

**MAYOR AND COUNCIL PUBLIC HEARING
TUESDAY, March 8, 2016, 7:00 P.M.**

AGENDA

1. Call to Order
2. Public Hearing:
 - a. Resolution 2016-01 – Application for the Establishment of the Brunswick, Maryland Enterprise Zone
 - b. Resolution 2016-02 – Purchase of 40-42 West Potomac Street
3. Adjournment

3/3/2016 1:22 PM

RESOLUTION NO. 2016-01

**RE: APPLICATION FOR ESTABLISHMENT OF THE
BRUNSWICK, MARYLAND ENTERPRISE ZONE**

WHEREAS, Maryland's Enterprise Zone Program is a "joint effort between the State and local governments to provide tax incentives to businesses and property owners located in some of the State's most economically distressed communities"; and

WHEREAS, the City of Brunswick and Frederick County wish to establish the Enterprise Zone within the city limits in order to improve the economic development potential within the boundaries of said zone.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF BRUNSWICK, MARYLAND, that the application for the establishment of the Brunswick Enterprise Zone is hereby approved as shown on Exhibit A.

The undersigned hereby certifies that this Resolution was approved and adopted on the _____ day of _____, 2016.

ATTEST:

CITY OF BRUNSWICK, MARYLAND

Robert C. McGrory
City Administrator

By: _____
Karin B. Tome, Mayor

CITY OF BRUNSWICK ENTERPRISE ZONE APPLICATION **-SPRING 2016**

BACKGROUND

The Maryland Enterprise Zone is a local economic development program established by the Maryland General Assembly in 1982 that gives local governments the legal authority to offer economic incentives, including real property and income tax credits. The Maryland Department of Commerce is the designated State agency responsible for coordinating the program; however, each zone is the creation and responsibility of local and county governments.

The State reimburses the local jurisdiction 50 percent of the revenue lost as a result of offering businesses located in its zone the property tax credit, subject to approval in the State's annual budget.

The City of Brunswick is undergoing a comprehensive revitalization strategy for their commercial district. During 2015, Brunswick Main Street employed the services of MacKenzie Commercial to develop an economic development strategy to transform the commercial district. The final report recommends the establishment of an identified Redevelopment Zone, employment tax credits and appropriate property tax credits.

In the Spring of 2015, the City of Brunswick met with the Frederick County Office of Economic Development (OED) to discuss possible programs that may benefit the City in their strategy. OED identified the Enterprise Zone as an economic development program available to the City because they meet one of the four eligibility requirements.

Using data from the U.S. Census, the Census Tract identified as 7753.02 meets the requirement for 'Population Decrease'. According to the Maryland Department of Commerce Tax Office, the adjoining census tract would also be eligible to be included as it contiguous to 7753.02. From 2000 to 2010, that Census Tract suffered a decrease in population of 35%, exceeding the 10% requirement of the program. The City has identified chronic vacancies/abandonment that exist within that area.

In September 2015, OED hosted a meeting with the Maryland Department of Commerce and their Tax Office along with the City of Brunswick to discuss the possibilities of applying for this designation. From this meeting, it was determined that the City would apply to meet the April 15, 2016 deadline.

Enterprise Zone Benefits

Real property tax credits – Ten-year credit against local real property taxes on the value of a portion of real property improvements. The credit is 80 percent for the first

five years and decreases 10 percent annually thereafter to 30 percent in the 10th and final year.

Income tax credits – One- or three-year credit for wages paid to eligible new employees. The general credit is a one-time \$1,000 credit per new worker. For economically disadvantaged employees, the credit increases to a total of \$6,000 per worker distributed over three years.

Who Can Apply to Become an Enterprise Zone

A municipality may apply for the designation of an area as an Enterprise Zone within its corporate or political boundaries but the State requires that the municipality include in its application an expression of consent from its overlying county that it, too, will offer the property tax credits. The consent document(s) shall be in the form required by local law and the governing body of the county.

Application Deadline

Applications must be received by 5PM on April 15 or October 15. The City of Brunswick desires to apply to meet the April 15, 2016 deadline.

ANALYSIS

There are 28 Enterprise Zones in the State but none in Frederick County. This gives Frederick County a competitive edge when competing with other Enterprise Zones in the State. Because the City of Brunswick is located less than a mile from the Virginia border, this gives Brunswick an additional edge from the neighboring state.

From FY 2010-FY2014, the State reports that investments in Enterprise Zones increased 22.14%. In FY2014, 802 businesses in Maryland received these Enterprise Zone property tax credits. Enterprise Zone administrators report that companies considering expansion often decide to expand within the zone rather than move to another location.

Because the income tax credit is applicable to one or more jobs, this encourages small business growth whereas many existing state job creation tax credits require at least 25 jobs.

Additionally, the State of Maryland reimburses the local jurisdictions 50 percent of property tax revenue lost as a result of investment in the Enterprise Zone.

RESOLUTION NO. 2016-02

A RESOLUTION AUTHORIZING THE PURCHASE OF 40-42 WEST POTOMAC STREET

WHEREAS, the building known as 40-42 West Potomac Street was built in 1904 and is a contributing structure to the National Register of Historic Places' Brunswick Historic District; and

WHEREAS, the building was purchased in 1974 by the Brunswick Potomac Foundation, Inc. and operated for many years as the Brunswick Railroad Museum, and more recently as the Brunswick Heritage Museum; and

WHEREAS, the building is also home to the National Park Service Chesapeake & Ohio National Historical Park Visitor Center and Brunswick Visitor Center; and

WHEREAS, the City of Brunswick wishes to purchase the building from the Brunswick Potomac Foundation, Inc., in the amount of \$265,000; and

WHEREAS, the Brunswick Potomac Foundation Board of Directors consented to the proposed purchase agreement in February, 2016,

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of Brunswick authorize the purchase of 40-42 West Potomac Street in the amount of \$265,000, contingent on the budgeting of funds sufficient to facilitate closing, and the receipt of a building inspection satisfactory to the Mayor.

The undersigned hereby certifies that this Resolution was approved and adopted on the _____ day of _____, 2016.

ATTEST:

CITY OF BRUNSWICK, MARYLAND

Robert C. McGrory
City Administrator

By: _____
Karin B. Tome, Mayor

**MAYOR AND COUNCIL MEETING
TUESDAY, MARCH 8, 2016
After the 7:00 PM Public Hearings**

AGENDA

1. **CALL TO ORDER, PLEDGE, AND ROLL CALL**
2. **MAYOR'S REMARKS**
 - a. Brunswick Hacker Space
3. **APPROVAL OF MINUTES**
 - a. Closed Meeting – February 9, 2016
 - b. Mayor & Council Meeting – February 9, 2016
4. **CITIZENS' FORUM (PETITIONS, REMONSTRANCES, AND COMMUNICATIONS)**
5. **INTRODUCTION AND ADOPTION OF RESOLUTIONS AND ORDINANCES**
 - a. Special Ordinance Number 520 - Fiscal Year 2016 Budget Amendment – First Reading
 - b. Resolution 2016-01 – Application for the Establishment of the Brunswick, Maryland Enterprise Zone – possible vote
 - c. Resolution 2016-02 – Purchase of 40-42 West Potomac Street – possible vote
6. **REPORT OF OFFICERS - COUNCIL – COMMITTEES**
7. **CONSENT AGENDA**
8. **UNFINISHED BUSINESS**
9. **NEW BUSINESS**
 - a. Fiscal Year 2017 Budget – Revenue - discussion
 - b. Solar Power Purchase Agreement (with Solar City, including panel installation at the Brunswick Sports Complex) – possible vote
10. **MISCELLANEOUS AND APPROPRIATIONS**
11. **ADJOURNMENT**

3/4/2016 11:14 AM

MAYOR AND COUNCIL MEETING
March 8, 2016

Suggested Motions

Agenda item 3a – 3b – Approval of Minutes

“I move to approve the Mayor and Council Closed Meeting and Mayor and Council Meeting minutes from February 9, 2016.”

Agenda item 5b – Resolution 2016-01 – Application for the Establishment of the Brunswick, Maryland Enterprise Zone

“I move to approve Resolution 2016-01 authorizing an application for the establishment of the Brunswick, Maryland Enterprise Zone.”

Agenda item 5c – Resolution 2016-02 – Purchase of 40-42 West Potomac Street

“I move to approve Resolution 2016-02 authorizing the purchase of 40-42 West Potomac Street.”

Agenda item 9b – Solar Power Purchase Agreement (with Solar City, including panel installation at the Brunswick Sports Complex)

“I move to approve the agreement for Solar Power Purchase with Solar City, including panel installation at the Brunswick Sports Complex.”

City of Brunswick
Mayor and Council Meeting Minutes
Tuesday, February 9, 2016, 7:00 P.M.

The February 9, 2016 City of Brunswick Mayor and Council meeting was called to order at 7:00 p.m. by Mayor Karin Tome at Brunswick City Hall. The following members and staff were present: Karin Tome, Mayor; Angel White, Mayor Pro Tem; Ellis Burruss, Carroll Jones, Harry Lashley, Jeff Snoots, and Walt Stull, Council Members; Bob McGrory, City Administrator; Milt Frech, Chief of Police; John Gerstner, Director of Public Works; Patrick Hoffmaster, Director of Utilities; and Terri Householder, Economic Development Coordinator.

Mayor Tome read the following statement:

The Brunswick City Council met in closed session on February 9, 2016 at 5:30 P.M. at City Hall to discuss personnel matters, to consider the acquisition of real property for a public purpose and matters related directly thereto, and consult with staff about pending or potential litigation. The authority to close this meeting is found in Article 10-508 of the Annotated Code of Maryland. Mayor Tome, Mayor Pro Tem White, Council Members Burruss, Jones, Lashley, Snoots, and Stull, and City Administrator McGrory were present. All members present voted to close the meeting. The Council discussed the following items:

- Personnel matters – discussed employee transitions and specific personnel issues in all four City departments, including a prospective hire in the Utility Department.
- Consult with Staff about Pending or Potential litigation – discussed an issue of potential litigation.
- Real Property Acquisition – discussed the possible acquisition of a piece of real property for a public purpose and the means to facilitate such acquisition.

No actions were taken.

Mayor's Remarks

- Mayor Tome thanked the general public, emergency responders, and City staff for the way they handled themselves during the historic blizzard a few weeks ago.
- Mayor Tome discussed her involvement with the Maryland Municipal League Legislative Committee and the conference of the Maryland Mayors' Association, of which she is an officer.
- Tim Ailsworth, Executive Director of Local Government Insurance Trust (LGIT) presented a rebate check for the City's participation in LGIT's health cooperative program.

