DATE: May 23, 2014
TO: Mayor & City Council
FROM: Bill McGrath, City Administrator
SUBJECT: Res 14-05-R Approving A Master Services Agreement With Suncast Corporation

As you are aware, Suncast Corporation, one of the United States’ leading plastic product manufacturers is headquartered in Batavia with its manufacturing facility located at 701 N Kirk Road. It is not only one of Batavia largest employers (approximately 1200), but also the City’s single largest user of electricity, accounting for approximately 12% of the total.

Several months ago, conversations regarding a potential expansion and increase in production were brought to a halt due to concerns with the Prairie State project and prospect of rate increases. Suncast pursued other options it had before committing to delivery and installation of several large, very expensive machines that would require the roof of the plant to (literally) be taken off and replaced for installation.

The option for Suncast was to leave Batavia. As we have been communicating with you, we believe the company has been earnest in its representations.

Over those several months, a number of other events have occurred. First, we were fortunate enough to receive some significant transportation grants from the State of Illinois. Currently we fund transportation projects with monies from both the General Fund as well as Motor Fuel Tax Funds. The receipt of any funding which can relieve us from using General Funds is good and gives us options, in this case, to use for economic development/retention efforts.

Secondly, we have discussed and concluded that it is vital to the City in terms of retaining companies, employment, and other indirect benefits, that we explore incentives for the use if increased amounts of power here, including both expansion of existing businesses or brand new businesses. The reality is that the current amounts of power used here are necessary to sustain the rate structure, which we all know is under pressure.

We have already secured one new company which will be using significant power, even though at an incentive rate which matches the market. While we may still be taking a loss on that market differential, we are at least using it to support an additional business and jobs here.

In the case of Suncast, we have been able to take advantage of both occurrences. If you examine the attached document, other than the technical terms necessary due to the complexity of power sales arrangements, we are simply proposing incentives for Suncast in order to keep it here and to grow.

The first incentive arrangement is to offer the market-matching rate for growth in excess of the facility's maximum 2013 usage. This will capture the additional activity due to the expansion.
The second is an incentive depending upon power use to “guarantee” its remaining in Batavia. Over several years depending upon power usage we will rebate money to Suncast related to the costs of expansion but primarily to remain here. The third is some financial assistance with some of the system upgrade expenses associated with the expansion.

Funding for these incentives will happen in three different forms. The market-matching rate program, since it is based upon new power, doesn’t require funding itself. The incentive to remain in Batavia will be funded as an economic development credit from the General Fund from monies which would have gone toward transportation projects, and the assistance with system expansion will come from the Utility itself.

This matter, being Resolution 14-05-R which approves of the agreement, will be on the JCOW agenda for May 27 for action (PU). The Agreement has been thoroughly reviewed by Attorney Drendel who, along with Gary Holm, Peggy Colby and Bob Rogde, has worked very diligently to get us to this point.

Both Public Works Director Gary Holm and Finance Director Peggy Colby will be out of town for the actual meeting, so please get any questions specifically geared toward them to all of us as soon as possible.

Thank you

Attachment: Res 14-05-R

C: Department Heads
CITY OF BATAVIA, ILLINOIS
RESOLUTION 14-05-R

A RESOLUTION APPROVING A MASTER SERVICES AGREEMENT
WITH SUNCAST CORPORATION FOR PROPERTY LOCATED
AT 701 N. KIRK ROAD

WHEREAS, the City of Batavia owns and operates an electric utility; and

WHEREAS, operations and billing for the utility are performed pursuant to City Code; and

WHEREAS, Suncast Corporation, an Illinois Corporation, located within the City has indicated it intends to increase manufacturing at its facility at 701 N. Kirk Road if certain agreements can be reached regarding construction costs for extensions of the utility system and rates for power sales and that, but for an agreement, it would not increase its manufacturing operation or remain long term in the City; and

WHEREAS, Suncast currently purchases and will continue to purchase substantial amounts of electricity which benefits the utility and all of its customers; and

WHEREAS, it is in the best interests of the City, the electric utility and its customers that an agreement with Suncast be approved;

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of City, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: The "Master Service Agreement" with Suncast attached hereto as Exhibit "A" is hereby approved and the Mayor and City Clerk are authorized to execute same.
PRESENTED to and PASSED by the City Council of the City of Batavia, Illinois, on the ___ day of __________, 2014.

APPROVED by me as Mayor of said City of Batavia, Illinois, on the ___ day of __________, 2014.

_________________________________
Jeffery D. Schielke, Mayor

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VOTE: | Ayes | Nays | Absent | 0 Abstentions
Total holding office: Mayor and 14 aldermen

ATTEST:

____________________
Heidi Wetzel, City Clerk
MASTER SERVICES AGREEMENT

DATED AS OF JANUARY 1, 2014

BY AND BETWEEN

THE CITY OF BATAVIA ILLINOIS

AND

SUNCAST CORPORAION
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MASTER SERVICES AGREEMENT

RECITALS

This AGREEMENT is dated as of January 1, 2014 ("Effective Date") and is by and between City of City, Illinois ("City"), and Suncast Corporation, an Illinois Corporation ("Customer") (each individually a "Party," or collectively, the "Parties").

WHEREAS, City owns and operates a municipal utility chartered and existing under the laws of the State of Illinois, with City's principal place of business at 100 N. Island Avenue in Batavia, Illinois; and

WHEREAS, Customer is a corporation organized under the laws of the State of Illinois with a principal place of business at 701 N. Kirk Rd., Batavia, IL, 60510; and

WHEREAS, Customer conducts its manufacturing operations at 701 N. Kirk Rd. in Batavia ("Facility") and is expanding its manufacturing operations there; and

WHEREAS, the Parties mutually agree that this Agreement pertains only to the Facility commonly known as 701 N. Kirk Rd.; and

WHEREAS, the Customer is the largest consumer of electric power in the City of Batavia, and without the Customer consuming and paying for the amount of electric power it consumes and pays for, all of the other consumers of electric power in the City would be required to pay significantly more for electric power;

WHEREAS, the Parties desire to enter into a transaction(s) whereby Customer continues and expands its manufacturing operations at the Facility, continues to purchase all of its electricity from City at various quantities, terms, and other transaction specifics that may be defined from time to time; and

WHEREAS, to manage the price of power for the Customer, the Parties have further agreed that the Customer’s total energy consumption at the 701 N. Kirk Road Facility for the calendar year 2013, which is 61,509,600 kilowatt-hours, will be utilized as a baseline and will remain on a bundled electric rate structure as described herein. Any net increase in energy consumption resulting from expansion of manufacturing at the Facility will be charged in accordance with the City’s Market-Based Rate Ordinance except as noted herein; and

WHEREAS, City is the actual scheduling agent for the City’s Retail Load, which shall include the Customer's bundled and market-based load. City shall include Customer's load with City's scheduled Retail Load in PJM and will provide all other services necessary to provide firm electric service to Customer; and

WHEREAS, but for the provisions of this Agreement, the Customer would not continue its operations, expand its operations and continue to use or expand its use of electric power in the City
of Batavia to the detriment of the City, the public and all of the consumers of electric power in the City;

NOW THEREFORE, in consideration of the above premises, and mutual covenants and agreements herein contained, the Parties hereby agree as follows:

ARTICLE 1- DEFINITIONS

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement. This Agreement includes certain capitalized terms that are not explicitly defined herein. Such capitalized terms shall have the meanings specified in the "PJM Related Documents," as the same are in effect from time to time, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in a "PJM Related Document", the definition in this Agreement shall control for purposes of this Agreement.

