

On-Site Generation Service Agreement

THIS AGREEMENT is made and entered into this _____ day of _____, 2015 (the “Effective Date”) by and between Duke Energy Carolinas, LLC (“Duke”), and The City of Greensboro, 300 West Washington Street, Greensboro, NC 27401 (“Customer”), having a physical address at 2199 White Street, Greensboro, North Carolina 27405(North Buffalo Plant) (hereinafter “the Site”). Duke and the Customer are hereinafter collectively referred to as “the Parties.”

WHEREAS, the Customer desires for Duke to provide equipment and services to allow for on-site generation at its Site in order for Customer to maintain the supply of electricity to its Site in the event the normal electric supply is interrupted;

WHEREAS, Duke is willing to provide such equipment and services to allow for on-site generation at Customer’s Site in accordance with the terms of this Agreement and the Schedule attached hereto as **On-site Generation Service**.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Scope of Services**. Duke shall provide the on-site generation equipment identified in **Scope Of Work** attached hereto (the “Equipment”) and the labor, supervision, equipment, materials and transportation necessary for the installation of the Equipment at the Customer’s Site, and maintenance and fuel acquisition to support the use of the Equipment (the “Services”). Customer shall provide, at no cost to Duke, any plans, specifications, drawings, or information that may be necessary or useful in the performance of the Services. In the event of any unforeseen difficulties in installation of the Equipment or performance of the Services due to conditions at the Site or due to the inaccuracy of information provided by Customer and relied upon by Duke, the Monthly Rate (as defined below), the scope of Services, and the Term shall be equitably adjusted to compensate Duke for any additional work. The Equipment shall only be approved for use by Customer upon: (i) completion of installation, (ii) connection to the Customer’s electric facilities, (iii) connection to Duke’s electric facilities and (iv) testing by Duke. Duke shall test the Equipment to ensure that it is in proper working order. Upon satisfactory completion of such tests, the Services shall be deemed accepted by Customer.
2. **Payment**. Customer shall pay the fees set forth in **On-site Generation Service** attached hereto (the “Monthly Rate”). Payments are due and payable on the date of the bill at the office of Duke. Bills are past due and delinquent on the fifteenth day after the date of the bill.
3. **Term and Termination**. This contract shall become effective upon the Effective Date and shall continue for a term of 10 years (“Initial Term”) unless otherwise terminated as provided herein. If either party breaches any material provision of this Agreement, including obligations for payment, which material breach remains uncured for a period of thirty (30) days from and after receipt of written notice, the non-breaching Party may terminate this Agreement and exercise any remedies at equity or at law. In addition, the Customer shall have the right to terminate this Agreement before the Initial Term has expired by (a) providing a minimum of ninety (90) days written notice prior to termination and (b) paying a termination fee (the “Termination Fee”). The Termination Fee will be calculated by taking the net present value of the Customer’s payments remaining in the Term, adding an estimated removal cost of the Equipment (including any costs incurred to restore Customer’s property to a substantially equivalent condition as before the

installation) as calculated by Duke, and subtracting therefrom the difference between the current salvage value of the Equipment and the present value at the time of termination of the salvage value used in establishing a monthly rate. In the event of any termination of the Agreement before the end of the Term, Duke shall be paid for all Services provided to the Customer prior to the effective date of termination. After the expiration of the Initial Term this Agreement shall be renewed for annual terms unless either party provides a minimum of ninety (90) days written notice of termination. This Agreement shall also be terminated immediately upon the occurrence of: (i) insolvency of any of the Parties, (ii) changes in laws, regulations or governmental restrictions which would make the providing of the Services impossible or impractical for Duke, and (iii) any act which jeopardizes Duke's title to or rights in the Equipment. Upon termination of this Agreement for any reason, Duke shall be entitled, without prejudice to any other remedies that Customer may have at law or in equity, to remove immediately all of its installed Equipment.

