

ATTACHMENT C.1 – TERMS AND CONDITIONS**ELECTRICITY PURCHASE TERMS AND CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR****1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION**

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Electricity Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Electricity Procurement Regulations, the Electricity Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Department of Transportation. Unless performance is separately and expressly waived in writing by the Director, Department of Transportation, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Department of Transportation. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The Director, Department of Transportation, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Department of Transportation, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

- A) The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Department of Transportation, in writing and is authorized to:
- (1) serve as liaison between the County and the contractor;
 - (2) give direction to the contractor to ensure satisfactory and complete performance;
 - (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
 - (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
 - (5) accept or reject the contractor's performance;
 - (6) furnish timely written notice of the contractor's performance failures to the Director, Department of Transportation, and to the County Attorney, as appropriate;
 - (7) prepare required reports;
 - (8) approve or reject invoices for payment;
 - (9) recommend contract modifications or terminations to the Director, Department of Transportation;
 - (10) issue notices to proceed; and
 - (11) monitor and verify compliance with any MFD Performance Plan.
- B) The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Electricity Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Department of Transportation, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Electricity Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Department of Transportation, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of Transportation, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of Transportation, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Department of Transportation or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of Transportation, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Department of Transportation, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of the Election Law, Annotated Code of Maryland.

13. GUARANTEE

- A) Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B) Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C) All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D) The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E) Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

16. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

17. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

18. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

19. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

20. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Department of Transportation, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Department of Transportation, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS
 (See Paragraph #20 Under the General Conditions of Contract
 Between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability	300	500	1,000	See Attachment
minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors				
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder
 Montgomery County Maryland (Contract #)
 Office of Procurement
 Rockville Center
 255 Rockville Pike, Suite 180
 Rockville, Maryland 20850-4166

*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS
 (See Paragraph #20 Under the General Conditions of Contract
 Between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment
Certificate Holder				
Montgomery County Maryland (Contract #)				
Office of Procurement				
Rockville Center				
255 Rockville Pike, Suite 180				
Rockville, Maryland 20850-4166				

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21. LICENSES AND AUTHORIZATIONS

The Contractor warrants and covenants that (a) it will possess, and will continue to possess for the duration of the Contract term, all required licenses and authorizations mandated by federal, state and local law in order to provide Electricity Supply Service under this Contract, and (b) it will at all times comply with all terms and conditions of such licenses and authorizations. The Contractor warrants and covenants that, for the duration of the Contract term, it will maintain in good standing its license and authorization as a Supplier and/or Marketer, as defined in the applicable jurisdiction's statutes and laws, including, but not limited to, Maryland Annotated Code, Public Utility Companies Article, Section 1-101(o). The Participant may request and the Contractor will promptly furnish evidence that the Contractor meets its warranties and covenants under this paragraph.

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Department of Transportation prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. TERMINATION FOR DEFAULT

The Director, Department of Transportation, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of Transportation, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Department of Transportation, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

27. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

28. TIME

Time is of the essence.

29. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

30. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

31. TITLE TO ELECTRICITY

The Contractor warrants good and marketable title to all electric energy delivered to the points of delivery under this Contract on behalf of the County, and will indemnify, defend and hold harmless the County and its directors, officers, elected officials and employees from and against all loss, cost, damage and other expenses, including attorney's fees and litigation expenses arising out of (a) Contractor's breach of the above-stated warranty, or (b) Contractor's title to and delivery of electricity, such claims including but not limited to environmental pollution liability. The Contractor's indemnification obligation under this paragraph is in addition to and not in derogation of any or all of the Contractor's indemnification obligations under conditions provided, however, that the Contractor's indemnification under this provision is limited to its liabilities in connection with the supply of electricity and/or performance of its obligations under the Contract.

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

ATTACHMENT C.2 – SAMPLE TASK ORDER

TASK ORDER NO. XX

**MONTGOMERY COUNTY MARYLAND, DEPARTMENT OF TRANSPORTATION,
DIVISION OF PARKING MANAGEMENT**

TO:	[Name of Solar Provider]
CONTRACT NO.:	[Contract Number]
CIP PROJECT NO.:	[CIP Number]
PROJECT:	[Name of Project]

THIS TASK ORDER IS BEING ISSUED IN ACCORDANCE WITH THE COMPENSATION, TERMS, CONDITIONS AND SCOPE OF SERVICES OF THE ABOVE REFERENCED CONTRACT.