“Administrative Fee” has the meaning set forth in Section 3.12.

“Agreement” means this Master Services Agreement, including the Appendices and Related Documents as amended, modified or supplemented from time to time.

“Baseline Energy” means the energy used and billed to Customer for the 701 N. Kirk Road Facility up to and including 61,509,600 kilowatt-hours annually.

“Batavia Hub” means the Batavia, Illinois group of nodes at which PJM calculates individual LMPs, for which the individual LMP values are averaged to create a single pricing reference for Batavia’s Retail Load.

“Billing Period” means the calendar month which shall be the standard period for all payments and metering measurements under this Agreement, unless otherwise specifically required by PJM or the entity providing meter reading services.

“Bundled Service” means electric service provided as a package by the City to the Customer at the Metering Point including all generation, transmission, distribution, ancillary and other services necessary to deliver and measure useful electric energy and power.

“Business Day” means a day ending at 5:00p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by the North American Electric Reliability Council; provided, that, with respect to any payment due hereunder, a "Business Day" means a day ending at 5:00p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Chicago, Illinois are authorized by Law to close; and, provided further, that with respect to any notices for scheduling to be delivered pursuant to any Section hereof, a "Business Day" shall be a day other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by PJM.

“Capacity Credit” means the type, form and amount of generating capability required to service Retail Load as set forth by PJM in the Related Documents, but does not include any entitlement to any transmission Congestion Rights or to the output of the Capacity Resource.
“Capacity Resource” means a generating unit or resource eligible to sell the capacity product from such generating unit or resource in the PJM market in accordance with PJM Market Rules and Procedures.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Congestion Costs” means the effect on transmission line loadings as reflected in the cost of transmission (whether positive or negative) associated with either increasing the output of a Generation Resource or serving an increment of Retail Load at each bus when the transmission system serving that bus is operating under constrained conditions.

“Congestion Rights” means the mechanism employed by PJM to allocate, using financial rights, Congestion Costs between a Generation Resource and the Retail Load (whether set forth in the PJM OATT or elsewhere).

“Confirmation” means the written confirmation of a Transaction signed by both Parties.

“Contract Hourly Quantity” means the hourly quantity as set forth in the Transaction confirmation(s) for the applicable Billing Period.

“Control Area” means the geographic territory in which generation and Retail Load is balanced, as operated by PJM.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P and/or Moody's.

“Customer” has the meaning set forth in the preamble to this Agreement.

“Day Ahead Hourly LMP” has the meaning set forth in the Market Rules and Procedures.

“Delivery Period” means the period as defined in Section 2.2.

“Delivery Points” means the point or points where City's 138 kV system connects to the ComEd transmission grid and where PJM will deliver and City will accept the Firm Energy.

“Distribution Fee” means a charge which is intended to cover the cost of carrying energy from the Delivery Point to the customer's Facility.

“Eastern Prevailing Time” means the prevailing time in the Eastern Time Zone.

“EEI Agreement” means a master electric trading contract in the form published by the Edison Electric Institute.
“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt-hours.

“Event of Default” means those events by the defaulting party set forth in this Agreement.

“Facility” has the meaning set forth in the Recitals to this Agreement.

“Federal Funds Rate” means, for the relevant determination date opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Such interest shall be calculated commencing on the date Performance Assurance in the form of cash is received by a Party but excluding the date Performance Assurance in the form of cash is returned to a Party

“FERC” means the Federal Energy Regulatory Commission.

“Firm Energy” means Energy that City shall sell and deliver and Customer shall purchase and receive unless relieved of their respective obligations without liability by Force Majeure, but only to the extent that, and for the period during which, either City's or Customer's performance is prevented by Force Majeure.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, or an assumption that forms a basis for this Agreement that proves to be different than what has been assumed, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided.

“Full Requirements Service” means those services described in Section 2.1 of this Agreement.

“Generation Resource” means the generation assets of City.

“Good Utility Practice” means any of the practices, methods, techniques and standards (including the practices, methods, techniques and standards approved by a significant portion of the electric power generation industry, PJM and/or NERC) that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made and having due regard for, among other things, contractual obligations, applicable laws and equipment manufacturer's recommendations, could have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather to be a range of possible practices, methods, techniques or standards.

“Hourly Market Price” means either the Day Ahead Hourly LMP price or the Real Time Hourly price for the Batavia Hub, to be defined by PJM, for the applicable hour and currently published at pjm.org/markets/energy-market/day-ahead and pjm.org/markets/energy-market/real-time, respectively.

“Increased Energy Consumption” means any energy used and billed to the Customer representing use at the 701 N. Kirk Road Facility in excess of 61,509,600 kilowatt-hours annually.
“kW” means Kilowatt
“kWh” means Kilowatt-hour

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form and from a bank acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“LMP” means locational marginal price.

“Market Rules and Procedures” means the market rules, manuals and procedures adopted by PJM, as may be amended from time to time, and as administered by PJM to govern operations within PJM.

“Metering Point” has the meaning set forth in Section 2.2.03

“Monthly Payment” means the monthly charges set out in Article 4 of this Agreement.

“Moody’s” means Moody's Investors Service, Inc. and its successors.

“MW” means Megawatt.

“MWH” means Megawatt-hour.

“NERC” means the North American Electric Reliability Council.

“Network Integration Transmission Service or NITS” means firm transmission service as set forth in the PJM OATI that provides for open access to the transmission systems within PJM and for the delivery of Firm Energy to the Delivery Points.

“NI HUB” means PJM Interconnection’s Northern Illinois Hub which is a group of nodes located in the Commonwealth Edison control area in northern Illinois where PJM calculates individual LMPs.

“Party(ies)” means Customer or City or any or both of them, as the context requires.

“Performance Assurance” means collateral in the form of cash, Letter(s) of Credit, or other security reasonably acceptable to City.

“Point of Demarcation” has the meaning set forth in section 2.2(d).

“PJM” means PJM Interconnection, LLC, the Transmission Provider for the Control Area, which is organized and operating pursuant to the PJM OATT and any PJM Related Documents.

“PJM Charges” mean the charges described in Section 3.5.

“PJM Related Documents” means either collectively or individually, the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement, the PJM Reliability Assurance
Agreement, Customer Account Manager, Declaration of Authority and any other applicable PJM Market Rules and Procedures.

“Retail Load” means City's end use customers’ requirements located within the franchised service territory that City has a statutory or contractual obligation to serve.


“Term” is defined in Section 2.1.

