

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A POWER PURCHASE AGREEMENT BETWEEN THE CITY AND TT OF DENTON, INC., (TOYOTA OF DENTON) A TEXAS CORPORATION; PROVIDING FOR THE EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns and operated an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric's ("DME") Public Utilities Commission of Texas ("PUCT") certificated jurisdiction; and

WHEREAS, the City of Denton desires to permit electric customers having electric generation facilities located within the City limits of Denton, Texas to offset a part of their electrical requirements by utilization of customer's electric power generation facilities; and

WHEREAS, Customer desires to interconnect the electric generating facilities to the City's Electric Utility System; and

WHEREAS, Customer has completed and submitted the Application for Interconnection and Parallel Operation of Distributed Generation with the City; and

WHEREAS, both the City and Customer have agreed to terms and conditions set forth in a power purchase agreement ("PPA") and desire to enter the PPA for the Installation of Distributed Generation; and

WHEREAS, the City Council finds that it is in the interest of the public and Customer that a copy of the PPA, redacted of Competitive Information, be made available to the public; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That the City Council approves and authorizes the City Manager, or their designee, and City Secretary, or their designee, to execute, attest, and deliver, respectively, the PPA, referenced herein, with TT of Denton, Inc.

SECTION 2. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 3. Immediately following the execution, attestation, and delivery of the PPA, the City Secretary is directed to seal and maintain the PPA in their custody and control, as documents excepted from public disclosure under the provisions of Texas Government Code, Section 552.133 unless otherwise lawfully ordered to disclose said documents.

SECTION 4. A copy of the PPA, redacted of Competitive Information, attached Exhibit 'A', shall be available to the public for inspection and copying. Absent lawful order, the original PPA shall not be available for public inspection or copying and will be sealed as provided for in the preceding section.

SECTION 5. The expenditure of funds as provided for in this ordinance is authorized.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____, the ordinance was passed and approved by the following vote [____ - ____]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
Vacant, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AN APPROVED this the _____ day of _____ 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City
of Denton,
email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.04.12 09:45:11 -05'00'

THE STATE OF TEXAS

COUNTY OF DENTON

POWER PURCHASE AGREEMENT

By and Between
The City of Denton, Texas
and
TT of Denton, Inc.

This Power Purchase Agreement (hereafter this "Agreement") is entered into as of this 24th day of March, 2023, by and between TT of Denton Inc., a Texas corporation (hereafter "CUSTOMER"); and the CITY OF DENTON, a Texas Municipal Corporation and a Home-Rule City (hereafter "CITY") through its electric utility referred to as Denton Municipal Electric ("DME"). CUSTOMER and CITY may also be referred to individually as a "Party," or collectively as the "Parties." Unless otherwise defined in this Agreement, capitalized or italicized terms shall have the meanings set forth in "Exhibit 1" attached hereto or set forth herein.

SECTION 1 TERM OF AGREEMENT

1.1 Purchase of Power. The CITY shall, for the term of this Agreement, purchase all Net Generation delivered by CUSTOMER and produced by the photovoltaic generating facilities owned by CUSTOMER through **PPFID1212** to the DME system through the CUSTOMER'S point of interconnection. "Net Generation" is the amount of gross generation less the electrical energy consumed through the same meter.

1.2 Term of Agreement. Subject to the conditions set forth herein, the Parties' obligations under this Agreement shall be effective March, 24, 2023 (the "Effective Date"). Unless otherwise suspended in accordance with the terms of this Agreement, this Agreement shall remain in full force and effect until March 24, 2028 (the "Initial Term"). Notwithstanding anything herein, CUSTOMER may terminate this Agreement with 30 days' written notice to the CITY.

1.3 Renewal. Six months prior to the end of the Initial Term and to the end of any term extensions, CITY shall give notice to CUSTOMER of any change to the rate for the additional term pursuant to Section 3. Unless a rate change is negotiated or this Agreement is non-renewed, this Agreement shall automatically renew at the end of each term for an additional five-year term.

SECTION 2 CONDITIONS PRECEDENT

2.1 Conditions Precedent. The performance of this Agreement by either Party shall be subject to the occurrence of all of the following events or conditions:

POWER PURCHASE AGREEMENT

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- (a) Approval of the related Agreement for Interconnection and Parallel Operation of Distributed Generation for **PPFID1212** by the CITY and CUSTOMER.
- (b) Approval of this Agreement by CUSTOMER; and
- (c) Approval of this Agreement by City Council of CITY.

