and will not be allocated to cover shortfalls in savings in other years. See "Annual Savings Exceed Annual Costs" above.
- 10.44 The savings guarantee shall be a first-party direct guarantee from the ESCO to Owner. A third-party guarantee, such as from a non-contractor insurance company, will not be accepted.
- 10.45 The ESCO shall demonstrate a staff capability that can fully maintain all proposed equipment with emergency service within an eight (8) hour response time.
- 10.46 Owner shall own all installed equipment. Said equipment shall be free and clear of all liens and encumbrances upon transfer of ownership to Owner. In addition, Owner may retain salvage rights to all equipment and material removed pursuant to an awarded contract.
- 10.47 All installations and system modifications designs shall be under the direction of appropriately licensed design professionals. Owner will require all design documents to be signed and sealed by a PA licensed architect/engineer (RA/PE) as appropriate.
- 10.48 The ESCO must work in conjunction with Owner personnel in coordinating all functions of the project, including the completion of all paperwork necessary for obtaining permits and providing assistance in obtaining state building aid and any other available forms of energy aid.

Exhibit A – Solar for Schools Program Grant Contract

Contract No: **C000094002**

**COMMONWEALTH OF PENNSYLVANIA
COMMONWEALTH FINANCING AUTHORITY**

SOLAR FOR SCHOOLS PROGRAM GRANT CONTRACT

This Grant Contract, is entered into by and between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Commonwealth Financing Authority ("Grantor"), and

**UPPER DARBY SCHOOL DISTRICT
Upper Darby School District
8201 Lansdowne Avenue
Upper Darby PA 19082**

("Grantee").

The Solar for Schools Grant Program was established pursuant to the act of July 17, 2024 (P.L. 813, No. 68) (Act 68 of 2024) pursuant to which the Department of Community and Economic Development reviews and approves eligible solar energy project applications. Pursuant to Section 1753.2-E(b.1) of Article XVII-A.1 of the act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal Code, the Grantor shall fund projects approved by the Department of Community and Economic Development from funds available under the Public School Facility Improvement Grant Program, established under Section 1753.2-E of Subarticle E of Act 34 of 2023, for the Solar for Schools Grant Program.

The parties, intending to be legally bound, agree as follows:

**ARTICLE I
AMOUNT OF THE CONTRACT**

Subject to the terms of this Grant, the Grantor hereby makes available to the Grantee out of funds appropriated a grant in the sum of **THREE HUNDRED TWENTY THREE THOUSAND, TWO HUNDRED THIRTEEN DOLLARS (\$323,213.00) AND NO CENTS-----** or such portion thereof as may be required by the Grantee and authorized by the Grantor, subject to the condition that it shall be used by the Grantee to carry out the activities described in the application submitted by the Grantee and as approved by the Grantor, and which is incorporated herein by reference. In addition, this Grant is subject to Appendix A&B, Commitment Letter and, if applicable, Appendix C, Special Conditions.

ARTICLE II EFFECTIVE DATES

The term of this Grant shall commence on the Effective Date (as defined below) and shall end on **JUNE 30, 2028**, subject to the other provisions of this Grant.

The Effective Date shall be the date the fully executed Grant is sent to the Grantee. A fully executed contract is one that has been signed by the Grantee and by the Grantor and contains all approvals required by Commonwealth contracting procedures.

This Grant is not binding in any way, nor will the Commonwealth be bound, until this document has been fully executed and sent to the Grantee. Any cost incurred by the Grantee prior thereto are incurred at the Grantee's risk.

ARTICLE III PAYMENT PROVISIONS AND FISCAL RESPONSIBILITIES

(a) The Grantor agrees to pay the Grantee for eligible project costs incurred under this Grant between **MAY 20, 2025** and **JUNE 30, 2028** ("Grant Activity Period") as follows:

- (1) Subject to the availability of state funds and other terms and conditions of this Grant, the Grantor will reimburse the Grantee based upon the Grantor's determination of the Grantee's needs and in accordance with the proposed budget as set forth in Appendix B.

The Grantor may pay the Grantee for eligible project costs at intervals to be determined by the Grantor. Under no circumstances shall the Commonwealth or the Grantor be liable for any expenditure exceeding the amount stated in this Grant or amendments hereto.

The Grantor shall have the right to disapprove any expenditure made by the Grantee which is not in accordance with the terms of this Grant and the Grantor may adjust payment to the Grantee accordingly.

- (2) Initial payments to the Grantee to perform the activities under this Grant and all other payments shall be made on invoice forms and in accordance with instructions provided by the Grantor.

To receive payments under this Grant, the Grantee shall submit requests for payment based on the Grantee's estimate of expenditures, at intervals as determined by the Grantee to meet disbursement needs. Unless otherwise instructed by the Grantor, this estimate must not exceed the current disbursement needs of the Grantee in order that the amount of cash on hand and available to the Grantee is as close to daily needs as administratively feasible. The Grantor may, however, set a minimum payment level or amount for each request for payment.

(b) Conditions for Payment:

- (1) Grant payments under this Grant are conditioned upon the completion of any Special Conditions set forth in Appendix A or otherwise incorporated into this Grant.
- (2) Costs allocated to program administration are limited to those described in the project budget or as otherwise revised in accordance with the amendment provisions of this Grant described in the Article entitled Amendments and Modifications.
- (3) Payment by the Commonwealth and all other terms of this Grant are subject to the effect of any federal deficit reduction legislation upon the availability of funds awarded by this Grant.

(c) The Grantee shall charge to the project account all approved costs of the project. All approved costs, including activities contributed by the Grantee or others and charged to the project account, must be supported by properly executed vouchers or other records indicating in proper detail the nature and propriety of the charge.

(d) Conditions for Repayment of Grant Funds:

- (1) Misuse or Failure to Use Funds.
 - (A) The Grantee shall use the funds granted under this agreement, or as much as may be necessary, to carry out the project in accordance with the terms of this Grant. If after all or any part of the funds has been paid to the Grantee and the Grantee shall fail to carry out the activities, the Grantee shall repay the Grantor the funds previously paid.
 - (B) If the Grantee does not use all or a portion of the funds paid under the terms of this Grant in accordance with this Grant, the Grantee shall be liable to the Grantor for the amount of funds unused or improperly used and shall return the funds to the Grantor.
 - (C) In the event the Grantor is entitled to repayment of all or a portion of the funds granted under this agreement, the repayment may include all interest, income, accumulations and the monetary equivalent of any appreciation in value of any property (real, personal or mixed) purchased with the funds granted them.