- City Utility Department employee Chase Woods was congratulated on a promotion he received, having completed the Maryland Department of the Environment licensing requirement as a Water Operator.
- Economic Development Coordinator Terri Householder and Sandy Wagerman, Frederick County Office of Economic Development, discussed the City's proposed application for Enterprise Zone designation from the State of Maryland, in cooperation with Frederick County.

Approval of Minutes

- Mayor & Council – January 12, 2016
- Closed – January 12, 2015

Ms. White made a motion to accept the minutes. Mr. Stull seconded the motion, which passed 6-0.

Citizens' Forum (Petitions, Remonstrances, and Communications)

Comments were offered by Jerry Donald, Frederick County Council Member.

Report of Officers -- Council -- Committees

Mr. McGrory offered comments regarding the Administrative Department.

Mr. Gerstner offered comments regarding the Public Works Department.

Council Members provided updates on their Committee activities, including announcements related to the City of Brunswick Economic Development Commission, Brunswick Family Campground, Brunswick Senior Center, Fire Department, Ambulance Department, Greater Brunswick Area Chamber of Commerce, Brunswick Heritage Museum, Canal Towns, Brunswick Main Street, Park Heights Cemetery, and Sustainable Brunswick.

Unfinished Business

- Enterprise Zone Application

The Council further discussed the prospective Enterprise Zone application.

Mr. Stull moved to approve the enterprise zone map and application. Mr. Snoots seconded the motion, which passed 6-0.

- Sidewalk Improvement Loan Program

Mr. McGrory discussed the background of this issue and thanked Council Member Lashley for his efforts in drafting the proposed legislation. A detailed discussion regarding potential ways to run the program and funding ensued.

Mr. Lashley moved to approve the Sidewalk Improvement Loan Program. Ms. White seconded the motion, which passed 6-0.

New Business

- Development and Administrative Fee Schedule

Mr. McGrory explained the background of this issue. The proposed additions to the fee schedule included fees related to notary services at City Hall, transportation network services, and the vacant property regulations recently passed by Council.

Mr. Lashley moved to approve the Development and Administrative Fee Schedule, dated February 9, 2016. Mr. Snoots seconded the motion, which passed 6-0.

- Traffic Control Request – Handicap Parking – 300 Block West Potomac Street

Mr. McGrory discussed the background of this issue. Staff recommended designating one handicap space at this location closer to when the proposed business, Smoketown Brewing Station, opens, with the option to designate additional spaces should the need arise after the business is open. The owner was amenable to this partial grant of the request.

Mr. Snoots made a motion to designate one handicap space in the 300 block of West Potomac Street. Mr. Burruss seconded the motion, which passed 6-0.

Adjournment

Mr. Stull moved to adjourn the meeting. Mr. Snoots seconded the motion, which passed 6-0. The meeting was adjourned at 8:54 p.m.

Submitted by: Carrie Myers

Approved By: _____
Mayor Date

Witnessed By: _____
City Administrator Date

**MAYOR AND COUNCIL OF BRUNSWICK
SPECIAL ORDINANCE NUMBER 520**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF BRUNSWICK TO AMEND THE FISCAL YEAR 2016
ANNUAL OPERATING AND CAPITAL BUDGET FOR THE CITY OF BRUNSWICK, MARYLAND.**

WHEREAS, with the assistance of the City staff, the Mayor of Brunswick prepared and submitted Ordinance Number 514, the Fiscal Year 2016 Budget, to the Council of Brunswick, which adopted said Ordinance on June 9, 2015 with the concurrence of the Mayor; and

WHEREAS, the Mayor and City Council wish to amend the adopted Fiscal Year 2016 Budget,

NOW THEREFORE BE IT ENACTED AND ORDAINED by the Mayor and Council of Brunswick:

SECTION I: that pursuant to the authority granted to it by Title 4 of the Annotated Code of Maryland and Section 16-3, Section 16-24, Section 16-38, Section 16-39B.1., and Section 16-39B.2 of the Charter of the City of Brunswick that the annual budget for the City of Brunswick, Maryland for Fiscal Year 2016 is hereby amended as attached hereto and incorporated herein, and

SECTION II: This Ordinance shall become effective on the 10th day, or April 22, 2016, following its enactment by the Council and its approval by the Mayor, or on the 10th day following its enactment by the Council over the veto by the Mayor.

PASSED this 12th day of April, 2016 by a vote of ____ for; ____ against, ____ abstaining; and ____ absent.

ATTEST:

COUNCIL OF THE CITY OF BRUNSWICK

Robert C. McGrory
City Administrator

By: _____
Name: Angel White
Mayor Pro Tem

APPROVED this 12th day of April, 2016.

ATTEST:

Robert C. McGrory
City Administrator

Karin B. Tome
Mayor

**CITY OF BRUNSWICK
GENERAL FUND**

| | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount |
|---|--------------------------|---------------------|-------------------------------|--------------------|-------------------------------|
| REVENUES | | | | | |
| Taxes | \$ 2,521,600 | \$ 2,335,103 | \$ 186,497 | | |
| Licenses & Permits | \$ - | \$ - | \$ - | | |
| Fines & Forfeitures | \$ 17,800 | \$ 8,677 | \$ 9,123 | | |
| Intergovernmental | \$ 1,080,200 | \$ 812,008 | \$ 268,192 | | |
| Franchise Fees | \$ 94,700 | \$ 48,063 | \$ 46,637 | | |
| User Fees | \$ 101,000 | \$ 113,152 | \$ (12,152) | \$ 22,500 | \$ 123,500 |
| Grants & Other Sources | \$ 113,400 | \$ 56,600 | \$ 56,800 | | |
| Utility Revenues | \$ 183,500 | \$ 106,357 | \$ 77,143 | \$ 10,000 | \$ 193,500 |
| Miscellaneous Revenue | \$ 134,900 | \$ 104,525 | \$ 30,375 | \$ 67,600 | \$ 202,500 |
| OPERATING REVENUE SUBTOTAL | \$ 4,247,100 | \$ 3,584,484 | \$ 662,616 | \$ 100,100 | \$ 4,347,200 |
| BORROWING | | | | | |
| Debt proceeds | \$ - | \$ - | \$ - | | |
| Bonds/loans | \$ - | \$ - | \$ - | | |
| Accumulated Reserves | \$ - | \$ - | \$ - | | |
| BORROWING SUBTOTAL | \$ - | \$ - | \$ - | \$ - | \$ - |
| TOTAL GENERAL FUND REVENUES | \$ 4,247,100 | \$ 3,584,484 | \$ 662,616 | \$ 100,100 | \$ 4,347,200 |
| EXPENDITURES | | | | | |
| Mayor and Council | \$ 107,200 | \$ 59,068 | \$ 48,132 | | |
| Financial Administration | \$ 716,100 | \$ 449,488 | \$ 266,612 | | |
| Planning and Zoning | \$ 239,800 | \$ 142,296 | \$ 97,504 | | |
| Police | \$ 1,081,200 | \$ 679,389 | \$ 401,811 | | |
| Fire & Rescue Service | \$ 32,100 | \$ 22,339 | \$ 9,761 | | |
| Public Works | \$ 1,056,000 | \$ 703,338 | \$ 352,662 | | |
| Waste Collection and Disposal | \$ 328,500 | \$ 201,629 | \$ 126,871 | | |
| Parks | \$ 95,100 | \$ 52,560 | \$ 42,540 | | |
| Events | \$ 64,700 | \$ 43,898 | \$ 20,802 | | |
| Economic Development | \$ 121,200 | \$ 62,067 | \$ 59,133 | | |
| OPERATING EXPENSES SUBTOTAL | \$ 3,841,900 | \$ 2,416,073 | \$ 1,425,827 | \$ - | \$ 3,841,900 |
| Capital outlay - Transfers Out | \$ 352,900 | \$ - | \$ 352,900 | \$ 100,100 | \$ 453,000 |
| Debt service | \$ 52,300 | \$ 31,998 | \$ 20,302 | | |
| TOTAL GENERAL FUND EXPENDITURES | \$ 4,247,100 | \$ 2,448,071 | \$ 1,799,029 | \$ 100,100 | \$ 4,347,200 |
| REVENUES OVER (UNDER) EXPENDITURES | \$ - | \$ 1,136,413 | \$ (1,136,413) | \$ - | \$ - |

CITY OF BRUNSWICK
CAPITAL PROJECT FUND

| | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount |
|--|--------------------------|-------------------|-------------------------------|--------------------|-------------------------------|
| REVENUES | | | | | |
| General Fund Transfers In | \$ 352,900 | \$ - | \$ 352,900 | \$ 100,100 | \$ 453,000 |
| Capital Grant Revenues and Other Sources | \$ 237,300 | \$ 58,647 | \$ 178,653 | \$ 25,000 | \$ 262,300 |
| CAPITAL REVENUE SUBTOTAL | \$ 590,200 | \$ 58,647 | \$ 531,553 | \$ 125,100 | \$ 715,300 |
| Debt Proceeds | \$ - | \$ - | \$ - | | |
| Bonds/Loans | \$ - | \$ - | \$ - | | |
| Accumulated Reserves | \$ 822,900 | \$ 662,883 | \$ 160,017 | \$ 303,300 | \$ 1,126,200 |
| BORROWING SUBTOTAL | \$ 822,900 | \$ 662,883 | \$ 160,017 | \$ 303,300 | \$ 1,126,200 |
| TOTAL CAPITAL PROJECT FUND REVENUES | \$ 1,413,100 | \$ 721,529 | \$ 691,571 | \$ 428,400 | \$ 1,841,500 |

