

INTERIM AGREEMENT

**THIS INTERIM AGREEMENT** (this “**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015 (the “**Commencement Date**”), by and between LOGANSPOUR MUNICIPAL UTILITIES, a municipally owned utility of the State of Indiana (“**LMU**”), by and through its Utility Service Board, and **SGP ENERGY LOGANSPOUR, LLC**, a limited liability company duly organized and existing under the laws of the State of Indiana (the “**SGP**”) (hereafter each individually a “**Party**” and collectively the “**Parties**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the BOTA or the PPA (each defined below), as applicable.

RECITALS

**WHEREAS**, pursuant to that certain Build Operate Transfer Agreement (“**BOTA**”) by and between the City of Logansport, Indiana (the “**City**”), and SGP, SGP intends to build, renovate, reconstruct, expand, modernize, or assemble, or enhance or upgrade (the “**Conversion**”), the existing LMU power generation facility (the “**Existing Facility**”) located within the corporate boundaries of the City and within the LMU service area; and

**WHEREAS**, under the BOTA and during the term of this Agreement, LMU shall retain full responsibility for sales of electric power to retail customers within LMU’s service territory and for delivery of electric power to retail customers within LMU’s service territory; and

**WHEREAS**, to facilitate the Conversion of the Existing Facility, LMU will allow SGP and its outside engineering firms to undertake certain design and engineering work and conduct appropriate testing at the Existing Facility provided that SGP reimburses LMU for the additional direct costs which it may incur as a result of such planning, engineering, design, surveying and Start-Up Testing activities at the Existing Facility necessary to determine the feasibility of the Project (the “**Testing Activities**”, with the portion of the Term (defined below) during which such Testing Activities take place comprising the “**Testing Period**”); and

**WHEREAS**, subject to the terms of the related Power Purchase Agreement by and between SGP and LMU (“**PPA**”), following the Testing Period and provided that the Section 2.1.5 Requirements (defined below) have been met, SGP may also become a wholesale provider of electric power to LMU during the Term (the “**Wholesale Activities**”, with, if applicable, the portion of the Term during which such Wholesale Activities take place comprising the “**Power Sales Period**”); and

**WHEREAS**, following the Testing Period and in the event that the Section 2.1.5 Requirements have not been met (with that portion of the Term comprising the “**Fuel Supply Period**”), SGP intends to become LMU’s sole supplier of fuel and supply or make available to LMU, and LMU intends to purchase from SGP, such amounts of coal, renewable pellets, or other fuel required for the operation of the Existing Facility under the terms specified herein; and

**WHEREAS**, pursuant to Article 4 of the BOTA the Parties desire to provide for the terms under which the Parties will cooperate and will facilitate the Testing Activities, the

Wholesale Activities and/or the supply of coal, renewable pellets, or other fuel, if applicable, required for the operation of the Existing Facility during the Term.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, SGP and LMU, each intending to be legally bound, agree as follows:

## AGREEMENT

1. Term. Unless earlier terminated pursuant to Section 6 herein, this Agreement shall have a term that commences on the Commencement Date and continues until January 30, 2017 (the “Term”); provided, however, that no less than sixty (60) days prior to the expiration of the Term the Parties shall mutually determine in good faith whether it is economically feasible to continue the operation of the Existing Facility under the terms of this Agreement or whether the operations of the Existing Facility should be reduced to maintenance levels until the conditions required for the Conversion have been met.

2. Scope of Services.

2.1 Responsibilities of LMU.

2.1.1 Operation of Existing Facility. Unless otherwise specified herein, during the Term, LMU shall operate the Existing Facility in an economically viable manner in accordance with Prudent Utility Practices and be responsible for, without limitation, management of LMU’s employees, and management of all services, equipment, labor relations, insurance coverages, safety, and maintenance involving the Existing Facility and materials required thereof; provided, however, that to the maximum extent practicable, LMU shall follow any reasonable instructions, guidelines and procedures provided or developed by SGP with respect to the operation and management of the Existing Facility. Notwithstanding the foregoing, LMU shall at all times remain responsible for the operations and management of the Existing Facility during the Term. To the maximum extent practicable, LMU shall cooperate with SGP and shall facilitate the Testing Activities.

2.1.2 Materials. Unless otherwise specified herein, LMU shall, at its cost and expense, purchase from SGP such amounts of coal, renewable pellets, or other fuel as LMU, after consultation with SGP, shall determine are required to (i) enable SGP to conduct the required Testing Activities during the Testing Period and (ii) operate the Existing Facility during the Fuel Supply Period, if applicable, in accordance with Prudent Utility Practices and designated EPA MACT standards.