Repayment must be in the form and manner directed by the Grantor.

(2) Violation of the Prohibition of Illegal Alien Labor on Assisted Projects Act.

If the Grantee

- (i) knowingly employs, or knowingly permits any of its subcontractors to knowingly employ, the labor services of an illegal alien on activities funded in whole or in part by grants or loans issued by an executive agency of the Commonwealth of Pennsylvania; and
- (ii) the Grantee or any of its subcontractors are sentenced under Federal law for an offense involving knowing use of labor by an illegal alien on activities funded in whole or in part by grants or loans issued by an executive agency of the Commonwealth of Pennsylvania,

the Grantee shall repay to the Grantor all grant funds received by the Grantee from the Grantor pursuant to this Grant. Repayment must be in the form and manner directed by the Grantor.

ARTICLE IV
BONDING, INSURANCE AND TAX LIABILITY REQUIREMENTS

(a) Liability Insurance:

The Grantee's standard liability insurance policies shall protect, or shall be endorsed to protect, the Commonwealth from claims of bodily injury and property damage arising out of any activities performed by the Grantee or its employees or agents under this Grant, including business and non-business invitees, and their property and all other property sustaining damage as a direct or indirect result of the execution of this project when validly present on Grantee's premises whether or not actually engaged in the project at the time the claim inures. The policies must not include any provision limiting then existing sovereign immunity of the Commonwealth or of its agents or employees. Upon request, the Grantee shall furnish to the Grantor proof of insurance as required by this paragraph.

(b) Other Liability Requirements:

The Grantee shall provide workers' compensation insurance where it is required and shall accept full responsibility for the payment of premiums for workers' compensation and social security and any other taxes or payroll deductions required by law for its employees who are performing activities specified by this Grant.

ARTICLE V COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

All activities authorized by this Grant must be performed in accordance with applicable statutes, regulations, conditions, directives, guidelines and any additional requirements as may be attached hereto as Appendix C or are otherwise provided by the Grantor. The Grantee acknowledges that this Grant is subject to all requirements set forth in this provision and further agrees that it will comply with future requirements determined by the Grantor as necessary.

(a) Compliance with State Statutes and Regulations:

The Grantee shall comply with all applicable state statutes and regulations.

(b) Commonwealth Standard Terms and Conditions:

(1) Definitions. Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the agreement to which they are attached.

(2) Indemnification. The Grantee shall indemnify and defend the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Grantee or its employees and agents pursuant to this agreement, as determined by the Commonwealth in its sole discretion.

(3) Nondiscrimination/Sexual Harassment.

(A) Representations. The Grantee represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the agreement. The Grantee shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

(B) Nondiscrimination/Sexual Harassment Obligations. The Grantee shall not:

(i) in any manner discriminate in the hiring of any employee(s) for the performance of the activities required under this agreement or any subgrant agreement, contract, or subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of

the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

- (ii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
 - (iii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this agreement or any subgrant agreement, contract, or subcontract.
 - (iv) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor, or supplier who is qualified to perform the work to which this agreement relates.
 - (v) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act, or National Labor Relations Act, as applicable, and to the extent determined by entities charged with the Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (C) Establishment of Grantee Policy. The Grantee shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of this agreement, the Grantee shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the grant activities are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.

- (D) Notification of Violations. The Grantee's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the agreement. Accordingly, the Grantee shall notify the Commonwealth if, at any time during the term of this agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
 - (E) Cancellation or Termination of Agreement. The Commonwealth may cancel or terminate this agreement and all money due or to become due under this agreement may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee in the Contractor Responsibility File.
 - (F) Subgrant Agreements, Contracts, and Subcontracts. The Grantee shall include these Nondiscrimination/Sexual Harassment provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of these provisions in the Grantor's subgrants, contracts, or subcontracts does not create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by those provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provisions, the Grantee shall use its best efforts to ensure the subgrantee's, contractor's, or subcontractor's compliance with these provisions.
- (4) Grantee Integrity.
- (A) Definitions. For purposes of these Grantee Integrity Provisions, the following definitions apply:
 - (i) "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - (ii) "Grantee" means the individual or entity, that has entered into this agreement with the Commonwealth.
 - (iii) "Grantee Related Parties" means any Affiliates of the Grantee and the Grantee's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Grantee.

- (iv) “Financial Interest” means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (v) “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, as may be amended, 4 Pa. Code §7.153(b), apply.
 - (vi) “Non-Solicitation Award Process” means a method of awarding grants based on predetermined criteria, without the solicitation of grant applications.
- (B) Representations and Warranties.
- (i) Grantee Representation and Warranties. The Grantee represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Grantee nor Grantee Related Parties have:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and are not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
 - (ii) Contractor Explanation. If the Grantee cannot make the representations and warranties set forth above at the time of its submission of its grant application or if the agreement is awarded pursuant to a Non-Solicitation Award Process at

the time of the execution of the agreement, the Grantee shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the agreement.

- (iii) Further Representations. By submitting any bills, invoices, or requests for payment pursuant to the agreement, the Grantee further represents that it has not violated any of these Grantee Integrity Provisions during the term of the agreement.
 - (iv) Notice. The Grantee shall immediately notify the Commonwealth, in writing, if at any time during the term of the agreement it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Grantee acknowledges that the Commonwealth may, in its sole discretion, terminate the agreement for cause if it learns that any of the certifications made in these Grantee Integrity Provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the agreement.
- (C) Grantee Responsibilities. During the term of this agreement, the Grantee shall:
- (i) maintain the highest standards of honesty and integrity.
 - (ii) take no action in violation of any applicable laws, regulations, or other requirements applicable to the Grantee that govern Commonwealth contracting or grant administration.
 - (iii) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these Grantee Integrity Provisions as they relate to the Grantee's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
 - (iv) not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the award of grants or the administration of this agreement.