CAPITAL EXPENDITURES

| | | | | | |
|---|---------------------|-------------------|-------------------|-------------------|---------------------|
| General Government | | | | | |
| <i>Building Improvements- General</i> | \$ 10,000 | \$ 2,643 | \$ 7,357 | | |
| <i>Building Acquisition- 40 W Potomac Street</i> | \$ - | \$ - | \$ - | \$ 127,600 | \$ 127,600 |
| <i>Park Improvements-General</i> | \$ 10,000 | \$ - | \$ 10,000 | | |
| <i>New Accounting System</i> | \$ 27,600 | \$ 15,114 | \$ 12,486 | | |
| <i>Dog Park (CP&P Grant)</i> | \$ 37,700 | \$ - | \$ 37,700 | | |
| <i>Bike Path Amenities (Grant)</i> | \$ - | \$ 19,649 | \$ (19,649) | \$ 25,000 | \$ 25,000 |
| <i>Splash Park (POS Grant 75%)</i> | \$ 37,500 | \$ 37,500 | \$ - | | |
| <i>Little League (POS Grant 90%)</i> | \$ 65,000 | \$ - | \$ 65,000 | | |
| <i>Mini-Golf (POS Grant 90%)</i> | \$ 40,000 | \$ - | \$ 40,000 | | |
| <i>Caboose/WB Tower (Grant)</i> | \$ 34,500 | \$ 33,025 | \$ 1,475 | \$ 15,500 | \$ 50,000 |
| <i>Building Improvements- Railroad (Grant)</i> | \$ 43,000 | \$ 21,630 | \$ 21,370 | | |
| <i>Building Improvements- Campground Pavillions</i> | \$ - | \$ (497) | \$ 497 | | |
| <i>\$305,300</i> | | | | | |
| Police | | | | | |
| <i>Vehicle - Annual Replacement</i> | \$ 58,000 | \$ 52,142 | \$ 5,858 | \$ 53,500 | \$ 111,500 |
| <i>Equipment- Radios, Laptop</i> | \$ 25,000 | \$ 108 | \$ 24,892 | | |
| <i>\$83,000</i> | | | | | |
| Transportation Services (Public Works) | | | | | |
| <i>Vehicle- Dump Truck (Plow & Spreader) & Van</i> | \$ 61,000 | \$ 57,926 | \$ 3,074 | | |
| <i>Equipment- Milling Machine Head, Snow Blower</i> | \$ 29,800 | \$ 15,763 | \$ 14,037 | | |
| <i>Street Improvements</i> | \$ 810,000 | \$ 465,522 | \$ 344,478 | | |
| <i>Building Improvements- Addition on PW Building</i> | \$ 60,000 | \$ - | \$ 60,000 | \$ 7,000 | \$ 67,000 |
| <i>Building Improvements- Shed Replacement</i> | \$ - | \$ - | \$ - | \$ 153,800 | \$ 153,800 |
| <i>Property Improvements- 13th Avenue(New Storage Building)</i> | \$ - | \$ - | \$ - | \$ 60,000 | \$ 60,000 |
| <i>Rubble Site Improvements</i> | \$ 14,000 | \$ - | \$ 14,000 | \$ (14,000) | \$ - |
| <i>\$974,800</i> | | | | | |
| Stormwater Management | | | | | |
| <i>Stormwater System Improvements</i> | \$ 50,000 | \$ 1,005 | \$ 48,995 | | |
| <i>\$50,000</i> | | | | | |
| General Fund Reserves | | | | | |
| <i>General Fund Reserve (annual accrual)</i> | \$ - | \$ - | \$ - | | |
| <i>\$0</i> | | | | | |
| TOTAL CAPITAL PROJECT FUND EXPENDITURES | \$ 1,413,100 | \$ 721,529 | \$ 691,571 | \$ 428,400 | \$ 1,841,500 |

REVENUES OVER (UNDER) EXPENDITURES \$ - \$ - \$ - \$ - \$ -

| | | | | | |
|--|------------------|------------------|-------------|-------------|------------------|
| General Fund Debt Service | | | | | |
| <i>Copier Capital Lease</i> | \$ 13,200 | \$ 7,713 | | | |
| <i>MDE Infrastructure Bond</i> | \$ 16,600 | \$ 16,603 | | | |
| <i>2012 Tax-Exempt Infrastructure Bond</i> | \$ 22,500 | \$ 7,683 | | | |
| TOTAL GENERAL FUND DEBT SERVICE | \$ 52,300 | \$ 31,998 | \$ - | \$ - | \$ 52,300 |

CITY OF BRUNSWICK
ENTERPRISE FUND - WATER

| | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount |
|---|--------------------------|---------------------|-------------------------------|--------------------|-------------------------------|
| OPERATING REVENUES | | | | | |
| Water | \$ 1,149,400 | \$ 619,445 | \$ 529,955 | | |
| OPERATING REVENUE SUBTOTAL | \$ 1,149,400 | \$ 619,445 | \$ 529,955 | \$ - | \$ 1,149,400 |
| ALLOCATION REVENUES | | | | | |
| Water | \$ 144,700 | \$ 96,597 | \$ 48,103 | \$ 10,100 | \$ 154,800 |
| ALLOCATION REVENUE SUBTOTAL | \$ 144,700 | \$ 96,597 | \$ 48,103 | \$ 10,100 | \$ 154,800 |
| MISCELLANEOUS REVENUE | | | | | |
| Miscellaneous Revenues | \$ 119,700 | \$ 68,421 | \$ 51,279 | \$ 900 | \$ 120,600 |
| VARIABLE REVENUE SUBTOTAL | \$ 119,700 | \$ 68,421 | \$ 51,279 | \$ 900 | \$ 120,600 |
| LONG TERM OBLIGATIONS | | | | | |
| Debt proceeds | \$ - | \$ - | \$ - | | |
| Bonds/Loans | \$ - | \$ - | \$ - | | |
| Accumulated Reserves | \$ 41,200 | \$ - | \$ 41,200 | \$ (11,000) | |
| BORROWING SUBTOTAL | \$ 41,200 | \$ - | \$ 41,200 | \$ (11,000) | \$ 30,200 |
| TOTAL ENTERPRISE FUND REVENUES | \$ 1,455,000 | \$ 784,463 | \$ 670,537 | \$ - | \$ 1,455,000 |
| EXPENDITURES | | | | | |
| Water | \$ 935,000 | \$ 570,528 | \$ 364,472 | | |
| Depreciation | \$ 112,800 | \$ 272,503 | \$ (159,703) | | |
| Capital Outlay | \$ 299,000 | \$ 87,920 | \$ 211,080 | | |
| Debt Service | \$ 108,200 | \$ 26,333 | \$ 81,867 | | |
| TOTAL ENTERPRISE FUND EXPENDITURES | \$ 1,455,000 | \$ 957,283 | \$ 497,717 | \$ - | \$ 1,455,000 |
| REVENUES OVER (UNDER) EXPENSES | \$ - | \$ (172,820) | \$ 172,820 | \$ - | \$ - |

CITY OF BRUNSWICK
ENTERPRISE FUND - WASTEWATER

| | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount |
|---|--------------------------|---------------------|-------------------------------|--------------------|-------------------------------|
| Operating Revenues | | | | | |
| Wastewater | \$ 1,204,700 | \$ 645,193 | \$ 559,507 | | |
| OPERATING REVENUE SUBTOTAL | \$ 1,204,700 | \$ 645,193 | \$ 559,507 | \$ - | \$ 1,204,700 |
| ALLOCATION REVENUES | | | | | |
| Wastewater | \$ 128,600 | \$ 102,931 | \$ 25,669 | \$ 8,300 | \$ 136,900 |
| ALLOCATION REVENUE SUBTOTAL | \$ 128,600 | \$ 102,931 | \$ 25,669 | \$ 8,300 | \$ 136,900 |
| MISCELLANEOUS REVENUE | | | | | |
| Miscellaneous Revenues | \$ 64,200 | \$ 50,688 | \$ 13,512 | \$ 2,700 | \$ 66,900 |
| VARIABLE REVENUE SUBTOTAL | \$ 64,200 | \$ 50,688 | \$ 13,512 | \$ 2,700 | \$ 66,900 |
| LONG TERM OBLIGATIONS | | | | | |
| Debt proceeds | \$ - | \$ - | \$ - | | |
| Bonds/Loans | \$ 131,800 | \$ - | \$ 131,800 | \$ (11,000) | \$ 120,800 |
| Accumulated Reserves | \$ - | \$ - | \$ - | | |
| BORROWING SUBTOTAL | \$ 131,800 | \$ - | \$ 131,800 | \$ (11,000) | \$ 120,800 |
| TOTAL ENTERPRISE FUND REVENUES | \$ 1,529,300 | \$ 798,812 | \$ 730,488 | \$ - | \$ 1,529,300 |
| EXPENDITURES | | | | | |
| Wastewater | \$ 910,000 | \$ 516,634 | \$ 393,366 | | |
| Depreciation | \$ 189,500 | \$ 472,624 | \$ (283,124) | | |
| Capital outlay | \$ 254,200 | \$ 27,378 | \$ 226,822 | | |
| Debt service | \$ 175,600 | \$ 31,946 | \$ 143,654 | | |
| TOTAL ENTERPRISE FUND EXPENDITURES | \$ 1,529,300 | \$ 1,048,583 | \$ 480,718 | \$ - | \$ 1,529,300 |
| REVENUES OVER (UNDER) EXPENSES | \$ - | \$ (249,770) | \$ 249,770 | \$ - | \$ - |

| CITY OF BRUNSWICK ENTERPRISE FUND - WATER Fiscal Year 2016 | | | | | | |
|--|--------------------------|----------------|-------------------------------|--------------------|-------------------------------|--|
| Water Capital Projects | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount | |
| <i>Water Distribution Replacement</i> | \$ 76,500 | \$ 48,713 | \$ 27,787 | | | |
| <i>Vehicles</i> | \$ 43,000 | \$ - | \$ 43,000 | | | |
| <i>Storage Tank Contract and Upgrade</i> | \$ 67,700 | \$ (3,175) | \$ 70,875 | | | |
| <i>Meter Replacements</i> | \$ 30,000 | \$ 14,954 | \$ 15,046 | | | |
| <i>Hydrant Replacement Project</i> | \$ 10,000 | \$ 6,969 | \$ 3,031 | | | |
| <i>Distribution Equipment</i> | \$ 63,600 | \$ 20,459 | \$ 43,141 | | | |
| <i>Treatment Equipment-Crane Hoist</i> | \$ 8,200 | \$ - | \$ 8,200 | | | |
| | \$87,920 | | | | | |
| Water Debt Service | | | | | | |
| <i>Water Debt Principal</i> | \$ 66,500 | \$ - | \$ 66,500 | | | |
| <i>Water Debt Interest</i> | \$ 41,700 | \$ 26,333 | \$ 15,367 | | | |
| | \$26,333 | | | | | |
| Water Reserves | | | | | | |
| <i>Water System Reserve (annual accrual)</i> | \$ 112,800 | \$ 272,503 | \$ (159,703) | | | |
| | \$272,503 | | | | | |
| Water Total | \$ 520,000 | \$ 386,755 | \$ 133,245 | \$ - | \$ 520,000 | |
| Depreciation | | | | | | |
| <i>Depreciation (calculated)</i> | \$ 563,900 | \$ 272,503 | \$ 291,398 | | | |
| <i>FY 2016 Funded</i> | \$ (112,800) | \$ (99,683) | \$ (13,117) | - | \$ 112,800 | |
| <i>Underfunded Depreciation</i> | \$ 451,100 | \$ 172,820 | \$ 278,280 | | | |