4. **Permits and Licenses.** Duke shall be responsible for obtaining all license and permits required to enable Duke to perform the Services, provided that Customer shall provide Duke all reasonable assistance in obtaining such permits and license. Customer will be responsible for environmental registration with the appropriate authority and Duke will prepare all necessary documents for such registration. Customer shall be responsible for paying all associated costs and fees to comply with any laws, rules, regulations, or ordinances of any federal, state or local authority, or any agency thereof, an estimate of which are attached hereto. Duke may upon thirty (30) days written notice to Customer terminate this Agreement without liability or penalty if Duke, after the exercise of all reasonable and diligent efforts, is unable to obtain or maintain any license, permit or other approval necessary to perform the Services or operate the Equipment.
5. **Right of Access.** Customer shall provide reasonable access to the Site at all times for Duke to perform the Services, including access for all vehicles (including, but not limited to, fuel tankers, cranes and other heavy construction vehicles), tools, materials and supplies reasonably required for maintenance of the Equipment. Customer shall provide a location on the Site for installation of Duke's Equipment, as well as reasonable lay-down area to store parts and perform the Services. Any additional costs incurred by Duke due to inadequate access to the Site shall be grounds for an equitable adjustment in the installation schedule and the Monthly Rate. Duke shall have the right to suspend services or adjust the schedule accordingly in the event that there is inadequate access to the Site, or if any other information is not promptly provided, or in the event that the safety of any person or property might be jeopardized by continuing with the Services.
6. **Preparation and Protection of Site.** In addition to the other obligations of Customer set forth in this Agreement, Customer shall be responsible for installation of any fences or other barriers to protect Equipment and third parties. Customer will also be responsible for installing any desired aesthetic screening of Equipment. Customer shall provide Duke all reasonable assistance in removing any fence or other barrier that obstructs Duke's ability to remove its Equipment upon termination of this Agreement.
7. **Ownership Rights.** Duke shall retain title to all Equipment provided by Duke pursuant to this Agreement, including all enhancements and accessories thereto, and all intellectual property rights associated therewith (including without limitation, rights to copyrights, trade secrets, and know-how), notwithstanding the fact that the Equipment or any part thereof may become in any manner attached to, embedded in or resting on any real property or building of the Customer. Customer shall keep the Equipment, and all enhancements and accessions thereto, free of all liens, encumbrances, or claims of any kind. In order to protect Duke from such liens and encumbrances, Customer shall, if requested by Duke, execute and deliver to Duke all uniform

commercial code financing (UCC-1) statements, continuation statements, notices and other documents that Duke may request from time to time to maintain, protect and perfect Duke's right, title and interest in the Equipment. In order to protect Duke from such liens and encumbrances, Customer hereby irrevocably appoints Duke as Customer's true and lawful attorney-in-fact with the power to sign Customer's name on, and to deliver any document described in the immediately preceding sentence. Copyrights or patents or other intellectual property created or developed during the performance of the Services shall be the property of Duke. For all such intellectual property, Duke shall grant an irrevocable, non-exclusive royalty-free license for Customer to use any such intellectual property during the term of this Agreement. Customer shall not make any alterations, additions or improvements to the Equipment without Duke's prior written consent.

If the Customer's financial condition declines at any time during the term of the Services hereunder, such that Duke has reasonable grounds to be insecure concerning the Equipment or Customer's ability to perform any of its obligations under this Agreement, Duke may request in writing adequate assurance of performance. Customer shall have ten (10) business days to provide such adequate assurance. If Duke, in its reasonable discretion, determines that Customer has failed to provide adequate assurance within the time period set forth above, then Duke shall have the right to terminate this Agreement immediately and recover the Equipment. Without limitation, grounds for insecurity may include (i) reduction in Customer's senior, unsecured long term debt rating below BB- or equivalent, (ii) notice of any lien or encumbrance allegedly filed against the Equipment; (iii) default of any real property lease upon which the Equipment is located; or (iv) default of any promissory note or loan agreement with any financial institution. Without limitation, adequate assurance to Duke may include cash prepayments, a parental guarantee, and/or a letter of credit, all in an amount and in a form reasonably acceptable to Duke.