SECTION 3 RATE

3.1 Generation Rate. Notwithstanding a Change in Law pursuant to Section 5 of this Agreement, [REDACTED]

SECTION 4 NON-RENEWAL OF AGREEMENT

4.1 If at the conclusion of any term or upon cancellation by CUSTOMER as set forth in Section 1.2, either Party does not wish to renew this Agreement, then on the day following the expiration of the term or the effective date of CUSTOMER termination, and for every year thereafter, CITY will not be obligated to purchase any generation transferred to the DME grid from **PPFID1212**.

SECTION 5 CHANGE IN LAW

5.1 If, during the Term of this Agreement, there occurs any material change (including the promulgation, enactment, repeal or amendment of any law or in the application of law) that in any manner affects the generation credit being offered to CUSTOMER, or requires the CITY to opt-into the deregulated ERCOT electric market, or if the CITY elects to opt-into retail competition then, to the extent allowed and not otherwise prohibited by such change in law, the provisions and terms of this Agreement shall control and such change in law shall not in any way affect or change the terms of this Agreement regarding the Credit to CUSTOMER for generation to CITY, or the means by which electricity Power is transmitted, distributed or conveyed through or by CITY to CUSTOMER as provided by this Agreement. Additionally, should there be any implementation of a federal or a state law, or should there be any material change in law or action by any state or federal governmental agency that either: (a) renders this Agreement illegal or unenforceable; or (b) would render performance by either Party hereto as illegal or unenforceable; or then promptly after any such material change in law or governmental action, and by written notice delivered to

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the affected Party by the other Party, the Parties shall enter into good-faith negotiations to make the minimum changes to this Agreement which will be necessary to render this Agreement in compliance with any such material change in law or governmental action while preserving, to the maximum extent possible, the benefits, burdens, and obligations of each Party under this Agreement.

SECTION 6 METERING

6.1 Measurement. Charges for electric Power and Generation Credits are calculated using measurements from metering equipment owned, installed and read by CITY. Electric meter services will be performed by CITY, at its sole expense, in accordance with the applicable electric rate tariff and Good Utility Practices.

6.2 Meter Testing. CITY will test its meters in accordance with the schedule and standards of the American National Standards Institute, Inc. ("ANSI"). Upon notice from CUSTOMER, CITY will, at CUSTOMER'S sole expense, perform additional tests of the accuracy of its meters within a reasonable time after notice is received. Following the completion of any test, CITY will promptly advise CUSTOMER of the date of the test, test results, who performed the test, and the date of the removal of any meter(s).

6.3 Invoice Adjustment Due to Meter Inaccuracy. If any meter is determined to be outside the accuracy standards established by ANSI, proper correction will be made of the measurement data, and CUSTOMER or CITY may adjust their respective charges based on the corrected meter data.

SECTION 7 BILLING AND PRICE

7.1 Billing and Payment

Payment shall become past due if not paid within 15 calendar days from date of invoice issuance.

SECTION 8 AUDIT

8.1 Each Party (and its representatives) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Power delivered at the Delivery Point(s). If any such examination reveals any inaccuracy in any statement, either on the part of the CITY or CUSTOMER, then the necessary adjustments with such statement and the payments thereof will be promptly made and shall bear interest calculated in accordance with

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Texas Government Code, Chapter 2251, from the date the overpayment or underpayment was made until the amount is fully paid; provided, however, that no adjustment for any statement or payment will be made unless an objection to the accuracy thereof was made prior to the lapse of two (2) years from the date of issuance of the statement audited.

SECTION 9 MISCELLANEOUS

9.1 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the non-assigning Party.

9.2 No Joint Venture or Lending of Credit Intended. Nothing in this Agreement shall be construed to create a partnership, joint venture, or other legal entity between the Parties. The rights and obligations of the Parties are to be governed strictly by this Agreement, and it is not intended that there shall be any lending of credit by one Party to the other or that either Party shall be entitled to create any obligation binding on the other Party that is not specifically provided for herein. Nothing herein shall be construed as a loan or pledge of credit or assets by the State of Texas or CUSTOMER as prohibited by Article 3, Section 50 of the Texas Constitution, or otherwise. Nothing herein shall be construed as a loan or pledge of credit or assets by the State of Texas or CITY as prohibited by Article 3, Section 52 of the Texas Constitution, or otherwise.