- (v) not have a financial interest in any other subgrantee, contractor, subcontractor, or supplier providing services, labor, or material under this agreement, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Grantee's financial interest. The Grantee must disclose the financial interest to the Commonwealth at the time of submission of its grant application, or if a Non-Solicitation Award Process is used, no later than the date the Grantee signs the agreement. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
 - (vi) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. § 13A01 et seq.) regardless of the method of award.
 - (vii) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. § 3260a) if this agreement was awarded pursuant to a Non-Solicitation Award Process.
 - (viii) immediately notify the Commonwealth or the Office of the State Inspector General, in writing, when the Grantee has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Grantee Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.
- (D) Investigations. If a State Inspector General investigation is initiated, the Grantee shall:
- (i) reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Grantee's compliance with the terms of this or any other agreement between the Grantee and the Commonwealth that results in the suspension or debarment of the Grantee. The Grantee shall not be responsible for investigative costs for investigations that do not result in the Grantee's suspension or debarment.
 - (ii) cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Grantee non-compliance with these Grantee Integrity Provisions and make identified Grantee employees and volunteers available for interviews at reasonable times and places.

- (iii) upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Grantee's integrity and compliance with these provisions. This information may include, but is not be limited to, the Grantee's business or financial records, documents or files of any type or form that refer to or concern this agreement.
 - (E) Termination. For violation of any of these Grantee Integrity Provisions, the Commonwealth may terminate this agreement and any other contract with the Grantee, claim liquidated damages in an amount equal to the value of anything received in breach of these Grantee Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another grantee to complete performance under this agreement, and debar and suspend the Grantee from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
 - (F) Subcontracts. The Grantee shall include these Grantee Integrity Provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of this provision in the Grantee's subgrant agreements, contracts, and subcontracts shall not create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provision, the Grantee shall use its best efforts to ensure their compliance with these provisions.
- (5) Contractor Responsibility.
- (A) Definition. For the purpose of these provisions, the term "Contractor" means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
 - (B) Contractor Representations.

- (i) The Contractor represents for itself and its subgrantees, contractors, and subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this agreement, that neither the Contractor, nor any of its subgrantees, contractors, and subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with the agreement, a written explanation of why the certification cannot be made.
 - (ii) The Contractor represents that, as of the date of its execution of this agreement, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal, if any liabilities or obligations exist, or is subject to a duly approved deferred payment plan if any liabilities exist.
- (C) Notification. The Contractor shall notify the Commonwealth if, at any time during the term of the agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subgrantees, contractors, or subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- (D) Default. The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the agreement with the Commonwealth.
- (E) Reimbursement. The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this agreement or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (F) Suspension and Debarment List. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

(6) Americans With Disabilities Act.

- (A) No Exclusion. Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this agreement.
- (B) Compliance. For all goods and services provided pursuant to this agreement, the Grantee shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- (C) Indemnification. The Grantee shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Grantee's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

(7) Applicable Law and Forum.

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

(8) Right to Know Law.

- (A) Applicability. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.
- (B) Grantee Assistance. If the Commonwealth needs the Grantee's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Grantee that it requires the Grantee's assistance, and the Grantee shall provide to the Commonwealth:
 - (i) access to, and copies of, any document or information in the Grantee's possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes

is a public record under the RTKL, within ten calendar days after receipt of written notification; and

- (ii) any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
- (C) Trade Secret or Confidential Proprietary Information. If the Grantee considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Grantee shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Grantee, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Grantee shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.
- (D) Reimbursement.
 - (i) Commonwealth Reimbursement. If the Grantee fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Grantee shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Grantee's failure, including any statutory damages assessed against the Commonwealth.
 - (ii) Contractor Reimbursement. The Commonwealth will reimburse the Grantee for any costs that the Grantee incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.
- (E) Challenges of Commonwealth Release. The Grantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Grantee shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Grantee's legal challenge, regardless of the outcome.
- (F) Waiver. As between the parties, the Grantee waives all rights or remedies that may be available to it as a result of the

Commonwealth's disclosure of Requested Information pursuant to the RTKL.

- (G) Survival. The Grantee's obligations contained in this Section survive the termination or expiration of this contract.

- (9) Offset.

The Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee, or its subsidiaries, owed to the Commonwealth against any payments due the Grantee under any contract between the Commonwealth and Grantee.

- (10) Automated Clearing House (ACH) Payments. [INTENTIONALLY OMMITTED]

- (11) Worker Protection and Investment. [INTENTIONALLY OMMITTED]

- (c) Compliance with Anti-Pollution Regulations:

The Grantee and its subcontractors, in the performance of their obligations under this Grant, shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

- (d) Compliance with the Prohibition of Illegal Alien Labor on Assisted Projects Act.

Pursuant to the Act of May 11, 2006 (P.L. 173, No. 43), known as the Prohibition of Illegal Alien Labor on Assisted Projects Act, the Grantee shall not knowingly employ, or knowingly permit any of its subcontractors to knowingly employ, the labor services of an illegal alien on activities funded in whole or in part by a grant or loan issued by an executive agency of the Commonwealth of Pennsylvania.

If the Grantee:

- (A) knowingly employs, or knowingly permits any of its subcontractors to knowingly employ, the labor services of an illegal alien on activities funded in whole or in part by grants or loans issued by an executive agency of the Commonwealth of Pennsylvania; and
- (B) the Grantee or any of its subcontractors are sentenced under Federal law for an offense involving knowing use of labor by an illegal alien on activities funded in whole or in part by grants or loans issued by an executive agency of the Commonwealth of Pennsylvania,

the Grantee shall:

- (A) repay to the Grantor all grant funds received by the Grantee from the Grantor pursuant to this Grant, and

- (B) be ineligible to apply for any Commonwealth grant or loan for a period of two years.

ARTICLE VI ASSIGNMENT, TRANSFER, COLLATERAL USE

This Grant is binding upon and inures to the benefit of the Grantor, the Grantee, and their respective successors and assigns, except that the Grantee may not assign or transfer its rights under this agreement without the prior written consent of the Grantor. Approval of an assignment does not establish any legal relationship between the Commonwealth or the Grantor and any other third party, and under no circumstances will the Commonwealth be held liable for any act or omission committed pursuant to an assignment.

ARTICLE VII INDEPENDENT CONTRACTOR

Notwithstanding anything contained in this agreement to the contrary, the rights and duties granted to and assumed by the Grantee are those of an independent contractor only. Nothing contained in this agreement is construed to create an employment, agency or partnership relationship between the Grantor and the Grantee.

