

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT TO PURCHASE OF ZONAL RESOURCE CREDITS FROM PRAIRIE MIST SOLAR PROJECT, LLC; PROVIDING A RATE COVENANT; WAIVING COMPETITIVE BIDS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock, Arkansas (“City”) is the owner and operator of an electric utility that is interconnected to the bulk electric system (“BES”) through facilities located in Zone 8 of the Midcontinent Independent System Operator (“MISO”) and subject to the rules and business practices of the MISO tariff; and

WHEREAS, MISO requires load serving entities such as the City to own or purchase Zonal Resource Credits (ZRCs) to ensure reliability of the BES; and

WHEREAS, the City is aware of the anticipated retirements of both the White Bluff and Independence Power Plants within the next decade that will cause significant upward pressure on the cost of Zone 8 ZRCs; and

WHEREAS, the City has the opportunity to enter a long-term contract to purchase ZRCs from a large solar array to mitigate the risk of price of increases; and

WHEREAS, there are a limited number of opportunities for long-term purchases for ZRCs in Zone 8 of MISO; and

WHEREAS, Ark. Code Ann. 14-58-303 requires City purchases exceeding the amount of \$35,000 to follow statutory procedures of local advertisement and opening of sealed bids which may only be waived in exceptional situations where bidding is deemed not feasible or practical; and

WHEREAS, Arkansas law codified at A.C.A. 14-203-115(b) allows for cities to enter wholesale power contracts that are payable by and from the rates collected by the City’s electric utility, and include covenants that rates will be adequate to meet the City’s obligations under the contract so long as the contract is approved by ordinance and the ordinance is published one (1) time in a newspaper of general circulation in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the purchase of long-term Zonal Resource Credits is an infrequent and exceptional event where traditional bidding is impractical and results in suboptimal terms and pricing; thus, formal bidding is hereby waived in connection with the purchase of Zonal Resource Credits from Prairie Mist Solar Project, LLC in accordance with the term sheet attached hereto as Exhibit A.

SECTION 2: That the Mayor and City Clerk are authorized to enter into a contract with Prairie Mist Solar Project, LLC to purchase Zone 8 ZRCs on terms and conditions reflected in the term sheet attached hereto as Exhibit A, which shall be reviewed and approved by the City Attorney prior to execution.

SECTION 3: That this Ordinance is passed in accordance with Title 14 Chapter 203 of the Arkansas Code Annotated, codified at A.C.A. § 14-203-101, et seq., and shall be published one (1) time in a newspaper of general circulation in the municipality.

SECTION 4: That the costs associated with this Ordinance and the contract authorized by this Ordinance shall be paid from the Electric Department Budget.

SECTION 5: That it is found and determined that capacity prices, including ZRCs, are subject to significant volatility and that the contract proposed by this ordinance will protect the City's electric customers from increases in the cost of utility service; therefore, an emergency is declared to exist and this Ordinance being immediately necessary for the preservation of the public peace, health and safety of the population shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:



Mayor Terry C. Hartwick *by AF*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/ABF

FILED	<u>10:30</u>	A.M.	___	P.M.
By	<u>A. Fields</u>			
DATE	<u>4-16-24</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>S. Ussery</u>			

November __, 2023

Attn: Jessica Stephens
North Little Rock Electric

Re: **Term Sheet**
Prairie Mist Solar Project Capacity
Prairie Mist Solar Project, LLC

Ms. Stephens,

Prairie Mist Solar Project, LLC, a wholly owned subsidiary of Primergy Solar LLC ("**Primergy**"), is pleased to extend this commercial term sheet to North Little Rock Electric ("**NLRE**"), concerning a MISO ZONE 8 term capacity purchase agreement ("**CPA**") for as-accredited solar capacity from the Prairie Mist Solar Project (as described below, the "**Project**") owned by Prairie Mist Solar Project, LLC upon the terms and conditions set forth below (the "**Term Sheet**").

The terms set forth herein shall remain valid until and including December 31, 2023.