A. SCOPE OF SERVICES

Comprehensive architectural and engineering services in support of ___[Name of Project]___, per the Scope attached to this Task Order as Exhibit “D”. The Solar Provider must provide complete drawings, specifications and technical documents, permitting, and construction administration in order to provide the County with a complete, safe and fully functioning facility.

Basic services must be completed in seven phases, as follows:

- Phase #1: Design Development Documents (50% Design)
- Phase #2: Construction Documents (100% Design)
- Phase #3: Proposal and Negotiation of Design
- Phase #4: Construction
- Phase #5: Interconnection
- Phase #6: Post Construction (Verification)
- Phase #7: Interconnection

The project must be designed to comply with all applicable federal, state and local codes, laws, and health regulations and be completed according to the terms explained in Exhibit “C” “Master Schedule”.

A.1. Basic Services

The basic services to be provided by the Solar Provider must be performed in the phases described in the scope of services of the Contract and this Task Order.

The Solar Provider, at its own expense, must make all the required submissions, and perform all required coordination, to obtain all permits and approvals required from appropriate utilities and government agencies, including the County and Maryland-National Capital Park and Planning Commission, and by other approving agencies, including all trade permits such as mechanical, electrical, and plumbing permits. Design revisions by the Solar Provider to meet requirements of approving authorities must be done at no cost to the County. The Solar Provider must initiate early and continuous reviews and coordination with these agencies.

The County Project Manager will assist the Solar Provider in obtaining the permits and approvals, when requested in writing by the Solar Provider, by: obtaining County representatives’ signatures and attending review and coordination meetings with the Solar Provider.

Following is a brief description of the overall Project:

- The site:-----
- The building(s):-----
- Accessory uses:-----
- Other:-----

The following is the sequence of events that will begin as soon as the design process starts and which may be updated and modified as the project develops:

- Initial kickoff meeting with the project team and all key players
- Solar Provider study of the project
- Design progress meetings with the County project management team, user agencies, and the Solar Provider key members
- Presentations to County officials, as necessary

The Solar Provider must provide copies of design documents to the County Project Manager to be distributed for review and comments.

A.2. Solar Provider’s Professional Responsibility and Standard of Care

By execution of this Task Order, the Solar Provider represents and agrees that (a) it is an experienced energy services firm having the ability and skill necessary to perform all the Services required of it under the Contract and this Task Order in connection with the design and construction of a Project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to: appropriate local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local utility laws, rules and regulations, and appropriate orders and interpretations by governing public authorities of such ordinances, requirements, laws, rules and regulations in effect at the time of commencement of the Solar Provider’s services on the Project), and that all drawings, plans, specifications and other documents prepared by the solar provider must be prepared in accordance with, and must accurately reflect and incorporate, appropriate laws, rules and regulations.

The Solar Provider hereby represents and agrees that the plans, drawings, specifications and other documents prepared by it for Construction will be complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Solar Provider, and that the Project, if constructed in accordance with such plans, drawings, specifications and other documents, will be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended.

The Solar Provider, in consideration of the fee specified hereinafter, conveys and agrees to perform, in connection with this Project, with the assistance of competent registered professional staff and/or sub consultants including but not limited to architect, structural engineer, mechanical engineer, electrical engineer, and any others as necessary, professional services as detailed in the Contract and/or in this Task Order.

The Solar Provider agrees to act in a reasonable, responsive and timely manner in the performance of all services under this Task Order.

