

# Issue Analysis Form (rev. July 2013)



**Date:** April 28, 2020  
**Item:** Broadband Agreement #2 with PGECE  
**Lead Department(s):** County Administration  
**Contact Person(s):** Jeffrey Stoke, Deputy County Administrator

## Description and Current Status

After the success of the June 2017 public/private partnership agreement between the County, Prince George County Industrial Development Authority and PGECE, LLC, attached is a proposal to enter into a second agreement with similar parameters to provide fiber to the home to rural Prince George County. Staff is presenting a red-line version of the 2017 original agreement that has been adjusted to meet the needs of the second phase of the project. If approved by the Board, staff is requesting formal adoption on May 12 followed by a PG IDA meeting on May 20 for consideration. PGECE staff will be present to discuss the second phase during the work session.

## Government Path

Does this require IDA action?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does this require BZA action?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does this require Planning Commission action?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does this require Board of Supervisors action?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does this require a public hearing?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If so, before what date?

Since the funding has already been attained through a taxable bond (fall closing 2019), the County path is to pass a resolution (May 12) to enter into the agreement and then transfer the \$1 million to the Prince George County Industrial Development Authority.

## Fiscal Impact Statement

The County issued a taxable bond for \$1 million. The financial closing has occurred and the funds have been placed in a County account specifically for this project.

## County Impact

Another 500 potential connection points in the County will have access to fiber to the home technology.

## Notes

This is the second agreement with PGECE, LLC. The first agreement was successfully completed in two years and won a total of five (5) state and national awards for a public/private partnership solving the rural internet dilemma.

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE COUNTY OF PRINCE GEORGE  
FIBER TO THE HOME  
BROADBAND EXPANSION GRANT 2020

**PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this \_\_\_\_ day of \_\_\_\_\_, 2020, by and among **THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the “County”) a political subdivision of the Commonwealth of Virginia, **PGECE ENTERPRISES, LLC** (“PGECE”) a Virginia limited liability company authorized to transact business in the Commonwealth of Virginia, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the “Authority”), a political subdivision of the Commonwealth of Virginia,

**WITNESSETH:**

WHEREAS sixty-one percent of all businesses in Prince George County are home-based businesses; and

WHEREAS the extension of broadband provides enhanced educational opportunities and furthers workforce development which supports economic development in Prince George County; and

WHEREAS the availability of secure, reliable, competitive and sustainable infrastructure is essential to meet future broadband needs; and

WHEREAS small and medium size business enterprises with greater high-speed internet use grow faster than those with less high-speed internet use; and

WHEREAS the internet is a powerful catalyst for job creation; and

WHEREAS the internet drives economic modernization; and

WHEREAS the County and Authority wish to make funds available for the purpose of inducing PGECE to expand access through “Fiber To The Home” broadband at an accelerated pace, after making a significant Capital Investment through a Fiber To The Home Broadband Expansion Grant (“Grant”); and

WHEREAS the County is willing to provide funds to the Authority with the expectation that the Authority will provide the funds to PGECE, provided that PGECE has agreed to meet certain performance targets relating to construction of infrastructure, and expanding access to, Fiber To The Home broadband; and

WHEREAS the County, the Authority and PGECE desire to set forth their understanding and agreement as to the payout of the Grant, the use of the proceeds of the Grant, the obligations

of PGECE regarding Capital Investment and the potential for recapture or “claw back” upon default; and

WHEREAS, it is anticipated that the construction, equipping, operation and installation of Phase II of the Fiber To The Home broadband project will require a capital expenditure of One Million Dollars (\$1,000,000.00) by PGECE; and

WHEREAS the stimulation of additional tax revenue to the County and economic activity in the County to be generated by the Capital Investment constitutes a valid public purpose for the expenditure of public funds and is the primary purpose of the Grant by the Authority:

NOW, THEREFORE in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### **Section 1 - Definitions**

For the purposes of this Agreement, the following terms shall have the following definitions:

“**Broadband Service**” – a minimum broadband speed of twenty-five (25) Mbps down and three (3) Mbps up as defined by the FCC.

“**Broadband Availability**” - The availability of a minimum of five hundred (500) new connection points allowing access to Fiber To The Home broadband for potential subscriber structures that are within one thousand (1,000) feet of a VDOT road where an existing pole or other access point is located.

