

RETAIL ELECTRIC ENERGY SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the City of Roseville, a municipal corporation, (“City”) and TSI Semiconductors America LLC, a Delaware limited liability company (“TSI”); and

W I T N E S S E T H:

WHEREAS, City is a municipally owned electric utility engaged in the activity of supplying and distributing Electric Energy; and

WHEREAS, City endeavors to offer competitive rates and provide TSI tailored contract rates which are intended to meet specific TSI needs; and

WHEREAS, City provides energy education, efficiency and conservation programs as key components to providing sustainable reliable energy and low rates to the community; and

WHEREAS, City is committed to stimulating economic development through energy contracts which provide financial benefits to commercial businesses without creating a subsidization on other customers within the rate classes; and

WHEREAS, the Parties now desire to enter into a Retail Electric Energy Services Agreement on the terms and conditions as specified below.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions.

“City Service Area” shall mean that area served by City’s electric distribution system.

“Electric Energy” shall mean the commodity electricity.

“Force Majeure” shall mean any cause beyond the reasonable control of the City, including but not limited to, unusually severe weather, flood, drought, earthquake, storm, fire, lightning, epidemic, war or act of public enemy, riot, civil disturbance or disobedience, labor dispute, strike, labor or material shortage, sabotage, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight City could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

“Full Electric Energy Requirements” shall mean all of TSI’s electric load requirements occurring within City Service Area during the Term of this Agreement, except:

A. As specified in Attachment A, any pre-existing (in operation prior to execution of this Agreement) non-emergency electric self-generation operating in parallel or independent of the City’s distribution grid.

B. Uninterruptible power sources and other emergency-only backup electric generation.

“Party” shall mean City or TSI and “Parties” shall mean both City and TSI.

“Scope of Services” shall mean those supplemental conditions, as specified in Attachment A, relating to the provision of Electric Energy under this Agreement.

“Transmission Provider” shall mean any person or entity, which controls or schedules transmission services or capabilities.

“Transmission Service” shall mean the delivery of electric power over the bulk electric transmission system to points of interconnection within the City.

2. Agreement Documents. This Agreement shall consist of this document and Attachment A, attached hereto and incorporated herein by this reference, and any amendments or supplements hereto that may be made from time to time. Attachment A shall specify the supplemental terms and conditions relating to, among others; TSI’s address for purposes of notice and billing, TSI’s locations to be served under this Agreement, Scope of Services, Self-Generation, and the pricing/rate formula. Except as to matters addressed in this Agreement, electric services provided to TSI shall be subject to all of City’s Ordinances, Resolutions, and Rules and Regulations as promulgated by the City Council, City Manager, or Electric Utility Director, as amended from time to time. This Agreement may be amended, modified, extended or terminated only upon mutual written consent of the Parties.

3. Term; Renewal. This Agreement shall become effective upon approval of each Party and execution by the Parties. The Term of this Agreement shall be two (2) years (“Term”) unless earlier terminated pursuant to the terms of this Agreement. There shall be no automatic renewal or extension of this Agreement.

4. Exclusive Electric Energy Supply. During the Term of this Agreement, City shall have the exclusive right to supply TSI’s Full Electric Energy Requirements and TSI shall have the obligation to receive and purchase its Full Electrical Energy Requirements exclusively from City in accordance with this Agreement. City will

deliver Electric Energy pursuant to this Agreement to TSI sites/locations within the City Service Area. All Electric Energy purchased by TSI shall be for the use of TSI with no sale or sub-metering to third parties.

5. Rate Paid by TSI for Electric Energy. In exchange for TSI's commitments under this Agreement, City and TSI agree that commencing on the next working day after City Council approval, TSI shall pay at such rates and volumes as specified in Attachment A. The rate shall be subject to all supplemental conditions, if any, as outlined in Attachment A. Additionally, TSI shall pay all charges associated with the purchase of Electric Energy, as required by the Roseville Municipal Code, as amended from time to time, applicable to the service rate classes, including other applicable charges and fees. Furthermore, TSI shall pay any and all applicable in-lieu fees, federal, state and local taxes. Upon expiration of the Term of this Agreement TSI shall be fully subject to the applicable tariff rate imposed by the Roseville Municipal Code, as amended from time to time.

