

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (this “Interim Agreement”) is entered into as of _____, 2023 between **MONTGOMERY REGIONAL SOLID WASTE AUTHORITY (“MRSWA”)**, a political subdivision of the Commonwealth of Virginia, and **MONTGOMERY REGIONAL SOLAR CENTER, LLC (“Developer”)**. MRSWA and Developer are referred to individually as a **“Party”** and collectively as **“the Parties”**.

Recitals

1. MRSWA was created as a political subdivision of the Commonwealth of Virginia under the Virginia Water and Waste Authorities Act, Virginia Code § 15.2-5100 *et. seq.* (**the “Act”**) by action of Montgomery County, the Town of Blacksburg, the Town of Christiansburg and Virginia Polytechnic Institute and State University.

2. MRSWA owns certain real property in Montgomery County, Virginia (**the “County”**) where MRSWA disposes of municipal solid waste, recycles materials and engages in related activities as allowed by law, including operating a transfer station under Virginia Department of Environmental Quality (**“DEQ”**) Permit-By-Rule Number 149, recycling tires under DEQ Permit-By-Rule Number 559, controlling stormwater under DEQ Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity Number VAR051352, and engaging in maintenance and post-closure care activities concerning a closed landfill under DEQ Solid Waste Permit Number SWP397.

3. Pursuant to Section 15.2-5114 of the Act, MRSWA is an instrumentality of the Commonwealth of Virginia exercising public and essential governmental functions to provide for the public health and welfare, and may lease all or any part of its real property.

4. In September of 2022, MRSWA issued its Request for Proposals (**the “RFP”**) pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (**the “PPEA”**), Sections 56-575.1 through 56-575.16 of the Code of Virginia, (1950), as amended, and PPEA Guidelines adopted by the MRSWA Board of Directors on December 8, 2011 and amended on August 18, 2022 (**“Guidelines”**), for the design, development, construction, management and operation of one or more solar photovoltaic systems at MRSWA facilities as a "qualifying project" under the PPEA (**the “Project”**). A copy of the RFP is attached as **Exhibit A**.

5. On or about November, 2022 MRSWA received proposals from potential developers for the design and construction of the Project, including the Developer's proposal dated November 30, 2022 (**the “Developer's Proposal”**).

6. The Developer's Proposal set forth, in the alternative, (a) an "Option 1" land lease arrangement for development of the Project by the Developer and providing for a lease option agreement and lease agreement if the lease option is exercised, with MRSWA receiving financial benefit by virtue of option and lease payments made by the Developer to MRSWA (**the “Lease Option”**), and (b) an "Option 2" power purchase arrangement for development of the Project by the Developer, with MRSWA receiving financial benefit from Developer's sale of electricity

generated by the Project to MRSWA at reduced rates (**the "PPA Option"**), which PPA option will also involve lease of MRSWA property to the Developer to allow Project development.

7. The PPEA requires that prior to the development or operation of the Project, MRSWA and the Developer shall enter into a Comprehensive Agreement in accordance with the requirements of Virginia Code Section 56-575.9, and further provides that prior to or in connection with the negotiation of such Comprehensive Agreement, the parties may enter into an Interim Agreement providing for project planning and development, design, engineering, environmental analysis and other provisions related to development of the Project.

8. In accordance with the PPEA and guidelines, MRSWA determined that proceeding with competitive negotiation procedures as set forth in the Virginia Public Procurement Act for the development of the Project is advantageous to MRSWA and the public based on the probable scope and complexity of the Project.

9. Following the review and analysis of the proposals, MRSWA determined that the Developer's Proposal contained sufficient information for a meaningful evaluation and potentially negotiating reasonable terms advantageous to MRSWA, and that Developer had provided reasonable follow up communication regarding the Developer's Proposal. MRSWA has further determined that the Developer is clearly more highly qualified and suitable than other entities making proposals regarding the Project.

10. MRSWA selected the Developer's Proposal for further review at the conceptual stage under the PPEA and posted the Developer's Proposal on MRSWA's website.

11. MRSWA and the Developer have negotiated this Interim Agreement providing for Project planning and development, design, engineering, environmental analysis and other provisions related to development of the Project, and further providing for a Comprehensive Agreement should MRSWA elect to proceed to final Project development under either the Lease Option or the PPA Option.