ARTICLE VIII INTEREST OF PARTIES AND OTHERS

No officer, member, employee, independent contractor or elected official of the Authority and no member of its governing body who exercises any functions or responsibilities in the review or approval of activities being performed under this Grant shall participate in any decision relating to this Grant which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested. Nor shall any officer, member, elected official or employee of the Commonwealth or any member of its governing body have any interest direct or indirect in this Grant or the Grant proceeds.

The Grantee covenants that the Grantee (including directors, officers, members and employees of the Grantee) presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of activities required to be performed under this Grant. The Grantee further covenants that no person having any interest shall be employed in the performance of activities for this Grant.

The Grantee represents and warrants that no elected state official, any employee of the Grantor, immediate family member (parent, spouse, domestic partner, child, brother or sister, daughter-in-law or son-in-law, or grandchild) of elected state official, or Grantor's employees, or any entity in which any above listed person shall have an ownership interest of 5% or greater, or in which entity above listed person has a controlling interest, has received or will receive a direct or indirect pecuniary benefit from or as a result of the full execution of this Grant. Further, the Grantee represents and warrants that it has not and

will not enter any contract for goods or services with the persons enumerated above using any funds made available to Grantee under this Grant.

ARTICLE IX SUBCONTRACTS

The Grantee shall not execute or concur in any subcontract with any person or entity in any respect concerning the activities governed by this agreement without prior written approval of the Grantor. Prior written approval is not required for the purchase by the Grantee of articles, supplies, equipment and activities which are both necessary for and merely incidental to the performance of the work required under this Grant. The Grantee shall not execute or concur in any subcontract declared disapproved by the Grantor. A subcontractor will be automatically disapproved, without a declaration from the Grantor, if the subcontractor is currently or becomes suspended or debarred by the Commonwealth or the federal government. In any event, the Grantee shall be responsible for the quantity and quality of the performance of any of its subcontracts.

All subcontracts must contain provisions of nondiscrimination/sexual harassment as specified in the Article entitled Compliance with Applicable Statutes and Regulations, subsection (b)(3). In addition, all subcontracts involving the pass through of Grant funds to subrecipients must include the contract closeout requirements contained in the Article entitled Contract Closeout Requirements. The Grantee is responsible for ensuring that copies of cancelled checks are received from subcontractors verifying the payment of eligible project costs incurred in accordance with the terms of this Contract, and, in the event that the Commonwealth audits this Contract, for resolving any findings contained in any audit reports. All costs deemed unallowable in any audit report involving the pass through of Grant funds to subrecipients are required to be returned to the Grantor through the Grantee.

ARTICLE X BIDDING REQUIREMENTS

If the Grantee is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the Grantee shall comply with those procedures if they are applicable to the project being funded with the grant funds. Otherwise, the Grantee shall comply with open and competitive bidding procedures in awarding all grants, subgrants, contracts, subcontracts or other agreements in excess of \$10,000.00 for construction, reconstruction, demolition, alteration and repair, for acquisition of machinery and equipment, or for engagement of the services of a professional consultant, when the grants, subgrants, contracts, subcontracts or other agreements are funded in whole or at least 50% in part with funds made available under this Grant. Open and competitive bidding procedures require the Grantee to obtain a minimum of three arm's length bids from vendors capable of providing the goods and performing the services requested. Arm's length transactions occur when the parties to the transaction are not related to one another and each party is acting in its own self-interest. The Grantor may require the Grantee to submit proof of compliance with these procedures, and failure to provide proof to the satisfaction of the Grantor may result in termination of the Grant and repayment of all or a portion of the funds available under this Grant. Upon written request and for good cause shown, the Grantor may, at the Grantor's

sole discretion, permit the Grantee to use an alternative procedure for solicitation of bids not inconsistent with law.

ARTICLE XI RECORDS

The Grantee, using accepted procedures, shall maintain at its principal office or place of business complete and accurate records and accounts including documents, correspondence and other evidence pertaining to costs and expenses of this Grant, and reflecting all matters and activities covered by this Grant.

At any time during normal business hours and as often as the Grantor deems necessary, the Grantee shall make available for inspection by the Grantor, the Commonwealth Auditor General, the Commonwealth Attorney General, or the Comptroller General of the United States, or their duly authorized representative, all of its records with respect to all matters covered by this Grant and will permit the Grantor to audit, examine and make copies of the records.

All required records must be maintained by the Grantee for a period of five (5) years from the date of final audit or close out of this Grant by the Grantor, except in those cases where unresolved audit questions may require maintaining some or all records for a longer period. In that event, records must be maintained until all pending matters are resolved.

ARTICLE XII PROGRESS REPORTS

The Grantee and its subcontractors shall furnish to the Grantor progress reports in the form and quantity as the Grantor may from time to time require, including, but not limited to, status reports of the project, project account statements, certificates, approvals, proposed budgets, invoices, copies of all contracts executed and proposed, employment placements, follow-up reports and all other information relative to the Grant as may be requested. The Grantor or its representative shall have the right to make reasonable inspections to monitor the Grantee's performance under this Grant.

If the Grantor determines that the Grantee or its subcontractor(s) has not furnished the reports as required by the Grantor, the Grantor, by giving written notice to the Grantee, may suspend payments under this Grant until the required reports are submitted.

ARTICLE XIII ACKNOWLEDGMENT OF COMMONWEALTH ASSISTANCE

Any publication concerning a project financed by the Grantor will acknowledge Commonwealth financial assistance as follows:

“This Project was financed *[in part]* by a grant
from the Commonwealth of Pennsylvania, Commonwealth Financing Authority.”

Signs acknowledging the Commonwealth financial assistance or administrative participation will be erected in the project area as soon as possible after the effective date

of this Grant. Acknowledgment of Commonwealth financial assistance may be combined with acknowledgment of other funding sources on project signs or in project publications.

ARTICLE XIV CONTRACT CLOSEOUT REQUIREMENTS

Unless otherwise directed in writing by the Grantor, the Grantee shall, within 45 days of the Grantee's receipt of the final payment of grant funds under this Contract, submit copies of cancelled checks verifying the payment of eligible project costs incurred in accordance with the terms of this Contract and copies of cancelled checks verifying the expenditure of any required matching funds.

All terms of this Contract remain in effect and be binding upon the parties to this agreement until all cancelled checks, totaling the entire amount of grant funds received by the Grantee under this Contract and the entire amount of required matching funds, are submitted and accepted by the Grantor.