9.3 Notices. All notices, requests, statements, or payments shall be made in writing as specified below. Notices required to be in writing shall be delivered by letter, electronic media, facsimile, or other documentary form. Notice shall be deemed to have been received by the close of the day on which it was transmitted or hand delivered (unless transmitted or hand delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received at the close of the next day on which recipient is open for business). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) day after it was sent (unless delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received on the next day on which recipient is open for business). A Party may change its addresses by providing notice of same in accordance herewith.

To CITY:

Denton Municipal Electric
1659 Spencer Rd
Denton, TX 76205
Fax No.: (940) 349-7334
Phone No.: (940) 349-8487
Attn: General Manager

and

City of Denton, Texas
215 East McKinney Street
Denton, TX 76201
Fax No.: (940) 349-8596
Phone No.: (940) 349-8560
Attn: City Manager

and

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City of Denton
City Attorney
215 E. McKinney
Denton, TX 76201
Fax No.: (940) 382-7923
Phone No.: (940) 349-8333

To CUSTOMER:

TT OF DENTON INC
MANAGING PARTNER
SCOTT FLY

and

TT OF DENTON INC
CONTROLLER
ASHLEY SANCHEZ

Phone No.: (940) 535-7601
Fax No.: (940) 382-2735

Phone No.: (940) 535-7701
Fax No.: (940) 382-2735

NOTE: All Invoices to CUSTOMER will be handled in accordance with normal billing practices.

9.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OR CHOICE OF LAWS. THE EXCLUSIVE VENUE FOR ALL LEGAL PROCEEDINGS SHALL BE IN DENTON COUNTY, TEXAS.

9.5 Contract Claims Resolution. The dispute resolution process that is provided for in Texas Government Code, Chapter 2260 shall be used by the Parties hereto in an attempt to resolve any unresolved claim for breach of contract or any other claimed default arising under this Agreement. Pursuant to said Chapter 2260, the submission, processing, and resolution of any claim made by CITY and/or CUSTOMER is governed by the published rules adopted by the Office of the Texas Attorney General, as are currently effective, hereafter enacted, or subsequently amended.

9.7 General. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement; or any other agreement or agreements addressing or purporting to address the supply or purchase of Power. No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties with authorization from the CUSTOMER and the Denton, Texas City Council. This Agreement shall not impart any rights enforceable by any third-party other than a permitted successor or assignee bound to this Agreement. No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

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9.8 Confidentiality. To the extent permitted by law, the Parties agree to maintain the confidentiality of all information acquired in the performance of the Agreement relating to the activities or operations of the other Party. This document is intended to be a Power Purchase Agreement and is therefore exempt from public disclosure under the provisions of Texas Government Code, Sec. 552.133(a-1)(1)(C) and (F). The Parties each agree not to divulge any such information to any third party without first providing written notice to the other Party and giving such Party the reasonable opportunity to avail itself of all rights and remedies as set forth in Chapter 552 of the Texas Government Code, commonly referred to as the Texas Public Information Act.

[SIGNATURE PAGE FOLLOWS]

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The Parties have executed this Power Purchase Agreement in two (2) original counterparts, each of which shall be deemed an original, to be construed to be effective as of the Effective Date.

“CITY”

THE CITY OF DENTON, TEXAS

a Texas municipal corporation and
home-rule city

By: _____

Sara Hensley
City Manager

ATTEST:
ROSA RIOS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By: _____

THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED as to
financial and operational obligations and
business terms.

“CUSTOMER”

TT of Denton, INC

a TEXAS
Corporation

SIGNATURE

PRINTED NAME

By: _____

Scott Fly
Managing Partner

TITLE

By: _____

<Name>
<Title>

POWER PURCHASE AGREEMENT

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AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION OF DISTRIBUTED GENERATION

THIS INTERCONNECTION AGREEMENT ("Agreement") is made and entered into this 29th day of NOVEMBER, 2022, by the City of Denton, with its electric utility department operating an electric system, referred to for Public Utility Commission of Texas and ERCOT purposes as DENTON MUNICIPAL ELECTRIC ("DME") and TT of Denton Inc the Texas Corporation ("Customer"), a TEXAS CORPORATION 4100 Interstate 35 E [specify the name of any entity, if any; the type of entity, if any; and the address of any entity] hereafter sometimes referred to individually as "Party" or both parties sometimes referred to collectively as the "Parties."