“Transaction” means a purchase of electric energy, capacity credits, congestion rights or other similar products by City from one or more parties that shall be agreed to in writing by City and such party or parties.

“Transmission Provider” means any entity or entities transmitting or transporting the Firm Energy and Ancillary Services to the Retail Load at the Delivery Points on behalf of Customer or by City as agent for Customer.

ARTICLE 2 – INCORPORATION OF RECITALS

The Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference.

ARTICLE 3- TERM, ELECTRIC SERVICE, DELIVERY PROVISIONS

3.1 Term. The Term of this Agreement shall begin as of the Effective Date and extend until December 31, 2023, as long as Customer operates the Facility in City. Notwithstanding the previous sentence, and upon reasonable notice, and with City's consent, such consent not to be unreasonably withheld, Customer may opt to take their entire electric service under City's applicable bundled retail rate, in which case this Agreement shall be deemed terminated on the date Customer begins service under such City retail rate.

3.2 Electric Service and Delivery.

3.3.01 Delivery Period. The Delivery Period shall commence as of the Effective Date and on the date(s) as defined in any Transaction confirmation(s) and shall terminate on the date(s) as defined in the Transaction confirmations(s) but no later than December 31, 2023.

3.3.02 Electric Service Construction. During the Construction Period the City shall construct certain infrastructure for permanent electric service to the Facility as described in Section 3.2.04.3 below and further described in A.

3.3.03 Metering Points. The Parties agree that Metering Points shall be on the primary side of the transformers serving the Facility. Whenever City seeks to change the physical capacity or the voltage at a Metering Point, City shall notify Customer of such desired change, in writing, as far in advance as is practical, but not later than twelve (12) months prior to the proposed effective date of the change. The notice shall state the location of the Metering Point and the nature of the work to be done. The City currently serves the Facility at 12kV and agrees to continue serving the Facility at 12kV throughout the duration of this Agreement unless it is mutually agreed by both Parties that a voltage change is desired. In no event shall City be obligated to permit a change to a Metering Point the operation of which would violate Good Utility Practice.
3.3.04 Service Limitations. The parties acknowledge that existing northeast service, southeast service and southwest service, also referred to by the City as Lines #1238, #1233 and #1236 respectively, are limited in capacity and cannot, generally, support additional loading in excess of the usage that exists at the time of this Agreement after the expansion contemplated by this Agreement is completed. The parties acknowledge that the northeast service is limited to a peak demand of 334A at 12kV and average usage of 260A at 12kV. The southeast service is limited to a peak demand of 219A at 12kV and average usage of 130A at 12kV. The southwest service is limited to a peak demand of 140A at 12kV and average usage of 105A at 12kV. The parties acknowledge that the new service utilized to support expanded manufacturing, as further described in Appendix A, has a maximum capacity of 120A at 12kV. The parties further acknowledge that the City has capacity to allow the further expansion of the Customer facilities and electric usage, but such expansion and increased usage would need to be served by 34kv service, which currently does not exist at the Facility.

The limitations identified in this Agreement are not intended to affect the incentives provided herein, either to reduce them for exceeding the limitations or to increase them to allow for expansion to exceed the limitations.

3.3.05 Point of Demarcation. For purposes of this Agreement, the Point of Demarcation shall be the Metering Points. All equipment and appurtenances commencing at, but not including, the Metering Points and continuing into the Facility shall be owned and maintained by the Customer. All equipment and appurtenances commencing at and including the Metering Points and continuing to the Distribution System shall be owned and maintained by City.

ARTICLE 4 - SALE AND PURCHASE

4.1 Full Requirements Service. Pursuant to the terms of this Agreement, City agrees to provide and Customer agrees to pay for all Bundled Service required to serve the Facility. Customer shall not be required to purchase any specific amount of capacity and energy hereunder unless pursuant to Section 4.2.02 the customer agrees to enter into a specific market-based electric energy transaction(s) as described in this Section and Section 4.2.02. Furthermore, City agrees to provide, sell and deliver market-based electric energy and/or capacity pursuant to any Transaction(s) and Customer shall take all of the market-based electric energy and/or capacity specified by any Transaction(s) it enters into or pay for same to the extent any market-based electric energy and/or capacity provided thereunder is not used. As an arranger of Full Requirements Service for the Facility, City is solely responsible to undertake such actions with respect to PJM that are necessary to arrange for the supply of Full Requirements Service for the Retail Load in each hour. City shall arrange for Full Requirements Service regardless of changes in Customer's load arising from daily fluctuations, increased or decreased usage, extreme weather and similar events.

4.2 Cost-Effectiveness. The parties agree that energy used at Facility shall fall into two categories, each of which shall be billed in a different manner.

4.2.01 Baseline Energy.

4.2.01.1 Subject to reconciliation as further described in Section 4.2.03 or any Baseline Energy utilized by the Facility between January 1, 2014 and December 31, 2019, the Customer bill shall be calculated by applying the rate in effect for Customer on December 31, 2013. The maximum PPAF billed during that time shall be $0.01825. The
base cost of power purchased, including cost of delivery, used to calculate the PPAF shall be equal to the base used as of December 31, 2013.

4.2.01.2 Subject to reconciliation as further described in Section 4.2.03 for any Baseline Energy utilized by the Facility between January 1, 2020 and December 31, 2021, the Customer bill shall be calculated by applying the rate in effect for Customer on December 31, 2013, plus up to and including a 5% rate increase applied to all charges for energy and demand in effect as of December 31, 2013, including a maximum PPAF of up to and including $0.019163, at the sole discretion of the City. The cost of power purchased, including cost of delivery, used to calculate the PPAF shall be equal to the base used as of December 31, 2013.

4.2.01.3 Subject to reconciliation as further described in Section 4.2.03, for Baseline Energy utilized by the Facility between January 1, 2022 and December 31, 2023, the Customer bill shall be calculated by applying the rate in effect for Customer on December 31, 2021, plus up to and including a 5% rate increase applied to all charges for energy and demand in effect as of December 31, 2021, including a maximum PPAF of up to and including $0.020121, at the sole discretion of the City. The cost of power purchased, including cost of delivery, used to calculate the PPAF shall be equal to the base used as of December 31, 2013.

4.2.01.4 Agreement Expiration. Commencing January 1, 2024, the Facility shall revert to Bundled Service at the appropriate rate per the Ordinance in place at that time.