12. MRSWA has determined that the proposed Project to be developed pursuant to this Interim Agreement serves the public purpose of the PPEA under the criteria set forth in Virginia Code § 56-575.4(C), has posted this Interim Agreement for public inspection in accordance with the PPEA and the Guidelines, and has held a public hearing on the proposal contained deemed to contain sufficient information for meaningful evaluation relating to the Project and this Interim Agreement at least thirty (30) days prior to entering into this Interim Agreement.

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

Unless the context clearly indicates otherwise, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Option and Lease Agreement.

“**Comprehensive Agreement**” means a Comprehensive Agreement as defined in the PPEA and as contemplated by the Guidelines for the development, operation and management of the Project.

“**Lease Agreement**” means Part II of the Option and Lease Agreement.

“**Option and Lease Agreement**” means the Option and Right of Entry and Deed of Solar Lease Agreement by and between MRSWA as Lessor and Developer as Lessee dated as of _____, 2023 and attached hereto as **Exhibit B**.

“**Option Agreement**” means Part I of the Option and Lease Agreement.

2. FEASIBILITY STUDIES AND DEVELOPER DUE DILIGENCE

2.1 The Parties enter into this Interim Agreement and the Option Agreement to provide authority for Developer to undertake the Feasibility Studies. As conditions precedent to development of the Project under, and in accordance with the terms and conditions of, either the Lease Option or the PPA Option, Developer may, at its sole cost and expense, diligently and faithfully complete the Feasibility Studies, and in doing so shall comply with and be bound by all of the provisions, obligations, liabilities and rights set forth in the Option Agreement.

2.2 Developer shall include in each Progress Report, as part of the required assessment of the likelihood of eventual exercise of the Option, an assessment based on the then-known-facts of the feasibility of the PPA Option setting forth factors both in support of and against the feasibility of such PPA Option.

2.3 During the Option Period MRSWA may but is not required to take any and all actions to increase the feasibility of the PPA Option.

2.4 The Developer shall also provide to MRSWA a final written report of the advantages and disadvantages of proceeding under both the Lease Option and the PPA Option for development of the Project, including a statement of Developer's preference for proceeding with either the Lease Option or the PPA Option (**the "Final Report"**).

2.5 MRSWA shall have not more than 45 days to review the Final Report and provide written notice to the Developer of such choice in accordance with the notice provisions of the Option and Lease Agreement (**"Notice of Selection"**).

2.6 If MRSWA selects the Lease Option, the Developer may choose in its absolute discretion to exercise the Option by providing MRSWA with a Notice of Exercise as set forth in the Option Agreement. In such event this Interim Agreement and the Lease Agreement shall constitute the Comprehensive Agreement between the Parties.

2.7 If MRSWA selects the PPA Option, then the Parties shall exclusively negotiate to attempt to reach agreement on a PPA as provided in the Option Agreement and Developer shall not market the project to other off-takers during such period of exclusivity. Developer

may elect to negotiate with MRSWA to enter into a Power Purchase Agreement, a revised lease agreement and such other related agreements deemed necessary or expedient in order to develop the Project under the PPA Option, provided that Developer may elect to exercise the Option and proceed with the Lease Option should the Parties not agree to a PPA as provided in the Option Agreement. Such Power Purchase Agreement, lease agreement and related agreements shall constitute the Comprehensive Agreement between the Parties. MRSWA's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by either Party to execute such Comprehensive Agreement.

3. GENERAL OBLIGATIONS

Whether under the Lease Option or the PPA Option, the Developer, at its sole cost and expense, shall design, engineer, finance, install, construct, commission, interconnect, start-up, test, monitor, operate, maintain, Decommission, and remove the System (**together, the "Services"**), in each case in a good, workmanlike, and professional manner and in accordance with the requirements of the Option and Lease Agreement applicable to said Services.

4. CONFLICT

Should there be any conflict between the terms and conditions of this Interim Agreement and the terms and conditions of the Option and Lease Agreement, the terms and conditions of this Option and Lease Agreement shall control.

5. DECOMMISSIONING

Developer shall Decommission the system, and provide security for such Decommissioning obligations, as provided for in the Option and Lease Agreement.