Buyer and Seller, independently described below, are collectively the "**Parties.**"

1. Buyer	North Little Rock Electric Department of North Little Rock, Arkansas.
2. Seller	Prairie Mist Solar Project, LLC
3. Agreement	Long-Form MISO Capacity Confirmation terms to be determined during negotiations.
4. Project	The Prairie Mist Solar Project, a solar photovoltaic (PV) electrical generating facility to be situated in Ashley County, Arkansas, and with an expected inverter-limited capacity of 100 MWac.
5. Capacity	With respect to each Season included in the Term, all Project capacity accredited by MISO for such Season under its rules related to Resource Adequacy as then in effect (" Buyer Capacity ").
6. Expected Commercial Operation Dates	The " Expected Commercial Operation Date " is Jan 1, 2025.
7. Commercial Operation	Commercial Operation shall be deemed established once the installed and in-service capacity of the Project initially becomes equal to or greater than 90% of the expected installed capacity of the Project. The " Actual COD " is the date of this occurrence.
8. Delay Damages	If the Project fails to achieve Actual COD on or before the start of the first Season that commences after the Expected Commercial Operation Date (the " Delay Damages Date "), then to the extent that Buyer does not receive the Buyer's Capacity for the applicable Season, Seller will pay Delay Damages to Buyer. Delay Damages are a daily charge in the amount of (i) \$260 per MW _{AC} /day <i>multiplied by</i> (ii) the MW _{AC} of Buyer's Capacity for such Season that was not received by Buyer

	due to such failure (after giving credit to any replacement or deferral capacity), and will accrue for each day from and after the Delay Damages Date until Actual COD is achieved or the Guaranteed Commercial Date occurs, whichever comes first.
9. Failure to Achieve Commercial Operation	If the Project fails to achieve Actual COD by the first day of the third Season commencing after the Expected Commercial Operation Date (the “ Guaranteed Commercial Operation Date ”), Buyer may terminate this Agreement upon written notice to Seller. Within 30 days of such termination of this Agreement, Seller will pay Buyer an early termination fee calculated in accordance with the “Close-out Amount” methodology of the ISDA 2002 Master Agreement, except that (i) if the calculation of the Close-out Amount would result in an amount due from Buyer to Seller, the early termination fee will be deemed equal to \$0, and (ii) the early termination fee will not be greater than (x) the amount of credit support that Seller is required to maintain during the pre-COD period minus (y) the total amount of Delay Damages paid to Buyer.
10. Term	20 years, commencing with the start of the [first] Season that commences after Actual COD (the “ Term Commencement Date ”). As of the date of this Term Sheet, Seasons are defined by MISO as including the following periods during a Planning Year: <ul style="list-style-type: none"> • Summer: June 1 through August 31 • Fall: September 1 through November 30 • Winter: December 1 through February 28 (29 if a leap year) • Spring: March 1 through May 31
11. Delivery	With respect to each Season included in the Term, Seller will transfer ZRCs to Buyer equal to Buyer’s Capacity for such Season, in each case in the MECT by no later than the 60th day prior to the deadline for submission of a Fixed Resource Adequacy Plan (“FRAP”) for the Planning Year in which such Season is included, and Buyer shall promptly thereafter accept such ZRCs in MECT. As of the date of this Term Sheet, a FRAP is due by the 7th business day of March of the year in which the applicable Planning Year starts
12. CPA Pricing	Buyer will purchase the Buyer Capacity at the following price: <ul style="list-style-type: none"> • 20 year term - \$2.00 per kW-month Prices will not escalate. Buyer payments are subsequent to the transfer of ZRCs for the Seasons included in the corresponding MISO Planning Year. Payments are due within 30 days of receipt of Seller’s invoice following Delivery.
13. Security	Prior to Actual COD, Seller will provide credit support in the amount equal to \$1,170,000. Seller’s liability for damages prior to Actual COD is limited to such amount. Seller will not be required to replenish such credit support to the extent drawn and applied by Buyer to Seller’s obligations under the Agreement. Seller is not required to provide or maintain credit support from and after Actual COD. If at any time the senior unsecured credit rating assigned to Buyer’s long-term debt obligations is not equal to or better than Investment Grade, then Buyer shall