4.2.02 Increased Energy Consumption.

4.2.02.1 Subject to reconciliation as further described in Section 4.2.03, Increased Energy Consumption (that is, for net energy consumption at the Facility in excess of 61,509,600 KWH annually) between January 1, 2014 and December 31, 2024 shall be calculated and billed using rates which are market-based as set forth in this Agreement with the intent of providing Customer with the most cost-effective means of meeting its electric energy requirements. To meet this intent, the Customer shall have the option, but not the obligation, to execute Transaction(s) with the City. The City and Customer may work with each other to identify potential Energy Transaction(s) that both parties may choose to execute. Prior to, and as a condition of, execution of any Transaction(s), the Customer shall provide the City with a good faith estimate in spreadsheet format of its load and projected load growth for the duration of the contemplated Transaction(s). The City shall share its expected load changes and any potential purchases and sales that it needs to make. The Parties shall then discuss and agree on any desired Transaction(s). The City shall have the right, but not the obligation, to obtain a price for any desired Transaction(s) and present to Customer upon receipt. Customer shall have the obligation to obtain pricing from three or more qualified energy providers for any desired Transaction(s). The Customer shall specify the type (fixed or variable), the desired price and the term of the Transaction(s) that it wishes to purchase and provide the City a written Confirmation of the same. The City shall have the right, but not the obligation, to supply the Customer utilizing resources from its existing portfolio for hours that are to be billed for Day Ahead or Real Time pricing. For periods when
Customer is soliciting longer term fixed price products, Customer shall inform the City of the term, type of product, and price (“Offer”) that Customer is willing to pay. The City shall have the right, but not the obligation to accept the Offer proposed by Customer and enter into a Transaction(s) with the Customer provided that such Transaction(s) meet the terms specified by the Customer. In addition, the City has sole discretion to determine which Transaction(s) to enter into on behalf of the City’s Retail Load other than Customer. To the extent that Customer wants to make a purchase from a supplier that is not yet registered to do business with the City, such supplier must agree to the terms and conditions specified by the City and enter into a supply agreement (EEI Agreement) with the City prior to the City making any purchase for the benefit of Customer. The Parties agree that the City has no obligation to purchase from a supplier who will not comply with the City’s standard EEI terms & conditions.

4.2.02.2 The Customer agrees to make all reasonable efforts to match any Transaction(s) to their load and load projections. The Customer agrees that purposefully contracting for excessive or insufficient Transaction(s) which result in a financial advantage to the Customer shall be prohibited. The City reserves the right to review, modify and/or terminate any Transaction(s) it has executed with the Customer if, for a period of three (3) consecutive months or more, the Customer’s load decreases below 90% of the load specified in the Transaction.

4.2.02.3 City shall pass through to Customer pursuant to Section 3.5, all applicable PJM and Transmission Provider charges and credits for Firm Energy to supply Customer's load obligation at the Delivery Points. Neither purchased power adjustments nor fuel factor adjustments applicable to City’s other Retail Load shall be applicable to Customer’s Increased Energy Consumption for the Term of this Agreement.

4.2.02.4 Contract Amount. Customer shall purchase from City the Contract Hourly Quantity as defined in one or more written Transaction confirmations. In the event there is no written Transaction confirmation, Customer shall pay the PJM Batavia Hub Day Ahead Price for all scheduled quantities and at the PJM Batavia Hub Real Time Price for all unscheduled quantities. Any amounts that are scheduled in excess of the Customer’s actual load shall be sold back to the market at the PJM Batavia Hub Real Time price and netted (positive or negative) to Customer on its next monthly invoice. The payments between the parties shall be netted for the Billing Period, such that the party obligated to pay the larger aggregate amount shall pay the other party an amount equal to the excess of the larger aggregate amount over the smaller aggregate amount. The Customer shall provide the City with its power schedule for the following day by 3:00 p.m. central prevailing time. If Customer does not provide a schedule for a given day, the prior day’s schedule shall be deemed to apply for the following days until such schedule is revised by Customer.

4.2.02.5 As the Contract Hourly Quantity is intended to reflect Customer’s Retail Load characteristics, to the extent that Customer experiences a change in its Retail Load obligation that would cause it to consistently vary from the Contract Hourly Quantity, the City and Customer agree to meet to discuss whether changes may be made to
address how Customer’s changed Retail Load obligation can be met under this Agreement; provided however, neither Party shall be required to accept a change with which it, in its sole judgment, disagrees.

4.2.02.6 Capacity Credits. The City shall fulfill its Capacity Credit obligations on behalf of its Retail Load in accordance with applicable PJM rules and requirements. Customer may enter into appropriate market transactions to hedge its capacity costs. The Customer shall be required to fulfill its Capacity Credit obligations in accordance with applicable PJM rules and requirements for the entire duration in which the Facility directly impacts the Capacity Credit obligations of the City. The Customer acknowledges that these obligations may extend beyond the Term of this Agreement and/or the time in which the Facility is operated in the City. The Customer agrees to pay for any necessary capacity charges as part of any final settlement for the Facility.

4.2.02.7 Transmission Service. Transmission Service shall be provided by City in accordance with City's Network Integration Transmission Service Agreement with PJM (“NITSA”).

4.2.02.8 Renewable Portfolio Standards. If City is required by law to meet applicable state or federal renewable portfolio supply standards, City shall invoice and Customer shall pay its pro rata share of costs associated with such compliance, except and to the extent that the Transactions or other Customer purchases of renewable energy credits are utilized to fulfill such obligations with regard to the Firm Energy supplied to Customer, in which case Customer shall not be obligated to pay City any such costs. Consistent with the commercial intent of this Agreement, City will make good faith efforts to minimize the cost to Customer of such compliance, including, if applicable, the purchase of renewable attributes or carbon credits owned, held or arranged for by Customer as part of or in a manner similar to Transactions.

4.2.02.9 Agreement Expiration. Commencing January 1, 2024, the Facility shall revert to receiving and purchasing its power through the City’s Bundled Service at the appropriate rate per the Ordinance in place at that time.

4.2.03 Reconciliations (True-ups).

4.2.03.1 On December 31 of each year the total annual energy used and billed to Customer shall be calculated. If the total annual energy used is less than or more than the established Baseline Energy (61,509,600 kilowatt-hours), then within 30 days of December 31 of each year, a balancing charge or credit for any energy and its equivalent demand shall be applied to the Customer’s market-based bill. Such balancing charge or credit will be calculated as follows:

4.2.03.2 The annualized average cost per kWh for Bundled Service shall be calculated as follows: total charges for electric services before tax / total kWh. Total charges shall include charges/credits for energy, electric base, demand, load factor credit, power
factor penalty and the average annual purchased power adjustment factor or for the equivalent of such categories if they change during the term of the agreement. Total kWh shall be all kWh billed at the bundled rate.

**4.2.03.3** The annualized average cost per kWh for market-based power shall be calculated as follows: total market charges before tax / total kWh. Total market charges shall include charges for energy, demand, administration, distribution, power factor penalty, capacity and PJM (or equivalent) transmission related charges and any other market charges implemented during the term of this agreement. Total kWh shall be all kWh billed at the market rate.

**4.2.03.4** The difference between the annualized average cost per kWh for Bundled Service, as calculated under 3.2.03.2, and the annualized average cost per kWh for market-based power, as calculated under 3.2.03.3, shall be applied to each kWh under or over the Baseline Energy amount of 61,509,600 kWh. A tax charge or credit shall be applicable to the net charge or credit.

**4.2.03.5** Such annual balancing charge or credit shall remain in effect for the term of the Agreement that market power rates are in effect.

