

Proposed Amendment to Bill No. 260464

AN ORDINANCE

Authorizing the Procurement Department, on behalf of the City of Philadelphia, to enter into an agreement with the Philadelphia Energy Authority to purchase electricity and certain attributes and benefits related to the generation of such electricity from a solar energy facility to be built and owned by Reactivate, LLC, located at Northeast Philadelphia Airport for use at and in connection with City facilities, all under certain terms and conditions.

1. Replace “Exhibit A” to the Bill with the attached document titled “Exhibit A.”

**EXHIBIT A**

**TERMS AND CONDITIONS OF POWER PURCHASE AGREEMENT FOR  
CITY OF PHILADELPHIA VIA THE PHILADELPHIA ENERGY AUTHORITY**

<b>Agreement</b>	This Term Sheet summarizes the principal terms and conditions to be included in a Power Purchase Agreement (the “Agreement”), which will set forth the commitments, conditions and obligations of the City of Philadelphia, the Philadelphia Energy Authority and other parties relating to the purchase and sale of electricity and Renewable Energy Credits (RECs).
<b>Project</b>	Distributed Solar Photovoltaic Project Northeast Philadelphia Airport
<b>Seller</b>	Reactivate PA Development LLC or Project affiliate
<b>Buyer</b>	City of Philadelphia Department of Aviation (“DOA”) via the Philadelphia Energy Authority (“PEA”)
<b>Design Capacity</b>	1.5 MW(ac)
<b>Term</b>	Up to 29 years from Commercial Operation Date
<b>Products</b>	<p>(a) “Metered Output” means energy measured at the inverter level (AC) which is made available to Purchaser at the “Delivery Point” (the interconnection point of Seller’s System) and settled pursuant to the applicable provisions of PECO Energy’s Rate RS-2 (Net Metering). “Delivered Energy” means energy measured at the Delivery Point.;</p> <p>(b) Project RECs transferred to the Purchaser in Purchaser’s PJM Generation Attributes Tracking System Account. Project RECs are based on Delivered Energy and are directly attributable to the Project.</p>
<b>Buyer’s Purchase</b>	100 percent of the Products produced and delivered by the Project.
<b>Purchase Price</b>	Purchaser shall pay Seller up to One Hundred Nineteen Dollars Fifty Cents (\$119.50) per MWh (the Purchase Price) for the Delivered Energy and all RECs and related environmental attributes associated with Delivered Energy that is made available by Seller at the Delivery Point.
<b>Scheduled Commercial Operation Date</b>	The Scheduled Commercial Operation Date shall be on December 31, 2027.
<b>Pre Commercial Operation Date Provisions</b>	<p>(a) <u>Credit Support</u></p> <p>Seller will be required to provide credit support in the form of either (i) a Letter of Credit (LoC) in a form reasonably satisfactory to Purchaser, or (ii) a cash deposit (the “Seller Credit Support”) in the amount of \$100,000 per MW of Design Capacity within five business days of the date of execution of</p>

	<p>the Agreement. Seller Credit Support will step down to \$50,000 per MW of Design Capacity at Commercial Operation Date. Seller Credit Support shall be supplied from entities rated A-/A3 or better by S&amp;P, Moody's or AM Best, as applicable. Seller Credit Support shall remain in effect through the later of the end of the Term or completion of Seller's removal obligations.</p> <p>(b) <u>Permits</u></p> <p>Seller, at its cost, shall be responsible for completing, preparing and submitting and obtaining all applications, plans, permits, licenses, consents waivers, variances, registrations and approvals, including building and stormwater management permits/approvals, and all other documentation required from all applicable Governmental Authorities, needed to construct and operate the System (collectively, the "Permits"). Seller shall be responsible for the payment of any applicable Permit and impact fees or other similar costs.</p>
<p><b>Delay Damages</b></p>	<p>If Commercial Operation has not been achieved by the Scheduled Commercial Operation Date (which may be extended by Uncontrollable Circumstance events, as defined below) the Seller shall pay damages ("Delay Damages") to the Purchaser for the period of delay in an amount equal to \$150 per MW per day.</p>
<p><b>Outside Commercial Operation Date</b></p>	<p>Seller's failure to achieve Commercial Operation within 180 days of the Scheduled Commercial Operation Date, as may be extended pursuant to the Agreement, constitutes an Event of Default under this Agreement.</p>
<p><b>Force Majeure</b></p>	<p>"Force Majeure" shall mean an event not anticipated as of the Effective Date, which materially adversely affects the ability of one party to timely perform and which is not within the reasonable control of the party affected thereby or attributable to such party's fault or negligence, and which by the exercise of due diligence the affected party is unable to overcome or obtain or cause a commercially reasonable substitute therefore to be obtained. Failure of the System will not constitute Force Majeure unless such failure is caused by a circumstance that would otherwise constitute Force Majeure. Force Majeure does not include (i) strikes or other labor actions arising from labor relations issues involving the employees of the Seller or subcontractors in connection with the Project or operation or maintenance of the System or (ii) any Hazardous Substance for which the Seller is responsible under Section 10.8, (iii) the Seller's ability to sell the electrical output of the System or any component thereof at a</p>

