

To prepare students for lifelong success through excellence in education



info@scasd.org — 814.231.1042

To: Board of Directors
 From: Gretchen Brandt, Jim Leous and Randy Brown
 Subject: Solar Power Purchase Agreement Update
 Date: November 1, 2019

The purpose of this communication is to provide an update regarding the cost sharing agreement for the solar power working group. A copy of the updated agreement in red-line and final versions are attached.

Cost sharing Agreement

Board comments related to the cost sharing agreement were reviewed with a subgroup of the working group. This provided clarity to the process, especially related to the cost sharing agreement purpose and timeline for completion. Based upon that review, an updated draft of the agreement has been prepared and is attached.

Responses to the suggested revisions include:

- Section 3 edits to include:
 - The addition of the name of the energy consultant with a cost or not to exceed amount, following the request for qualification process.
 - The cost sharing agreement needs to be in place prior to expended funds therefore, including this information would delay the process.
 - Clarification of attorney fees
 - Attorney services would most likely be needed in relation to the release of the RFP, which will follow within months of the RFQ.
 - The RFQ is expected to be released in the December - January timeframe.
 - Addition of the requirement of an affirmative vote by the district in selecting the energy consultant.
 - Resolution on this item being included specifically in the document has not yet been resolved
- Section 8: removal in its entirety
 - removed

- Section 22: amended and labeled as Section 23
 - completed

A draft of the agreement should be be available for distribution to the working group representatives for their November meeting.

COST SHARING AGREEMENT

THIS COST SHARING AGREEMENT ("Agreement") is entered into by and between the Centre County, a county of the Fourth Class with an address of Willowbank Office Building, 420 Holmes Street, Bellefonte, Pennsylvania 16823; Centre Region Council of Governments, a voluntary association of State College Borough and surrounding townships with an address of 2643 Gateway Drive, State College, Pennsylvania 16801; College Township, a township of the Second Class with an address of 1481 East College Avenue, State College, Pennsylvania 16801; Ferguson Township, a township of the Second Class with an address of 3147 Research Drive, State College, Pennsylvania 16801; Halfmoon Township, a township of the Second Class with an address of 1948 Halfmoon Valley Road, Port Matilda, Pennsylvania 16870; Harris Township, a township of the Second Class with an address of 224 East Main Street, Boalsburg, Pennsylvania 16827; Patton Township, a township of the Second Class with an address of 100 Patton Plaza, State College, Pennsylvania 16803; State College Borough, a borough of the Second Class with an address of 243 South Allen Street, State College, Pennsylvania 16801; State College Borough Water Authority, an authority with an address of 1201 West Branch Road, State College, Pennsylvania 16801; Centre County Recycling & Refuse Authority, an authority with an address of 253 Transfer Road, Bellefonte, Pennsylvania 16823; College Township Water Authority, an authority with an address of 1481 East College Avenue, State College, Pennsylvania 16801; and State College Area School District, a school district of the second class with an address of 240 Villa Crest Drive, State College, Pennsylvania 16801 ("Parties").

W I T N E S S E T H

WHEREAS, the Parties hereto are public entities located in and around Centre County, Pennsylvania; and

WHEREAS, the Parties are organized in whole and/or in part for the benefit of the citizens who reside in and around Centre County, Pennsylvania; and

WHEREAS, the Parties use and consume electricity in support of their respective operations; and

WHEREAS, the Parties have entered into a voluntary collective for the purpose of purchase electricity, and reducing individual costs; and

WHEREAS, the Parties intend to pay for their proportionate share of collective costs; and

WHEREAS, the Parties desire to set forth their respective rights, duties, obligations, and procedures in regards to the foregoing.

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

1. The hereinbefore recitals are incorporated by reference as if each had been set forth at length herein.

2. This Agreement is contingent upon the approval of each of the respective Boards and Councils of the Parties.

3. The Parties shall pay their proportionate share of collective costs, to include "_____ " energy consultant "at a cost of" or "not to exceed of" "_____ " and attorney's fees. (The attorney fees may include, but not limited to, the request for qualification process to evaluation and engage with an energy consultant as well as drafting and evaluating the request for proposal process.) The proportionate share shall be based upon their usage of electricity during calendar year 2018. The percentages allocated to each of the parties is set forth in Exhibit A which is attached hereto and made a part hereof.

(a) Due to the significant share of the cost borne by the SCASD under this agreement, the energy consultant will be selected by affirmative vote by the SCASD.

4. State College Area School District shall advance payments for the collective costs, and within thirty (30) days of the close of the calendar year submit itemized invoices to the Parties for payment. Payment shall be due within thirty (30) days.

5. State College Area School District shall maintain records of, *inter alia*, the invoices it receives and the payments it makes on behalf of the Parties, and such records

shall be available for inspection by any of the Parties during regular business hours.