The Commonwealth reserves the right for state agencies or their authorized representative to perform audits of a financial or performance nature if deemed necessary. The costs for any work performed by the state or federal agencies will be borne by those agencies at no additional expense to the Grantee. In the event that the Commonwealth audits this Contract, all costs deemed unallowable in any audit report are required to be returned by the Grantee to the Grantor.

ARTICLE XV TEMPORARY SUSPENSION OF THE CONTRACT

Upon written notice and at any time during the period covered under this Grant, the Grantor may suspend payments and request suspension of all or any part of the Grant activities. The Grantor may give notice to suspend for the following reasons:

- (a) Violations of laws and regulations, audit exceptions, misuse of funds, failure to submit required reports or when responsible public officials or private citizens make allegations of mismanagement, malfeasance or criminal activity.
- (b) When, in the opinion of the Grantor, the activities cannot be continued in a manner as to adequately fulfill the intent of statute or regulations due to act of God, strike or disaster.

During the term of suspension, the Grantor and Grantee shall retain and hold available all funds previously approved for application to the activities. During this period all such funds held by the Grantee must be placed in an interest bearing program expenditures account. The Grantee may not expend any of the funds during the period that the Grant is suspended except pursuant to order of a court of competent jurisdiction. The Grantee shall have the right to cure any default or other circumstance that is the basis for suspension of this Grant within a reasonable period of time.

This Grant is also conditioned upon complete performance by the Grantee of past agreements or contracts between the Grantor and the Grantee. Complete performance includes the Grantee's timely submission of the required final audit of past agreements or

contracts to the Grantor. If the Grantor determines that there has been incomplete performance of past agreements or contracts by the Grantee, the Grantor, by giving written notice to the Grantee, shall suspend payments under this Grant until the Grantee has fulfilled its obligations under past agreements or contracts to the satisfaction of the Grantor. When the Grantee has fulfilled its obligation under past agreements or contracts to the Grantor's satisfaction, the Grantor shall resume payments under this Grant.

ARTICLE XVI TERMINATION OF THE CONTRACT

The Grantor may terminate this Grant at any time for its convenience or for any other reason if it determines that termination is in its best interests, or is otherwise appropriate, by giving written notice to the Grantee of the termination and specifying the termination effective date. Termination pursuant to this section must not be applicable to funds that the Grantee is legally or contractually obligated to pay as a result of project activities entered into prior to the date that it receives written notice of termination. All grant monies not legally or contractually obligated, plus accrued interest, must be returned to the Grantor on or before the effective date of termination and all project records must be made available to the Grantor.

ARTICLE XVII ENTIRE AGREEMENT

This Grant, when signed by all the parties to this agreement, constitutes the full and complete understanding and agreement of the parties of its express terms as provided above.

No provision of this Grant is construed in any manner so as to create any rights in third parties not party to this Grant. It is interpreted solely to define specific duties and responsibilities between the Grantor and the Grantee and does not provide any basis for claims of any other individual, partnership, corporation, organization or municipal entity.

ARTICLE XVIII AMENDMENTS AND MODIFICATIONS

A properly executed Grant amendment is required to change the termination date of this Grant, to change the Grant Activity Period, to amend the grant amount or to make major changes in the approved program scope, objectives or methods. An amendment must be executed if there is a significant change in the activities to be conducted under this Grant. Other revisions to the Project Description or Budget may be made upon written approval from the Grantor after prior written request of the Grantee; provided, the request is made by the Grantee and approved by the Grantor prior to the termination or expiration of the Grant.

ARTICLE XIX SEVERABILITY

Should any section or any part of any section of this Grant be rendered void, invalid or unenforceable by any court of law, for any reason, the determination does not render void, invalid, or unenforceable any other section or part of any section of this Grant.

ARTICLE XX CONSTRUCTION

All of the terms of this Grant are expressly intended to be construed as covenants as well as conditions. The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

ARTICLE XXI NONWAIVER OF REMEDIES

No delay or failure on the part of the Grantor in exercising any right, power or privilege hereunder shall affect the right, power or privilege; nor shall any single or partial exercise thereof or any abandonment, waiver, or discontinuance of steps to enforce the right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies of the Grantor are cumulative and concurrent and not exclusive of any rights or remedies which it might otherwise have. The Grantor shall have the right at all times to enforce the provisions of this Grant in accordance with the terms contained in the agreement regardless of any conduct or custom on the part of the Grantor in refraining from so doing at any time. The failure of the Grantor at any time to enforce its rights under this agreement, is not construed as having modified, waived, or created a custom in any way or manner contrary to specific provisions of this Grant.

[Remainder of page left intentionally blank.]

The parties, through their authorized representatives, have signed this contract below.

UPPER DARBY SCHOOL DISTRICT

For Commonwealth signatures only



Commonwealth Financing Authority

GRANTEE: Please sign & complete at "X's" only



X By: [Signature Affixed Electronically – see last page]

[Signature Affixed Electronically – see last page] _____
Executive Director Date

X By: [Signature Affixed Electronically – see last page]

For Commonwealth signatures only



Approved as to Legality and Form

[Signature Affixed Electronically – see last page] _____
Office of Chief Counsel Date

[Signature Affixed Electronically – see last page] _____
Office of Attorney General Date



Commonwealth Financing Authority
Harrisburg PA, 17120

May 22, 2025

Daniel P. McGarry, Superintendent of Schools
Upper Darby School District
8201 Lansdowne Avenue
Upper Darby, PA 19082

RE: Solar for Schools Program (\$323,213)
Solar for Schools Program at Bywood Elementary

Dear Superintendent McGarry:

I am pleased to inform Upper Darby School District ("*Applicant*") that the Department of Community and Economic Development ("DCED") approved your application ("*Application*") and that the Commonwealth Financing Authority ("*CFA*"), at its meeting held May 20, 2025, approved funding for a grant in the amount of THREE HUNDRED TWENTY-THREE THOUSAND TWO HUNDRED THIRTEEN DOLLARS (\$323,213) ("*Grant*"). The Application has been approved based upon and in accordance with the terms and the representations made therein.

The grant will be used by the Applicant for equipment purchases and installation, engineering, and administration costs associated with the 743KW rooftop photovoltaic Solar for Schools Program at Bywood Elementary Project ("*Project*") located in Upper Darby, Delaware County, Pennsylvania.