**4.2.04 Additional Incentives.**

**4.2.04.1** Per the provisions of the City’s Economic Incentive Electric Rate Ordinance in effect during the period from 2010 through 2013, Customer qualified for and shall receive a one-time incentive payment in the amount of Two-Hundred Thirty-One Thousand and 0/100 Dollars ($231,000.00), such payment shall be made within Ten (10) days of the effective date of this Agreement. This incentive is for increased electric consumption during the period from August, 2011 to July, 2013. Customer agrees that, due to the other incentives provided within this Agreement, it shall not be eligible for any further incentive payments under the Economic Incentive Electric Rate program, as modified from time to time by the City, which resulted in the payment described in this paragraph.

**4.2.04.2.** City agrees to furnish certain infrastructure upgrades to the City’s system to accommodate the expansion of Customer’s manufacturing at an estimated cost of approximately Two-Hundred Thousand and 00/00 Dollars ($200,000.00). This will allow Customer to expand its consumption of electric power from the City. City agrees to furnish the system infrastructure upgrades at no cost to the Customer up to a total of $250,000.00. In the event that the total cost of construction exceeds $250,000.00, then all costs in excess of $250,000.00 shall be the responsibility of the Customer. City agrees to share construction cost information with Customer in an open-book fashion.

**4.2.04.3** City agrees to waive the outstanding invoice to the Customer in the amount of approximately Thirty-Five Thousand and 00/100 Dollars ($35,000.00) for an electric service that was previously installed as an inducement to expand its manufacturing which will increase the Customer’s consumption of electric power from the City.

**4.2.04.4** As an addition to the incentives offered Customer by the City’s electric utility elsewhere within this Agreement, the City, as inducement for Customer to maintain a minimum use of power, shall offer the following:
4.2.04.4.1 The parties acknowledge that the City has procured a grant in the form of a Letter of Intent dated December 12, 2013, and subsequent amendments ("Grant") to assist with its road infrastructure that is available to reimburse City for street expenditures made over a number of years. As a way to induce Customer to expand its facility in the City, to maintain a minimum use of power, the City agrees to and shall reapportion its resources in the amounts of those Grant funds committed to by executed project agreements and/or other grant funds that might be obtained, which the City might otherwise use for transportation projects (hereinafter "Freed Funds"), so they may be used to supplement electric utility revenues. Upon receipt of those Freed Funds, City shall commit the Freed Funds to assist the electric utility in providing the incentive described in this Section 4.2.04.4. City agrees to use best efforts to obtain receipt of all of the Grant funds that have been committed to by project agreements, and shall do so in as timely a manner as possible.

4.2.04.4.2 The incentives under this Section 4.2.04.4 shall be in the form of credits to be earned based upon certain levels of Customer’s power usage for the years 2014 through 2019. Since the creation of Freed Funds is tied to receipt of executed project agreements and the Grant monies, there may be a difference between the time of the calculation of the incentive and the redemption thereof. Effective January 1, 2014, and continuing through December 31, 2019, Customer shall earn an incentive credit in the amount of $0.025283 (2.52834 cents) per kWh for the first 50,000,000 kWh of power used by the Facility each and every year. Said incentive shall be accounted for until 50,000,000 kWh of usage has been reached in each year. In any given month, the then-existing credits shall be redeemed by applying an actual credit against Customer’s bill from the City to the extent electric utility revenues have been supplemented by Freed Funds as described above. If the amount of the credits earned by Customer exceeds the amount of the bill, Customer shall be paid the difference to the extent the City has received executed project agreement funds. Earned but yet-unredeemed credits shall be redeemed and provided by the City after December 31, 2019, as described above to the extent executed project agreement funds are received. In no event shall Customer receive an incentive for usage in excess of 300,000,000 kWh for the Facility under this Agreement, nor shall incentives redeemed or paid or given Customer by way of credit exceed the amount of Freed Funds

4.3 City Franchise Fee. The City’s franchise fee of 4% shall be paid for all electricity, both bundled rate and market-based, per the applicable provision of the City Municipal Code. Said Franchise Fee shall not be increased (as to Customer) between the effective date of the Agreement and December 31, 2019.

4.4 Power Factor Penalty. The City’s Power Factor Penalty shall be paid per the applicable provision in the City Municipal Code. Said Power Factor Penalty Fee may be decreased but not be increased (as to Customer) between the effective date of this Agreement and December 31, 2019.
4.5 Distribution Charge and Administrative Fee. Customer shall pay City a Distribution Charge of $5.78 per kw/month. Customer shall pay City a fixed monthly Administrative Fee of $5,200.00. Once per Calendar Year City shall, at its option, adjust the Distribution Charge and Administrative Fee to the extent the City can reasonably demonstrate to Customer that such costs to serve Customer have changed.

4.6 Rights and Remedies Associated with Transactions. In cooperation and consultation with Customer, City shall use commercially reasonable efforts to pursue available remedies under any EEI Agreement applicable to a Transaction utilized to serve Customer. To the extent the City obtains payments associated with rights and remedies under such an agreement, including early termination or default payments applicable to service provided to Customer, City shall pass through or credit such payments for the benefit of Customer in a manner consistent with the commercial intent of this Agreement. For clarity, to the extent City incurs charges or payments associated with provision of any Transaction for the Customer, and such charges or payments are not due to a City Event of Default, such charges or payments shall be passed through to Customer in accordance with Sections 3.3 and other applicable provisions of this Agreement.

ARTICLE 5 BILLING FOR UTILITY SERVICE

5.1 Billing for Utility Service. In each month during the Delivery Period, City shall calculate all charges due under this Agreement, including pass through of PJM Charges and any taxes (including Illinois State Tax), fees and levies in accordance with the applicable ordinance. Because quantities determined under this Article 5 may be estimated, quantities used in calculations shall be subject to adjustment to reflect actual quantities, whether positive or negative, in subsequent months' calculations. Because there may be various Transactions on a month by month basis, the billing may include fixed and or variable rates. Such charges shall be billed in accordance with Section 5.4 below.

5.2 Pass Through of Charges. City shall pass through to Customer the charges for energy, capacity, operating reserves, and PJM Charges set forth in this Agreement on an open-book, fully transparent basis. To the extent that either Party pays or is required to pay for any service or charge that is the responsibility of the other Party, then the paying Party shall be reimbursed for such costs by the responsible Party either through cash payment or by credit against other amounts owed to the responsible Party by the paying Party in accordance with this Section.

5.3 Taxes, Fees and Levies. Customer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Full Requirements Service. All Full Requirements Service delivered by City to Customer hereunder shall be for use by Customer.

5.4 Payment.

5.4.01 Invoice and Payment Date. Customer shall pay City any amounts due and payable hereunder on or before the twentieth (20th) day after the date of invoice, or if such day is not a Business Day, then on the next Business Day. City reserves the right to issue invoices on a weekly or any other time basis in a manner consistent with PJM.
5.4.02 Payment Method and Interest. All invoices may be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. If all or any part of any amount due and payable pursuant to this Agreement shall remain unpaid thereafter, a late payment penalty shall thereafter accrue and be payable to City in accordance with the applicable Ordinance for bundled rates.