6. Joint Load Planning. TSI will, in good faith, attempt to notify City prior to implementation of any and all operational changes (e.g., including but not limited to, installation of infrastructure) that may result in a change of service, demand and/or consumption which may result in an increase or decrease of ten percent (10%) of TSI's regular Electric Energy use. TSI shall make a good faith effort to provide City with anticipated load growth projections on an annual basis. The Parties may annually discuss, plan and project TSI's Electric Energy requirements, and review TSI's forecasted load projections and supply needs. The annual meetings may occur on or about the anniversary date of this Agreement. Depending on the circumstances, the

Parties may agree to hold joint-planning meetings more frequently. A breach or violation of this Article 6 by either Party shall not result in a breach or violation of this Agreement.

7. Exceptions to City's Obligation to Serve. City shall be temporarily excused for a reasonable time from the obligations under this Agreement under any of the following conditions:

A. The occurrence of a Force Majeure causing City to be unable to perform under this Agreement.

B. The failure of a Transmission Provider to provide sufficient, as scheduled, Transmission Service to City.

C. The failure of an electrical energy supplier to supply sufficient, as scheduled, Electric Energy to City.

D. Except as provided in Article 12, the failure of TSI to perform a material obligation of this Agreement.

E. Notwithstanding any of the above, as specified in Roseville Municipal Code section 14.24.180, as amended from time to time.

During any Force Majeure event or in any instance when the City does not supply Electric Energy, TSI may obtain electricity from any other source or third party. If the Force Majeure event persists beyond two (2) weeks, TSI may terminate this Agreement without any further obligation to City. In the event of termination, if TSI subsequently obtains Electric Energy from the City, TSI will be charged the appropriate non-contractual status tariff rates.

8. Responsibility for System Upgrades and/or Special Metering Requirements. TSI shall be responsible for any extra meter requirements and/or

additional meter requirements directly attributable to TSI's service requirements with TSI's prior written consent.

9. Responsibility for Facilities. TSI will expend reasonable efforts to maintain, service and repair its facilities that facilitate the provision of Electrical Energy by City under this Agreement. TSI will use its best efforts to assess energy efficiency opportunities and to participate in efficiency and peak load reduction programs offered by the City. The interconnection of the distribution system shall be effected by the mutual cooperation of the Parties.

10. TSI's Response to Peak Load and Electric Grid Emergencies. TSI recognizes the important role that all users of Electric Energy may have in the conservation of electricity during summer peak times and on high electric load days. TSI agrees to work with the City in identifying non-critical electric load suitable for energy reductions during California State Stage Alert and other regional alert days. TSI agrees that, when called and if operationally feasible, TSI will implement mutually agreed upon load reduction measures which may include responding to critical energy day pricing signals and initiating end use load control programs. City agrees that in return for energy reductions to non-critical load on days where called for by City, City will, as much as is reasonably possible, actively promote TSI's participation in such a program to local news media and thereby to the citizens of the City of Roseville. City will also recognize such participants with official letters of recognition. Other levels of load reduction program participation providing potential enhanced reliability benefits through additional contracts may exist and should be discussed with City.

11. Breach by TSI. Except for the delinquent payment of invoices, upon any other breach of this Agreement by TSI, City shall provide written notice of such breach to TSI, after which, TSI shall have ten (10) calendar days in which to cure such breach (“Cure Period”). Following such Cure Period, City may pursue its remedies at law or equity if such breach has not been cured during such period. During any Cure Period of alleged breach by TSI, City shall continue to provide Electric Energy to TSI on the terms and conditions set forth in this Agreement.

In the event TSI breaches its obligation to timely pay for Electric Energy services within the time periods required by the Roseville Municipal Code, City in its sole discretion may terminate this Agreement and place TSI on the appropriate non-contractual status tariff rate.

12. Breach by City. Upon the breach of this Agreement by City, TSI shall provide written notice of such breach to City, after which, City shall have ten (10) calendar days in which to cure such breach (“Cure Period”). Following such Cure Period, TSI’s remedy is to default to the applicable non-contractual status tariff rate in accordance with City’s rules and regulations.

13. Billing. TSI shall be billed and obligated to pay in accordance with the normal rules and procedures of the City’s Finance, Electric and other applicable departments. As the City’s billing system capabilities are enhanced, the Roseville Electric Account Representative shall inform TSI of such enhancement(s). The Parties will attempt, in good faith, to meet and confer to discuss such enhancements as they become operational and meet and confer annually to discuss TSI’s billing needs.