The Solar Provider is responsible for the coordination of all drawings and design documents relating to the Solar Provider’s Project design, regardless of whether such drawings and documents are prepared by the Solar Provider or by the Solar Provider’s consultants. The Solar Provider is responsible for coordination and internal checking of all design documents and for the accuracy of all dimensional, layout and specified information contained therein, as fully as if each document were prepared by the Solar Provider. The Solar Provider is responsible for the completeness and accuracy of all documents, including drawings and specifications, submitted by or through the Solar Provider and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

A.3. Project Requirements

The Solar Provider must prepare drawings, specifications and other documents necessary so that the Construction

Contract cost is accurate and reasonable.

The Solar Provider must provide a detailed construction cost estimates as defined in the Contract. The Solar Provider must keep all estimates confidential.

Incorporated herein as Exhibit "C" and made a part of this Task Order is a Master Schedule for the Project, to be adhered to by the Solar Provider. No deviation from the Master Schedule will be allowed without a written Design Adjustment signed by the Using Department Head. Should the County determine that the Solar Provider is behind schedule, the Solar Provider must expedite and accelerate its efforts, which may include additional staff and/or overtime, to maintain the approved design schedule at no additional cost to the County, except for excusable delays as defined in the Contract. The Solar Provider must provide, within two (2) weeks after receipt of the Notice to Proceed, a detailed comprehensive implementation schedule sufficient to track the project progress within the Master Schedule for review and approval by the County. The schedule must include all phases of the project and each required submission to all required agencies (local, county, state, federal, and all permitting authorities and utility companies, etc.). The schedule must be submitted to the County in both paper format and electronic format. The schedule must be updated and submitted to the County monthly with each payment application.

All documentation provided by the Solar Provider at the end of each phase must comply with the requirements of Document File Formats as specified by the County Project Manager.

All costs of printing/reproduction necessary during the design and for permitting and construction administration by the Solar Provider must be borne by the Solar Provider.

During all the phases of the Project, the Solar Provider must coordinate design and construction sequencing with the County.

The following statement must be printed on all invoices submitted to the County for payment:

"The Solar Provider certifies that up to the date of this invoice the Solar Provider and/or its consultants have not engaged or performed any additional services without written authorization of the County."

A.4. Project Conferences and Meetings

Throughout all phases of the Project, the Solar Provider and its consultants must meet periodically with the County Project Manager when reasonably requested. Attendees shall be as determined by the County Project Manager. Unless noted otherwise, meetings the Solar Provider must attend include but are not limited to:

- Solar Provider orientation meeting and meeting with the County's technical personnel.
- Design meetings for the presentation of each design submission indicated in the Task Order, meetings must include representatives from all relevant disciplines. All design meetings will be held at the County's offices.
- Pre-construction conference.
- Bi-weekly construction progress meetings. Emergency field meetings may be held at the County's request to resolve urgent problems.
- Substantial Completion, Final Completion, verification and measurements meetings as required by the commissioning processes, and completion of warranty period meetings.
- Any meetings to be scheduled by the Solar Provider necessary to properly coordinate the design and construction administration effort, including, without limitation, meetings with governing and other regulating agencies, code officials and applicable utilities.

The Solar Provider must take and transcribe minutes of all Project meetings and provide them to the County no later than three (3) business days after such meeting. The cost of such transcription services must be borne by the Solar Provider.

B. COMPENSATION

The County will compensate the Solar Provider for all services performed under this contract via the power purchase schedule incorporated into this Task Order. (See Attachment A for price sheet).

B.1. County Responsibilities

The County will provide the requirements for the Project.

The County will review, and approve or disapprove, documents submitted by the Solar Provider.

The County will furnish information and approvals requested by the Solar Provider.

The General Conditions (Solar Power Purchase Agreement) were provided with the Request for Energy Proposal that resulted in Contract # _____.

C. TERM

The Solar Provider agrees to complete the services under each phase by the number of days indicated in the Master Schedule (Exhibit "C") after a Notice to Proceed for that phase is issued.

The effective date of this Task Order and the period in which the Solar Provider must perform all work under the Task Order begins with the County's issuance of a Notice to Proceed and ends fourteen (14) months after substantial completion of construction of the Project. The Solar Provider must also perform all work in accordance with time periods stated in this Task Order.