This Grant offer is subject to the following conditions:

1. The Applicant shall provide the CFA with copies of all executed contracts for all Project-related work to be performed. All contracts must contain the nondiscrimination/sexual harassment provision as set forth in the grant agreement, a certificate of insurance, and performance and payment bonds.
2. Prevailing wage requirements are generally applicable to projects using grant funds toward construction, demolition, reconstruction, alteration, repair work, renovations, build-out, and installation of machinery and equipment in excess of \$25,000. Any questions as to prevailing wage obligations and whether they apply to your project

should be directed to the Bureau of Labor Law Compliance at (717) 787-0606. Please note, certified payrolls will be required to be submitted as part of the reimbursement process. Please refer to Exhibit A of this commitment letter for further information regarding the Pennsylvania Prevailing Wage Act.

3. The Applicant shall provide the CFA with satisfactory evidence that all taxes and other monies due and owing to the Commonwealth of Pennsylvania are paid current, unless any of said taxes or other payments are being contested, in which case, the CFA may require that funds be escrowed to pay said taxes or other payments in the event of any adverse decision.
4. The Applicant shall provide the CFA with copies of all approved permits, if applicable.
5. Compliance with the program guidelines.
6. The Applicant is responsible for seeking competitive bids for all work conducted with the Grant funds using Separations Act or Guaranteed Energy Savings Act (GESA). In addition, the Applicant shall comply with all applicable federal, state and local laws and regulations dealing with bidding and procurement, if applicable.
7. The CFA reserves the right to approve or reject contracts between the Applicant and consultants or contractors for work that will be paid for with Grant funds.
8. The Applicant may not make or authorize any substantial change (including but not limited to system size) in an approved project without first obtaining the consent of the CFA in writing.
9. The Applicant shall maintain full and accurate records with respect to the Project. The CFA shall have free access to such records and to inspect all Project work, and other relative data and records. Upon request of the CFA, the Applicant must furnish all data, reports, contracts, documents, and other information relevant to the Project as may be requested.
10. The Applicant shall ensure that the Contractor completing the Solar Energy Project provides a signed Affidavit, see Exhibit C prior to the beginning of construction. The Affidavit must be from a Contractor who did not perform the Solar Site Assessment as the Applicant is prohibited from using the same Contractor for both the Solar Facility Site Assessment and the Project.
11. The Project must be completed prior to the expiration of the grant agreement.
12. This commitment is contingent upon the availability of funds for the program identified on page one of this commitment letter, which program was established under Act No. 68 of 2024 and upon the balance of the financing being finalized as outlined in your Application.

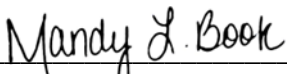
13. An Applicant receiving a grant under the Solar for Schools Program who sells, transfers, or conveys the school facility where the energy project is located, must notify the “DCED and provide a contractual agreement between the grantee and the proceeding owner. The proceeding owner must then reimburse DCED as follows:
 1. **Facility Sold within 5 years from the date of the award of the grant –**
New owner must reimburse DCED in an amount equal to 80% of the grant.
 2. **Facility Sold within 5-10 years from the date of the award of the grant –**
New owner must reimburse DCED in an amount equal to 60% of the grant.
 3. **Facility Sold within 10-15 years from the date of the award of the grant –**
New owner must reimburse DCED in an amount equal to 40% of the grant.
 4. **Facility Sold within 15-20 years from the date of the award of the grant –**
New owner must reimburse DCED in an amount equal to 20% of the grant.
 5. **Facility sold after 20 years –** No reimbursement is required of the new owner.

Exhibit B further describes the procedure to access the Solar for Schools Grant funds after all of the necessary conditions are met.

This commitment will expire forty-five (45) days from the date of this letter unless we have received your written acceptance by returning this original commitment letter along with the included grant agreement. Thereafter, this commitment will be null and void. Our receipt of the signed commitment letter and grant agreement will constitute your authorization to incur costs for reimbursement back to the date of CFA approval as noted herewith.

If you should have any questions regarding this grant, please contact Devin Gray, Director, CFA Programs Division, PA Department of Community and Economic Development, at (717) 787-6245.

Sincerely,



Mandy L. Book
Executive Director
Commonwealth Financing Authority

EXHIBIT A

PREVAILING WAGE ACT

In the event that grant funds will be used for a public work project, the Prevailing Wage Act (PWA) may apply. The PWA requires that not less than the prevailing minimum wages be paid to all workmen employed on “public work” as defined in the PWA. Information on the PWA and the definition of “public work” may be found at www.dli.state.pa.us/laborlaw by clicking on the link to Prevailing Wage Act.

The Act’s definition of "public work" has been applied to projects undertaken by private entities but receiving government assistance.

The PWA does not apply to the installation of equipment or machinery that is not a fixture, although any building construction/renovations to accommodate the equipment/machinery could be covered.

The PWA also does not apply to work performed by the Project-owner’s in-house employees, as opposed to work done by contractors or subcontractors.

The full PWA can be found at 43 P.S. sections 165-1 through 165-17.

Please contact L&I’s Bureau of Labor Law Compliance (717-787-0606) with questions about the PWA and/or if you would like L&I’s assistance in determining if the PWA applies to the Project.

Information on applying for prevailing wage rates can be found at www.dli.state.pa.us/laborlaw. From that webpage, click the links to Prevailing Wage or Prevailing Wage Act. You will see a link for “Online Prevailing Wage Application & Rate Search.” Follow that link to Prevailing Wage Rates Determination Request Form to submit the request electronically or print Prevailing Wage Rates Determination Request Form to submit by mail or fax.

EXHIBIT B

SOLAR FOR SCHOOLS PROGRAM

INSTRUCTIONS FOR RECEIVING GRANT FUNDS

As indicated in your Solar for Schools Program Grant Commitment Letter, the grant award is contingent upon receipt and execution of documents as stated in your letter. Failure to accomplish this may result in the rescission of your Grant, as required by applicable law. Listed below are the steps you must follow.

GRANT AGREEMENT

Upon receipt, sign the grant agreement and commitment letter and return both as instructed in the cover letter. Once returned, the signature process requires approximately 45 days. One fully executed copy of the grant agreement will be returned to you with a copy of a payment request form for requesting payment.

PAYMENT OF FUNDS

Submit to the CFA all executed construction contracts, which must include the nondiscrimination/sexual harassment provision as set forth in the grant agreement and any other documents required in the Grant commitment letter.