5.4.03 Billing Disputes. If a Party, in good faith, disputes a PJM invoice, the disputing Party shall immediately notify the other Party of the basis for the dispute and, if the invoice has not yet been paid, pay all of such invoice no later than the due date. Upon resolution of the dispute, any required payment or refund shall be made within two (2) Business Days of such resolution along with any accrued interest from and including the due date to but excluding the date paid. If Customer, in good faith, disputes an invoice from City, Customer shall immediately notify City of the basis for the dispute and, if the invoice has not yet been paid, pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment or refund shall be made within seven (7) Business Days of such resolution. Any overpayment by Customer shall be subject to interest on refunds as provided in Section 16.9.

ARTICLE 6 - CONGESTION MANAGEMENT

The Parties agree to work together to manage congestion risk in a manner consistent with the commercial intent of this Agreement. City shall manage congestion risk on behalf of its Retail Load in accordance with applicable PJM rules and requirements. Customer may enter into appropriate market transactions to hedge its congestion risks.

ARTICLE 7 - CREDITWORTHINESS

7.1 If requested by City, the Customer shall deliver within 120 days following the end of each fiscal year, a summary audit report indicating that the customer has the financial ability to enter into and fully honor the transactions contemplated herein. In all cases the reports statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. Any financial information provided by Customer is acknowledged to be proprietary, privileged and/or confidential, and disclosure of the financial information would cause competitive harm to the customer and shall be held in the strictest confidential manner and not disclosed to any party without the written consent of Customer. If the City receives a Freedom of Information Act (“FOIA”) as to which a response would include said reports as a responsive document, the City agrees to take the following actions: 1) Deny said FOIA request (in a timely manner) citing the relevant sections of FOIA relating to proprietary information and other applicable sections of FOIA, 2) Notify the Customer within twenty four (24) hours of receipt of the request of said FOIA and allow Customer (and Customer’s attorney) to fully participate in the formulation of any responses to the Attorney General, States Attorney or a Court with jurisdiction over the FOIA request, 3) and cooperate in the defense against any and all attempts to disclose said reports up
through and including appeals to the Supreme Court (if required to exhaust all attempts to deny said request).

7.2 **Credit Assurances.** If at any time City has reasonable grounds to believe that Customer's creditworthiness or performance under this Agreement has become unsatisfactory, City may provide Customer with written notice requesting Performance Assurance in a reasonable amount determined by City in a commercially reasonable manner. Upon receipt of such notice Customer shall have five (5) Business Days to remedy the situation by providing such Performance Assurance to City. In the event that Customer fails to provide such Performance Assurance or other credit assurance acceptable to City within five (5) Business Days of receipt of notice, then an Event of Default under Article 7 shall be deemed to have occurred and City shall be entitled to the remedies set forth in Article 7.

7.3 **Interest Rate on Cash Amounts Held as Collateral.** For Performance Assurance in the form of cash that is held by a party pursuant to this Article 7, the interest rate will be the Federal Funds Rate minus 0.25% as from time to time in effect.

**ARTICLE 8- DEFAULT AND REMEDIES**

8.1 **Customer Events of Default.** Any one or more of the following shall constitute an "Event of Default" hereunder with respect to Customer:

8.1.01 The failure to make, when due, any payment required pursuant to this Agreement (other than payments disputed under Section 4.5) if such failure is not remedied within three (3) Business Days after written notice;

8.1.02 Any representation or warranty made Customer herein is false or misleading in any material respect when made or when deemed made or repeated if such false or misleading representation or warranty is not remedied within ten (10) Business Days after written notice;

8.1.03 The failure by Customer to provide Performance Assurance as set forth in this Agreement.

8.1.04 The failure by Customer to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above) and such failure is not cured within a reasonable time after notice of such failure from City, not to exceed sixty (60) days;

8.1.05 Customer files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it. (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due; or

8.1.06 Customer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation,
amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

8.2 City Events of Default.

8.2.01 City fails to pass through an appropriate credit or payment due under an applicable Transaction to Customer if such failure is not remedied within three (3) Business Days after written notice;

8.2.02 Any representation or warranty made herein is false or misleading in any material respect when made or when deemed made or repeated if such false or misleading representation or warranty is not remedied within ten (10) Business Days after written notice;

8.2.03 City fails to enter into, and/or materially perform its obligations under a Transaction requested by Customer in accordance with Article 3 above and such failure is not cured within a reasonable time after notice of such failure from Customer, not to exceed sixty (60) days;

8.2.04 City fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above).

8.3 Remedies for an Event of Default

8.3.01 In the event of a Customer Default per Section 8.1, City shall have the right to impose such remedies as may be provided in accordance with the applicable ordinance, and the City may have the option of terminating this Agreement in addition to any other remedy available in law. In the event of a City Default per Section 8.2, Customer shall have the right to seek available remedies at law (including those available under the City municipal code) or in equity.

8.3.02 In the event City ceases to be in the business of providing electric utility services under Illinois law, Customer shall have the right to obtain electric service from an Alternative Retail Electric Supplier in accordance with applicable law.

ARTICLE 9 CURTAILMENT, TEMPORARY INTERRUPTIONS AND FORCE MAJEURE

9.1 Curtailment. If PJM, in its sole discretion, determines there is a shortage of Energy requiring City to curtail Firm Energy deliveries to Customer, then upon being notified by PJM or City of such requirement to curtail, Customer will institute procedures which will cause a corresponding curtailment of the use of Energy by its retail load. It is the express intention of this provision that any curtailment of Energy be required only as a result of a bulk transmission event, as determined by PJM. Such curtailment shall fall equitably on all end use loads within the affected PJM control area and the load served by City. If upon notification of a requirement to curtail Energy deliveries to its retail load, Customer fails to institute such procedures, City shall be entitled to limit deliveries
of Firm Energy to Customer in order to effectuate reductions in Energy deliveries equivalent to
the reduction which would have been effected had Customer fulfilled its curtailment obligation
hereunder during the period in which PJM determines that any shortage exists, and, in such event,
City shall not incur any liability to Customer in connection with any such action so taken by City.
The City and Customer agree that if a required curtailment results in Customer’s annual Baseline
Energy to be less than 61,509,600 kilowatt-hours, then Customer shall be given credit towards the
Baseline Energy calculation for curtailed energy as if it were actually used. The credit shall be
calculated by multiplying the total hours of curtailment by the average hourly energy consumption
throughout a forty-eight (48) hour period immediately preceding the curtailment event.

9.2 Temporary Interruptions. City will use reasonable diligence in undertaking its
obligations under this Agreement to furnish Firm Energy to Customer, but City does not
guarantee that the supply of Firm Energy furnished to Customer will be uninterrupted, or that
voltage and frequency will be at all times constant. Temporary interruption of Firm Energy
deliveries hereunder shall not constitute a breach of the obligations of City under this
Agreement, and City shall not in any such case be liable to Customer for damages resulting from
any such temporary interruptions of service.