| CITY OF BRUNSWICK ENTERPRISE FUND - WASTEWATER Fiscal Year 2016 | | | | | | |
|---|--------------------------|----------------|-------------------------------|--------------------|-------------------------------|--|
| Wastewater Capital Projects | Current FY2016 Budget | FY2016 Actuals | Budget to Actuals Variance | Proposed Change | Proposed Amended Amount | |
| <i>Vehicle- Used Truck</i> | \$ 10,000 | \$ - | \$ 10,000 | | | |
| <i>Sludge Conveyor Rebuild</i> | \$ 85,200 | \$ 11,128 | \$ 74,072 | | | |
| <i>I&I</i> | \$ 105,000 | \$ - | \$ 105,000 | | | |
| <i>UV Bulb Replacement</i> | \$ 18,000 | \$ - | \$ 18,000 | | | |
| <i>WWTP Improvements</i> | \$ 36,000 | \$ 16,250 | \$ 19,750 | | | |
| | | | | | | |
| | \$27,378 | | | | | |
| Wastewater Debt Service | | | | | | |
| | | | | | | |
| <i>Wastewater Debt Principal</i> | \$ 125,200 | \$ - | \$ 125,200 | | | |
| <i>Wastewater Debt Interest</i> | \$ 50,400 | \$ 31,946 | \$ 18,454 | | | |
| | | | | | | |
| | \$31,946 | | | | | |
| Wastewater Reserves | | | | | | |
| | | | | | | |
| <i>Wastewater System Reserve (annual accrual)</i> | \$ 189,500 | \$ 472,624 | \$ (283,124) | | | |
| | | | | | | |
| | \$472,624 | | | | | |
| Wastewater Total | \$ 619,300 | \$ 531,948 | \$ 87,352 | \$ - | \$ 619,300 | |

| Depreciation | | | | | | |
|----------------------------------|--------------|--------------|------------|------|------------|--|
| <i>Depreciation (calculated)</i> | \$ 947,500 | \$ 472,624 | \$ 474,876 | | | |
| <i>FY 2016 Funded</i> | \$ (189,500) | \$ (222,854) | \$ 33,354 | \$ - | \$ 189,500 | |
| <i>Underfunded Depreciation</i> | \$ 758,000 | \$ 249,770 | \$ 508,230 | | | |

RESOLUTION NO. 2016-01

**RE: APPLICATION FOR ESTABLISHMENT OF THE
BRUNSWICK, MARYLAND ENTERPRISE ZONE**

WHEREAS, Maryland's Enterprise Zone Program is a "joint effort between the State and local governments to provide tax incentives to businesses and property owners located in some of the State's most economically distressed communities"; and

WHEREAS, the City of Brunswick and Frederick County wish to establish the Enterprise Zone within the city limits in order to improve the economic development potential within the boundaries of said zone.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF BRUNSWICK, MARYLAND, that the application for the establishment of the Brunswick Enterprise Zone is hereby approved as shown on Exhibit A.

The undersigned hereby certifies that this Resolution was approved and adopted on the _____ day of _____, 2016.

ATTEST:

CITY OF BRUNSWICK, MARYLAND

Robert C. McGrory
City Administrator

By: _____
Karin B. Tome, Mayor

RESOLUTION NO. 2016-02

A RESOLUTION AUTHORIZING THE PURCHASE OF 40-42 WEST POTOMAC STREET

WHEREAS, the building known as 40-42 West Potomac Street was built in 1904 and is a contributing structure to the National Register of Historic Places' Brunswick Historic District; and

WHEREAS, the building was purchased in 1974 by the Brunswick Potomac Foundation, Inc. and operated for many years as the Brunswick Railroad Museum, and more recently as the Brunswick Heritage Museum; and

WHEREAS, the building is also home to the National Park Service Chesapeake & Ohio National Historical Park Visitor Center and Brunswick Visitor Center; and

WHEREAS, the City of Brunswick wishes to purchase the building from the Brunswick Potomac Foundation, Inc., in the amount of \$265,000; and

WHEREAS, the Brunswick Potomac Foundation Board of Directors consented to the proposed purchase agreement in February, 2016,

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of Brunswick authorize the purchase of 40-42 West Potomac Street in the amount of \$265,000, contingent on the budgeting of funds sufficient to facilitate closing, and the receipt of a building inspection satisfactory to the Mayor.

The undersigned hereby certifies that this Resolution was approved and adopted on the _____ day of _____, 2016.

ATTEST:

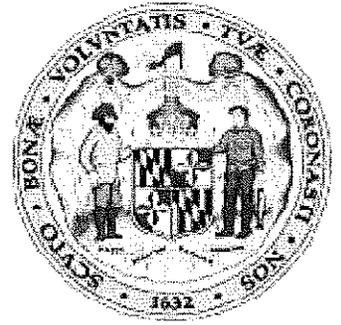
CITY OF BRUNSWICK, MARYLAND

Robert C. McGrory
City Administrator

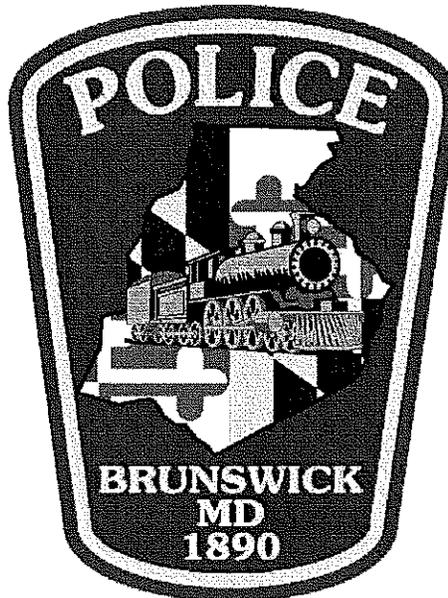
By: _____
Karin B. Tome, Mayor



City of Brunswick Maryland



Police Department



2015 Annual Report

Milton E. Frech Jr., Chief of Police
Bryan C. Brown, Assistant Chief

Chief Milton Frech of the Brunswick Police Department respectfully submits this report as an overview of accomplishments and achievements from January 1, 2015 to December 31, 2015.

2015 Personnel:

In April 2015, the agency received approval to hire three new officers due to vacancies. One of the new hires resigned in January 2016 and a second was injured during the academy, resulting in the applicant being unable to continue. The third new hire is currently in the Frederick Police Academy with a projected graduation date of July 2016. The agency currently has three vacancies.

2015 Vehicles:

Two vehicles were purchased in the FY16 budget and the agency purchase two 2016 Chevrolet Impalas. Both vehicles were received and equipped in the fall of 2015. This will allow for the rotation of older, high mileage vehicles from the police fleet. The Police Department transferred a 2007 Chevrolet Impala to the Water Department during 2015.

2015 Calls for Service:

During the 2015 calendar year, the Brunswick Police handled a total of 17,637 calls for service. This was an increase of 404 calls when compared to 17,233 calls for service total in 2014. In comparison, the Thurmont Police Department handled a total 9,670 calls for service in 2015.

683 calls required police reports and 170 were closed by arrest. 6,340 calls were self initiated patrol checks of locations within the City and 11,297 calls for service originating from dispatch/citizens.

| 2015 Statistical Information: | 2015 | 2014 |
|--------------------------------------|-------------|-------------|
| Call Type Counts | 17,637 | 17,233 |
| Adult Arrest | 149 | 171 |
| Juvenile Arrest | 21 | 41 |
| Total Arrests | 170 | 212 |
| Maryland Uniform Citations | 415 | 392 |
| Equipment Repair Orders | 76 | 54 |
| Warning Citations | 820 | 532 |
| Parking Citations | 290 | 498 |

| <u>UCR Part I Crimes:</u> | 2015 | 2014 |
|---------------------------|------|------|
| Criminal Homicide | 0 | 0 |
| Forcible Rape | 0 | 2 |
| Robbery | 2 | 1 |
| Assaults | 78 | 66 |
| Burglaries | 28 | 18 |
| Larcenies / Thefts | 68 | 62 |
| Motor Vehicle Thefts | 0 | 3 |

**Both rape cases were closed as unfounded.*

Grants:

In 2015, the Brunswick Police received \$86,260.79 in grants funds. Captain Brown worked on obtaining most of these grants and should be recognized for his efforts. Listed below are the grants and information related to each grant.

2015 State Aid for Police Protection: \$57,000

The State Aid for Police Protection Fund is a formula-driven funding program used to supplement resources for police protection in local communities. State funds provide additional revenue to support the operational costs of local and county police agencies

2015 State Homeland Security Program: \$8,704.79

The Brunswick Police Department purchased one hand-held police radio and three E-tix scanner/printers with this grant. The equipment was purchased and deployed in the spring of 2015.

2015 State Homeland Security Program Supplemental Grant: \$8,921

The Brunswick Police Department applied for and received funding to purchase two Motorola mobile vehicle radios. The cost included purchasing and programming the radios. The equipment is currently installed in our two new Impala police vehicles, saving the City of Brunswick the expense of purchasing the radios.

2015 Tobacco Grant: \$750.00

The Brunswick Police Department received a grant from the Frederick County Health Department for Tobacco Enforcement. The funds must be used before June 30, 2016.

2015 Safe Streets Grant: \$5,000.00

The Brunswick Police Department partnered with the Frederick City Police Department to receive a grant from the Federal Safe Street Initiative. The grant is awarded to the Frederick City Police Department and portions are distributed to local agencies. The Brunswick Police department was awarded \$5,000 that must be used before June 30, 2016.

2015 LGIT Law Enforcement Memorial Training Grant: \$5,000

LGIT awarded the Brunswick Police Department a training grant. This is the second time in three years that Captain Brown was able to apply for and receive funding for this grant.

2015 Equipment Acquisition:

In the fall of 2015, I was able to acquire, free of charge, ten used CF53 Panasonic computers from an allied agency, who was upgrading their technology. Panasonic recently replaced the CF53 with the new CF54 laptop computer. The CF53 is a huge upgrade when compared to our currently outdated CF30 and CF31 laptops, which were originally designed for Windows XP. When new, the cost of a CF53 was \$2,500, though the current cost of a refurbished or used unit is \$1,400. Ten Gamber Johnson computer trays, valued at \$750 each, were also acquired. This acquisition saved the City of Brunswick thousands of dollars while upgrading the technology in our police vehicles.

