

## **MITIGATION CREDIT SUPPLY AGREEMENT**

THIS MITIGATION CREDIT SUPPLY AGREEMENT (this “Agreement”) by and between First Pennsylvania Resource, L.L.C. (“RES”) and Homer City Generation LP (“Buyer”) is effective as of October \_\_, 2025 (the “Effective Date”).

### **RECITALS:**

WHEREAS, RES has established a mitigation bank known as the Paden Creek Mitigation Bank (the “Bank”) authorized by the Pennsylvania Department of Environmental Protection (the “PADEP”) and the United States Army Corps of Engineers (the “USACE”) and together with the PADEP the “Permitting Agencies”) pursuant to a mitigation banking instrument (as amended or modified from time to time, the “Bank Instrument”);

WHEREAS, RES is authorized to operate the Bank and to sell and transfer mitigation credits and/or acres, as described in the Bank Instrument (“Mitigation Credits”), in accordance with the Bank Instrument; and

WHEREAS, Buyer desires to purchase from RES, and RES desires to sell to Buyer, Mitigation Credits, upon the terms and subject to the conditions set forth in this Agreement.

THEREFORE, for and in consideration of the premises and the payments set forth herein, RES and Buyer agree to the following terms and conditions:

### **AGREEMENTS:**

#### **1. Purchase of Mitigation Credits.**

- a. Purchase. RES hereby agrees to sell to Buyer, and Buyer hereby agrees to buy from RES, the Mitigation Credits described in Exhibit A, on the terms, and subject to the conditions, set forth herein (the “Purchased Credits”).
- b. Purchase Price. The purchase price for the Purchased Credits is \$39,000.00 (the “Purchase Price”). Buyer agrees to pay RES the Purchase Price by wire transfer to the account specified on Exhibit B no later than thirty (30) days after the Effective Date. All amounts paid by Buyer under this Agreement shall, when paid, be deemed fully earned by RES and non-refundable.
- c. Default. If Buyer fails to pay any portion of the Purchase Price when due, then: (i) RES shall not be required to perform hereunder and shall not be responsible for any breach, liability, or damages resulting from such non-performance; (ii) all late payments shall bear interest at a rate that is the lesser of two percent (2%) per month and the highest rate permissible under applicable law, calculated daily and compounded monthly, starting on the date such payment is due but excluding the date the overdue amount plus applicable rate is paid; and (iii) RES may terminate this Agreement, pursue such remedies as may be available to it at law and in equity and, without limiting the foregoing, ownership of the Purchased Credits shall automatically revert to RES, and RES shall be free to sell the Purchased Credits to one or more third parties.

#### **2. Ownership and Application of Purchased Credits.**

- a. Ownership. As of the Effective Date, Buyer shall own the Purchased Credits, subject to Sections 1.c. and 2.d. of this Agreement.
- b. Application of Purchased Credits. At any point on or after the Effective Date, Buyer may request that RES apply the Purchased Credits to a permit by delivering a written notice to RES (an “Application Notice”). Each Application Notice shall include (i) Buyer’s name and contact information; (ii) each Permitting Agency’s name and contact information; (iii) Buyer’s project name and location; (iv) Buyer’s permit application number and date; and (v) a brief description of the impacts mitigated by the Mitigation Credits (*e.g.*, impact of [x] acres of wetlands). Upon request, Buyer shall promptly provide RES any additional information necessary to meet the requirements set forth in the Bank Instrument or required by the Permitting Agencies. Upon receipt of an Application Notice and, if the Purchase Price has not been paid in full, payment of the portion of the Purchase Price that remains outstanding, RES shall promptly provide the Permitting Agencies with the documentation required by the Bank Instrument to apply the Purchased Credits to the permit application specified by Buyer. Buyer is solely responsible for the accuracy of the information provided to RES in an Application Notice and any other information provided by Buyer to RES in connection with the Purchased Credits or the application of the Purchased Credits to a permit. RES shall have neither the duty to confirm the accuracy of the information provided by Buyer nor any liability for inaccurate information.



- c. Exculpation of RES. In no event will RES be responsible (i) if the Permitting Agencies do not allow the Purchased Credits to be applied to a permit; (ii) for determining the nature or amount of mitigation required by Buyer for any project, for any permit, or under any applicable law; or (iii) for compliance with the terms and conditions of any permit ultimately issued to Buyer in connection with any project or otherwise.
- d. Substitute Credits. Notwithstanding anything to the contrary herein, RES may, in its discretion and in lieu of supplying the Purchased Credits, obtain substitute Mitigation Credits from mitigation banks or other sources (“Substitute Credits”) and apply those Substitute Credits to the permit specified by Buyer in the Application Notice; provided, that such substitution does not adversely impact Buyer. If RES provides Substitute Credits in lieu of the Purchased Credits, ownership of the Purchased Credits shall automatically revert to RES, and RES shall be free to sell the Purchased Credits to one or more third parties.
- e. Bank Closeout. If all of the Purchased Credits have not been applied to a permit by the five-year anniversary of the Effective Date, and, as a result, RES is prevented from closing the Bank, Buyer will take any and all actions requested by RES to achieve Bank closeout.