WHEREAS, DME desires to permit electric customers having electric generating facilities located within its service territory, to offset a part of their electrical requirements by utilization of customer's electric power generation facilities or to produce energy for sale on the DME electric utility system or in accordance with the City's Electric Rate Schedule DGR or ancillary contract; and

WHEREAS, Customer desires to interconnect the electric generating facilities to the City's Electric Utility System; and

WHEREAS, Customer has completed and submitted the Application for Interconnection and Parallel Operation of Distributed Generation with the City's Electric Utility System to the City, which is incorporated herein as Exhibit A, and the City has conducted its pre-interconnection studies to determine whether the City can make available and Customer is qualified to enter into such an arrangement for such distributed energy resource interconnection with the City's Electric Utility System; and

WHEREAS, both the City and Customer desire to enter into this Agreement, under the terms, conditions, and subject to the limitations set forth below,

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the City and Customer hereby **AGREE** as follows:

1. Scope of Agreement. City shall permit Customer to interconnect and operate an electric generating facility, on Customer's premises, in parallel with the City's Electric Utility System in accordance with the terms of this Agreement. PROVIDED HOWEVER, that this Agreement is applicable to conditions under which the City and the Customer agree that one or more generating facility or facilities operating less than 60 kilovolts (kV) ("Facility" or "Facilities") may be interconnected to the City's Electric Utility System AND Customer provides the City with generation data either through web link access or monthly reports.

2. Definitions.

- a. "Agreement" shall mean the "Agreement for Interconnection and Parallel Operation of Distributed Generation."
- b. "Customer" shall mean an entity interconnecting a Power Producing Facility to the City's Electric Utility System.
- c. "General Manager" shall mean the General Manager of Denton Municipal Electric, or their designee.



- d. "Electric Utility System" shall mean all generation, transmission and distribution facilities owned or used by the City in connection with its delivery of electric energy to the City's electric utility customers.
 - e. "Points of Interconnection" shall mean the point at which the Power Producing Facility physically ties to the Electric Utility System as is more fully described in Exhibit A, attached hereto and incorporated herewith.
 - f. "Power Producing Facility" or "PPF" shall mean an electric generating facility, operating less than 60 kilovolts, which will be interconnected and operated in parallel with the City's Electric Utility System. This shall include any and all related equipment necessary, as determined by the City, for the safe operation and interconnection of the electric generating facilities to the Electric Utility System.
 - g. "PPFID" shall mean the identification number assigned by the City to a Power Producing Facility.
 - h. "PUC" shall mean the Public Utility Commission of Texas, or any successor agency.
3. Identification of Power Producing Facility. The Power Producing Facility referred to herein shall refer solely to the Power Producing Facility identified, located and described in this section:

- a. Type: Solar
- b. PPFID: 1212
- c. PPF Rating: 403.43 kW DC / 300.00kW AC
- d. Site Address: 4100 Interstate 35 E

4. Establishment of Point of Interconnection. The City and Customer agree to interconnect the Customer's PPF at the Points of Interconnection specified in this Agreement, in accordance with the provisions of the City of Denton, Texas Code of Ordinances; and any applicable Public Utility Commission of Texas Substantive Rules (including §25.211 relating to Interconnection of Distributed Generation and §25.212 relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation, hereafter the "PUC Rules") or any applicable successor rule addressing distributed generation, and as described in the attached Exhibit A.

5. Interconnection.

- a. Energy transferred from the PPF to the Electric Utility System under this Agreement shall be deemed delivered at the City's selected metering point on the premises identified in Section 3 above.