9.3 Force Majeure. To the extent either Party is prevented by Force Majeure from
carrying out, in whole or part, its obligations under the Agreement and such Party (the
"Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as
practicable, then the Claiming Party shall be excused from the performance of its obligations
with respect to this Agreement (other than the obligation to make payments then due or
becoming due with respect to performance prior to the Force Majeure). The Claiming Party
shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not
be required to perform or resume performance of its obligations to the Claiming Party
corresponding to the obligations of the Claiming Party excused by Force Majeure.

9.4 Force Majeure Exceptions. Force Majeure shall not be based on (i) the loss of
Customer's Retail Load; (ii) Customer's inability economically to use the Full Requirements
Service; or (iii) City's ability to resell the Full Requirements Service at a price greater than the
pricing set forth herein.

9.5 Transmission Curtailment. Either Party may raise a claim of Force Majeure based
in whole or in part on curtailment by PJM unless (i) such Party has contracted for firm
transmission with a Transmission Provider for the services to be delivered to or received at the
Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or
a similar term as defined under the Transmission Provider's tariff.

ARTICLE 10 NOTICES. REPRESENTATIVES OF THE PARTIES

10.1 Notices. Any notice, demand, or request required or authorized by this Agreement
to be given by one Party to another Party shall be in writing. Such notice shall be sent by
facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or
mailed, postage prepaid, to the representative of the other Parties designated in this Article 9.
Any such notice, demand, or request shall be deemed to be given (i) when received by facsimile
or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or
personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first
class mail.

Notices and other communications by City to Customer shall be addressed to:

Suncast Corporation
Mr. Mike Hamilton

701 N Kirk Rd.
Batavia, IL 60510
Phone: 630.406.6221
Electronic:mhamilton@suncast.com
Facsimile: 630.406.6296

With a copy to:

Steven A. Andersson
Mickey, Wilson, Weiler, Renzi & Andersson, P.C.
2111 Plum Street, Suite 201
PO BOX 787
Aurora, IL 60507-0787
Phone: 630.801.9699
Facsimile: 630.801.9715
Electronic: ssa@mickeywilson.com

Notices and other communications by Customer to City shall be addressed to:

Bill McGrath
City Administrator
100 N. Island Ave. City IL 60510
Phone: (630) 454-2000
Electronic: bmgrath@cityofbatavia.net
Facsimile: (630) 454-2001

With a copy to:
Gary Holm
Director of Public Works
City of Batavia
200 N. Raddant Rd. Batavia IL 60510
Phone: (630) 454-2309
Electronic: gholm@cityofbatavia.net
Facsimile: (630) 454-2351

Invoices/Payments:
Peggy Colby
Finance Director
Phone: (630) 454-2030
Electronic: pcolby@cityofbatavia.net
Any Party may change its representative by written notice to the other Parties.

10.2 Authority of Representative. The Parties' representatives designated in Section 9.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are authorized officers of their respective entities and such amendment, modification or waiver is made pursuant to Article 16.

10.3 Customer Schedule Change. If Customer chooses to change its operating schedule, then Customer shall provide a minimum forty-eight (48) hours’ notice by calling (630) 454-2357 or (630) 454-2350 or sending a facsimile to (630) 454-2351 or e-mail correspondence to City at rrogde@cityofbatavia.net with a copy to gholm@cityofbatavia.net.

ARTICLE 11- LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES

11.1 Limitation on Consequential, Incidental and Indirect Damages. To the fullest extent permitted by law, neither customer nor company, nor their respective officers, directors, agents, employees, members, parents or affiliates, successor or assigns, or their respective officers, directors, agents, or employees, successors or assigns, shall be liable to the other party or their respective members, parents, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this agreement. The provisions of this section 10.1 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this agreement.

11.2 Indemnification. Each Party shall indemnify and hold harmless the other Party from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages to any person or destruction of any property arising in any manner directly or indirectly by reason of the acts of such Party's authorized representatives while on the premises of the other Party under the rights of access provided herein.

Customer shall indemnify and hold harmless City from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages to any individual, firm or corporation constituting part of the Retail Load arising in any manner directly or indirectly.
by reason of a failure, interruption, curtailment, or deficiency in City's supply of Full Requirements Service.

City assumes no responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by Customer; and Customer agrees to protect, indemnify and save harmless City from any and all claims, demands, or actions for injuries to person or property by any person, firm or corporation in any way resulting from, growing out of, or arising in or in connection with (a) the construction, maintenance or operation of Customer’s system or other property, or (b) the use of, or contact with, Energy delivered hereunder after it is delivered to Customer and while it is flowing through the lines of Customer, or is being distributed by Customer, or is being used by Retail Load.

If any Party intends to seek indemnification under this Section 11.2 from any other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within fifteen (15) days of the commencement of, or actual knowledge of, such Claim. Such Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

11.3 Independent Contractor Status. Nothing in this Agreement shall be construed as creating any relationship among Customer and City other than that of independent contractors for the sale and purchase of Full Requirements Service. No Party shall be deemed to be the agent of any other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship among the Parties is intended to be created hereby.

11.4 Title; Risk of Loss. Title to and risk of loss related to the Full Requirements Service shall transfer from City to Customer at the Delivery Points. City warrants that it will deliver Full Requirements Service to Customer free and clear of all Claims or any interest therein or thereto by any person arising prior to the Delivery Points.

ARTICLE 12- REPRESENTATIONS AND WARRANTIES

12.1 City and Customer represent and warrant to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has, or will upon execution of this Agreement promptly seek, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, including, but not limited to any organizational
documents, charters, by-laws, indentures, mortgages or any other contracts or documents to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) This Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming bankrupt; and

(f) There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially and/or adversely affect its ability to perform its obligations under this Agreement.

12.2 City represents and warrants to Customer that:

(a) Except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality under federal or state law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; and

(b) It will have all necessary infrastructure in place to service Customer as set forth in this Agreement.

12.3 Customer represents and warrants to City that:

Customer shall provide and maintain suitable protective devices on its equipment to prevent any loss, injury or damage that might result from single phasing conditions or any other fluctuations or irregularity in the supply of Energy. City shall not be liable for any loss, injury or damage resulting from a single phasing condition or any other fluctuation or irregularity in the supply of Energy which could have been prevented by Customer's use of such protective devices.

ARTICLE 13- ASSIGNMENT

13.1 General Prohibition Against Assignments. Except as provided in Section 13.3 below, no Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Parties' written consent, which consent shall not be unreasonably withheld or delayed.

13.2 Exceptions to Prohibition Against Assignments. A Party may, without the other Party's prior written consent, (and without relieving itself from liability hereunder) (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign
this Agreement to an Affiliate of such Party (which Affiliate shall be of equal or greater creditworthiness); or (iii) transfer or assign this agreement to any person or entity succeeding by merger or by acquisition to all or substantially all of the assets whose creditworthiness is equal to or higher than that of the assigning Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

13.3 Consent to Assignment. City agrees that, if requested by Customer, City shall sign a consent to a collateral assignment of this Agreement to Customer's lender(s) typical for project finance.