6. INDEPENDENT CONTRACTOR

The Parties understand and agree that Developer, in performing its obligations under this Interim Agreement and any Comprehensive Agreement, shall be deemed an independent contractor and not an agent, employee or partner of MRSWA.

7. NOTICES

All requests, notices and other communications required or permitted to be given under this Interim Agreement shall be given as provided in the Option and Lease Agreement.

8. MISCELLANEOUS

8.1 Assignment. This Interim Agreement may only be assigned, sublet, or transferred, in whole or in part, in accordance with the terms of the Option and Lease.

8.2 Attorneys' Fees. Should either party employ an attorney to (i) institute and maintain a suit against the other party arising out of this Interim Agreement or the other party's obligations

(ii) assist in enforcing or defending any of its rights under this Interim Agreement, (iii) protect its interest in any matter arising under a contract with the other party, or (iv) collect damages for the breach of a contract or any other amounts owed to it; then, the prevailing party shall be entitled to recover from the other party its attorneys' fees, costs, charges, and expenses expended or incurred therein.

8.3 **Audit.** Developer hereby agrees to retain all books, records, and other documents relative to the System and this Interim Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. MRSWA and its authorized agents, state auditors, the grantor of the funds to MRSWA, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any such books, documents, papers and records of Developer for the purpose of making audits, examinations, excerpts or transcriptions.

8.4 **Authorization to Conduct Business in Virginia.** The provisions of Virginia Code § 2.2-4311.2 are incorporated herein by reference. If Developer, is a business entity described in Virginia Code § 2.2.4311.2.A, Developer must be authorized to transact business in Virginia if required by law to be so authorized and shall not allow its existence or certificate authority or registration to transact business to lapse or be revoked or cancelled during the term of this Interim Agreement.

8.5 **Availability of Funds.** It is understood and agreed between the parties herein that MRSWA shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling MRSWA's obligations with respect to this Interim Agreement.

8.6 **Compliance With Laws.** All work performed shall be in accordance with, but in the case of Developer only to the extent applicable to Developer as a private entity, all local, state and federal codes, laws and regulations, including but not limited to: Virginia Conflict of Interest Act, Virginia Fair Employment Contracting Act, Virginia Freedom of Information Act, Virginia Human Rights Act, Virginia Prompt Payment Act, the Virginia Public Procurement Act, and MRSWA policies.

8.7 **Counterparts.** This Interim Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Interim Agreement or any counterpart hereof to produce or account for the other counterpart. The Parties acknowledge and agree that this Interim Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

8.8 **Drug-Free Workplace**

- a. During the performance of this Interim Agreement, Developer agrees to (i) provide a drug-free workplace for Developer's employees; (ii) post in conspicuous places, available to employees and applicants for employment, statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Developer that Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order exceeding \$10,000 in value, so that the provisions will be binding upon each Subcontractor or vendor.
- b. For the purposes of this paragraph, "*drug-free workplace*" means a site for the performance of work done in connection with this Interim Agreement by Developer where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Interim Agreement.
- c. Developer shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Developer, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

8.9 Equal Opportunity Employment. During the performance of this Interim Agreement, Developer agrees as follows:

- a. Developer will not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Developer. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. Developer, in all solicitations or advertisements for employees placed by or on behalf of Developer, will state that Developer is an Equal Employment Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. Developer will include the provisions of the foregoing Subsections a(1),(2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with Developer, so that the provisions will be binding upon each subcontractor or vendor.

8.10 Ethics in Public Contracting. The provisions, requirements, and prohibitions as contained in Virginia Code §§ 2.2-4367 through 2.2-4377, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Interim Agreement.

8.11 Contractual Claims. The Parties shall first endeavor to resolve any disputes, claims and other matters in question between the Parties. Contractual claims or disputes by Developer against MRSWA shall be submitted in writing no later than sixty (60) days after any final payment from the Developer to MRSWA; provided, however, that Developer shall give MRSWA written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Developer's intention to file such a claim or dispute shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope.

MRSWA's decision on contractual claims shall be final and conclusive unless Developer appeals within six months of the date of the final decision of MRSWA on the claim by instituting legal action in the Montgomery County Circuit Court. This Section 8.11 is subject to Developer's rights under the Option and Lease.