- b. It is expressly understood and agreed by the parties hereto that the interconnection and monitoring of electric flow contemplated by this Agreement shall be accomplished by appropriate metering facilities owned and installed by the City. The PPF shall be responsible for all expenses associated with the purchase and installation of specialized metering facilities, including but not limited to dual metering arrangements and/or bi-directional meters.
6. Testing and Approval of Facility.
 - a. The Customer shall install and maintain protective devices for the PPF as required by the City's Electric Utility Engineering. The protective devices shall be tested and approved by the City's Electric Utility Engineering prior to commencing parallel operations with the Electric Utility System. Further testing of the protective devices shall be conducted any time that modifications are made to the PPF. The City shall have the right to have representatives present at any testing of the PPF's protective devices. Customer shall notify the General Manager at least five (5) days prior to the testing of the PPF's protective devices.
 - b. The PPF shall not commence parallel operations with the City until written approval of the interconnection facilities has been granted by the General Manager of the City's electric utility. Such approval shall not be unreasonably withheld, provided that Customer has complied with all City requirements.
7. Access and Premises. The City may enter the PPF's premises (a) to inspect, at reasonable hours, the PPF's protective devices; or (b) to read or test meters; or (c) to disconnect, without notice whenever necessary, the PPF from the Electric Utility System if, in the City's opinion, a hazardous condition exists and such immediate action is necessary in order to protect persons, City facilities, or property of others from damage or interference caused by the PPF, or lack of properly operating PPF protective devices.
8. Maintenance and Permits. The Customer shall: (a) maintain the PPF in a safe and prudent manner, and in conformance with all applicable laws and regulations, including, but not limited to, those set forth in Exhibit A to this Agreement and the PUC Distributed Generation Interconnection Manual; and (b) obtain any governmental authorizations and permits as required for the construction and operation of the PPF and interconnection facilities. The PPF shall reimburse the City for any and all losses, damages, claims, penalties, or liability it incurs as a result of the PPF's failure to obtain or maintain any governmental authorizations and permits required for the construction and operation of the PPF.
9. Representations of Customer. Customer further agrees and represents to the City that the distributed generation equipment of Customer shall be designed, installed, connected, operated and maintained, to the best of Customer's knowledge and belief, in accordance with the applicable ANSI standards now in force; the applicable UL standards that are in force at the time of the execution of this Agreement; the applicable IEEE standards [particularly IEEE 929-2000 and IEEE 1547-2003] that are in force at the time of the execution of this Agreement; the applicable National Electrical Code (the "NEC") standards in force at the time of the execution of this Agreement; the applicable ERCOT Operating Guides in force at the time of the execution of this Agreement; as well as any other applicable local, state, or federal codes, statutes, and regulations in force at the time of the execution of this Agreement .
10. Responsibilities of Customer. The Customer will, at its own cost and expense, operate, maintain, repair, inspect, and shall be fully responsible for the PPF which it now or hereafter may own unless otherwise specified on Exhibit A. Customer shall conduct operations of its PPF(s) in compliance with all applicable local, state, or federal codes, statutes, and regulations. The maintenance of the PPF shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule. The Customer agrees to cause their PPF to be constructed in accordance with specifications equal to or greater than those provided



by the National Electrical Safety Code (the “NESC”), approved by the American National Standards Institute (the “ANSI”), in effect at the time of construction. The Customer covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of the PPF so as to reasonably minimize the likelihood of a disturbance affecting or impairing the Electric Utility System, or other systems with which the Customer is interconnected. The City will notify Customer if there is evidence that the PPF operation causes disruption or deterioration of service to other customers served from the same grid, or if the PPF operation causes damage to the Electric Utility System. Customer will immediately notify the City of any emergency or hazardous condition or occurrence with the PPF that could affect safe operation of the Electric Utility System.

11. Interruption or Reduction of Deliveries.

a. The City’s Authority. The City shall not be obligated to accept or pay for produced energy from a generating unit unless in accordance with the City’s Electric Rate Schedule DGR or a separate agreement has been entered into between the Customer and the City. The City may require the Customer to interrupt or reduce deliveries of available energy in the following instances:

- (1) When the General Manager determines that it is necessary in order to construct, or install, or maintain, or repair, or replace, or remove, or investigate any of the City’s equipment or any part of its Electric Utility System;
- (2) If the General Manager determines that curtailment, interruption, or reduction is necessary because of emergencies, or forced outages, or *force majeure*, or compliance with prudent electrical practices;
- (3) Notwithstanding any provision of this Agreement, the City shall have the right to disconnect the PPF from the Electric Utility System if it determines that either: (a) the PPF or its operation may endanger City personnel, or (b) the continued operation of the PPF may endanger the integrity of the Electric Utility System. The PPF shall remain disconnected until such time as the City is satisfied that the objectionable conditions have been corrected or no longer exists; or
- (4) The City discovers or learns of PPF manufacturer defects or deficiencies that may have adverse operational impacts on the Electric Utility System.