Where applicable, comply with the Pennsylvania Prevailing Wage Act which requires prevailing wage rates in all bid documents, specifications, and construction contracts pertaining to the Project. The Department of Labor and Industry (L&I) has final authority to make all prevailing wage applicability determinations.

The Applicant agrees to provide general liability, property damage and workmen's compensation insurance, against any and all claims arising out of the construction or renovation of a facility used to generate solar energy or manufacture equipment related to solar systems, or the purchase and installation of equipment used to manufacture or generate solar energy which are to any extent financed by the funds from this Grant. The Applicant agrees to maintain such insurance and to name the CFA as an additional insured on such policies of insurance. Further, the Applicant agrees to notify the CFA of any change or cancellation of such insurance policies.

When you have submitted the required documents to this office, complete the payment request form following the instructions and sample provided and return it to this office. The payment request will take from 2-4 weeks to process.

PAYMENT REQUESTS

The CFA requires the applicant to provide completed payment request forms and accompanying invoices verifying the costs incurred for the Project.

The Applicant will provide a payment request form requesting reimbursement of any eligible costs after the receipt of the fully executed grant agreement. Funds will be disbursed at 50% of actual approved costs incurred.

The Applicant should continue to submit payment requests. Each subsequent payment request must be accompanied by invoices verifying costs incurred. Final invoices must be submitted following the completion of the Project for **costs incurred prior to the expiration of the grant agreement. Costs incurred after the expiration date, are not eligible for reimbursement**.

NOTE: Fees for securing other financing, as well as interest charges on borrowed funds, are not eligible for reimbursement.

FINAL INSTRUCTIONS

All payment requests and invoices must be submitted no later than the 1st day of the second month after the expiration date.

Should you have any questions, do not hesitate to contact:

PA Department of Community and Economic Development
CFA Programs Division
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Telephone: (717) 787-6245

CONTRACTOR AND SUBCONTRACTOR COMPLIANCE AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF _____ :

- a. Maintains all valid licenses, registrations or certificates required by the Federal Government, the Commonwealth or a local government entity that are necessary to do business or perform applicable work.**
- b. Maintains compliance with the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, the act of December 5, 1936 (2nd Sp. Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, and bonding and liability insurance requirements as specified in the contract for the solar energy project.**
- c. Has not defaulted on a project, declared bankruptcy, been debarred or suspended on a project by the Federal Government, the Commonwealth or a local government entity within the previous three years.**
- d. Has not been convicted of a misdemeanor or felony relating to the performance or operation of the business of the contractor or subcontractor within the previous 10 years.**
- e. Has completed a minimum of the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the high-speed broadband service infrastructure.**

4. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Affiant Signature

Date

Affiant Title

NOTARY PUBLIC:

Signed and sworn to (or affirmed) before me on _____

Signature of notarial officer: _____

My commission expires: _____

NOTARIAL SEAL:

Exhibit B – Required Payment & Performance Bonds

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal (the “Principal”), and _____, a company organized and existing under the laws of the _____, having its principal office at _____ and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the “Surety”), are held and firmly bound, jointly and severally, unto the Upper Darby School District, as Obligee (the “Obligee”), as hereinafter set forth in the full and just sum of _____ Dollars and ____ Cents (\$____), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to Obligee a certain proposal (the “Proposal”) in response to a Request for Proposals (“RFP”) for Energy Related Facilities Improvements Per the Terms of the Pennsylvania Guaranteed Energy Savings Act 163 of 2016, as amended, pursuant to Agreement, and including drawings, specifications, and other related documents constituting the “Contract Documents”; and

WHEREAS, this Performance Bond does NOT guarantee annual energy savings pursuant to the RFP;

WHEREAS, all capitalized terms not defined in this Payment Bond shall be ascribed the meaning set forth in the Contract Documents for the Project;

WHEREAS, the Contract Documents are incorporated into this Payment Bond by reference and made a part hereof; and

WHEREAS, The Obligee, is a “contracting body” under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known as and cited as the “Public Works Contractors’ Bond Law of 1967” (the “Act”); and

WHEREAS, the Act, in Section 3.1(a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Payment Bond to the Obligee, with this Payment Bond to become binding upon the award of a contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, it also is a condition of the Contract Documents that this Payment Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Payment Bond to the Obligee, and if the Obligee shall make an award to the Principal in

accordance with the Proposal, then the Principal and the Obligee shall enter into an agreement with respect to performance of such Work (the "Agreement"), the form of which Agreement is the Contract Form and shall also be considered part of the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Payment Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the Work under the Agreement shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the Work in accordance with the Agreement and in accordance with the Contract Documents, including any amendment, extension or addition to the Agreement and/or to the Contract Documents, for material furnished or labor performed, then this Payment Bond shall be void; otherwise, this Payment Bond shall be and shall remain in force and effect.

This Payment Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the Work covered by the Agreement, including any amendment, extension, or addition to the Agreement. The term "claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association, or corporation. The phrase "labor or materials" when used herein and as required by the Act, shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the Work covered by the Agreement. As required by the Act, the provisions of this Payment Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public work or public improvement contemplated by the Contract Documents and the Agreement.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the Work in accordance with the Agreement and in accordance with the Contract Documents, including any amendment, extension or addition to the Agreement and/or to the Contract Documents, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Payment Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material; and may prosecute such action to final judgment and may have execution upon the judgment; provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Payment Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished; and (b) no action upon this Payment Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the claimant; and (c) every action upon this Payment Bond shall be instituted in the Court of Common Pleas of Delaware

County or in the United States District Court for the Eastern District of Pennsylvania and not elsewhere.

This Payment Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Agreement in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Agreement, and/or any giving by the Oblige of any extensions of time for the performance of the Agreement in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Oblige toward the other with respect to the Contract Documents and the Agreement, and/or the reduction of any percentage to be retained by the Oblige as permitted by the Contract Documents and by the Agreement, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Payment Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

Provided, that it is expressly agreed that this Payment Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract Documents not increasing the contract price more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Contract Documents as so amended. The term "Amendment", wherever used in this Payment Bond and whether referring to this Payment Bond, the Contract Documents, or the Agreement, shall include any alteration, addition, extension, or modification of any character whatsoever.

Provided, further, that no final settlement between the Oblige and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Payment Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Payment Bond, nor this Payment Bond surrendered until such Principal files with the Oblige a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor & Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from said Principal or any foreign corporation, subcontractors thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

[Signature page follows]

IN WITNESS WHEREOF, the Principal and the Surety, intending to be legally bound, cause this Payment Bond to be signed, sealed, and delivered this ____ day of _____, 202__ (the "Effective Date").