“**Consistent**” - ability of service to maintain promised speeds at periods of peak use.

“**Capital Investment**” - a capital expenditure by or on behalf of PGECE for the installation of a Fiber Backbone and Fiber To The Home broadband infrastructure.

“**Event of Force Majeure**” – any circumstances beyond a party’s reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages, shortages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power, telecommunications or transportation.

“**Fiber Backbone**” - the principal data routes between large, strategically interconnected computer networks on the defined route and core routers on the Internet.

“**Fiber To The Home**” – installation of fiber optic wire from a central point directly to a structure to provide high-speed internet access.

“**Phase II**” - the successful completion of the necessary infrastructure to serve a minimum of five hundred (500) new potential subscribers located within one thousand feet of a roadway by July 1, 2024.

“**Reliable**” - ability to maintain service in the case of storms or system breakdowns consistent with industry standards for a rural fiber optic network.

“**Roadway**” – a road that is part of the Virginia Department of Transportation (VDOT) secondary system, which is immediately adjacent to a fiber network access point owned by Prince George Electric Cooperative.

### **Section 2 - Broadband Installation Plan.**

Within sixty (60) days of the execution of this Agreement, PGECE shall provide to the Authority a broadband installation plan for installation of the Fiber Backbone. The broadband installation plan shall include, but not be limited to, the locations where PGECE proposes to install broadband infrastructure, the types of materials proposed to be used, and the capacity and lifespan of the materials.

### **Section 3 – Broadband Subscriptions**

As of July 1, 2024 PGECE shall have made available consistent and reliable Broadband Service to a minimum number of five hundred (500) new potential subscribers after the effective date of the Agreement.

PGECE shall provide reasonable documentation to the County and the Authority annually, beginning July 1, 2021 and continuing through July 1, 2024, verifying the number of new potential subscribers to Broadband Service, to whom service has been made available. In addition, the number of new connections within the County shall be supplied for informational purposes.

After the effective date of this Agreement, in the event PGECE has not made available Broadband Service to a minimum of five hundred (500) new potential subscribers on or before July 1, 2024, PGECE shall be in default under the terms of this Agreement as defined in Section 8 – Default herein.

### **Section 4 - No Degrading of Service**

PGECE shall ensure that there is no degrading of Broadband Service, as defined in this Agreement, to customers during the term of this Agreement.

### **Section 5 - Continuation of Service/New Customers**

PGECE agrees that as long as a reasonable demand exists for Broadband Service, PGECE will continue to provide Broadband Service to existing and new subscribers, who reside within one thousand (1,000) feet of a roadway as defined herein.

### **Section 6 - Disbursement of Grant**

(a) Notwithstanding anything in this Agreement to the contrary, the Authority will not have any obligation to disburse any portion of the Grant under this Agreement until and unless this Agreement is approved by the County's Board of Supervisors and the Authority has received such funds from the County.

(b) Subject to the delivery of the Grant by the County to the Authority, within thirty (30) days of its receipt of the Grant funds, the Authority will disburse the Grant funds to PGECE on condition that PGECE has complied with Section 2 of this Agreement.

### **Section 7 - Community Service Commitments**

Upon request, PGECE, at its expense, will construct and make available within a reasonable timeframe, fiber optic cable connections to all public structures and facilities owned or operated by the County that are adjacent to the Phase II construction route within one thousand (1,000) feet of a VDOT road where an existing pole or access point is located., including, but not limited to schools, libraries, parks and recreation facilities, fire stations, and wireless communications towers. Internet service charges for these facilities shall be at the commercial rate.

### **Section 8 - Default**

After the effective date of this Agreement, if PGECE fails to make available consistent and reliable Broadband Service to five hundred (500) new potential subscribers by July 1, 2024 as set forth in Section 3 – Broadband Subscriptions of this Agreement, then PGECE shall be in default and shall refund to the Authority Two Thousand Dollars (\$2,000.00) for each potential subscriber below the required five hundred (500) new potential subscribers for whom such service has not been made available.

### **Section 9 - Event of Force Majeure**

PGECE shall not be considered in Default under Section 8 – Default, of this Agreement if prevented from meeting the new subscription requirements of this Agreement by July 1, 2024 on account of an Event of Force Majeure as defined herein. If such occurs, PGECE shall be allowed a reasonable extension of time from the date of the occurrence of such Event, to allow PGECE to meet the required subscription objective.