2.1.3 Minimum Purchase Requirements; Blended Price. During the Fuel Supply Period, if applicable, LMU shall purchase from SGP, on an annualized basis, no less than 80,000 tons of coal (unless the environmental standards then in place, including, without limitation, the EPA MACT standards, require that LMU utilize a mixture of coal and renewable pellets, or other renewable fuels, in the operation of the Existing Facility, in which case LMU shall purchase from SGP, on an annualized basis, a mixture of no less than 80,000 tons of such fuels), at an

aggregate blended price of \$65.00 per ton, delivered at LMU yard, on an annualized basis (the “Fuel Costs”); provided, that the Parties shall work together in good faith to maximize the usage of coal in the operation of the Existing Facility in compliance with all environmental standards then in place, including, without limitation, the EPA MACT standards.

2.1.4 Access. During the Term, LMU shall afford SGP, or a third party designated by SGP, access to the Existing Facility at reasonable times and on reasonable notice for the purpose of performing the Testing Activities.

2.1.5 Allocation of Energy. After completion of the Testing Activities and so long as (i) the Testing Activities have been completed successfully, as reasonably determined by SGP, (ii) SGP has obtained the Required Permits necessary for SGP to become a wholesale provider of power (assuming that MISO membership, MISO interchange agreements and approval from MISO are not necessary), during the Power Sales Period, if applicable, and (iii) LMU has obtained any consents required under LMU’s existing agreements with Duke Energy Indiana, Inc. (collectively, the “Section 2.1.5 Requirements”), LMU shall assign the Energy output generated by the Existing Facility (and any Capacity rights, Environmental Attributes, or other output) to SGP, or a third party beneficiary designated by SGP in its sole discretion. If applicable, LMU shall afford SGP, such transmission rights through LMU’s existing transmission and distribution system as are required to deliver the Energy output of the Existing Facility to third party purchasers. Notwithstanding the foregoing, should SGP desire to sell to LMU all or a portion of the Energy assigned to SGP pursuant to this Section 2.1.5 during the Power Sales Period, LMU shall purchase from SGP, subject to the terms of the PPA (it being understood, that the PPA will not become effective until such time as specified therein), all of the Power that SGP may offer. The Parties shall work together to secure any third party consents that may be required in order for SGP to make sales of power to third parties, including, without limitation, consents from Duke Energy Indiana, Inc.

2.1.6 Cooperation On Regulatory Matters And Environmental Permitting. LMU shall work on a cooperative basis with SGP to secure the Required Permits, including, without limitation, environmental permits, approvals, and extensions needed for the conversion or upgrading of the Existing Facility. LMU shall expeditiously share information with SGP on a continuing basis on any dialogue with federal or State regulatory agencies; and LMU shall provide copies of all correspondence to and from these regulatory agencies; to the maximum extent practicable, the Parties shall strive to develop a common or shared position on any regulatory matters that may arise.

## 2.2 Responsibilities of SGP.

2.2.1 Costs. During the Term SGP shall reimburse LMU for (i) that portion of the Capital Maintenance Costs (as defined below) which are allocated to SGP in Section 3 hereof, (ii) the costs of the Testing Activities to the extent, and only to the extent, that such costs exceed the reasonable budgeted costs of operating the Existing Facility during the Testing Period in accordance with Prudent Utility Practices (the “Excess Costs”), and (iii) if applicable, the

reasonable direct costs of operating the Existing Facility during the Power Sales Period in accordance with Prudent Utility Practices (the “**Operating Costs**”).

2.2.2 Testing Materials. During the Testing Period, SGP shall supply or make available to LMU, and LMU shall purchase from SGP, pursuant to Section 2.1.2 herein, such amounts of renewable pellets or other similar renewable fuels as SGP determines shall be needed to conduct the required Testing Activities (“**Testing Materials**”).

2.2.3 Continued Fuel Supply. In the event that the Section 2.1.5 Requirements have not been met, during the Fuel Supply Period, SGP shall become LMU’s sole supplier of coal, renewable pellets, or other fuel required for the continued operation of the Existing Facility and shall supply or make available to LMU, and LMU shall purchase from SGP, such amounts of coal, renewable pellets, or other fuel and at such prices as specified in Section 2.1.3 herein.

3. Capital Maintenance. Within thirty (30) days of the Commencement Date, the Parties shall jointly conduct an expert evaluation (the “**Expert Evaluation**”) of the cost-effectiveness of either an overhaul or replacement of each of the 16.5MW and 22.0MW turbines utilized by, and any other capital maintenance projects required for the continued operation of, the Existing Facility (“**Capital Maintenance**”). Based on the results of the Expert Evaluation, the Parties shall (i) work together in good faith to determine the most appropriate and cost effective approach to the Capital Maintenance and (ii) jointly allocate up to \$1,600,000.00 of the costs of the most cost-effective Capital Maintenance solution as follows: (i) LMU shall provide the initial \$400,000.00 (i.e., \$0.00 to \$400,000.00) of the cost of such Capital Maintenance; (ii) the Parties shall split the subsequent \$800,000.00 (i.e., \$400,000.01 to \$1,200,000.00), if any, of the cost of such Capital Maintenance equally; and (iii) SGP shall provide the final \$400,000.00 (i.e., \$1,200,000.01 to \$1,600,000.00), if any, of the cost of such Capital Maintenance (collectively, the “**Capital Maintenance Costs**”). Should the projected costs of the Capital Maintenance, as determined by the Expert Evaluation, exceed \$1,600,000.00, the Parties agree to work in good faith to adjust the aforementioned Capital Maintenance Costs budget.