Customer and the City clearly understand and agree that the City will not accept nor assume any liability for interrupting the interconnection between the PPF and the Electric Utility System. The City is authorized to, but not liable for, any effects as a result of opening up and padlocking open the Customer’s external disconnect switch, disconnecting the PPF at the Electric Utility System’s Points of Interconnection or taking any other action that physically separates the PPF from the Electric Utility System. The City will attempt to provide sufficient Customer notice prior to interconnection disconnection, but Customer notice is not necessary for immediate PPF isolation should a condition warrant immediate interconnection disconnection as determined by the City.

12. Limitation of Liability and Indemnification.

- a. Neither the City nor Customer shall be liable to the other for damages for any act that is beyond such party’s control, including any event that is a result of an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, or regulation or restriction imposed by governmental,



military, or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either party.

- b. Notwithstanding the other provisions of this Agreement, Customer agrees to indemnify, defend, and hold harmless the City of Denton, as well as all of their present, future and former elected officials, agents, employees, officials and representatives in their official, individual and representative capacities from and against any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental) of any conceivable character, due to or arising from injuries to persons (including death), or to property (both real, personal and mixed) created by, arising from, or in any manner relating to the PPF, including (a) engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of; or (b) the making of replacements, additions, betterments to, or reconstruction of the Customer's PPF, and expressly including those arising through strict liability and those arising under the constitutions of the United States and of the State of Texas.
- c. The City and Customer shall each be directly responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of delivery. The City does not assume any duty of inspecting the Customer's lines, wires, switches, or other equipment and will not be responsible therefore. Customer assumes all responsibility for the electric service Customer supplies hereunder and the facilities used in connection therewith at or beyond the point of delivery, the point of delivery being the point where the electric energy first leaves the wire or facilities provided and owned by the City and enters the wire or facilities provided by Customer.
- d. For the mutual protection of the Customer and the City, only with the City's prior written authorization, are the connections between the City's service wires and the Customer's service entrance conductors to be energized.
- e. The provisions of this Section 12 shall not be construed to relieve any insurer of its obligation to pay any insurance claim in accordance with the provisions of any valid insurance policy.
- f. If the Customer fails to comply with the insurance provisions of this Agreement, the Customer shall, at its own cost, defend, save harmless and indemnify the City of Denton, its elected officials, officers, employees, agents, assignees, and successors in interest from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including attorney's fees and other costs of litigation) resulting from the death or injury to any person, or damage to property, including the personnel and property of the City of Denton, to the extent the City of Denton would have been protected had the Customer complied with all such insurance provisions required hereunder. The inclusion of this section is not intended to create any express or implied right in the Customer to elect not to provide the required insurance in Section 13 hereof. The provisions of this subsection shall survive the termination of this Agreement.
- g. If the Customer applied and received an incentive from the City, Customer shall comply with all guidelines acknowledged in the GreenSense Incentive Program Manual. If the Customer fails to meet any ongoing Program requirements stated in the GreenSense Incentive Program Manual, Customer shall repay to the City the incentive related the system. The refund amount is calculated as: [incentive received] x [5 – number of full years the system was operational] x 0.2.



13. Insurance Required. Customer represents that, at the time of the execution of this Agreement, Customer has currently in force and effect property insurance on the premises described in Section 3 hereof, in the amount of the current value of the premises, and comprehensive personal liability insurance covering the premises in a minimal amount of not less than \$100,000 per occurrence. Customer further represents that Customer shall maintain such insurance in force for the duration of this Agreement. Customer agrees to provide a copy of the insurance policy or a valid certificate issued by the insurer (in a form satisfactory to the City) to the City prior to any interconnection with DME's electric grid, and shall provide proof of continuing coverage upon reasonable request given to Customer. The insurance herein provided in Section 13 shall, by endorsement to the policy or policies, provide for thirty (30) days written notice to the City prior to cancellation, termination, alteration, or material change of such policy or policies of insurance.

14. Right of Access, Equipment Installation, Removal & Inspection. Upon reasonable notice, the City may send qualified representatives to the premises of the Customer at or immediately before the time the PPF first produces energy to inspect the interconnection, and to observe the Facility's commissioning (including any testing), startup, and operation for a period of up to no more than three (3) days after initial startup of the unit. Following the initial inspection process described above, the City may send an employee to the premises, at reasonable hours, or at any time without notice, in the event of an emergency or hazardous condition, as determined by the City. The City shall have access to Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its other customers.