6. This Agreement may be varied, modified, or altered by the consent of the Parties. No alterations, amendments, modifications, or variations of the terms of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the Parties.

7. If disputes relative to the implementation of this Agreement arise, then it is the intent of the Parties that their representatives shall meet to discuss the issues in an effort to resolve the dispute. If the Parties are unable to resolve said dispute, the Parties shall mutually select a mediator, who is a respected professional with expertise in the area of the dispute resolution, to facilitate the resolution of the dispute. If the Parties are unable to mutually select a mediator, then the mediation shall be conducted in accordance with the then current commercial Mediation Rules of the American Arbitration Association. Absent written agreement of the Parties to the contrary, the mediation process shall be completed or terminated within forty-five (45) days of the initial request for mediation. In the event the Parties are still unable to resolve any dispute, then the matter shall be heard in the Court of Common Pleas of Centre County, Pennsylvania.

8. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior written consent of all Parties hereto.

9. The terms and conditions herein contained shall, subject to the provision as to assignment, apply to and bind the successors of the parties hereto.

10. This document represents the entire and integrated agreement between and among the Parties and super cedes all prior negotiations, representations, and agreements, either written or oral.

11. If a court of arbitrator of competent jurisdiction holds any provision or clause herein to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining provisions or clauses, or portions thereof, shall not be affected unless an essential

purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision or clause.

12. The Agreement shall bind and benefit the Parties to this Agreement and their legal representatives and successors in interest.

13. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

14. For purposes of general operations, the contact representative for State College Area School District shall be Randy L. Brown, Finance and Operations Officer, and his contact information is as follows:

240 Villa Crest Drive
State College, Pennsylvania 16801
814-231-1021
Rlb21@scasd.org

15. All notices to the Parties may be given electronically, and to the electronic mail addresses contained in Exhibit B attached hereto and made a part hereof.

16. The persons executing this Agreement on behalf of the Parties hereto warrant that: (a) such Party is duly organized and existing, (b) the persons are duly authorized to execute and deliver this Agreement on behalf of said Party, (c) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (d) the entering into this Agreement by a Party does not violate any provision of any other agreement to which said Party is bound.

17. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.

18. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or

taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.

19. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other agreement between and among the Parties.

20. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

21. The Parties acknowledge that additional municipal governments, school districts, or agencies in the County of Centre may elect to enter into this agreement after the initial election period. If election is made, the additional organizations will pay their portion of the collective costs using the same allocation method as all other Parties as included in Exhibit A. It should also be understood that the inclusion of additional organizations will result in a refund of costs to all other Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein above written.

Centre County

By: _____
Chairman

Attest:

Secretary

Dated: _____

Council of Governments

By: _____
Chairman

Attest:

Secretary

Dated: _____

College Township

By: _____
Chairman

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Ferguson Township

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Chairman

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Halfmoon Township

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Harris Township

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Patton Township

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President

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(a) Due to the significant share of the cost borne by the SCASD under this agreement, the energy consultant will be selected by affirmative vote by the SCASD.

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~~8. The term of this Agreement shall be for two (2) years from the date when all Parties have given formal approval. At the expiration of such Term, this Agreement shall be automatically extended for an additional one (1) year, unless a majority of the Parties hereto shall have provided written notice to the others at least six (6) months before the end of the then current term that they wish to terminate this Agreement, and in such case this Agreement shall terminate at the expiration of the then current term. Notwithstanding the foregoing, any Party at any time may withdraw from the collective upon giving written notice to each other Party that it intends to do so at least six (6) months prior to the end of any given calendar year. Any party who chooses to do so shall remain responsible for its proportionate share of collective costs through the effective date of its withdrawal.~~

9. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior written consent of all Parties hereto.

10. The terms and conditions herein contained shall, subject to the provision as to assignment, apply to and bind the successors of the parties hereto.

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~~22. The Parties acknowledge that the Centre Area Transportation Authority, an agency with an address of 2081 W. Whitehall Road, State College, Pennsylvania 16801 may elect to enter into this agreement after the initial election period. If election is made, the Centre Area Transportation Authority will pay their portion of the collective costs using the same allocation method as all other Parties as included in Exhibit A. It should also be understood that the inclusion of the Centre Area Transportation Authority will result in a refund of costs to all other Parties.~~

23. The Parties acknowledge that additional municipal governments, school districts, or agencies in the County of Centre may elect to enter into this agreement after the initial election period. If election is made, the additional organizations will pay their portion of the collective costs using the same allocation method as all other Parties as included in Exhibit A. It should also be understood that the inclusion of additional organizations will result in a refund of costs to all other Parties.

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Secretary

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Secretary

Dated: _____

State College Area School District

By: _____
President

Attest:

Secretary

Dated: _____