	<p>more advantageous price; or (iv) Seller's failure to finance and/or construct the System (other than as a result of a Force Majeure event). Increased cost of performance by Seller shall not constitute an event of Force Majeure. The failure to specifically exclude an event shall not be interpreted to indicate that it is a Force Majeure event.</p> <p><u>Performance Excused</u></p> <p>A Party whose performance under the Contract is prevented by a Force Majeure event is generally excused from performance if it promptly notifies the other party and works diligently to resume performance.</p> <p><u>Early Termination</u></p> <p>If an affected Party fails to substantially perform its obligations under this Agreement on account of a Force Majeure event for a period exceeding 180 days after the occurrence of such Uncontrollable Circumstances event, then the non-affected party shall have the right to terminate the Agreement unless the Parties agree to a longer period.</p>
<p><b>Failure to Deliver</b></p>	<p><u>Failure to Deliver.</u> If, in any Operating Year, the Seller fails to deliver at least 90% of the Estimated Annual Production for such year set forth in Exhibit I (the “Annual Delivery Guarantee” to be based on a P-90 production forecast) less any amount not produced as a result of a Force Majeure event:</p> <p>the Seller shall pay to the Purchaser within 30 days after the end of such Operating Year an amount (the “Purchaser Make-Up Amount”) equal to:</p> <ul style="list-style-type: none"> <li>(i) the positive difference, if any, between (i) the average of day-ahead prices at PJM pricing node ID 51297 (PECO Transmission Zone) for electricity delivered between the hours of 8 a.m. and 4 p.m. during such Operating Year minus (ii) the Purchase Price in effect for such Operating Year; times</li> <li>(ii) the Annual Delivery Guarantee for such Operating Year minus the number of kWhs delivered during such</li> </ul>

	<p style="text-align: center;">Operating Year (the “Annual Shortfall”).</p> <p>The Seller shall deliver substitute SRECs of the same vintage in an amount equal to the Annual Shortfall, or in the event that such substitute SRECs are not available for purchase, Seller shall credit Purchaser in an amount equal to the midpoint of the then-current over-the-counter PA SREC market, multiplied by the Annual Shortfall.</p>
<p><b>Events of Default</b></p>	<p>Each of the following will be an “Event of Default” with respect to a party:</p> <p>(a) such party fails to pay any amount due under this Agreement within five days of the date on which such amount was due and such failure continues for more than five days after receipt of notice from the other party;</p> <p>(b) such party fails in any respect in the observance or performance of any covenant, condition or agreement of such party under this Agreement and such default continues for thirty days after written notice from the other party or such longer period (not to exceed an additional sixty days) as may be reasonably necessary to cure such failure; provided that, in the latter case, such party proceeds with all due diligence to cure such failure curable within such period of time;</p> <p>(c) any representation or warranty made by such party in this Agreement was false or misleading in any material respect when made;</p> <p>(d) such party (i) commences a voluntary case under any bankruptcy law or any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (ii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against the other party in an involuntary case under any bankruptcy law; (iii) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (iv) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (v) makes a general assignment for the benefit of its creditors; (vi) takes any corporate or other action for the purpose of affecting any of the foregoing; or (vii) any involuntary bankruptcy proceeding is commenced against such party and is not dismissed or discharged for 60 days;</p> <p>(e) if Seller and/or any Affiliate and/or any assignee or the City shall be in default under the Site Lease;</p>

	<p>(f) if the Site Lease terminates for any reason not caused by Seller, which shall be a Purchaser Event of Default;</p> <p>(g) such party fails to provide or maintain in full force and effect any insurance required by this Agreement</p> <p>(h) if Seller fails to comply with the Credit Support requirements; and</p> <p>Certain other Events are also Seller Events of Default.</p>
<b>Purchase Option</b>	<p>At the end of the calendar year in which each of the sixth, tenth, and fifteenth anniversaries of the Commercial Operation Date occur and at the expiration of the Term, so long as a Purchaser Event of Default does not then exist, the Purchaser has an option to purchase the System for a purchase price equal to the greater of (i) the Fair Market Value of the System or (ii) the Early Termination Fee as of the Purchase Date. To exercise the purchase option, the Purchaser must give notice to the Seller of its intent to do so. If the parties cannot agree on the Fair Market Value of the System within 30 days after the delivery of such notice, then they shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. If the parties cannot agree on the selection of an appraiser within 10 days, the appraiser will be jointly selected by an appraiser firm selected by the Seller and an appraisal firm selected by the Purchaser. The valuation made by the appraiser will be binding on the parties in the absence of fraud or manifest error. The costs of the appraisal will be borne by the parties equally.</p>
<b>Governing Law</b>	<p>Commonwealth of Pennsylvania. Seller will also comply with all applicable FAA regulations.</p>
<b>Economic Opportunity Plan</b>	<p>The Agreement shall be subject to providing opportunities for small and local businesses. Seller is committed to best and good faith efforts as determined by the City's Office of Economic Opportunity to meet Economic Opportunity goals. The City's Office of Economic Opportunity "OEO" works to ensure that all businesses desiring business with the City have an equal opportunity to compete. Seller agrees to comply with the City's requirements for the collection, retention, and reporting of data relating to contracting at any tier, including Subcontracts.</p>