2015 Training:

Officers and staff attended 3,186 hours of training in 2015. 2,736 hours were for four (4) applicants attending three (3) different Police Academies throughout the year. The remaining 450 hours of training included the following courses:

In-Service Training
Range Training
Less Lethal Techniques

CJIS Training
MML Leadership Training
DT Training

2015 Special Event Staffing:

The Brunswick Police continued to support local events in our community. Brunswick Police personnel adjusted their schedules to staff these special events without the expenditure of any overtime funding. The events included, but were not limited to, all Brunswick Main Street events, 4th of July Fireworks, BARC Halloween events, Veterans Day Parade and Hometown Holidays.

2016 Goals:

My goals for the agency in the upcoming year are to continue to improve customer service and provide services that continue to improve the safety in our community. Though mentioned in my 2015 goals, I plan to continue to work towards adding a criminal investigator position to handle our criminal caseload. The inability to maintain full staffing levels, throughout the past few years, have not allowed for this position to be implemented. I plan to continue to work with the City to develop ways to attract and maintain qualified personnel. Retention continues to be a huge problem for the agency.



Brunswick Police Department Monthly Report

Reporting Month and Year: FEBRUARY 2016

Traffic Enforcement Activity

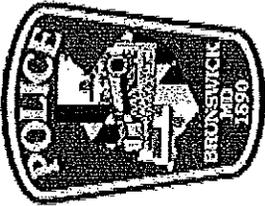
| | Month | YTD | PY Month | PY YTD |
|---------------------------|-------|-----|----------|--------|
| Maryland State Citations: | 26 | 54 | 28 | 47 |
| Maryland State SEROS: | 9 | 9 | 0 | 2 |
| Warning Citations: | 13 | 34 | 21 | 40 |
| Parking Citations: | 15 | 43 | 28 | 50 |

Parking Enforcement Revenue

| | Month | YTD | PY Month | PY YTD |
|--------------------|-------|-----|----------|--------|
| Fines Collected: | * | * | * | * |
| Meter Collections: | * | * | * | * |

Crime Report

| | Month | YTD | PY Month | PY YTD |
|-------------------------|-------|------|----------|--------|
| Calls for Service | 828 | 1977 | 1149 | 2490 |
| Homicide | 0 | 0 | 0 | 0 |
| Rape | 0 | 0 | 0 | 0 |
| Robbery | 0 | 0 | 0 | 0 |
| Assault | 3 | 9 | 6 | 19 |
| B&E | 2 | 2 | 0 | 0 |
| Theft | 3 | 4 | 1 | 6 |
| Auto Theft | 1 | 1 | 0 | 0 |
| Motor Vehicle Accidents | 12 | 15 | 3 | 14 |



Brunswick Police Department

Listing of Arrests

February 1, 2016 to February 29, 2016

| Case ID | Date | Time | Charge | Status | Person Type | Officer | Disposition |
|------------|------------|-------|---|----------------|-------------|---------------------|-------------------|
| 2016000947 | 02/01/2016 | 18:39 | DRIVING UNINSURED VEHICLE | CLOSED/CLEARED | ADULT | CHRISTOPHER HANDLER | CLEARED BY ARREST |
| 2016000957 | 02/02/2016 | 00:37 | EXCEEDING MAX SPEED | CLOSED/CLEARED | ADULT | JACQUELYN DRUKTENIS | CLEARED BY ARREST |
| 2016000205 | 02/02/2016 | 15:32 | ASSAULT, 2ND DEGREE (SIMPLE ASSAULT) | CLOSED/CLEARED | ADULT | MILTON FRECH | CLEARED BY ARREST |
| 2016001201 | 02/09/2016 | 17:07 | OTHER AGENCY WARRANT/SUMMONS SERVICE | CLOSED/CLEARED | ADULT | BRANDON SMITH | CLEARED BY ARREST |
| 2016001438 | 02/18/2016 | 08:17 | CDS, POSSESSION OF PARAPHERNALIA | CLOSED/CLEARED | JUVENILE | BRANDON SMITH | CLEARED BY ARREST |
| 2016001455 | 02/19/2016 | 18:30 | CDS, POSSESSION OF MARIJUANA | CLOSED/CLEARED | ADULT | JAMES LEDWELL | CLEARED BY ARREST |
| 2016001465 | 02/19/2016 | 18:30 | CDS, POSSESSION OF MARIJUANA | CLOSED/CLEARED | ADULT | JAMES LEDWELL | CLEARED BY ARREST |
| 2016001489 | 02/20/2016 | 15:54 | VIOLATION OF PROBATION | CLOSED/CLEARED | ADULT | JAMES LEDWELL | CLEARED BY ARREST |
| 2016001888 | 02/27/2016 | 11:20 | OTHER AGENCY WARRANT/SUMMONS SERVICE | CLOSED/CLEARED | ADULT | BRANDON SMITH | CLEARED BY ARREST |
| 2016001709 | 02/28/2016 | 01:11 | DRIVING VEH. WHILE UNDER INFLUENCE OF ALCOHOL (DWI) | CLOSED/CLEARED | ADULT | JAMES LEDWELL | CLEARED BY ARREST |
| 2015009370 | 02/28/2016 | 12:50 | VIOLATION OF PROBATION | CLOSED/CLEARED | ADULT | BRANDON SMITH | CLEARED BY ARREST |

Total Number of Arrests: 11



Brunswick Police Department
Call Type Counts Listing
February 1, 2016 to February 29, 2016

| Call Type | Counts |
|--|---------------|
| ANIMAL COMPLAINTS | 2 |
| ASSAULT - OCCURED EARLIER | 1 |
| ASSAULT IN PROGRESS - ALERT TONE | 1 |
| ASSAULT WITH INJURY | 1 |
| ASSIST FIRE DEPARTMENT | 12 |
| ASSIST OTHER AGENCY - SPECIFY | 2 |
| ASSIST OTHER PD (SHERIFF) | 21 |
| ATTEMPT TO LOCATE - ADD TO LOOKOUT FILE | 4 |
| CARDIAC ARREST | 1 |
| CHILD / JUVENILE ABUSE | 1 |
| COMMERCIAL | 13 |
| COURT - BPD | 8 |
| COURT PAPERWORK | 1 |
| DESTRUCTION OF PROPERTY / VANDALISM | 3 |
| DISABLED VEHICLE | 7 |
| DISORDERLY CONDUCT - INTOXICATED SUBJECT | 6 |
| DISTURBANCE - ALL GATHERINGS | 10 |
| DOMESTIC | 9 |
| DOMESTIC IN PROGRESS - ALERT TONE | 2 |
| ESCORT (MSP) | 2 |
| EXTRA DUTY | 15 |
| FOLLOW UP - ALL TYPES | 35 |
| FOUND PROPERTY | 3 |
| FRAUD | 4 |
| FUNERAL ESCORT | 1 |
| HARRASSMENT | 3 |
| HIT AND RUN PROPERTY DAMAGE | 6 |
| JUVENILE COMPLAINT | 1 |
| LOST PROPERTY | 1 |
| MENTAL PERSON | 2 |
| MISSING PERSON | 3 |
| NARCOTICS - FCPD SEND TWO CARS | 4 |



Brunswick Police Department
Call Type Counts Listing
February 1, 2016 to February 29, 2016

| Call Type | Counts |
|--|---------------|
| NOTIFICATIONS | 2 |
| OPEN OR 911 HANG-UP | 29 |
| PARKING VIOLATIONS | 10 |
| PATROL CHECK (BRUNSWICK) | 350 |
| POLICE INFORMATION | 2 |
| POLICE TRAINING / EDUCATION | 3 |
| PROPERTY DAMAGE ACCIDENT | 6 |
| RELAY OR 10-5 | 1 |
| REPO / TOW AWAY | 2 |
| REQUEST OFFICER | 83 |
| RESIDENTIAL | 8 |
| RESIDENTIAL BURGLARY - REPORT ONLY | 2 |
| RESIDENTIAL HOLD UP - ALERT TONE | 1 |
| ROADWAY HAZARD | 5 |
| SELECTIVE ENFORCEMENT TRAFFIC OR SPEED | 8 |
| SPECIAL ASSIGNMENTS | 8 |
| SUICIDE - ATTEMPTED ALSO | 1 |
| SUMMONS SERVICE (BPD) | 1 |
| SUSPICIOUS ACTIVITY / VEHICLE OR PERSON | 4 |
| SUSPICIOUS PERSON | 7 |
| SUSPICIOUS VEHICLE | 11 |
| TALKS / CRIME PREVENTION / COMMUNITY RELATIONS | 7 |
| TEST FOR TRAINING - DO NOT DISPATCH | 1 |
| THEFT / STOLEN / SHOPLIFTING - EXCEPT VEHICLE | 3 |
| TRAFFIC COMPLAINT/ ALSO TRAFFIC DETAIL | 2 |
| TRESPASSING | 2 |
| VEHICLE STOP (BRUNSWICK) | 49 |
| VEHICLE THEFT / UNAUTHORIZED USE | 1 |
| VERBAL DISPUTE - NON DOMESTIC | 1 |
| WALKING PATROL | 25 |
| WARRANT SERVICE (BPD) | 2 |
| WELFARE CHECKS | 6 |



Brunswick Police Department
Call Type Counts Listing
February 1, 2016 to February 29, 2016

Total Number of Calls: 828

CITY OF BRUNSWICK MONTHLY WATER FLOW REPORT

| | <u>Monthly Total</u> | <u>Daily Average</u> |
|--------------------------------------|----------------------|-------------------------|
| Water from springs..... | <u>4,312</u> | *M.G. <u>0.148</u> M.G. |
| Water pumped from Potomac River..... | <u>12,546</u> | M.G. <u>0.433</u> M.G. |
| Total..... | <u>16,858</u> | M.G. <u>0.582</u> M.G. |
| Finished water pump from Plant... | <u>11,768</u> | M.G. <u>0.406</u> M.G. |

Submitted By Peter Holter
Date 3-3-16

*Million Gallons

WATER PLANT PROJECTS & MAINTENANCE --February 2016

- 1) Tested all chlorine gas detectors
- 2) Calibrated all chemical feeders
- 3) Received chemical deliveries of Caustic, Acid and Del-pac
- 4) All WTP staff attended CPR training
- 5) The WTP was happy to welcome Hugh Powers to our staff and began his training
- 6) Dennison plumbing performed the annual service on all back flow preventors
- 7) All Fire extinguishers were given their annual check up
- 8) Replaced the pillow blocks on #1 and #2 filter waste gates
- 9) Sampled for TTHM's and HAAS's and met all state and federal requirements
- 10) Replaced the packing in the waste sludge pumps
- 11) Installed a new control panel on the generator at the Elevated storage tank site
- 12) Yourtee springs cl-17 chlorine analyzer was replaced and the flow controlled chlorination system was recalibrated
- 13) Hach performed the annual service on all cl-17 chlorine analyzers and 1720 e turbidimeters
- 14) Repaired a leak on the sulfuric acid feed line
- 15) Replaced outdoor security lighting at the old pump station
- 16) Replaced ceiling tiles in the 1 million gallon storage tank