SIGNATURE PAGE

ORDERED BY:

MONTGOMERY COUNTY, MARYLAND

Department of Transportation
100 Edison Park Drive, 4th Floor
Gaithersburg, Maryland 20878

Shri Gondhalekar
Office of Parking Management
Department of Transportation
Contract Administrator

Date

ACCEPTED BY:

[Insert Corporate Name]

[Insert Address Line 1]

[Insert Address Line 2]

BY:

ATTACHMENT C.3 – EXAMPLE SITE ACCESS AND LICENSE AGREEMENT

BETWEEN

AND
MONTGOMERY COUNTY, MARYLAND

DATED: _____, 2014

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Exhibit A – Property	TBD
Exhibit B – Licensed Premises with equipment layout.	TBD

SITE ACCESS AND LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made this ____ day of _____, 201X, by and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter referred to as the “COUNTY”), and _____ with its principal office located at _____ (hereafter referred to as “LICENSEE”), (the LICENSEE and the COUNTY together the “Parties”).

WITNESSETH

In consideration of the fees hereinafter reserved and other good and valuable covenants and obligations as hereinafter contained, the Parties agree as follows:

1. USE OF LICENSED PREMISES:

(a) COUNTY hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions herein, space for Solar PV panels, support structure/s and related equipment listed in Exhibit A (“Equipment”) to be installed on the existing parking garage structure located at _____, in Montgomery County, State of Maryland and more particularly described on Exhibit B attached hereto and made part hereof (“Property”). The location of installation for LICENSEE’S Equipment on the Garage is generally described on Exhibit B attached hereto and made a part hereof as the licensed premises (“Licensed Premises”). No variation will be permitted without the prior written consent of the COUNTY. No parking space will be used for or eliminated as a result of LICENSEE’S installation of or operation of the Equipment..

(b) LICENSEE shall have the right of reasonable ingress and egress, to install and maintain utility wires, cables, conduits, circuit boxes, switches, amplifiers, antennas or other accessories and appurtenances for use of its Equipment, subject to the restrictions in this paragraph. The Garage is a public facility opened twenty-four hours per day, seven days per week. LICENSEE, its employees, agents, independent Solar Providers and subcontractors shall be entitled to access the Equipment and the Licensed Premises twenty-four hours per day, seven days per week, provided that in all instances LICENSEE shall check-in at County Security by calling (240) 777-6161 upon its arrival, and advise Garage maintenance staff by calling (240) 876-3211 or (240) 876-8064.

(c) LICENSEE shall use the Licensed Premises for the purposes of installation and maintenance of Equipment. In connection therewith, the LICENSEE may complete all work necessary to prepare the Licensed Premises for operation of the Equipment, including but not limited to installation of Solar PV panels, supporting structure/s and related equipment and appurtenances. With minimal disruption to COUNTY, all work on the Licensed Premises and improvements thereto, including the plans and specifications for such work, shall be at LICENSEE’S sole cost and expense, and shall be subject to prior review and written approval of the COUNTY. During the initial plan review, COUNTY and LICENSEE shall agree upon the final location for the installation of LICENSEE’S Equipment. The LICENSEE will maintain the Licensed Premises in good condition. LICENSEE shall repair any damage to the COUNTY Garage caused by LICENSEE’S installation, maintenance, repair and/or removal of its communication equipment and facilities.

(d) It is understood and agreed that the LICENSEE’S ability to use the Licensed Premises is contingent upon its obtaining after the execution date of this Agreement and maintaining throughout the term of this Agreement all of the certificates, permits, and any other approvals (“Approvals”) required by any federal, state, and local authorities. In the event that any such application should be finally rejected or

any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or; if the LICENSEE in its sole discretion determines that it will be unable to use the Licensed Premises for its intended purposes due to technological reasons, the LICENSEE shall have the right to terminate this Agreement. Notice of the LICENSEE'S exercise of its right to terminate, shall be given to COUNTY in writing by certified mail, return receipt requested, at least thirty (30) days prior to the termination date.