### **Section 10 – Sale or Assignment of PGECE**

In the event of a sale or assignment of PGEC Enterprises, LLC to any person, firm or corporation prior to PGECE's fulfillment of its obligations under the terms of this Agreement, such sale or assignment shall be made expressly subject to all terms of this Agreement.

## **Section 11 - Discharge by PGECE of Contract Obligations**

All parties hereto understand and agree that as of the date PGECE has installed and made available, consistent and reliable Broadband Service to a minimum of five hundred (500) new potential subscribers, after the effective date of this Agreement and has provided reasonable documentation to the County and to the Authority verifying same, PGECE shall have satisfied in full all of the requirements of it under the terms of this Agreement and shall be discharged from any further obligations to the County and to the Authority hereunder.

## **Section 12 - Miscellaneous**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties and may not be amended or modified, except in writing, signed by each of the parties hereto. Other than this Agreement, PGECE shall not be required to enter into any additional agreements or submit any additional application letters in order to receive the Grant.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

**Section 13 - Notices**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to PGECE, to:  
Cary J. Logan, Jr., CEO  
PGECE Enterprises, LLC  
7103 General Mahone Hwy  
Waverly, Virginia 23890

with copy to:  
F. Lewis Wyche, Jr., Esquire  
F. Lewis Wyche, Jr., P.C.  
6405 Courthouse Road  
Post Office Box 160  
Prince George, Virginia 23875

and:  
C. J. Berkeley Horne, Esquire  
LeClair Ryan  
919 East Main Street, 24<sup>th</sup> Floor  
Richmond, Virginia 23219

if to the County, to:  
Percy C. Ashcraft, County Administrator  
County of Prince George  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:  
Dan Whitten, Esquire  
Prince George County Attorney  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

if to the Authority, to:  
Jeff Stoke, Assistant Secretary  
Industrial Development Authority of the  
County of Prince George, Virginia  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:  
David L. Richardson, Esquire  
McGuire Woods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3916

**IN WITNESS WHEREOF**, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PGEC ENTERPRISES, LLC, a Virginia limited liability company**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE COUNTY OF PRINCE GEORGE  
FIBER TO THE HOME  
BROADBAND EXPANSION GRANT 2020

**PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this \_\_\_\_ day of \_\_\_\_\_, ~~2020 June, 2017~~, by and among **THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the "County") a political subdivision of the Commonwealth of Virginia, **PGEC ENTERPRISES, LLC** ("PGECE") a Virginia limited liability company authorized to transact business in the Commonwealth of Virginia, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth of Virginia,

**WITNESSETH:**

WHEREAS sixty-one percent of all businesses in Prince George County are home-based businesses; and

WHEREAS the extension of broadband provides enhanced educational opportunities and furthers workforce development which supports economic development in Prince George County; and

WHEREAS the availability of secure, reliable, competitive and sustainable infrastructure is essential to meet future broadband needs; and

WHEREAS small and medium size business enterprises with greater high-speed internet use grow faster than those with less high-speed internet use; and

WHEREAS the internet is a powerful catalyst for job creation; and

WHEREAS the internet drives economic modernization; and

WHEREAS the County and Authority wish to make funds available for the purpose of inducing PGECE to expand access through "Fiber To The Home" broadband at an accelerated pace, after making a significant Capital Investment through a Fiber To The Home Broadband Expansion Grant ("Grant"); and

WHEREAS the County is willing to provide funds to the Authority with the expectation that the Authority will provide the funds to PGECE, provided that PGECE has agreed to meet certain performance targets relating to construction of infrastructure, and expanding access to, Fiber To The Home broadband; and

WHEREAS the County, the Authority and PGECE desire to set forth their understanding and agreement as to the payout of the Grant, the use of the proceeds of the Grant, the obligations

of PGECE regarding Capital Investment and the potential for recapture or “claw back” upon default; and

WHEREAS, it is anticipated that the construction, equipping, operation and installation of Phase III of the Fiber To The Home broadband project will require a capital expenditure of One Million Dollars (\$1,000,000.00) by PGECE; and

WHEREAS the stimulation of additional tax revenue to the County and economic activity in the County to be generated by the Capital Investment constitutes a valid public purpose for the expenditure of public funds and is the primary purpose of the Grant by the Authority:

NOW, THEREFORE in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

#### **Section 1 - Definitions**

For the purposes of this Agreement, the following terms shall have the following definitions:

“**Broadband Service**” – a minimum broadband speed of twenty-five (25) Mbps down and three (3) Mbps up as defined by the FCC.