15. Disconnection of Unit or Termination of Agreement. The City or Customer may terminate this Agreement, at will and without cause, by giving written notice of termination to the other party not less than thirty (30) days prior to the date of termination. PROVIDED HOWEVER, this Agreement shall automatically terminate upon (1) the disconnection of electric utility service to the premises due to the delinquency of payment of Customer (that is the same rules regarding late payment and disconnection that all other ratepayers of the City have); or (2) the closing of Customer's electric utility account; or (3) a change in the ownership of the premises by Customer; or (4) the failure to maintain the insurance coverage required under Section 13 above; or (5) the failure to comply with all terms of this Agreement. All PPF equipment shall be completely disconnected and isolated from the Electric Utility System upon termination of this Agreement by either Party. The Customer shall demonstrate to DME's satisfaction that the PPF has been disconnected. The City reserves the right to disconnect the PPF equipment itself or hire a local qualified electrician to perform such work at the sole expense of the Customer, if Customer fails to properly perform such work within seven (7) days of the date of the Agreement termination.

16. Notices. Notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to the City:

General Manager
Denton Municipal Electric
1659 Spencer Road
Denton, Texas 76205

With a copy to:

City Attorney's Office
City of Denton
215 E. McKinney Street
Denton, Texas 76201

(b) If to Customer:

As provided in Exhibit A

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other Party.



17. Entirety of Agreement and Prior Agreements Superseded. This Agreement, including Exhibit A, which is expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

18. Governing Law and Regulatory Authority. This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and shall be exclusively enforced in accordance with the laws thereof. The provisions and obligations of this Agreement are performable in the City of Denton, Denton County, Texas. Venue shall lie for any lawsuit dealing with this Agreement in the courts of Denton County, Texas.

19. Attorney's Fees. Should either Party to this Agreement commence legal proceedings against the other to enforce the terms and provisions of this Agreement, the Party who does not substantially prevail in the proceeding(s) shall pay a reasonable amount of attorney's fees and expenses (including, but not limited to expert witness fees and deposition expenses) incurred by the prevailing Party.

20. Severability. If any term or provision of this Agreement is held by a court to be illegal, invalid, or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each illegal, invalid or unenforceable term or provision there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

21. Amendment. This Agreement may be amended only upon mutual agreement of both of the Parties hereto, which amendment will not be effective until it is reduced to writing and executed by the Parties.

22. Invoicing and Payment. Invoicing and payment terms for services associated with this Agreement shall be based upon and consistent with the applicable Ordinances of the City of Denton, Texas.

23. Assignability. Customer and the City agree that this Agreement may not be assigned due to the special nature of the Agreement. Any sale or disposition of the real property and the PPF covered hereby in whole or in part, by Customer will require that the PPF be disconnected from the Electric Utility System until DME has communicated with the new owner about relevant safety issues and until such time as the new owner signs a new Interconnection Agreement with the City.

24. No Waiver. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

25. Entire Agreement. It is understood and agreed that this Agreement contains the entire Agreement between the Parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. This Agreement cannot be changed or terminated orally and no written modification of this Agreement shall be effective unless executed and signed by both Parties.



26. No Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein undertaken and assumed are solely for the use and benefit of the Parties, their successors-in-interest and, where permitted, their assigns.

27. Paragraph Headings and Construction of Agreement. The descriptive headings of the various articles and sections of this Agreement have been inserted for the convenience of reference only, and are to be afforded no significance in the interpretation or construction of this Agreement. Both Parties hereto have participated in the negotiation and preparation of this Agreement, which shall not be construed either more or less strongly against or for either Party.

28. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

29. Exhibits. All Exhibits to this Agreement are incorporated herewith by reference for all purposes, wherever reference is made to the same.

30. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal and legal representatives, successors, or assigns.

31. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed an original, but all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly-authorized representatives on this the 29th day of NOVEMBER, 2022

CITY OF DENTON,

a Texas home-rule municipal corporation

DocuSigned by:

By: William J Shepherd

57E6742E0D72484

Title: Executive Manager Business Services

Date: 1/19/2023

[CUSTOMER] TT of DENTON Inc
d/b/a TOYOTA OF DENTON

By: [Signature]

Title: General Manager

Date: 11.29.2022