

MEMORANDUM OF UNDERSTANDING
BETWEEN
DUKE ENERGY PROGRESS, LLC AND BUNCOMBE COUNTY

1. General

This Memorandum of Understanding (“**Memorandum**”) is executed on May , 2017 by and between Duke Energy Progress, LLC (hereinafter referred to as “**Duke Energy**”) and Buncombe County (the “**County**”). Duke and the County are herein collectively referred to as “**Parties**” and individually as a “**Party.**”

2. Purpose

This Memorandum sets forth the mutual desire of the Parties to form a cooperative relationship and engage in a dialogue regarding the development of a utility scale solar project on portions of land owned by the County in Buncombe County, NC (Tax Map No. 9721-94-2726-00000 and 9721-95-9833-00000). This project will consist of Duke Energy leasing approximately 30+/- acres from the County to develop, build, own and operate up to 4MW of utility scale solar. The Parties agree that Duke Energy may file any necessary interconnection requests to support the development of this solar project while lease negotiations are ongoing.

3. Meetings and other Communications

For the above purpose, the Parties agree to exchange information through meetings, the date, times and frequencies of which are mutually agreed upon by the Parties. The attendees and the location for any meeting shall be determined by discussion between the Parties. Such meetings may take place in person or via conference call.

The following units or individuals shall be responsible for organizing and coordinating any such meeting:

Duke Energy:

Larry Watson
Russ Thacher

The County:

Jon Creighton

4. Information Exchange

In addition to the meetings described above, the Parties may exchange information in any manner in which the Parties may mutually agree, including via email, secure data room access, first class mail, overnight mail, hand delivery or facsimile.

5. Restrictions on the Provision of Information

Any and all information provided by a Party pursuant to this Memorandum shall be provided in such

Party's sole discretion. Neither Party is obligated to disclose any information pursuant to this Memorandum. In addition, the Parties recognize that information in their possession related to certain topics may be the property of third parties and subject to confidentiality and disclosure restrictions. As a result, such Party may not have the right to disclose or discuss third party confidential information or information derived from such third party confidential information without the express written consent of the third party. Furthermore, the Parties note that a Party may be restricted from disclosing certain information if such disclosure is prohibited by current laws and regulations. Notwithstanding the foregoing, Duke Energy acknowledges that County by law must comply with Chapter 132 of the North Carolina General Statutes. If a third party makes public record request for information declared "confidential" or a "trade secret", Duke Energy agrees to indemnify County for all reasonable attorney fees, awards and cost involved in defending the action. Additionally, Duke Energy agrees to intervene in any lawsuit or declaratory judgment to determine whether the documents requested meet the requirements of N.C.G.S. §132-1.2 as a trade secret or confidential information. The County agrees to notify Duke Energy of any public record request of information/documents declared "confidential" pursuant to this agreement.

6. Confidentiality

Each party agrees (a) to protect the Confidential Information of the other with at least the same degree of care used to protect its own most confidential information; (b) except as otherwise set forth herein, not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information except as required to be disclosed by any federal, state, or local court or agency having jurisdiction; and (c) upon the request of the other Party, to promptly deliver to the other party all written copies of its Confidential Information. "Confidential Information" shall include, but not be limited to, business plans and methods; customer information; and engineering, operating and technical data.

7. Expenses

Each Party shall be responsible for its own costs and expenses in connection with this Memorandum and the activities to be completed hereunder or pursuant hereto.

8. Nature of Memorandum

Except for the obligations set forth in Sections 5, 6 and 11 (the "**Binding Provisions**"), this Memorandum constitutes only a non-binding statement of the Parties' intentions and neither constitutes nor should be construed as evidence of any form of offer, acceptance or binding contract or the basis for agreement by estoppel or otherwise. Except for the Binding Provisions, this Memorandum does not create a legally enforceable agreement, any rights, duties, obligations or liabilities whatsoever. Except for the Binding Provisions, any such legally enforceable agreement will only arise upon the negotiation, execution and delivery of a mutually satisfactory final definitive agreement or agreements and the satisfaction of the conditions set forth therein, including the approval of such agreements and the matters to which they relate by the appropriate authorized persons within each Party, which approval shall be in the sole subjective discretion of such persons. This Memorandum shall not serve to grant or convey any right or license to use any idea, invention, trade secret, patent, copyright or other intellectual property rights belonging to either Party or any third party.

This Memorandum shall not be constructed as creating a partnership, trust or any agency relationship.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS MEMORANDUM.

9. Assignability

Neither Party may assign this Memorandum or any of its rights under this Memorandum without the prior written consent of the other Party.

10. Mutual Consultation

Any matter not specifically provided for in this Memorandum will be decided through mutual consultation between the Parties.

11. Applicable Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of South Carolina, without regard to the principles of conflicts of laws thereof.

12. Duration

Unless earlier terminated pursuant to Section 14, this Memorandum shall be valid for a term of one (1) year from the date of execution.

13. Amendments

This Memorandum may be amended at any time by mutual written agreement of Parties.

14. Termination

This Memorandum may be terminated at any time and for any reason by either Party without obligation or liability by providing notice to the other party. Notwithstanding the foregoing, the confidentiality provisions contained in the Confidentiality Agreement shall survive after the termination of this Memorandum.

In witness whereof, the Parties have hereto subscribed their names as of the day and year first written above.

DUKE ENERGY PROGRESS, LLC

By:

Name: Melisa Johns

Title: Vice President, Distributed Energy Resources Business & Product Development

BUNCOMBE COUNTY

By:

Name: Wanda Greene

Title: Buncombe County Manager