8.12 Governing Law and Forum Selection. This Interim Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Interim Agreement shall only be proper in the Montgomery County Circuit Court, regardless of the actual location of such parties. The provisions of this Interim Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Interim Agreement.

8.13 Headings. The headings used in this Interim Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

8.14 Immigration Reform and Control Act of 1986. Developer does not, and shall not during the performance of this Interim Agreement for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

8.15 Indemnification. Developer, to the fullest extent permitted by law, shall indemnify, defend and hold harmless MRSWA and its officers, agents, and employees from and against any claims, losses, damages, liabilities, including attorneys' fees and expenses, and actions of any kind or nature, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of Developer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

8.16 Minority and Women-Owned Business Enterprise and Small Business Certification. Developer shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for the design and development of the System, provided that Developer shall not be required to incur additional cost for such services.

8.17 Modifications. This Interim Agreement shall not be amended, altered, or modified unless such amendment, modification or alteration is reduced to writing signed by both parties and attached hereto.

8.18 No Waiver. Any failure of a Party to demand rigid adherence to one or more of the terms of this Interim Agreement, on one or more occasions, shall not deprive such Party and shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. of the right to insist upon strict compliance with the terms of this Interim Agreement. The consent or approval by MRSWA of any act by Developer requiring MRSWA's consent or approval shall not be construed to waive or render unnecessary the requirement for MRSWA's consent or approval of any subsequent similar act by Developer. Any waiver of a term of this Interim Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

8.19 Non-Discrimination pursuant to Virginia Code § 2.2-4343.1. MRSWA does not discriminate against faith-based organizations. Developer shall not discriminate against faith-based organizations during the performance of this Interim Agreement.

8.20 Required Payment Provisions Under Virginia Code § 2.2-4354

- a. Developer shall take one of the two following actions within seven (7) days after receipt of amounts paid to Developer by MRSWA for work performed by a subcontractor under this Interim Agreement:
 - (1) Pay the subcontractor for the proportionate share of the total payment received from MRSWA attributable to the work performed by the subcontractor under this Interim Agreement; or
 - (2) Notify MRSWA and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b. Developer shall provide its federal employer identification number to MRSWA.
- c. Developer shall pay interest to the subcontractor on all amounts owed by Developer that remain unpaid after seven (7) days following receipt by Developer of payment from MRSWA for work performed by the subcontractor under this Interim Agreement, except for amounts withheld as allowed in subdivision a(2), above.
- d. Unless otherwise provided under the terms of this Interim Agreement, such interest shall accrue at the rate of one percent (1%) per month.
- e. Developer shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements to each lower-tier subcontractor.
- f. Developer's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of MRSWA.

8.21 Severability. If any provision or any part of a provision of this Interim Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of this Interim Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

8.22 Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

8.23 Tax ID Number. The provisions of Virginia Code § 2.2-4308.2 are incorporated by reference. In accord with Virginia Code § 2.2-4308.2 registration and participation in the E-Verify program (electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C, Title IV, § 403(a), as amended) is required. Developer agrees to provide its federal tax identification number to MRSWA.

8.24 Time of the Essence. Time is of the essence of this Interim Agreement.

8.25 Entire Agreement. This Interim Agreement and the Option and Lease Agreement contain the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Interim Agreement and the Option and Lease Agreement alone sets forth the terms on which the Parties have mutually agreed.

8.26 Further Cooperation. The Parties agree to provide such other cooperation to confirm the status of this Agreement, to include the execution of a reasonable estoppel certificate or in the event the PPA Option is not exercised and carried out a certificate memorializing the expiration or extinguishment of certain rights of MRSWA hereunder with respect to the PPA Option.

8.27 Legal Compliance. MRSWA shall take all necessary action to ensure that this Agreement, the Option and Lease comply with all applicable law, including the PPEA and Virginia Public Procurement Act.

IN WITNESS WHEREOF the undersigned have executed this Interim Agreement.

MONTGOMERY REGIONAL SOLID WASTE AUTHORITY

By _____

Title _____

MONTGOMERY REGIONAL SOLAR CENTER, LLC

By _____

Title _____