CITY OF BRUNSWICK WWTP MONTHLY FLOW REPORT

Total Influent Flow --- 32.25 Million Gallons

Total Effluent Flow --- 29.87Million Gallons

Rain --- 4.10 INCHES

Sludge to Landfill ---47.0 TONS

Submitted By --- Patrick Hoffmaster

Date 3/3/16

We seen several days of high flows into the WWTP this month from all the rain I & I

Brunswick WWTP Operations & Projects February 2016

- 1) Ran Belt Press twice weekly
- 2) Backflushed SBR's bi-weekly
- 3) Cleaned Pista Grit vacuum bowl weekly
- 4) Changed the oil in the sludge pump gear box
- 5) Changed the oil in the de-cant pumps gear box
- 6) Changed the oil in the BFP air compressor
- 7) Dealt with multiple high flow events on 2/3, 2/4, 2/5, 2/16 and 2/17. Staff worked 24 hour shifts
- 8) A roof leak was discovered and rookers repaired 4 water leaks with a 15 year warranty
- 9) Staff prepared the plant for high flows caused by I&I by bringing #3SBR in service and setting up the "big berth" submersible pump on stand by
- 10) Staff began preparing for the WWTP painting project
- 11) Yearly fire extinguisher inspections were performed
- 12) Yearly back flow preventer inspections were performed
- 13) CPR and blood born pathogen training was given to all staff

FEBRUARY 2016 WATER METER/ SAFETY REPORT

Meters:

Settlements – 18
Replacements – 0
Repairs – 3
High Bill Investigations – 11
New Installs – 6
Meter Inspections – 2
U&O Inspections – 1
Cut-offs- 3

Safety:

DPW Staff was trained and certified on “CPR/AED” and “Bloodborne/ Airborne Pathogens.” These are American Heart Association and National Safety Council courses, respectively. Per OSHA standards, the CPR Certification is valid for two years and the Bloodborne Pathogens Certification is valid for one year.

Westminster Fire Extinguisher Service completed the annual fire extinguisher inspection on all City owned fire extinguishers.

Enrolled DPW staff in Maryland Occupational Safety and Health (MOSH) sponsored safety classes to attend throughout the coming months.



THE CITY OF BRUNSWICK MARYLAND

1 WEST POTOMAC STREET · BRUNSWICK, MARYLAND 21716 · (301) 834-7500

January Planning/Code Staff Report Mayor and Council 3-8-2016

Planning

- Staff completed review on Section III A Brunswick Crossing
- Staff received conditional approval at the Planning Commission meeting for Brunswick Crossing Section III A.
- Staff worked with Contractors on several homes under construction.
- Staff worked with economic development coordinator on events and business development.
- Staff issued U&O for new brewery .
- Staff is working on final approval for Ace Hardware shopping center project.
- 18 Zoning Certificates issued February
- 2 U&O's issued February
- No BoA meeting in February and no meeting is scheduled for March.
- Planning Commission met in February a meeting is scheduled for March.

GIS

- Assisted public with property data
- Assisted public works with and water and sewer mapping data
- Worked on Zoning Certificate data base
- Update Maps for Brunswick Crossing
- Developing various maps for departments

ZC Log 2016

| ID | ZC # | Tax ID # | Date Approved | Parcel # | Name of Owner/Applicant | Street # | Street Address | Improvement/Use |
|----|--------------|-----------|---------------|-----------|-----------------------------------|----------|-------------------|----------------------------|
| 19 | <u>16-19</u> | 25-479629 | 2-3-16 | 365 | Branda Fauble | 7 | Peach Orchard Ct | Daycare |
| 20 | <u>16-20</u> | 25-589906 | 2-5-16 | 10 KK | Ryan homes | 1142 | Dargon Quarry Ln | SFD |
| 21 | <u>16-21</u> | 25-591959 | 2-5-16 | 20KK | Ryan Homes | 1112 | Dargon Quarry | SFD |
| 22 | <u>16-22</u> | 25-468708 | 2-9-16 | 1225 | Eric Beasley | 27 | E. E St. | Int. Reno. |
| 23 | <u>16-23</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Wine & Chocolate Walk |
| 24 | <u>16-24</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Down Hill Run |
| 25 | <u>16-25</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Community Picnic & Vendors |
| 26 | <u>16-26</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Potomac Street Mile Run |
| 27 | <u>16-27</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Halloween Party |
| 28 | <u>16-28</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Hometown Hollidays |
| 29 | <u>16-29</u> | 25-464702 | 2-10-16 | 1677 | FCPS High School | 101 | Cummings Dr | Dugout replacement |
| 30 | <u>16-30</u> | 25-467094 | 2-3-16 | 943 & 944 | Brunswick Main Street | 1 | E. Potomac St. | Progressive Dinner |
| 31 | <u>16-31</u> | 25-473574 | 2-18-16 | 262 | Heather Delaughter | 26 | E. Orndorff | Dumpster/Reno |
| 32 | <u>16-32</u> | 25-478711 | 2-19-16 | 625 | Solar Energy World- Chris Shipley | 22 | N. Virginia Ave | Solar Panels |
| 33 | <u>16-33</u> | 25-479025 | 2-24-16 | 1363 | Fireworks Now LLC | 52 | Souder Rd. | Fireworks Temp Business |
| 34 | <u>16-34</u> | 25-592001 | 2-29-16 | 3 RR | Ryan Homes | 409 | Potomac View Pkwy | SFD |
| 35 | <u>16-35</u> | 25-592007 | 2-29-16 | 9 RR | Ryan Homes | 505 | Potomac View Pkwy | SFD |
| 36 | <u>16-36</u> | 25-492285 | 2-29-16 | 45 FF | Ryan Homes | 1210 | Volunteer DR | SFD |

U&O Log 2016

| Item # | U&O # | Receipt Date | Street # | Street Address | Zoning Certificate # | AP # | Issuance Date |
|--------|-------|--------------|----------|----------------|----------------------|--------|---------------|
| 2 | 16-2 | 2-1-16 | 1109 | Long Farm Cir | SFD | 135609 | 2-1-16 |
| 3 | 16-3 | 2-3-16 | 6 | W. Potomac St. | SFD | 139064 | 2-3-16 |

MONTHLY CODE ENFORCEMENT REPORT

| Violations | February 2016 | YTD January-February 2016 | Past January-February 2015 |
|-----------------------------|----------------------|----------------------------------|-----------------------------------|
| WARNINGS | | | |
| Vehicles/ Vehicle repair | 0/0 | 1/0 | 6/0 |
| Property trash/ Unsec. | 3/0 | 10/0 | 9/0 |
| Property Repair/Property | 0/0 | 1/0 | 0/0 |
| Overgrowth /Unsanitary | 0/0 | 0/0 | 0/0 |
| Vac. prop.trash/ Unsec.vac | 2/0 | 2/0 | 0/0 |
| S.walk repair/ S.Walk Trash | 0/1 | 0/1 | 0/1 |
| Littering | 0 | 0 | 2 |
| Vacant Overgrowth | 0 | 0 | 0 |
| Animal Waste / Snow and | 0/59 | 0/122 | 1/96 |
| Livestock | 0 | 0 | 0 |
| Trash Cans /Signs | 1/0 | 1/0 | 1/1 |
| Warning Totals | 66 | 138 | 117 |
| CITATIONS | | | |
| Vehicles/ Vehicle repair | 0/0 | 0/0 | 2/0 |
| Property trash/ Unsec. | 0/0 | 0/0 | 1/0 |
| Property Repair/ Property | 0/0 | 0/0 | 0/0 |
| Overgrowth/ Unsanitary | 0/0 | 0/0 | 0/0 |
| Vac. prop. trash,/ Unsec. | 0/0 | 0/0 | 0/0 |
| S walk repair/ S walk trash | 0/0 | 0/0 | 0/0 |
| Littering | 0 | 0 | 0 |
| Vacant Overgrowth | 0 | 0 | 0 |
| Animal Waste/ Snow and | 0/3 | 0/3 | 0/13 |
| Livestock | 0 | 0 | 0 |
| Trash Cans | 0 | 0 | 0 |
| Signs | 0 | 0 | 0 |
| Citation Totals | 3 | 3 | 16 |
| Complaints | 4 | 15 | 14 |

2016 Constant Yield Tax Rate Certification

Taxing authority: **Brunswick
in Frederick County**

| | | | | |
|----|------------|---------------------------------------|----|-------------------------|
| 1 | 1-Jul-2015 | Gross assessable real property base | \$ | 455,573,600 |
| 2 | 1-Jul-2015 | Homestead Tax Credit | - | <u>137,106</u> |
| 3 | 1-Jul-2015 | Net assessable real property base | | 455,436,494 |
| 4 | 1-Jul-2015 | Actual local tax rate (per \$100) | x | <u>0.4620</u> |
| 5 | 1-Jul-2015 | Potential revenue | \$ | 2,104,117 |
| 6 | 1-Jul-2016 | Estimated assessable base | \$ | 482,024,535 |
| 7 | 1-Jan-2016 | Half year new construction | - | 8,321,000 |
| 8 | 1-Jul-2016 | Estimated full year new construction* | - | 5,000,000 |
| 9 | 1-Jul-2016 | Estimated abatements and deletions** | - | <u><u>3,073,032</u></u> |
| 10 | 1-Jul-2016 | Net assessable real property base | \$ | 465,630,503 |
| 11 | 1-Jul-2015 | Potential revenue | \$ | 2,104,117 |
| 12 | 1-Jul-2016 | Net assessable real property base | ÷ | 465,630,503 |
| 13 | 1-Jul-2016 | Constant yield tax rate | \$ | 0.4519 |

Certified by



Director

* Includes one-quarter year new construction where applicable.

**Actual + estimated as of July 1, 2016, including Homestead Tax Credit.

LARRY HOGAN
Governor

BOYD RUTHERFORD
LT. Governor



DEPARTMENT OF
ASSESSMENTS & TAXATION

SEAN POWELL
Director

MICHAEL HIGGS JR.
Deputy Director

Date: February 12, 2016
To: All Municipal Taxing Authorities
From: Sean Powell, Director
Re: 2016/17 Constant Yield Tax Rate - Instructions

The Department of Assessments and Taxation is charged with administering the Constant Yield Tax Rate law. The law is found in two separate sections of the Tax-Property Article, §§ 2-205 and 6-308. The latter section contains the provisions that must be followed by taxing authorities. We are here to answer your questions and assist you in complying with this law.

