

COUNCIL OF THE CITY OF SEAT PLEASANT, MARYLAND

RESOLUTION NO. R-13-16

Introduced By **City Council**

Date Introduced **April 1, 2013**

Amendments Adopted

Date Adopted **April 1, 2013**

Date Effective **April 1, 2013**

A RESOLUTION

OF THE COUNCIL OF THE CITY OF SEAT PLEASANT APPROVING THE FORMS OF A TRANSACTION SUMMARY AND TERM SHEETS RELATING TO THE CITY CENTER PROJECT (COLLECTIVELY, THE “TERM SHEETS”) FOR CERTAIN DOCUMENTS REFERRED TO HEREIN AS THE GROUND LEASE, THE MASTER LEASE, THE DEPOSITORY TRUST AGREEMENT, THE FACILITES MANAGEMENT AGREEMENT AND THE POWER PURCHASE AGREEMENTS (COLLECTIVELY, THE “DOCUMENTS”); AUTHORIZING AND EMPOWERING THE MAYOR, ON BEHALF OF THE CITY, TO INDICATE THE CITY’S APPROVAL OF THE TERM SHEETS AS DESCRIBED HEREIN (INCLUDING APPROVING IMMATERIAL MODIFICATIONS TO THE SAME); AND AUTHORIZING THE CITY CENTER PROJECT COMMITTEE, WITH THE ASSISTANCE OF LEGAL COUNSEL, TO NEGOTIATE THE FORMS OF THE DOCUMENTS; AND GENERALLY RELATING TO THE TERM SHEETS AND THE DOCUMENTS.

WHEREAS, on or about April 7, 2012, The City of Seat Pleasant (the “City”) issued a Request for Qualifications (the “RFQ”) for a developer to enter into a public-private partnership with the City for the redevelopment of certain property identified in the RFQ, which redevelopment activities are referred to as the City Center Project (the “Project”); and

WHEREAS, pursuant to Resolution No. R-12-18, adopted by the Council of the City (the “Council”) on June 11, 2012, the City selected Kratos Infrastructure, LLC (“Kratos”), one of the respondents to the RFQ, as the developer for the Project; and

WHEREAS, a City Center Committee (the “Committee”) comprised of Mayor Grant, Council President Porter, Councilmember Higgs, Councilmember Simms and Acting City Administrator/City Treasurer Ashton was designated to negotiate term sheets for the Project with Kratos; and

WHEREAS, the Committee, with the assistance of legal counsel, has negotiated with Kratos six (6) documents designated respectively as the City Center Project Transaction Summary (the “Transaction Summary”), the Term Sheet for Ground Lease (the “Ground Lease Term Sheet”),

the Term Sheet for Master Lease (the “Master Lease Term Sheet”), the Term Sheet for Depository Trust Agreement (the “DTA Term Sheet”), the Term Sheet for Facilities Management Agreement (the “FMA Term Sheet”) and the Term Sheet for Power Purchase and Sale Agreements (the “PPA Term Sheet”); and

WHEREAS, the Transaction Summary, the Ground Lease Term Sheet, the Master Lease Term Sheet, the DTA Term Sheet, the FMA Term Sheet and the PPA Term Sheet are referred to herein collectively as the “Term Sheets”; and

WHEREAS, the Term Sheets provide that they are non-binding, but represent the major terms of the Ground Lease, the Master Lease, the Depository Trust Agreement, the Facilities Management Agreement and the Power Purchase and Sale Agreements (collectively, the “Documents”) to be entered into with respect to the Project; and

WHEREAS, following Council approval of the Term Sheets, the next step in the process will be for counsel to prepare, and for Kratos and the City to negotiate, the Documents; and

WHEREAS, on March 18, 2013, the Committee voted unanimously to recommend to the Council that the Council approve the Term Sheets in the forms attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of The City of Seat Pleasant, that:

SECTION 1. The Recitals to this Resolution are deemed a substantive part of this Resolution and incorporated by reference herein. Capitalized terms used in the Sections of this Resolution that are not otherwise defined herein shall have the meanings given to such terms in the Recitals to this Resolution.

SECTION 2. The forms of the Term Sheets attached to this Resolution as Exhibit A are incorporated by reference herein and are hereby approved by the Council.