	<p>provide security in an amount equal to (x) during the period prior to Actual COD, the credit support then required from Seller, and (y) during the period from and after Actual COD, (i) \$959,040 <i>multiplied by</i> (ii) the number of MISO Planning Years remaining in the Term and for which Buyer has not yet paid the contract price for the Buyer Capacity <i>multiplied by</i> (iii) 20%.</p> <p>Either party can provide security in the form of cash, LC from an Investment Grade bank, or in the form of an entity guarantee with that entity possessing an Investment Grade credit rating. Investment Grade is at or above "BBB-" (S&P, Fitch, or Moody's-equivalent).</p>
14. RECs and Other Attributes	The Agreement will not cover, and Buyer will have no rights with respect to, any Energy, RECs or other attributes generated by or available from the Project.
15. Change in Law	The CPA price will not be revised as a result of any Change in Law or Market Design that alters either Buyer's or Seller's costs or savings in connection with this Agreement, or the value of the capacity.
16. Confidentiality	This Term Sheet, the negotiations between the Parties, and any information provided by one Party (the disclosing Party) to the other Party (the receiving Party) constitute confidential information (" Confidential Information "). Neither Party will disclose Confidential Information of the disclosing Party without consent, and will exercise commercially reasonable efforts to maintain the confidentiality of such Confidential Information. Notwithstanding the foregoing, the receiving Party may disclosing Confidential Information of the disclosing Party to (i) a governmental authority to the extent legally required by such governmental authority or under applicable law, but only if the receiving Party provides prior notice of such disclosing to the disclosing Party and takes commercially reasonable actions to protect such Confidential Information from further disclosure, (ii) its advisors, auditors, legal counsel, and insurers; (iii) its affiliates and its and their respective officers, directors, members, managers, employees, and agents that have a need to know such Confidential Information; and with respect to Seller as the receiving Party, to its actual and potential lenders and other financing parties and to actual and potential purchasers of an interest in Seller or any of its affiliates or the Project.
17. Miscellaneous	<p>In the event that the definitions of MISO Capacity Zones change such that the Project no longer receives MISO Zone 8 ZRCs, Seller will continue to sell and deliver to Buyer, and Buyer will continue to purchase and receive, the Buyer Capacity, but for the MISO Capacity Zone in which the Project is then located. If the MISO boundaries change such that the Project is no longer located in the MISO balancing authority area, the Parties will in good faith negotiate the changes to the Agreement necessary to ensure that Buyer continues to receive credit for the resource-contingent capacity available for the Project under the rules of the RTO in which the Project is then located, while preserving the relative allocation of risk associated with providing MISO capacity as is applicable as of the effective date of the Agreement.</p> <p>Notwithstanding the foregoing, in no event will Seller have any liability to Buyer for zonal deliverability charges or other costs and expenses necessary for Buyer to receive credit for the delivered capacity of the Project following any such change.</p>

Binding Terms:

The foregoing summary of proposed terms (i) addresses only the material terms and conditions set forth above, (ii) is not intended to and does not summarize all the terms, conditions, and other provisions that would be contained in the Agreement, and (iii) is indicative and for discussion purposes only. Except for the provisions of this Binding Terms Paragraph and of Section 16 (Confidentiality) above, both of which are intended to be binding and legally enforceable, this Term Sheet shall not create any legal rights, duties, or obligations between the Parties.

Any agreement with respect to the proposed transaction described in this Term Sheet is subject to the negotiation, execution, and delivery of the Agreement (in form and substance satisfactory to Buyer and Seller in their respective sole discretion), and the satisfaction of such other conditions as each Buyer and Seller may require, including any applicable management and board approvals. Neither Buyer nor Seller is obligated to enter into any agreement with respect to the matters set forth in this Term Sheet, nor may Buyer, Seller, or any other person or entity bring a claim or action against Buyer or Seller as a result of a failure to agree on or enter into any such agreement.

This Term Sheet may be executed in one or multiple counterparts and all counterparts so executed shall constitute one and the same document. Delivery of an electronic or facsimile executed counterpart of a signature page to this Term Sheet shall be as effective as delivery of a manually executed original counterpart of this Term Sheet.

Upon execution of this Term Sheet, both Parties intend to enter into a non-exclusive negotiation period until December 31, 2023.


Whether or not the Agreement is consummated, each of the Parties shall bear and pay its own costs and expenses (including the fees and expenses of its legal counsel and any other consultant, advisor or third party) arising from the origination, negotiation and performance of this Term Sheet and the Agreement.

The Parties shall not be deemed to have formed a partnership or joint venture or other fiduciary relationship and no partnership, joint venture, or other fiduciary relationship shall be deemed to exist or arise between the parties or their affiliates, with respect to, or as a result of, the terms of this Term Sheet.


The laws of the State of New York govern all matters related to this Term Sheet, including its construction, interpretation, performance, and enforcement.

Accepted and Agreed:

North Little Rock Electric Department of North Little Rock, Arkansas

By: 
Name: RYAN WILSON
Title: General Manager
Date: Nov 21, 2023

Prairie Mist Solar Project, LLC

DocuSigned by:

By: _____
Name: EMILY COHEN
Title: Chief Development Officer
Date: November 27, 2023