14. Assignment. Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this paragraph shall, at the option of the non-assigning Party, be deemed void.

15. Attorney's Fees; Venue; Governing Law. In any action brought by either Party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and fees, discovery costs and costs of expert witnesses. Any action arising out of this Agreement shall be brought in Placer County, regardless of where else it might otherwise be venued. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Integrated Agreement; Severability. This Agreement constitutes the entire understanding between the Parties concerning the subject matter herein contained. If any term, provision or condition contained herein shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to Parties or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. Notices. Any notice, demand, or request required by this Agreement must be in writing and shall be considered properly given when delivered in person, sent by overnight delivery, sent by registered or certified mail, or mailed, U.S. First Class, postage prepaid, addressed as follows:

CITY:

Electric Utility Director
2090 Hilltop Circle
Roseville, CA 95747

City Manager
311 Vernon Street
Roseville, CA 95678

TSI:

Bruce Gray, CEO
7501 Foothills Blvd.
Roseville, CA 95747

The above addresses and facsimile numbers may be changed by Notice to the other Party.

18. Limitation on Liability and Damages. Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all express or implied warranties are disclaimed. Neither party shall be liable to the other party for any direct, consequential, indirect, liquidated, incidental or special damages, lost revenue or lost profits arising out of the performance or non-performance of this Agreement, even if TSI or any such other person or entity has been informed or aware of the possibility of such damages. The Party's sole and exclusive remedies are as specified in Articles 12 and 13 of this Agreement.

19. Waiver. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy. No delay on the part of any Party in the exercise of any right or remedy shall operate as a waiver thereof.

20. Public Records. TSI acknowledges that City is a public entity subject to the requirements of the California Public Records Act and related case law.

21. Representations and Warranties. Each Party to this Agreement represents and warrants that it has lawful power and authority to enter this Agreement and perform its obligations hereunder.


22. Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 2019, and TSI has caused this Agreement to be executed.

CITY OF ROSEVILLE, a
municipal corporation:

TSI SEMICONDUCTORS AMERICA
LLC, a Delaware limited liability
company:

BY: _____
DOMINICK CASEY
City Manager

BY: 
Print Name: RANDALL RUFFALO
Title: CFO


ATTEST:

BY: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM

BY: _____
ROBERT R. SCHMITT
City Attorney

APPROVED AS TO SUBSTANCE

BY:  _____
MICHELLE BERTOLINO
Electric Utility Director

ATTACHMENT A

CUSTOMER INFORMATION AND SUPPLEMENTAL CONDITIONS

Customer:

Name: TSI Semiconductors America LLC
Roseville Address: 7501 Foothills Blvd; Roseville, CA 95747
Contact Name: Bruce Gray, CEO
Telephone Number: 916-786-3900

Location(s) Served (list address(s) and account number(s)):

1. Within City Service Area: All sites operated by Customer located within City Service Area that qualify for General Service rates. The list of such sites may be modified from time to time. The Customer will be responsible for contacting the Roseville Electric Utility Energy Services Account Representative to request such changes to this list.
2. Outside City Service Area: NONE

Scope of Services:

City will provide electric service as provided in this Agreement. Specifically, City will provide "full Electricity Energy Requirements" as defined in Article 1(B) and "Exclusive Electric Energy Supply" as defined in Article 4 therein.

Period of Electric Energy Usage by Customer under this Agreement (Period of Usage):

Start Date: In accordance with Articles three (3) and five (5) of this Agreement.
End Date: Upon expiration of the Term of this Agreement.

Pricing Formula:

The Customer shall pay the applicable charges for the connected GS class service as provided in Roseville Municipal Code Chapter 14.24.

The Customer shall receive a rate discount of 15% for the first year of the Term and 7.5% for the second year of the Term per each metered energy and energy-related charge item on the GS4 class service. All standard rate components are subject to change and may be revised per commercial class rate adjustments as made from time to time by the City Council during the term of this Agreement. The Customer's rate discount shall be automatically increased or decreased proportionally to the rate change of each service's corresponding GS class service. The rate discount shall not apply to Demand, Power Factor, Stand By, Flat, or other miscellaneous electric service-related charges, nor city, state or federal pass-through charges for which the Roseville Electric Utility may be required to collect.

With regard to the GS-4 and other industrial class services, Customer shall pay all rates/charges/costs as specified in Roseville Municipal Code Chapter 14.24, as amended from time to time by the Roseville City Council.