(e) LICENSEE represents and warrants that all information furnished to the COUNTY and required herein including all data contained in specification sheets shall be of sufficient detail to afford any tenant, future tenant, or licensee adequate information to ensure that any tenant or licensee avoids interference with LICENSEE'S Equipment. COUNTY reserves the right to require the LICENSEE to make necessary adjustments to its Equipment in the event LICENSEE'S Equipment creates a material restriction in COUNTY'S ability to enter into agreements with tenants, potential tenants or licensees. LICENSEE'S failure to comply with COUNTY'S requirement for LICENSEE to make necessary adjustments to its Equipment shall constitute an event of default.

(f) Notwithstanding affixation to the Licensed Premises, title to the Equipment and all accessories and appurtenances associated therewith installed by LICENSEE shall remain property of the LICENSEE. The LICENSEE may remove all or part of the Equipment at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Licensed Premises, normal wear and tear excepted.

(g) At LICENSEE'S sole cost and expense, and after approval of all plans by the COUNTY, LICENSEE'S electrical service shall be tied into the COUNTY service on the Property.

(h) LICENSEE shall provide an as-built engineer's drawing showing the location of its Equipment on the Licensed Premises and Property within ninety (90) days of full execution of this Agreement.

2. TERM:

(a) This License shall be for a term of _____ years ("Initial Term") commencing on _____, and expiring on _____

(b) This License may be renewed by the mutual written agreement of the COUNTY and the LICENSEE ("Renewal Terms"), provided that the Parties hereto reach an agreement no later than six (6) calendar months prior to the end of the Initial Term or the then current Renewal Term on the License Fee of this Agreement for the next Renewal Term, subject to a determination by the LICENSOR that it can grant such an extension. COUNTY and LICENSEE shall execute a letter of agreement stating the commencement date of the then applicable Renewal Term.

A. **(c) The termination date ("Termination Date") of the Agreement shall be the last day of the Initial Term, or the then current Renewal Term or the earlier date on which this Agreement is terminated in accordance with the provisions hereof.**

3. LICENSEE FEE:

(a) LICENSEE shall pay an annual amount of \$ 0, and any financial benefit to the County should be expressed as part of price per kWh generated by the solar photovoltaic system.

4. LICENSEE INDEMNIFICATION:

Except to the extent caused by the negligence or intentional misconduct of COUNTY or its , employees, LICENSEE hereby agrees, covenants, and warrants to protect, indemnify, and hold COUNTY and its respective officers, members, employees, agents and invitees (the “Indemnified Parties”) harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys’ fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of (i) construction work and alterations and related activities undertaken by LICENSEE pursuant to this Agreement, (ii) the negligence or willful misconduct of LICENSEE, or its agents, employees, Solar Providers and invitees on or about the Property, (iii) the use or occupancy of the Property by the LICENSEE or its agents, employees or Solar Providers, (iv) any breach by LICENSEE, or anyone acting through or on behalf of LICENSEE of any of its obligations hereunder, and (v) damages, including consequential damages from an occurrence involving either bodily injury or property damage, caused by LICENSEE.

5. LICENSEE INSURANCE:

Commencing on the date upon which COUNTY delivers the Premises to LICENSEE and at all times thereafter, LICENSEE shall cause to be carried and maintained, at no cost to COUNTY, the insurance coverages attached hereto as Exhibit D. COUNTY may change the types of required coverages from time to time as circumstances and changes in use of the Property warrant.

6. COUNTY LIABILITY:

Any obligation or liability of the COUNTY arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings Art. §§5-301 et seq. (the “LGTCA”). Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties.

7. COUNTY INSURANCE:

The COUNTY shall maintain during the term of this Agreement and until all of the COUNTY’S obligations which survive termination of this Agreement have been completed, a policy of public liability and property damage insurance as per §§ 20-37 of the Montgomery County Code, (2004), as amended, which regulates the Montgomery County Self-Insurance Program. Montgomery County may self-insure. The COUNTY shall evidence limits of insurability for general liability coverage in amounts of \$500,000 aggregate and \$200,000 each occurrence, and \$20,000 per person, \$40,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and State of Maryland statutory limits for workman’s compensation. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the LGTCA, Md. Ann. Code §§ 5-301, et seq.