(Corporate Principal)

ATTEST:

(Name of Corporation)

Secretary (Assistant Secretary)

BY: _____
President (Vice President)

(CORPORATE SEAL)

or (if appropriate)

WITNESS:

(Name of Corporation)

*BY: _____
(Authorized Representative)

* Attach appropriate proof, with raised corporate seal, dated as of the same date as the Bond, evidencing authority to execute on behalf of the corporation.

* * * * *

(Corporate Surety)

WITNESS:

(Name of Corporation)

**BY: _____
(Attorney-in-fact)

** Attach an appropriate power of attorney, with raised corporate seal, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-fact to act on behalf of the corporation.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal (the “Principal”), and _____, a company organized and existing under the laws of the _____, having its principal office at _____ and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the “Surety”), are held and firmly bound, jointly and severally, unto the Upper Darby School District, as Obligee (the “Obligee”), as hereinafter set forth in the full and just sum of _____ Dollars and ____ Cents (\$____), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to Obligee a certain proposal (the “Proposal”) in response to a Request for Proposals (“RFP”) for Energy Related Facilities Improvements Per the Terms of the Pennsylvania Guaranteed Energy Savings Act 163 of 2016, as amended, pursuant to Agreement, and including drawings, specifications, and other related documents constituting the “Contract Documents”; and

WHEREAS, this Performance Bond does NOT guarantee annual energy savings pursuant to the RFP;

WHEREAS, all capitalized terms not defined in this Performance Bond shall be ascribed the meaning set forth in the Contract Documents for the Project;

WHEREAS, the Contract Documents are incorporated into this Performance Bond by reference and made a part hereof; and

WHEREAS, the Obligee is a “Contracting Body” under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the “Public Works Contractors’ Bond Law of 1967” (the “Act”); and

WHEREAS, the Act, Section 3.1(a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Performance Bond to the Obligee, with this Performance Bond to become binding upon the Award of the Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, it also is a condition of the Contract Documents that this Performance Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Performance Bond to the Obligee, and if the Obligee shall make an award to the

Principal in accordance with the Contract Documents, then the Principal and the Obligees shall enter into an agreement with respect to performance of such Work (the "Agreement"), the form of which Agreement is the Contract Form and shall also be considered part of the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Performance Bond are and shall be that if: (a) the Principal well, truly and faithfully shall comply with and shall perform the Agreement in accordance with the Contract Documents, at the time and in the manner provided in the Agreement and in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Agreement by the Principal or growing out of the performance of the Agreement by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligees and all of its officers, agents and employees from any and all costs and damages which the Obligees and all of its elected officials, officers, agents and employees may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligees any and all costs and expenses which the Obligees and all of its officers, agents and employees may incur by reason of any such default or failure of the Principal, including, but not limited to, additional legal fees (e.g., fees of attorneys, paralegals and other legal professionals) and professional fees resulting from such default or failure of the Principal, and delay damages resulting from such default or failure of the Principal in accordance with the Contract Documents; and (b) if the Principal shall remedy, without cost to the Obligees, all defects which may develop during the period of one (1) year from the date of final completion by the Principal and acceptance of the Obligees of the Work, or any extended warranty period provided by Principal, to be performed under the Agreement in accordance with the Contract Documents, which defects, in the sole judgment of the Obligees or its legal successors in interest, shall be caused by or shall result from defective or inferior materials or workmanship, then this Performance Bond shall be void; otherwise, this Performance Bond shall be and shall remain in force and effect and all claims, demands, costs, expenses and damages, including, but not limited to, legal and professional fees resulting from the default or failure of Principal and delay damages resulting from such default or failure of the Principal in accordance with the Contract Documents, shall be payable by Principal and Surety to Obligees; provided, however, that the obligations of the Surety hereunder shall not exceed the amount of this Performance Bond, as this Performance Bond is amended, whether automatically or in writing, in accordance with the terms hereof.

This Performance Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Agreement in accordance with the Contract Documents, and/or any alterations, changes, or additions to the Agreement, and/or any giving by the Obligees of any extensions of time for the performance of the Work in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligees toward the other with respect to the Contract Documents, and/or the reduction of any percentage to be retained by the Obligees as permitted by the Contract Documents, shall not release, and/or discharge, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and

assigns, from liability and obligation under this Performance Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance, and/or reduction of retained percentage.

Provided, that it is expressly agreed that this Performance Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Contract Documents not increasing the contract price in the aggregate by more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Contract Documents as so amended and the Surety, for value received, does waive notice of any such amendment to the Contract Documents not increasing the Contract Price in the aggregate by more than twenty percent (20%). The term "Amendment", wherever used in this Performance Bond and whether referring to this Performance Bond, or the Contract Documents, shall include, without limitation, any alteration, addition, extension, or modification, and of any character whatsoever.

Provided, further, that no final settlement between the Obligee and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal and the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

In the event that the Obligee incurs legal fees for default or enforcement of its rights under the Contract Documents or Performance Bond, the Surety agrees to pay for all reasonable legal fees and costs incurred by the Obligee.

Any dispute resolution proceeding, legal or equitable, under this Performance Bond, shall be instituted in the Court of Common Pleas of Delaware County or in the United States District Court for the Eastern District of Pennsylvania and not elsewhere. In such dispute resolution proceeding, Obligee may join both Principal and Surety as parties, and Principal and Surety hereby consent to such joinder, jurisdiction, and venue. This Performance Bond shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

[signatures on following page]

IN WITNESS WHEREOF, the Principal and the Surety, intending to be legally bound, cause this Performance Bond to be signed, sealed, and delivered this _____ day of _____, 202__ (the "Effective Date").

(Corporate Principal)

ATTEST:

(Name of Corporation)

Secretary (Assistant Secretary)

BY: _____
President (Vice President)

(CORPORATE SEAL)

or (if appropriate)

WITNESS:

(Name of Corporation)

*BY: _____
(Authorized Representative)

* Attach appropriate proof, with raised corporate seal, dated as of the same date as the Bond, evidencing authority to execute on behalf of the corporation.

* * * * *

(Corporate Surety)

WITNESS:

(Name of Corporation)

**BY: _____
(Attorney-in-fact)

** Attach an appropriate power of attorney, with raised corporate seal, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-fact to act on behalf of the corporation.