8. **Safety.** All Services performed by Duke shall comply with Duke's Safe Work Practices requirements and applicable law. Customer will ensure that all Occupational Safety and Health Act requirements are adhered to for the area of the Site where any Duke Equipment, in support of the Services, is to be stored. It shall be the responsibility of the Customer to promptly notify Duke of any events or problems, other than that of a routine nature, relating to the operation and maintenance of the Equipment which comes to the Customer's attention. Duke, in its sole discretion, may provide Customer an emergency start-up button for the Equipment. Except for the use of this emergency start-up button in accordance with Duke instructions, the Customer shall not, nor shall it permit its employees, contractors or others to, tamper with, adjust, change or attempt to operate any of the Equipment for which Duke has responsibility pursuant to this Agreement.
9. **Warranty.** Duke warrants that services shall be performed in accordance with generally accepted industry practices, however, Duke does not guarantee the uninterrupted operation of the Equipment. Duke shall exercise reasonable efforts to complete the Services by the date agreed upon by the Parties. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, DUKE MAKES NO OTHER WARRANTIES OR GUARANTEES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,** provided, however, in the event of equipment failure, Duke guarantees it will use all reasonable efforts to correct the failure within 48 hours, including but not limited to hiring additional employees or acquiring and installing replacement parts as required.

10. **Limitation of Liability.** Except as provided in paragraph 15, Duke shall not be responsible for any work done by third-parties or for any loss, damage, cost or expense arising out of or resulting from such work, unless authorized in advance and supervised by Duke. **DUKE SHALL COMPLY WITH THE TERMS AND CONDITIONS OF ITS SERVICE REGULATIONS ON FILE WITH COMMISSIONS HAVING JURISDICTION OVER PUBLIC UTILITIES. NOTWITHSTANDING THE FOREGOING, DUKE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR SPECULATIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS DUE TO ANY ACT OR OMISSION UNDER THIS AGREEMENT.** Duke hereby agrees to indemnify and hold harmless the Customer from any and all damages caused by Duke's negligence arising out of or related to the work authorized under this Agreement. Duke further represents to the Customer that it currently is self-insured for liability up to \$1,000,000 and that it will be responsible for handling its claims.
11. **Protection of Equipment.** In the event of damage to Duke Equipment that is caused by any act or omission of Customer or Customer's agents, Customer agrees to pay all repair or replacement costs associated with the damage. Customer shall protect the Equipment from and shall be liable for loss, damage, theft, fire or destruction to Equipment while Equipment is on Customer's property (less normal wear and tear), and provided such loss or damage is not the result of any act or omission of Duke, its employees, or agents or when such property damage or loss occurs while the Equipment is being serviced or operated by Duke. This paragraph shall survive the termination of this Agreement.
12. **Assignment.** This Agreement shall inure to the benefit of and be binding on the parties and their successors and assigns. Neither party shall assign all or any portion of this Agreement without the prior written consent of the other Party, except that either Party may assign the Agreement without such consent to its successor by merger, or to a person acquiring all or substantially all of business assets or to its parent or a wholly owned subsidiary.
13. **Rate Schedule and Service Regulations.** The sale, delivery, and use of electric power hereunder, and all services of whatever type to be rendered or performed in accordance with the terms of this Agreement, shall in all respects be subject to and in accordance with all of the terms and conditions of Duke's Rate Schedule, **On-site Generation Service Schedule** and its Service Regulations, all of which are now on file with the North Carolina Utilities Commission and are hereby incorporated by reference and made a part of this Agreement as though fully set forth herein.
14. **Amendments.** Services rendered under this Agreement are subject to the authority of the North Carolina Utilities Commission and any changes or other modifications lawfully made thereto. This agreement is subject to changes or substitutions, either in whole or in part, made from time to time by a legally effective filing of Duke with, or by order of, the regulatory authority having jurisdiction. Unless specified otherwise, any such changes or substitutions shall become effective immediately and shall nullify all prior provisions in conflict therewith. Except as expressly provided herein, the terms of this Agreement may not be modified except by written agreement duly executed by both Parties. No amendments to this agreement may be accomplished verbally or through the exchange of letters.
15. **Subcontracting.** Duke shall be permitted to use subcontractors to perform the services. Notwithstanding the use of subcontractors, Duke shall continue to be primarily responsible for the quality of the Services.