SECTION 3. The Mayor, on behalf of the City, is hereby authorized to (i) sign a letter on behalf of the City (to which copies of the Term Sheets, modified as described below, if applicable, shall be attached), addressed to Kratos, indicating that the Council has approved the Term Sheets or (ii) execute on behalf of the City copies of the Term Sheets (modified as described below, if applicable) in order to indicate the Council’s approval of the same. In either such case, the Mayor, on behalf of the City, is hereby authorized to agree to any immaterial modifications to the forms of the Term Sheets attached hereto as Exhibit A, such approval to be evidenced conclusively by the Mayor’s execution of the letter referred to in the preceding sentence or by the Mayor’s execution of copies of the revised Term Sheets as referred to in the preceding sentence.

SECTION 4. The Committee, with the assistance of legal counsel, is hereby authorized to negotiate the forms of the Documents. The final or substantially final forms of the Documents will require the approval of the Council.

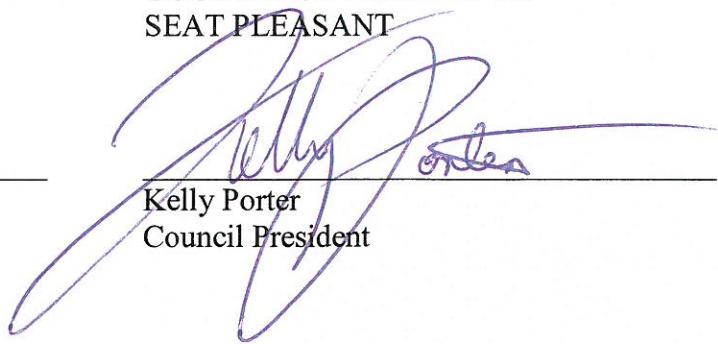
READ AND PASSED THIS 1st DAY OF April, 2013.

Attest:



Dashaun N. Lanham
City Clerk

COUNCIL OF THE CITY OF
SEAT PLEASANT



Kelly Porter
Council President

KEY:

Underlining indicates text added to this Resolution by amendment following introduction.
~~Strike-throughs~~ indicate text deleted from this Resolution by amendment following introduction.

#154082;52038.010



EXHIBIT A

TERM SHEETS

[See Attached]

CITY CENTER PROJECT TRANSACTION SUMMARY

The City of Seat Pleasant ("City") and Kratos SPV ("Kratos") intend to enter into an arrangement whereby the City will lease to Kratos in its entirety, pursuant to a Ground Lease, an approximately 15-acre aggregation of land owned by the City for a term of 40 years. Kratos will then construct on such parcel of land, at its own expense, certain improvements consisting of approximately 224,200 s.f. of space plus associated parking, which are anticipated to include a City Hall, a Recreation Center (to be managed by the Maryland-National Park and Planning Commission), a Wellness Center (that will provide urgent and primary care), a Community Center, senior residential rental housing, and recreational fields and parking (collectively, the "Facilities"). For the avoidance of doubt, all references to "project improvements" or the "Facilities" include, but are not limited to related roads, water, sewer service and other improvements traditionally viewed as "infrastructure", and such traditional infrastructure shall be property of the City. Such traditional infrastructure improvements shall be paid for as part of the costs of the Facilities, including any tap fees or similar and related costs commonly incurred upon initial development of similar projects. During the duration of the Master Lease, Kratos SPV shall be responsible for maintaining such infrastructure; *provided however*, that Kratos shall not be liable to maintain any infrastructure typically provided by another entity, such as a public utility. The parties may agree, by mutual consent to include additional facilities and usages for the Facilities.

The City, pursuant to a Master Lease between it and Kratos, will lease all of these Facilities from Kratos. Under the terms of the Master Lease, the City will enter into subleases with tenants for the Wellness Center and the senior residential housing (and any other relevant Facilities). The expectation is that the sublet rental revenue from the Wellness Center and senior residential housing will offset any rental obligations the City has to Kratos under the Master Lease, exclusive of the rent for the public buildings (e.g. City Hall and the Community Center). In addition, the City, under the Ground Lease, will receive rent payments from Kratos.