Municipal corporations may set any tax rate for personal property without regard to the constant yield tax rate process. However, failure to comply with the constant yield tax rate law could have serious consequences for your jurisdiction. If the notice requirements are not fulfilled, the Department must notify the Attorney General who has required jurisdictions to lower their real property tax rates.

Concept

The constant yield tax rate is calculated by the Department for each taxing authority in the State. It represents the real property tax rate for the coming tax year that will generate the same amount of revenue that was generated during the current tax year. As assessments increase, the constant yield tax rate decreases. Implicit in this concept is the idea that *a tax rate at or below the existing tax rate is a tax increase if it is higher than the constant yield tax rate.* When a taxing authority plans to impose a real property tax rate that is higher than the constant yield tax rate, it must advertise the tax increase and hold a public hearing. If the taxing authority plans to set a real property tax rate at the current level, but above the constant yield tax rate, it must be advertised and a hearing must be held.

For the upcoming tax year, the assessable base of some taxing authorities has decreased. Therefore, the Constant Yield Tax Rate for those jurisdictions will actually be higher than the property tax rate for the current year. However, the legal requirements for adopting a tax rate above the Constant Yield Tax Rate remain the same. Accordingly, any taxing authority that is proposing a tax rate above the Constant Yield Tax Rate must comply with the enclosed instructions.

If the taxing authority plans to set a real property tax rate that is equal to or less than the Constant Yield Tax Rate, then the Constant Yield Tax Rate statute **does not** require a notice or a hearing.

Procedures

The law establishes very strict procedures governing the advertisement and the public hearing. Further, the law requires that the Department of Assessments and Taxation monitor the advertising and hearing process and report to the Attorney General any apparent violations. In the past, violations have resulted in jurisdictions being ordered to reduce the tax rate after tax bills had been issued. To avoid violating the law, you must comply with the following procedures:

300 W. Preston St. Room 605 Baltimore, MD 21201
www.dat.maryland.gov

410.767.4481 (phone) 1.800.735.2258 (MD relay)
410.333.5873 (fax) 1.888.246.5941 (toll free)

LARRY HOGAN
Governor

BOYD RUTHERFORD
LT. Governor



DEPARTMENT OF
ASSESSMENTS & TAXATION

SEAN POWELL
Director

MICHAEL HIGGS JR.
Deputy Director

- 1. Notice or Advertisement (2 options):** (1) Mail the proper notice to each real property taxpayer who resides in your jurisdiction; or (2) place an advertisement in a newspaper of general circulation in your jurisdiction. If you want to mail the notice to each resident, please contact the Department for prior approval and guidance.
- 2. Form of the Notice or Advertisement:** The language is specified word for word in the statute. An ad that deviates from the statutory requirements does not meet the requirements of the law and will be referred to the Attorney General for action. A sample notice with instructions and calculations for the arithmetic (Form CYTR #3) are included in this package. The wording in the statute is required and may not be modified. No part of this notice may be omitted. Additional language consistent with the intent of the law will be permitted (e.g. information regarding access to the hearing for the disabled). *Additional language designed to recast a tax rate in excess of the constant yield tax rate as anything other than a tax increase is contrary to the intent of the constant yield tax rate law and is not acceptable. It does not matter whether the additional language is within or outside the border of the required notice.* In order to minimize your advertising costs and avoid needless litigation, please use only the language required by law. If you have any question about the acceptability of additional language, contact Nruti Desai at the address on the following page.

If you are using the same tax rate as last year, please note that the percentage change in Section 1 and Section 2 of the advertisement will be the same but may be different than Section 4. Even though the calculations for the new real property tax revenues generated in Section 2 and Section 4 will vary due to rounding, please use the figure from Section 2 in both sections. Please use whole dollars in the advertisement and round to one decimal place in the percent changes.

We will gladly review any advertisement prior to publication. The advertisement will be checked for any errors in the text and calculations, and any additional language will be reviewed. If you wish, we will write your advertisement for you if you furnish us with your proposed tax rate(s). We will attempt to get the advertisement back to you by the next work day. Whenever possible, you will receive a response from us the same day we receive it. Please contact Cynthia Barkley for additional information.

- 3. Style and Placement of the Advertisement:** The ad must be at least 1/8th of a page with 12 point type. The notice must not be placed on pages with legal notices or classified advertisements. The headline must be in bold face with all capital letters. The text of the advertisement must be in regular face with mixed case letters. Be sure to emphasize these requirements with the newspaper. The sample notice enclosed shows the correct form for the advertisement.
- 4. Timing of the Advertisement and Hearing:** The hearing must be held on or after the 7th day and on or before the 21st day after the notice is published. Do not count the day of the notice or advertisement, but count the day of the hearing and all intervening calendar days, including Saturdays, Sundays, and holidays. This means that the advertisement must appear between one and three weeks before the hearing. The hearing must be held on or before June 17th before the date required by law for imposition of the property tax. This means that the absolute latest the advertisement can be published is June 10th

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DEPARTMENT OF
ASSESSMENTS & TAXATION

SEAN POWELL
Director

MICHAEL HIGGS JR.
Deputy Director

for a June 17th hearing.

5. **Reporting to the Department:** The taxing authority must provide a copy of the *entire* newspaper page that carried the notice or evidence that the notice was mailed to each property taxpayer. A photocopy of the newspaper page or just the advertisement itself are not acceptable. Please use the enclosed Form CYTR #2. This must be sent to the Department within 15 days of the date of the advertisement. We strongly recommend that you send the Department a copy of the notice as soon as it is published, especially if the Department has not reviewed the advertisement prior to publication. We review all advertisements as soon as they are received so that if the advertisement does not conform to the law you may have time to republish it and hold a new hearing before the June 17th deadline. Failure to properly report to the Department is noncompliance that must be referred to the Attorney General.
6. **Setting the Rate:** The real property tax rate must be set at the constant yield tax rate hearing, or at a later time if the day, time, and location the tax rate will be set is announced at the hearing. The personal property tax rate can be set at any time consistent with law.

Enclosed is the Constant Yield Tax Rate Certification (Form CYTR #1) which shows the constant yield tax rate and the associated steps in its calculation for your jurisdiction. Personal property is not part of the constant yield tax rate calculation.

Please remember that the constant yield tax rate uses an estimate of assessable real property made in February, several months before tax rates are typically set. Every effort is made to provide reliable estimates of revenue for the upcoming year. However, these estimates may be affected by subsequent reductions in assessments by the local Property Tax Assessment Appeal Board or the Maryland Tax Court for certain properties. The Department issues revised estimates on a county basis in late March which may be obtained by contacting this office or from our web site at www.dat.maryland.gov

Questions or Problems:

Department of Assessments and Taxation
Attn: Nruti Desai, Office of the Director
301 West Preston Street, Room 808
Baltimore, Maryland 21201
Phone: (410) 767-4884
Fax: (410) 333-5873
Email: nruti.desai@maryland.gov

Enclosures: Sample Notice

Form CYTR #1 (Constant Yield Tax Rate Certification)

Form CYTR #2 (Reporting Form)

Form CYTR #3 (Advertisement Calculation Instructions)

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www.dat.maryland.gov

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Calculations for Increasing Constant Yield Tax Rate Advertisement

Part 1: For the tax year beginning July 1, 2016, the estimated real property assessable base will decrease by **1**% from \$**2** to \$**3**.

$$\mathbf{1} = \frac{(\text{Line 3} - \text{Line 10})}{(\text{Line 3})}$$

$$\mathbf{2} = \text{Line 3}$$

$$\mathbf{3} = \text{Line 10}$$

Part 2: If county/city/town maintains the current real property tax rate of \$**4** per \$100 of assessment, real property tax revenues will decrease by **5**% resulting in a \$**6** reduction in real property tax revenues.

$$\mathbf{4} = \text{Line 4}$$

$$\mathbf{6} = \frac{\text{Line 3} \times \text{Line 4} - \text{Line 10} \times \text{Line 4}}{100}$$

$$\mathbf{5} = \frac{\mathbf{6}}{\frac{\text{Line 3} \times \text{Line 4}}{100}}$$

Part 4: The proposed tax rate is **7**% higher than the constant yield tax rate and will generate \$**8** in additional real property tax revenues.

$$\mathbf{7} = \frac{(\text{Proposed Rate} - \text{Line 13})}{\text{Line 13}}$$

$$\mathbf{8} = \frac{\text{Line 10} \times \text{Proposed Rate} - \text{Line 10} \times \text{Line 13}}{100}$$

NOTE: Line numbers correspond with the line numbers of form CYTR #1.

LARRY HOGAN
Governor

BOYD RUTHERFORD
LT. Governor



DEPARTMENT OF
ASSESSMENTS & TAXATION

SEAN POWELL
Director

MICHAEL HIGGS JR.
Deputy Director

MEMORANDUM

Date: February 12, 2016
To: All Taxing Authorities
From: Sean Powell, Director
Re: Department Notification - Constant Yield Tax Rate Notice

Please complete this form letter and return at the appropriate time as indicated to:

Department of Assessments and Taxation
Attention: Nruti Desai, Office of the Director
301 West Preston Street, Room 808
Baltimore, Maryland 21201

Please check one of the following:

- 1. The taxing authority has established a tax rate not in excess of the Constant Yield Tax Rate.
Please Respond to the Department Within 15 Days When the Tax Rate, Not Exceeding the Constant Yield Tax Rate, Is Set.

- 2. The taxing authority plans to exceed the Constant Yield Tax Rate and attached is a copy of the entirepage of the newspaper notice or a copy of the dated notice that was mailed to each property taxpayer.
Please Respond to the Department within 15 Days of the Date of the Newspaper Notice, or Date the Notice Was Mailed to Each Property Taxpayer.

Taxing Authority:

County or Municipality and the County

Name/Signature:

Date: _____ Phone _____

E-Mail Address: _____

COUNTY NEWSPAPER NOTICE REQUIREMENTS

Headline must be all capital letters and bold type as shown.
Remainder must be in both upper and lower case characters as shown.
Notices must be in 18-point font. County advertisements must be
a minimum of 1/4 page in size and
must not be placed with legal notices or classified ads.

(NAME OF JURISDICTION) NOTICE OF A PROPOSED REAL PROPERTY TAX INCREASE

The (name of taxing authority) of (name of jurisdiction) proposes to increase real property taxes.

1. For the tax year beginning July 1, 2016, the estimated real property assessable base will decrease by%, from \$..... to \$.....