In addition, the Parties agree that, insofar as practicable, any Capital Maintenance shall be conducted during the months of April/May or October/November.

4. Invoices. LMU shall provide SGP with detailed invoices relative to the Excess Costs or Operating Costs, if applicable, and SGP shall provide LMU with detailed invoices relative to the Fuel Costs, if applicable, on or before the fifteenth (15) day following the end of each calendar month. Each Party shall have thirty (30) days from the receipt of an invoice to reimburse the other Party for its invoiced costs. Any disputes with respect to the accuracy or correctness of any invoice shall be settled between the Parties in accordance with Section 7.5 of the PPA.

5. Right to Offset. Subject to applicable guidelines of any Indiana Governmental Authority, including without limitation the State Board of Accounts, each Party shall have the right to offset any amounts due to the other Party, and invoiced pursuant to Section 4, against the amounts due from such Party.

6. Compliance with Laws. In carrying out its duties under this Agreement, each Party shall comply with all applicable Laws, including without limitation, all Environmental Laws.

7. Liabilities and Indemnification. The Parties agree that unless specifically set forth in this Agreement, SGP shall not be responsible for any liabilities of LMU, the City or the Existing Facility, including, without limitation, Environmental Liabilities, except to the extent caused by the gross negligence, or intentional or willful misconduct of SGP or any of SGP's employees or agents. LMU shall indemnify, hold harmless, and defend SGP and its affiliates, subsidiaries, directors, officers, agents and contractors, from and against any and all losses, to the extent arising out of, in connection with, or resulting from LMU's performance of its obligations under this Agreement, including, but not limited to, violation of applicable Law, breach of any of LMU's representations or warranties made herein, or LMU's failure to perform any of its obligations under this Agreement or any other agreement material to the performance of its obligations under this Agreement, or LMU's negligence or otherwise wrongful acts or omissions.

8. Termination. This Agreement may be terminated at any time by SGP upon thirty (30) days' prior written notice to LMU. Notwithstanding the foregoing, this Agreement shall terminate automatically if SGP notifies LMU and/or the City in writing that any of the conditions set forth in Section 3.2.1 of the BOTA have not been met and/or upon termination of the BOTA. In the event of termination of this Agreement as provided herein, this Agreement shall forthwith become void and be of no further force and effect and there shall be no liability or obligation on the part of SGP or LMU or their respective representatives with respect to this Agreement.

9. Limitations of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER BUSINESS-INTERRUPTION DAMAGES UNDER, ARISING OUT OF, DUE TO, OR IN CONNECTION WITH ITS PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR ANY OF ITS OBLIGATIONS HEREIN, WHETHER BASED ON STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE.

10. Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and assigns.

11. Miscellaneous. Articles 10 and 13 of the BOTA are incorporated herein by reference and made part of this Agreement in its entirety.

[signature page follows]

(Signature Page of Logansport Municipal Utilities,  
to the Interim Operating Agreement)

IN WITNESS WHEREOF, Logansport Municipal Utilities, by action of its Utility Service Board has caused this Agreement to be approved, executed and effective as of the Commencement Date.

**LOGANSPORT MUNICIPAL UTILITIES**

by its Utility Service Board

By: \_\_\_\_\_

\_\_\_\_\_, Chairman  
Utility Service Board

**ATTEST:**

By: \_\_\_\_\_  
Paul Hartman  
Superintendent

**APPROVED:**

By: \_\_\_\_\_  
Carol Sue Hayworth, Clerk-Treasurer

**City's Contract Representative:** Paul Hartman  
\_\_\_\_\_  
Superintendent of Utilities

(Signature Page of SGP Energy, LLC to the Interim Operating Agreement)

**IN WITNESS WHEREOF**, SGP Energy, LLC has caused this Agreement to be approved, executed and effective of the Commencement Date.

**SGP ENERGY, LLC.**

By: \_\_\_\_\_  
Randy Delbert LeTang

\_\_\_\_\_  
(Printed Name and Title)

**ATTEST:**

By: \_\_\_\_\_  
SGP Energy, LLC

**Operator's Contract Representative:** \_\_\_\_\_  
\_\_\_\_\_