16. **Waiver.** The failure of either Party to insist upon performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such a right in the future.
17. **Confidentiality.** Information disclosed (either directly or by visual examination of facilities) by either party to the other during the performance of the Services may include confidential or proprietary information of such party or third parties to whom it is bound by written obligations of confidentiality ("Confidential Information"). In the event (i) any such Confidential Information is disclosed in writing and is specifically identified as proprietary or confidential in writing prior to or at the time of disclosure, or (ii) such Confidential Information is disclosed orally or by visual examination and the party claiming confidential status therefore identifies the information in writing as confidential at the time or within a reasonable time after disclosure, the party receiving such Confidential Information shall keep it in confidence and shall not voluntarily furnish or otherwise disclose it to any third party during or after completion of the Services. Neither party shall be obligated to maintain the confidentiality of any Confidential Information designated by the other party as confidential or proprietary if: (a) The information was in the receiving party's possession or was known to the receiving party prior to its receipt from the other party and the receiving party was under no legal obligation to protect the confidentiality of such information; (b) The information is independently developed by the receiving party without the utilization of the Confidential Information; (c) The information is or becomes public knowledge without the fault of the receiving party; or (d) The information is or becomes available to the receiving party from another source without breach of any legal obligation to protect such information.
18. **Delays.** In no event shall Duke be responsible for any damages arising out of any failure to perform or delay due to any cause beyond Duke's reasonable control, including but not limited to riot, war, public emergency, fire, earthquake, acts of God, governmental restrictions, labor disturbances, strikes, delays in delivery of Equipment or interference by the Customer of entry on the Site or any act or failure to act by any third party. In such an event, Duke shall be entitled to an extension of time necessary to overcome the cause of the failure to perform or delay.
19. **Independent Contractor.** The Parties are independent contractors. Neither is the agent of the other. This is not a partnership agreement. While the Parties may enter into additional agreements, no Party here commits to any other to enter into such agreement
20. **Survival; Severability.** All Sections of this Agreement providing for indemnification, confidentiality or limitation of liability shall survive termination, cancellation or expiration of this Agreement. If any provision, or part thereof, of this Agreement shall be held to be invalid or unenforceable for any reason, the invalid provision or part thereof shall be stricken from the Agreement, and the remainder of the Agreement or provision shall be valid and enforceable to the fullest extent permitted by law.
21. **No Publication.** Neither party shall use the other party's name or the fact that a party is performing or receiving Services in any press releases, media statements or public communications or otherwise publicize this Agreement without the other party's prior written consent. Neither party shall use the other party's (including its subsidiaries and affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way without such party's prior written consent, and neither party shall be deemed to have granted the other party a license of, or granted the other party any rights in, any of the foregoing by entering into this Agreement.

22. **Entire Agreement.** The Parties acknowledge that this Agreement constitutes the entire agreement between the parties and supercedes all previous agreements and understandings concerning the work. In the event of any conflict between the terms and conditions of this Agreement, the terms of **Scope of Work** or the terms of the Rate Schedule, **On-site Generation Service Schedule** and Service Regulations, the terms of the Rate Schedule, **On-site Generation Service Schedule** and Service Regulations shall govern and control. The terms of the Agreement shall control over the terms of **Scope of Work**. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to any conflict of law principles.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Duke Energy Carolinas, LLC

By: _____

Title: _____

Date: _____

Witness

By: _____

Title: _____

Date: _____

The City of Greensboro

By: _____

Title: _____

Date: _____

Witness

By: _____

Title: _____

Date: _____

Duke Energy's Energy Services Group is not part of the regulated services offered by Duke Energy Carolinas and is not in any way sanctioned by the North Carolina Utilities Commission. Purchasers of products or services from Energy Services will receive no preference or special treatment from Duke Energy Carolinas and a customer does not have to buy products or services from Energy Services in order to continue to receive the same safe and reliable electric service from Duke Energy Carolinas.

The City of Greensboro On-Site Generation Service Agreement

Scope of Work

To support loads as calculated in the Generator Feasibility Study, Duke Energy will provide the following equipment installation:

Generator:

One (1) – 3000kW standby rated, 480 Volt diesel electric generator with walk-in sound attenuated weatherproof enclosure. The generator shall have a sub-base mounted fuel tank adequate for approximately 24 hours of run time at 100% of rated load.

Switchgear:

One (1) – 4000A utility paralleling transfer gear package located in weatherproof enclosure and located adjacent to the generator. Upon loss of normal utility power to the facility, the transfer gear will signal the generator to start. Once rated voltage and frequency are attained by the generator it shall supply the load.

Monthly Rate

Duke Energy will provide On-Site Generation Service to The City of Greensboro, North Buffalo Plant located at 2199 White Street, Greensboro, North Carolina 27405 for a monthly fee of **\$30,550.00** per month for 120 months.