“**Broadband Availability**” - ~~The availability of a minimum of five hundred (500) new connection points allowing access to Fiber To The Home broadband for potential subscriber structures that are within one thousand (1,000) feet of a VDOT road where an existing pole or other access point is located.~~  
the availability of the connection necessary to access Fiber To The Home broadband for structures that are within one thousand feet of a VDOT road where an existing PG Electric pole or other access point is located.

“**Consistent**” - ability of service to maintain promised speeds at periods of peak use.

“**Capital Investment**” - a capital expenditure by or on behalf of PGECE for the installation of a Fiber Backbone and -Fiber To The Home broadband infrastructure.

“**Event of Force Majeure**” – any circumstances beyond a party’s reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages, shortages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power, telecommunications or transportation.

“**Fiber Backbone**” - the principal data routes between large, strategically interconnected computer networks on the defined route and core routers on the Internet.

“**Fiber To The Home**” – installation of fiber optic wire from a central point directly to a structure to provide high-speed internet access.

“**Phase II**” - the successful completion of the necessary infrastructure ~~in order to serve a minimum~~ minimum of ~~result in~~ five hundred (500) new potential subscribers ~~connections to structures~~ located within one thousand feet of a roadway by July 1, 2024.

“**Reliable**” - ability to maintain service in the case of storms or system breakdowns consistent with industry standards for a rural fiber optic network.

“**Roadway**” – a road that is part of the Virginia Department of Transportation (VDOT) secondary system, which is immediately adjacent to a fiber network access point owned by Prince George Electric Cooperative.

#### **Section 2 - Broadband Installation Plan.**

Within sixty (60) days of the execution of this Agreement, PGECE shall provide to the Authority a broadband installation plan for installation of the Fiber Backbone, ~~in substantial conformity with the attached map, entitled “Potential PGECE Fiber Optic Lines and Broadband Customers,” dated April 21, 2017.~~ The broadband installation plan shall include, but not be limited to, the locations where PGECE proposes to install broadband infrastructure, the types of materials proposed to be used, and the capacity and lifespan of the materials.

#### **Section 3 – Broadband Subscriptions**

As of July 1, 2024, PGECE shall have ~~installed and~~ made available consistent and reliable ~~bBroadband sService~~ to a minimum number of five hundred (500) new potential subscribers ~~new subscriber structures~~ after the effective date of the Agreement.

PGECE shall provide reasonable documentation to the County and the Authority annually, beginning July 1, 2021~~18~~ and continuing through July 1, 2024, verifying the number of new new potential subscribers to bBroadband sService, to whom service has been made available. In addition, the number of new connections within the County shall be supplied for informational purposes, with a minimum of one-year subscriptions each.

After the effective date of this Agreement, in the event ~~that~~ PGECE has not ~~made available~~ provided ~~bBroadband sService~~ to a minimum of five hundred (500) new potential new subscribers on or before July 1, 2024, PGECE shall be in default under the terms of this Agreement as defined in Section 8 – Default herein.

#### **Section 4 - No Degrading of Service**

PGECE shall ensure that there is no degrading of ~~bBroadband sService~~, as defined in this Agreement, to customers during the term of this Agreement.

#### **Section 5 - Continuation of Service/New Customers**

PGECE agrees that as long as a reasonable demand exists for ~~b~~Broadband ~~s~~Service, PGECE will continue to provide ~~b~~Broadband ~~s~~Service to existing and new subscribers, who reside within one thousand (1,000) feet of a roadway as defined herein.

#### Section 6 - Disbursement of Grant

(a) Notwithstanding anything in this Agreement to the contrary, the Authority will not have any obligation to disburse any portion of the Grant under this Agreement until and unless this Agreement is approved by the County's Board of Supervisors and the Authority has received such funds from the County.

(b) Subject to the delivery of the Grant by the County to the Authority, within thirty (30) days of its receipt of the Grant funds, the Authority will disburse the Grant funds to PGECE on condition that PGECE has complied with Section 2 of this Agreement.