8. RIGHT OF ENTRY:

Emergency Access: In cases of emergency involving imminent risk of injury or death to persons or damage to property, COUNTY, its agents or employees, without prior notice to LICENSEE, may enter the Licensed Premises, however, COUNTY will attempt, but is not required, to notify LICENSEE of any such entry under this Article 8(b) as soon as is practicable under the circumstances.

9. SURRENDER OF POSSESSION:

This Agreement shall terminate on the Termination Date without the necessity of notice from either COUNTY or LICENSEE. Upon the Termination Date or earlier termination of this Agreement, LICENSEE shall (i) quit and surrender to COUNTY the Licensed Premises, restoring the Licensed Premises to its original condition, ordinary wear and tear excepted, with utilities capped off; (ii) and remove LICENSEE'S Equipment and facilities. If LICENSEE'S Equipment and facilities are not removed from the Licensed Premises within 72 hours after the Termination Date, the property remaining will be deemed abandoned and will become the property of COUNTY, and COUNTY may have it removed and disposed of at LICENSEE'S expense, with no liability of County to return such Equipment to Licensee. At the time of termination of this Agreement and at the request of COUNTY or LICENSEE, the Parties must participate in a walk-through to inspect the Licensed Premises.

10. ENTIRE AGREEMENT:

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between COUNTY and LICENSEE, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

11. COMPLIANCE WITH LAWS:

LICENSEE shall comply with all current, as amended and future enacted statutes, laws, rules, orders, regulations and ordinances (collectively "Laws") affecting the use or operation of the Licensed Premises. In no event shall LICENSEE use the Licensed Premises for purposes which are prohibited by zoning or similar laws or regulations. LICENSEE acknowledges and agrees it is solely responsible for determining if its use of the Licensed Premises complies with the applicable zoning regulations, and that COUNTY makes no representation (explicit or implied) concerning such zoning regulations. LICENSEE shall not use the Licensed Premises in any manner that causes a violation of any environmental laws or regulations or that could create environmental liabilities under Federal, State or local environmental protection laws.

12. CHOICE OF LAW:

This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

13. CHOICE OF FORUM:

Any action involving a dispute relating in any manner to this Agreement, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in Montgomery County, Maryland.

14. ASSIGNMENT AND OTHER TRANSFER:

(a) Under Common Control: LICENSEE may assign, without consent, its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Assignee shall assume all of LICENSEE'S obligations herein. LICENSEE shall immediately provide written notification to COUNTY of any assignment as defined in this Paragraph 14(a).

(b) **Assignment Requiring Consent:** Licensee shall not assign this Agreement without the prior written consent of the COUNTY to an assignee not meeting the criteria of Article 14(a), which consent shall not be unreasonably conditioned, withheld or delayed. Any assignment consented to by the COUNTY shall not relieve the Licensee from any of its obligations under this Agreement, and such consent by the COUNTY shall not be effective unless and until (i) Licensee gives written notice thereof to the COUNTY, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Licensed Premises by assignee, (ii) such assignee shall deliver to the COUNTY a written agreement in form and substance satisfactory to the COUNTY pursuant to which such assignee assumes all of the obligations and liabilities of the Licensee hereunder, and (iii) Licensee shall deliver to the COUNTY a copy of the proposed assignment agreement. Licensee shall also provide any additional information the County reasonably requests regarding such proposed assignment. Any assignment without the COUNTY'S written consent may be declared null and void by the COUNTY and, at the COUNTY'S election, constitute an Event of Default hereunder.

(c) **Other Transfer:** This Agreement may not be sold or transferred and the LICENSEE shall not sublet or permit any other party to use the Licensed Premises or Property or any of the LICENSEE'S Equipment on the Property.

15. NOTICES.

All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

LICENSEE:

Name:
Company:
Address:
Contact:
Contact Phone:
Emergency Phone:
Email

COUNTY:

Name:
Company:
Address:
Contact:
Contact Phone:
Emergency Phone:
Email:

16. RELATIONSHIP OF THE PARTIES:

It is expressly understood that the COUNTY shall not be construed or held to be a partner, co-venturer, agent or associate of the LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of the LICENSOR and LICENSEE.