Rentals and all other revenues from the Facilities will be deposited into a Depositary Trust under a Depositary Trust Agreement between the City, Kratos and a third party Trustee. These funds will be disbursed under a "waterfall" in priority order to cover City Center Project operations and maintenance costs, Private and Public Improvement rent payments under the Master Lease and other prescribed purposes. A portion of project funding provided by Kratos will be placed into a Depositary Trust as a special Strategic Reserve Fund ("SRF") Account. In the event that the sublet rental revenues in any given year are less than the amount required to cover City Center Project expenses and other required payments, the Trustee under the aforesaid Depositary Trust would be instructed to draw funds from the SRF Account to cover the difference (thereby offsetting all or a portion of the amount that might otherwise be payable by the City), subject to any limitations on withdrawals contained in the Depositary Trust Agreement. Any substantial excess revenues after all expenses are paid may be used to fund certain additional reserves (such as for future rent, repair and replacement costs) and thereafter any excess funds will be allocated between Kratos Infrastructure (as defined below) and the City as further described in the attached term sheets.

The City will retain Kratos pursuant to a Facilities Management Agreement to operate, maintain and lease the Facilities (including City Hall, Recreation Center, and the Community Center, if the City so desires; provided however, that the City may elect not to have the Facilities Manager operate and maintain certain of these public facilities). This will alleviate any burden on the City to engage in the real estate management business. Kratos most likely will retain experienced third-party real estate management and other contractors to provide services such as leasing and cleaning. The improvements under the Master Lease will be constructed to incorporate building integrated energy facilities such as solar panels, which will be designed, installed and operated by Kratos Infrastructure, LLC or its designee ("Kratos Infrastructure"). All such building integrated energy facilities will be owned by Kratos Infrastructure at all times separate from the improvements, and energy produced by the building integrated energy facilities will be purchased by the City from Kratos Infrastructure pursuant to a Power Purchase Agreement(s) for distribution to users within the City Center Project, and for sale to the host utility PEPCO (or other relevant utility) under the established PEPCO net-metering program.

Upon receipt of pre-construction funding, Kratos will reimburse the City for all reasonable costs of the City's legal and financial advisors and any other reasonable costs relating to the contemplated transaction that have previously been paid by the City prior to such date, including reasonable costs of any needs assessments/feasibility studies paid by the City prior to such date. From and after the date of pre-construction funding, Kratos or its lender shall pay all such reasonable expenses, including reasonable expenses of any professionals employed by the City. The City shall have the right to approve the selection of professionals providing needs assessments/feasibility studies following the date of pre-construction funding.

For the avoidance of doubt, and notwithstanding anything to the contrary in any of the attached term sheets, if the transaction is unwound at any time after entry into any of the definitive agreements (Ground Lease, Master Lease, Facilities Management Agreement, Depositary Trust Agreement and Power Purchase Agreement(s)) and prior to completion of the Facilities and their occupancy, the City will not owe any moneys to Kratos, Kratos Infrastructure, LLC, any of their related entities or successors or assigns, or any person or entity providing pre-construction, construction or take-out financing.

A series of five (5) term sheets are attached describing in detail the key agreements that reflect the transaction, namely the Ground Lease, the Master Lease, the Facilities Management Agreement, the Depositary Trust Agreement and the Power Purchase Agreement. These are non-binding term sheets that were prepared to explain the general parameters of the proposed transaction. Neither party shall have any obligation under the Term Sheets until definitive agreements are executed with respect to the City Center Project.

TERM SHEET FOR GROUND LEASE

The City of Seat Pleasant ("City") intends to lease an approximately 15-acre parcel of real property contained within the City limits to Kratos SPV ("Kratos") upon the general terms and conditions set forth below:

LANDLORD: The City of Seat Pleasant

TENANT: Kratos SPV

PROPERTY: Approximately 14.56 acres consisting of the following properties:
311 68th Place
6013 Addison Road
6807 Eads Street (to be acquired)
6815 Eads Street
6011 Addison Road
(collectively, the "Land").
The City will hold fee simple title to the entire Land.

LEASE TERM: Forty (40) year initial term.

RENTAL RATE: \$1.00 per year

RENTAL PAYMENTS: Kratos will pay the rent for the entire Land, inclusive of Parcel A (anticipated to include City Hall, Recreation Center, Recreational Area and Community Center and related parking) and Parcel B (anticipated to include the Wellness Center and senior residential properties and related parking).¹ The rent will be either accrued or prepaid into the Depositary Trust Agreement.