2. If (name of jurisdiction) maintains the current tax rate of \$..... per \$100 of assessment, real property tax revenues will decrease by% resulting in a \$..... reduction in real property tax revenues.

3. In order to fully offset the effect of decreasing assessments, the real property tax rate could be increased to \$....., the constant yield tax rate.

4. The (county, city, town, etc.) is considering increasing its real property tax rate above the constant yield tax rate. The (county, city, town, etc.) proposes to adopt a real property tax rate of \$..... per \$100 of assessment. This tax rate is% higher than the constant yield tax rate and will generate \$..... in additional property tax revenues.

A public hearing on the proposed real property tax rate increase will be held at (time) on (date) at (location).

The hearing is open to the public, and public testimony is encouraged.

Persons with questions regarding this hearing may call (phone number) for further information.

SAMPLE NOTICE-INCREASING CYTR



Solar Power Purchase Agreement (Commercial MD)

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

| Purchaser: | | Seller: | |
|--------------------|--|------------------|--|
| Name and Address | City of Brunswick MD 1 West Potomac Street Brunswick, MD 21716 Attention: John Smith, NA | Name and Address | SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department |
| Phone | 555-555-5555 | Phone | (650) 638-1028 |
| E-mail | a@a.com | E-mail | Contracts@solarcity.com |
| Facility Ownership | Purchaser owns the Facility | | MD: HIC 128948 |
| Tax Status | Non-profit | | |
| Project Name | City of Brunswick | | |

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

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

- Exhibit 1 Pricing Attachment
- Exhibit 2 System Description, Delivery Point and Premises
- Exhibit 3 General Terms and Conditions (*Revised December 4, 2014*)

Purchaser: City of Brunswick MD

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Pricing Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to three (3) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes Accrue to Seller.**
4. **Contract Price:**

| Contract Year | \$/kWh |
|----------------------|---------------|
| 1 | \$0.0540 |
| 2 | \$0.0551 |
| 3 | \$0.0562 |
| 4 | \$0.0573 |
| 5 | \$0.0585 |
| 6 | \$0.0596 |
| 7 | \$0.0608 |
| 8 | \$0.0620 |
| 9 | \$0.0633 |
| 10 | \$0.0645 |
| 11 | \$0.0658 |
| 12 | \$0.0671 |
| 13 | \$0.0685 |
| 14 | \$0.0699 |
| 15 | \$0.0713 |
| 16 | \$0.0727 |
| 17 | \$0.0741 |
| 18 | \$0.0756 |
| 19 | \$0.0771 |
| 20 | \$0.0787 |

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

5. **Condition Satisfaction Date:** 180 days after the Effective Date
6. **Anticipated Commercial Operation Date:** 365 days after the Effective Date
7. **Outside Commercial Operation Date:** 545 days after the Effective Date
8. **Rebate Variance:** All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than this amount, the Parties may renegotiate the prices set forth in Section 4 of this Exhibit 1. If the Parties cannot reach agreement, Seller may terminate this Agreement without penalty within 30 days of confirmation of the rebate amount. For the avoidance of doubt, under such termination neither Purchaser nor Seller shall be required to pay the Termination Payment.

Exhibit 3

General Terms and Conditions

Revised December 4, 2014

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "Term"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the "Delivery Point"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System.
3. **Term and Termination.**
 - a. **Initial Term.** This Agreement is effective as of the Effective Date. The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the utility. Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
 - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System under Section 15(b) by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement and at a Contract Price to be determined. Notwithstanding the foregoing, if the Parties are unable to agree on a Contract Price, then this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 4(c), "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

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

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"**Governmental Authority**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

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

"**Tax Credits**" means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations.**

a. _____ !! ! _____.

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "Construction Agreement" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the utility for interconnection of the System to the utility's electric distribution system; and
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

b. _____ ! _____.

Purchaser's obligations under this Agreement are conditioned on the completion of the following conditions to Purchaser's reasonable satisfaction:

- i. The occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit 1**); provided that the Outside Commercial Operation Date shall be automatically extended on a day for day basis for each day of Force Majeure or any other delay caused by the Purchaser or any third party.

c. **Failure of Conditions.**

If any of the conditions listed in subsections (a) or (b) above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates and the failed condition does not result from Force Majeure or the actions/omissions of the terminating Party or any third party, including the utility, then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement. Notwithstanding anything to the contrary in this Agreement, if Seller commences construction of the System, all conditions listed in subsections (a) and (b) shall be deemed automatically satisfied effective as of such commencement and each party's respective termination rights under this Section 6(c) shall automatically terminate and have no further force or effect as of such date.

7. _____ !! ! _____.

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

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

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

interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties.

- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) day light hours as defined by the United States National Weather Service in the area where the System is located (each, a "**Scheduled Outage**") per calendar year during the Term, during which time Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours as defined by the United States National Weather Service in the area where the System is located per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. For avoidance of doubt, the forty-eight (48) hour period shall include all Scheduled Outage hours allowed under any of the terms of this Agreement, including those undertaken pursuant to Section 8(d).
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that reasonably should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller

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

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a “**Defaulting Party**”, the other Party shall be the “**Non-Defaulting Party**” and each event of default shall be a “**Default Event**”:

- (1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- (2) failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- (3) if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- (4) Purchaser loses its rights to occupy and enjoy the Premises;
- (5) a Party, or its guarantor (if any), becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
- (6) Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

b. **Remedies.**

- (1) **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.
- (2) **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to System installation a \$5,000 design cancellation fee shall also apply in addition to any other remedy available to Seller.
- (3) **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):

- A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) reasonable compensation, on a net after tax basis assuming a tax rate of 35%, for the loss or recapture of (A) the investment tax credit equal to thirty percent (30%) of the System value; and (B) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (C) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (D) other financing and associated costs not included in (A), (B) and (C), (ii) the net present value (using a discount rate of 5%) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (iii) removal costs as provided in Section 12(b)(3)(C) and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the utility; (iii) any removal costs incurred by Purchaser; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

13. Representations and Warranties.

a. General Representations and Warranties. Each Party represents and warrants to the other the following:

- (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. _____, Purchaser represents and warrants to Seller the following:

- (1) License. Purchaser has title to or a leasehold or other property interest in the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If

Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.

- (2) Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- (3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- (5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
- (6) Oregon Only: The electricity generated by the System will be used solely for commercial and business purposes. No portion of the electricity generated will be used for personal, family, household or agricultural purposes.

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- (1) If Seller penetrates the Facility roof, Seller will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) one (1) year following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof.
- (2) Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Term.
- (3) During the Term, Seller will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to Seller under this Agreement. If Seller damages the Facility or property Seller will repair the damage Seller causes or pay Purchaser for the damage Seller causes. Seller may use new or reconditioned parts when making repairs or replacements. Seller may also, at no additional cost to Purchaser, upgrade or add to any part of the System.
- (4) Seller's total liability arising out of or relating to this Section 13(c) shall in no event:
 - A. *For System Failure or Replacement:* exceed the total of the Purchaser's payments under this Agreement during the previous twelve (12) month period; and
 - B. *For damages to the Facility or property:* exceed three million dollars (\$3,000,000).

d. **NO OTHER WARRANTY.** OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 13(A) AND 13(C), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY UNDER THIS AGREEMENT. THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

14. System Damage and Insurance.

- a. **System Damage.** If the System is damaged or destroyed other than by Purchaser's negligence, willful misconduct or breach of this Agreement, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last two (2) years of

the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement without liability, unless Purchaser agrees to pay for the cost of restoration of the System.

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

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

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the taxowner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. The "**Fair Market Value**" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the amount paid to purchase the system be less than the aggregate of the amounts calculated under Section 12(b)(3)(A)(ii) and (iv) as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must

provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied, concerning the System, "as is, where is, with all faults"; provided that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

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

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 13 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 16(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 16(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.
 - i. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

a. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third party claims pursuant to Section 16, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Except with respect to indemnification of third party claims pursuant to Section 16 and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (16)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.

17. **Force Majeure.**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); any Change in Law that makes it unlawful, impossible or materially impracticable for Seller to perform under this Agreement; unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred (100) days (thirty days in the instance of a Change in Law that is a Force Majeure event) or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then the Parties shall, within thirty (30) days following receipt by the other Party of notice of such Force Majeure event, meet and attempt in good faith to negotiate amendments to this Agreement. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then the Party not claiming Force Majeure (except to the extent that the Force Event is a Change in Law, under which circumstances, Seller) shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to payment of amounts accrued prior to termination and actions or omissions that occur prior to termination.
- e. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar

legislation); or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder; provided, that a change in federal, state, county or any other tax law after the Effective Date shall not be a Change in Law pursuant to this Agreement.

18. **Assignment and Financing.**

a. **Assignment.**

i. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. If Purchaser has been provided with reasonable proof that the proposed assignee has comparable experience in operating and maintaining solar photovoltaic systems and the financial capability to do the same, Purchaser's withholding of consent shall be deemed unreasonable.

ii. Notwithstanding Section 18(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to any Financing Party, any entity through which Seller is obtaining financing from a Financing Party, any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee).

iii. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) ("**Financing Parties**") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

19. **Confidentiality.**

a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants, lenders and Financing Parties (collectively, "**Representatives**"), and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 19(a), except as set forth in Section 19(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 19(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 19(a).

To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 19(a), but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party's or its Representatives' breach of this Agreement, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

20. **Goodwill and Publicity.**

- a. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.
- b. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's purchase or use of solar or renewable energy in connection with this Agreement and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

21. **General Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration.** Any dispute arising from or relating to this Agreement shall be arbitrated in San Francisco, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 8(a) (Facility Access Rights), Section 10 (Removal of System at Expiration), Section 13 (Representations and Warranties), Section 14(b) (Insurance Coverage), Section 16 (Indemnification and Limitations of Liability), Section 19 (Confidentiality and Publicity), Section 21(a) (Choice of Law), Section 21 (b) (Arbitration and Attorneys' Fees), Section 21(c) (Notices), Section 21 (g) (Comparative Negligence), Section 21(h) (Non-Dedication of Facilities), Section 21(j) (Service Contract), Section 21(k) (No Partnership), Section 21(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 21(n) (No Third Party Beneficiaries).

- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 10 of this Agreement.
- i. **Es toppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the

objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Bonds.** Notwithstanding any language to the contrary in this Agreement and solely to the extent a performance and/or payment bond is being issued to Purchaser:
 - i. **Performance bond liability.** Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond the one (1) year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
 - ii. **Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.
 - iii. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.

End of Exhibit 3