17. INTERFERENCE:

The LICENSEE shall install and maintain its Equipment at all times in a manner that will not interfere with the County's operation of the facility. In the reasonable assessment of the COUNTY, based upon verifiable data or testing, and is not corrected by the LICENSEE within forty-eight (48) hours after written notification, the COUNTY shall have the right to require the LICENSEE to shut down and repair the LICENSEE'S Equipment, except for brief tests (not to exceed 5-10 minutes every hour) to eliminate such interference. If the COUNTY believes the LICENSEE'S Equipment is causing interference, LICENSEE at LICENSEE'S sole cost, shall arrange for interference testing to be conducted in coordination with COUNTY staff present. The COUNTY shall not be held responsible for any interference to the LICENSEE'S Equipment or operations, provided the COUNTY exercises due care and otherwise complies with this Agreement. Similarly, COUNTY agrees that after execution of this Agreement, any tenants or licensees of the Property will be permitted to install such radio equipment that is of the type and frequency that will not cause interference to the LICENSEE. In the event future equipment of any tenants or licensees of the Property causes interference to the LICENSEE and is not corrected by the interfering party within forty-eight (48) hours of notification, the COUNTY shall require the interfering party to immediately shut down the interfering equipment until the interference is corrected, except for intermittent testing.

18. HAZARDOUS MATERIALS:

LICENSEE warrants and represents that it will be solely liable for the clean-up and removal of hazardous substances that LICENSEE, its agents, employees, or Solar Providers generate, or cause to be placed on the Property and Licensed Premises as required by law. COUNTY represents that to its knowledge, the Property and Licensed Premises are free from any unlawful environmental contamination as of the date of execution of this Agreement.

19. NON DISCRIMINATION:

LICENSEE agrees to comply with the non-discrimination in employment policies in County contracts as required in Sections 11B-33 and 27 of the Montgomery County Code (2004), as amended, as well as all other federal, state and local laws, rules and regulations regarding employment discrimination. By signing this Agreement, LICENSEE assures COUNTY that in accordance with applicable law, it does not, and agrees that it shall not engage in any employment discrimination in violation of the above sections of the Montgomery County Code as well as any other federal, state or local laws, rules and regulations.

20. ETHICS REQUIREMENT:

LICENSEE understands and agrees that unless authorized pursuant to Section 11B 52 and Chapter 19A of the Montgomery County Code (2004), as amended, that it is unlawful for any person or entity transacting business with the County to employ a public employee contemporaneous with his or her public employment.

21. CONTRACT SOLICITATION:

LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from the COUNTY upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the LICENSEE for the purpose of securing business or an attorney

rendering professional legal services consistent with the canons of ethics of the profession. LICENSEE is responsible for paying any Broker's fees or commissions for any Broker with whom LICENSEE has any contract or agreement and for paying all of LICENSEE's attorneys' fees in connection with the negotiation of this Agreement.

22. RESIDENT AGENT:

In case the LICENSEE has resident agent, the resident agent for the LICENSEE is _____, in the State of XXXXXX, and the address is: _____.
LICENSEE shall notify COUNTY, in writing, within thirty (30) days of any change in Resident Agent.

23. TERMINATION:

This Agreement and all rights and obligations hereunder may be terminated by the COUNTY, for any reason, at any time and at no cost to the COUNTY, whenever the Chief Administrative Officer ("CAO") or the CAO's designee shall determine that termination of this Agreement is in the best interest of the COUNTY. Such termination shall be effective to LICENSEE on the later to occur of (i) thirty (30) days after delivery to LICENSEE of written notice, or (ii) the date specified in a written notice as the termination date.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seals
the day and year first above written.

WITNESS:

LICENSEE:

By: _____

By: _____

Date: _____

WITNESS:

COUNTY:

Montgomery County

By: _____

By: _____

Date: _____

Approved for legal form and legality:

Recommended by:

Office of the County Attorney

By: _____

By: _____

Arthur Holmes, Jr., Director

Department of Transportation

Date: _____

Date: _____