EXTENSION OPTION: Two (2) twenty-five (25) year extension terms at Kratos' option. Kratos must provide written notice to the City of such extension at least one (1) year prior to the expiration of the previous term. The option would only apply to Parcel B (containing the private Project Improvements as defined in the Term Sheet for the Master Lease). The Ground Lease as to Parcel A would be terminated at the end of the initial forty (40) year term of the Ground Lease with all rights as to the Parcel A property (including the public Project Improvements constructed on Parcel A by Kratos) reverting at no

¹ For the avoidance of doubt, there will not be two physically separate parcels. The project improvements will exist on the entirety of the property.

cost to the City. The ground rent under each extension option term will be the fair market value of Parcel B (exclusive of the Project Improvements constructed on Parcel B) as defined by a three MAI approval method (as further described in the Ground Lease) determined at the end of the initial forty (40) year term (for the first option term) or at the end of the first option term (for the second option term). The rent under any of the option terms will be paid annually and will include a market escalation footer determined at the time the market rent is determined. Kratos may only extend the term of the Ground Lease for the second option term if the first option term is exercised.

PURCHASE OPTION:

Upon the expiration of the initial term of the Ground Lease (and if legally permissible), Kratos will have the option to purchase Parcel B for a price and on terms determined by a mechanism to be agreed upon by the parties in the Master Lease (defined below) and subject to the consent of the City.

IMPROVEMENTS:

The Ground Lease will require that Kratos enter into a Master Lease as landlord and the City as tenant which will provide for Kratos to construct, at its expense, certain improvements on the Land, which improvements will include approximately 224,200 s.f. of development anticipated to include a City Hall, a Community Center, a Recreation Center, a Recreational Area, parking areas, a Wellness Center (providing urgent and primary care) and senior residential rental housing, plus associated parking ("Master Lease").

NON-BINDING EFFECT: The parties recognize that this Term Sheet does not set forth all the matters to be included in the Ground Lease and does not create any binding obligations on either party. The Ground Lease will be drafted to incorporate the provisions of this Term Sheet and such other usual and customary provisions as are necessary and appropriate to carry out the intent and understanding of the parties with respect to the subject matter hereof. Nothing in this Term Sheet will obligate either party to enter into a definitive Ground Lease, and any Ground Lease will be subject to the approval requirements of both parties and will be contingent on the execution of other binding agreements necessary to complete the City Center Project.

TERM SHEET FOR MASTER LEASE

The City of Seat Pleasant ("City") intends to lease to Kratos SPV ("Kratos") certain land located within the City of Seat Pleasant, Maryland, upon which land Kratos will construct certain improvements to benefit the City and its residents, which improvements will be owned by Kratos and leased to the City under a Master Lease Agreement ("Master Lease") as further described below:

LANDLORD: Kratos SPV ("Kratos")

TENANT: The City of Seat Pleasant

LAND: Approximately 14.56 acres consisting of the following properties:
311 68th Place
6013 Addison Road
6807 Eads Street (to be acquired)
6815 Eads Street
6011 Addison Road

(collectively, the "Land"). The Land will be divided into two parcels, Parcel A being the "Public Improvements", which shall consist of the City Hall, Recreational Area – approximately 5 acres of parks and fields, Community Center, Recreation Center, and related parking) and Parcel B being the "Non-Public Improvements", which shall consist of the Wellness Center and senior residential rental housing and related parking; together the improvements on Parcel A and Parcel B make up the Project Improvements.¹ The City is leasing the Land to Kratos pursuant to a separate Ground Lease ("Ground Lease").

IMPROVEMENTS: Kratos will construct, at its expense, certain improvements on the Land which are anticipated to include a City Hall, a Community Center, Recreation Center, a Recreational Area, a Wellness Center, senior rental housing, parking (collectively, the "Project Improvements"). The Project Improvements may be modified by mutual agreement of the City and Kratos. The Project Improvements will consist of approximately 224,200 s.f. of finished space plus associated parking. There will also be appropriate parking spaces and recreational areas. Specifications for the Project Improvements will be developed in cooperation with the City and appended as an exhibit to the Master Lease.