ARTICLE 14- CONFIDENTIALITY

14.1 Confidential Information. To the extent permitted by law, all Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Parties' prior written consent.

14.2 Disclosure. Notwithstanding the foregoing, Confidential Information may be disclosed

(a) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Full Requirements Service to be delivered pursuant to this Agreement,

(b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order,

(c) as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction and

(d) to third parties in connection with merger, acquisition/disposition and financing transactions provided that any such third party shall have signed a confidentiality agreement with the disclosing party containing customary terms and conditions that protect against the disclosure of the Confidential Information and that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance.

14.3 Notice. In the event that a Party ("Disclosing Party") is requested or required to disclose any Confidential Information pursuant to subsections 14.2 (a) and (b) above, and subject to the requirements of the Illinois Freedom of Information Act, the Disclosing Party shall provide the other Party with prompt written notice of any such request or requirement, so that the other Party may seek an appropriate protective order, other confidentiality arrangement or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, in the opinion of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.
14.4 Remedies. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition, to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Parties from and against any Claims, threatened or filed, and any losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above. The Parties hereby acknowledge that any breach of the terms and provisions of this Article 14 shall cause irreparable harm to the other Party for which there will be no adequate remedy at law and that therefore, the non-breaching Party shall be entitled to injunctive relief without bond in addition to any and all other relief the non-breaching Party may be entitled to pursuant to the terms and provisions of this Agreement and any applicable statute or the common law.

Notwithstanding the above provisions, City shall be permitted to communicate with PJM any necessary information with regard to implementation of this Agreement, and will make all reasonable efforts to ensure that Confidential Information remains confidential.

ARTICLE 15- REGULATORY AUTHORITIES

Each Party shall perform its obligations hereunder in accordance with applicable law, rules and regulations. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

ARTICLE 16- DISPUTE RESOLUTION AND STANDARD OF REVIEW FOR PROPOSED CHANGES

16.1 Resolution by Officers of the Parties. In the event of any dispute among the Parties arising out of or relating to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution who shall meet within ten (10) days after notice is given by either Party. If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution to the dispute then, the Parties, may, upon mutual agreement of the parties, agree to binding arbitration before a single arbitrator. If the parties fail to select an arbitrator within thirty (30) days after mutual agreement to submit a matter to arbitration, the arbitrator shall be named in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties shall share equally the services and expenses of the arbitrator and each shall pay its own costs, expenses, and attorneys' fees. Fees and expenses of the court reporter shall be paid in equal parts by the Parties hereto.

16.2 Waiver of Trial by Jury. In the event the Parties do not mutually agree to binding arbitration, City and Customer each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement any course of conduct, course of dealing, statements (whether oral or written) or actions of City and Customer related hereto and
expressly agree to have any disputes arising under or in connection with this Agreement be adjudicated by a judge of the court in the State of Illinois or federal court sitting in the State of Illinois having jurisdiction without a jury.

ARTICLE 17- GENERAL PROVISIONS

17.1 Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties thereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party hereto.

17.2 No Dedication of Facilities. Any undertakings or commitments by one Party to the other under this Agreement shall not constitute the dedication of generation facilities or the transmission system or any portion thereof of either Party to the public or to the other Party, except for their obligation. Whenever at Customer's request City's facilities are relocated solely to suit Customer's convenience, Customer shall reimburse City for the entire cost incurred in making such change.

17.3 Waivers. The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party in 3.2.

17.4 Interpretation. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State of Illinois, without giving effect to its conflict of laws provisions.

17.5 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

17.6 Modification. No modification to this Agreement will be binding on any Party unless it is in writing and signed by all Parties.

17.7 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

17.8 Headings. Article and Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

17.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party invoices evidencing the quantities of Full
Requirements Service. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments to such invoice and the payments thereof will be made promptly and shall bear interest calculated in accordance with Federal Funds Rate minus 0.25% as from time to time in effect from the date the overpayment or underpayment was made until paid provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of the twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.10 Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least one (1) year such records as may be needed to afford a clear history of the Full Requirements Service supplied pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended.

17.11 Survival. The provisions of Article 10 shall survive for one year after the termination of this Agreement hereof, and any Section of this Agreement that specifies by its terms that it survives termination, shall survive the termination or expiration of this Agreement.

17.12 Cooperation to Effectuate Agreement. Each Party shall cooperate to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties. Customer and City each shall exercise reasonable diligence to use and provide any service furnished under this Agreement with a view to securing the efficiency of their respective apparatus and systems in keeping with Good Utility Practice in the area, shall coordinate their respective systems' relaying and fusing so as to preclude unnecessary interruptions, shall maintain their respective facilities and equipment at all times in a safe operating condition in accordance with Good Utility Practice, shall operate their respective facilities and equipment in such manner as not to interfere with the service to customers of either party, and shall coordinate maintenance that may adversely affect the operation of their respective facilities and equipment.

ARTICLE 18 - RULES OF CONSTRUCTION

Terms used in this Agreement but not listed in this Article or defined in Article 1 shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

The masculine shall include the feminine and neuter.

The words "include", "includes" and "including" are deemed to be followed by the words "without limitation."

References to contracts, agreements and other documents and instruments shall be references to the same as amended, supplemented or otherwise modified from time to time.

The Appendices attached hereto are incorporated in and are intended to be a part of this Agreement; provided, that in the event of a conflict between the terms of any Appendices and the Terms of this Agreement, the Terms of this Agreement shall take precedence.
References to laws and to terms defined in, and other provisions of, laws shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

References to a person or entity shall include its successors and permitted assigns and, in the case of a governmental authority, any entity succeeding to its functions and capacities.

References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement.

Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same.

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE 19- ENTIRE AGREEMENT

The Parties agree that this Agreement, including the Appendices attached hereto and Related Documents, sets forth the terms under which City will supply Full Requirements Service to Customer during the Delivery Period and constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral (including without limitation any preliminary term sheet) (but excluding the assumptions on which this Agreement is based), among the Parties concerning this Agreement.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

CITY:                                                                                   CUSTOMER:
City of Batavia, Illinois                                                           Suncast Corporation

By: ________________________                           By: ______________________
Jeffery D. Schielke, Mayor                                                  Name, Title

Attest:

___________________________
Heidi Wetzel, City Clerk
APPENDIX A

ELECTRIC SYSTEM INFRASTRUCTURE IMPROVEMENTS

In support of the Customer’s desire to expand manufacturing at the Facility, City shall cause to be installed the following electric system infrastructure improvements:

Installation of underground conduit, via open trenching method, of a size and quantity determined by the City, from approximately the existing southeast service location primary metering cabinet to a new primary metering cabinet located south of the existing railroad tracks near the new transformer location as specified by the Customer but generally located near the southwest corner of the existing Facility. Installation of underground conduit, via directional boring method, of a size and quantity determined by the City, from the new primary metering cabinet to the transformer primary compartment. Installation and termination of all cable, of a size and quantity determined by the City, from the existing metering cabinet to the new transformer location.

The Parties agree that the Customer is responsible for the transformer pad construction or any necessary relocation of the transformer.