### 3. Miscellaneous.

- a. Buyer Rights. For the avoidance of doubt, this Agreement does not give the Buyer (i) rights to any monies generated by the Bank, or (ii) rights of ownership or use of the real property associated with the Bank or any other property interests of RES or its affiliates.
- b. Confidentiality. Neither this Agreement nor the terms hereof may be furnished to any third party without the written consent of all parties, except as may otherwise be required by law or a court of competent jurisdiction; provided, that the foregoing shall not prohibit the parties from providing this Agreement or the terms hereof to their attorneys, consultants, professional advisors, affiliates, current investors and lenders, and prospective investors and lenders. Buyer acknowledges and agrees that RES may, as part of the process for transferring the Purchased Credits, disclose information provided by Buyer to the Permitting Agencies and other applicable regulatory authorities.
- c. Governing Law and WAIVER OF JURY TRIAL. This Agreement and all matters arising out of or relating to this Agreement are governed by the laws of Pennsylvania, without giving effect to any conflict of laws provisions thereof. Either party may only institute legal suits, actions, and proceedings arising out of or relating to this Agreement in the federal or state courts located in Pittsburgh, Pennsylvania. **EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT; AND (C) WAIVES ANY RIGHT TO TRIAL BY JURY.**
- d. Counterparts and Authorization. This Agreement may be signed by facsimile or electronic PDF signature, which signature shall be deemed to constitute an original signature and be binding as such. This Agreement may be executed in identical counterparts, each of which when so executed and delivered will constitute an original, but all of which taken together will constitute one and the same instrument. The parties each separately represent that the person signing this Agreement is duly authorized to sign this Agreement.
- e. Force Majeure. No party shall be liable or responsible to the other party, or deemed to have breached this Agreement, for any failure or delay in satisfying its obligations hereunder if such failure or delay is attributable to any of the following: strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, orders, laws, regulations, or restrictions, adverse determinations from the Permitting Agencies or any other governmental authority, or any other causes which are beyond the reasonable control of the responsible party.
- f. Consequential Damages. Notwithstanding anything to the contrary herein, no party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability, or other tort or otherwise, regardless of the foreseeability or the cause thereof. Each party expressly agrees that the affiliates, members, partners, and shareholders of any defaulting or breaching party hereunder are not jointly, solidarily, or severally liable for any costs, expenses, losses, or damages arising from such party’s breach or default under this Agreement.
- g. Notice. All notices sent by one party to the other pursuant to this Agreement shall be in writing, addressed as set forth on the signature page of this Agreement, and either (i) sent by email with confirmed receipt, or (ii) delivered or sent



(A) in person; (B) by U.S. Mail, postage prepaid and certified with return receipt requested; or (C) by nationally recognized overnight delivery service, shipping prepaid. Either party may change its email address or physical address by notifying the other party in writing of the change.

- h. Interpretation. The Parties expressly agree that this Agreement was jointly drafted and that each Party had opportunity to negotiate its terms and to obtain assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall not be construed against or in favor of any Party but shall be construed in a neutral manner.
- i. Survival. Notwithstanding anything to the contrary herein, Section 1.c. and Article 3 shall survive any termination of this Agreement.
- j. General. Buyer's rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of RES. This Agreement constitutes the entire agreement and understanding between the parties with respect to the purchase and sale of the Purchased Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to such matters. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of either party. This Agreement may not be changed, amended, or modified except by an instrument in writing signed by both parties. The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal. This Agreement is not intended to create, and it shall not create, any partnership, joint venture, or similar arrangement between Buyer and RES. No party's failure or delay in exercising any of its rights hereunder will constitute a waiver of such rights unless expressly waived in writing.

**[Signature Page Follows]**



The parties have executed this Mitigation Credit Supply Agreement effective as of the Effective Date.

FIRST PENNSYLVANIA RESOURCE, L.L.C.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Physical Address: 317 E. Carson Street  
Suite 242  
Pittsburgh, PA 15219  
Attn: Mr. Michael Sachs

Email Address: [msachs@res.us](mailto:msachs@res.us)

HOMER CITY GENERATION LP

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Physical Address: 1750 Power Plant Road  
Homer City, PA 15748

Email Address: \_\_\_\_\_



Exhibit A

Credit Type	Quantity
Wetland Credits	0.26
Stream Credits	0.00



Exhibit B

Bank: First Horizon Bank  
165 Madison Ave  
Memphis, TN 38103

Routing No.: 084000026

Account No.: 200-0081-7317

Account Name: First Pennsylvania Resource, L.L.C.  
Checking Account

For questions, please call Kimberly Cowan with Bank Sponsor at (281) 407-6134; or  
Alison Lyons with First Horizon Bank (713) 624-1384