#### Section 7 - Community Service Commitments

Upon request, PGECE, at its expense, will construct and make available within a reasonable timeframe, fiber optic cable connections to all public structures and facilities owned or operated by the County that are adjacent to the Phase II construction route within one thousand (1,000) feet of a VDOT road where an existing pole or access point is located. ~~Fiber Backbone,~~ including, but not limited to schools, libraries, parks and recreation facilities, fire stations, and wireless communications towers. Internet service charges for these facilities shall be at the commercial rate. ~~In addition, up to \$50,000 of the grant funds may be utilized for a pilot project at the Burrowsville Community Center for a "Digital Den" open to the public upon request, PGECE will construct and make available to the County's Central Wellness Center, the Prince George Emergency Crew Building, the Burrowsville Volunteer Fire Department and the Burrowsville Community Center internet service at the residential internet service rate during the term of this Agreement. At such time as PGECE has satisfied in full all of the requirements of it under the terms of this Agreement, the rate for internet service to the County's Central Wellness Center, the Prince George Emergency Crew building, the Burrowsville Volunteer Fire Department and the Burrowsville Community Center shall be at the PGECE commercial internet rate.~~

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#### Section 8 - Default

After the effective date of this Agreement, if PGECE fails to make available consistent and reliable ~~b~~Broadband ~~s~~Service to five hundred (500) ~~new potential~~new subscribers by July 1, 2024 as set forth in Section 3 – Broadband Subscriptions of this Agreement, then PGECE shall be in default and shall refund to the Authority Two Thousand Dollars (\$2,000.00) for each ~~potential~~ subscriber below the required five hundred (500) –new potential subscribers not provided consistent and reliable broadband service below the required five hundred (500) new subscribers for whom such service has not been made available.

#### Section 9 - Event of Force Majeure

PGECE shall not be considered in Default under Section 8 – Default, of this Agreement if prevented from meeting the new subscription requirements of this Agreement by July 1, 2024~~4~~ on account of an Event of Force Majeure as defined herein. If such occurs, PGECE shall be allowed a reasonable extension of time from the date of the occurrence of such Event, to allow PGECE to meet the required subscription objective.

#### **Section 10 – Sale or Assignment of PGECE**

In the event of a sale or assignment of PGEC Enterprises, LLC to any person, firm or corporation prior to PGECE’s fulfillment of its obligations under the terms of this Agreement, such sale or assignment shall be made expressly subject to all terms of this Agreement.

#### **Section 11 - Discharge by PGECE of Contract Obligations**

All parties hereto understand and agree that as of the date PGECE has installed and made available, consistent and reliable ~~b~~Broadband ~~s~~Service to a minimum of five hundred (500) new ~~potential~~ subscribers ~~structures~~, after the effective date of this Agreement and has provided reasonable documentation to the County and to the Authority verifying same, PGECE shall have satisfied in full all of the requirements of it under the terms of this Agreement and shall be discharged from any further obligations to the County and to the Authority hereunder.

#### **Section 12 - Miscellaneous**

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement among the parties and may not be amended or modified, except in writing, signed by each of the parties hereto. Other than this Agreement, PGECE shall not be required to enter into any additional agreements or submit any additional application letters in order to receive the Grant.

(b) *Governing Law; Venue.* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions.

(c) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability.* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

#### **Section 13 - Notices**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to PGECE, to:

with copy to:

Carsey J. LoganMichael E. Malandro, Jr., ManagerCEO

F. Lewis

Wyche, Jr., Esquire  
PGEC Enterprises, LLC  
7103 General Mahone Hwy  
Waverly, Virginia 23890

F. Lewis Wyche, Jr., P.C.  
6405 Courthouse Road  
Post Office Box 160  
Prince George, Virginia 23875

and:  
C. J. Berkeley Horne, Esquire  
LeClair Ryan  
919 East Main Street, 24<sup>th</sup> Floor  
Richmond, Virginia 23219

if to the County, to:  
Percy C. Ashcraft, County Administrator  
County of Prince George  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:  
Dan WhittenSteven L. Micas, Esquire  
Prince George County Attorney  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

if to the Authority, to:  
Jeff Stoke, Assistant Secretary  
Industrial Development Authority of the  
County of Prince George, Virginia  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:  
David L. Richardson, Esquire  
McGuire Woods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3916

**IN WITNESS WHEREOF**, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PGEC ENTERPRISES, LLC, a Virginia limited liability company**

By \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE  
GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