¹ For the avoidance of doubt, there will not be two physically separate parcels. The project improvements will exist on the entirety of the property.

Schedule A - Description of Project Improvements

Development Projection

	Commercial	Residential	Community Center	City Hall	Parking	Gross Square Footage
	0	0	13,000		60	
Wellness Center	59,000		0		310	
City Hall	0	0		36,0000	90	
Senior Housing and Rec Center			100,000	16,200	0	240
Total	59,000	100,000	29,200	36,000	700	224,200 (and associated parking)

Note: Final programming and construction will be based on a minimum usage and GSF from above.
Also includes approximately five (5) acres of Recreational Area.

Kratos will work in collaboration with the City to design the Project Improvements in a manner that helps to meet the needs and desires of the City. It will be known as the City Center Project (the "Project").

LEASE TERM: Forty (40) year term

OCCUPANCY DATE: January 1, 2015 (or another date certain to be agreed by the parties)

RENTAL RATE: The Rental Rate will be based upon the amortized value of the Project Improvements constructed by Kratos on the Land. As the exact cost of construction is unknown, a detailed rental plan will be attached to the Master Lease which will be based upon the estimated Project Improvement costs, plus a defined contingency to allow the Rental Rate to be adjusted upward or downward depending upon the final cost of the Project Improvements. Additionally, the Rental Rate will be adjusted upward or downward by any change orders requested by the City.

The Rental Rate will be subject to a reasonable annual adjustment factor that is applied in similar types of leases. The Master Lease will also provide that in the event of certain unforeseen extreme uncontrollable circumstances, such as unknown soil or rock conditions or hazardous wastes, the parties will negotiate in good faith to reach an acceptable compromise as to cost sharing.

ESTIMATED \$73,000,000.00

CONSTRUCTION COSTS:	Construction Cost estimate includes hard and soft costs and may be adjusted by +/- 10% up to and including final programming or by further agreement among the parties
ESTIMATED MASTER LEASE PAYMENT:	\$5,840,000.00 per year (based upon the estimated construction costs for the Project Improvements) plus annual escalator. The Master Lease Payment will be adjusted +/- 1% as a percentage of the Construction Costs (i.e. - \$5,840,000 is 8% of the Construction Cost and may be as low as 7% or as high as 9%); provided however that the Master Lease Payment may be modified further by mutual agreement of the City and Kratos. The Payment will be due at a fixed date to be determined by City and Kratos. The Master Lease Payment is also referred to as the "Rent."
ANNUAL ESCALATOR:	1.5% per year increase in the total Master Lease Payment.
RENTAL PAYMENTS:	The City will pay the Rent for all of the Project Improvements (inclusive of Parcel A and Parcel B). The Rent may be paid in monthly (or quarterly) installments. Kratos will be retained pursuant to a Facilities Management Agreement to sublease the Wellness Center and the senior rental housing on the City's behalf. The intent is that the sublet rentals will offset any costs to the City associated with leasing the private portions of the Project Improvements situated on Parcel B. All sublet rental, plus the Public Improvements and any other revenues generated by the Project Improvements, will be deposited into a Depository Trust account for Project Operations and will be disbursed in accordance with the requirements of the Depository Trust Agreement ("DTA").
OBLIGATIONS:	In addition to the Master Lease Payments, the City will be responsible for paying all real property taxes for the Project and, subject to any legal limitations, maintaining adequate liability insurance for the entire Project (together, the "Property Expenses"), which costs (for the private Project Improvements) are intended to be passed on to the subtenants. Notwithstanding the prior sentence, payments for such real property taxes and insurance may be made from the DTA.
ENCUMBRANCE:	Upon substantial completion of the Project Improvements, Kratos will have the right to transfer all or a portion of its interest in the Project Improvements and leases to a third-party, including by transferring all or a portion of its equity interests in Kratos entity to such financier. It is presently contemplated that such third-party lender will be U.S. Realty Advisors, a publicly traded real estate

REIT. If necessary, liens may be recorded against the Project to secure the rights of the lender and investors providing funding for the Project but subject to the rights of the City under the Master Lease. Notwithstanding anything to the contrary, in no event shall the City lose its fee simple interest in the Land (including Parcel A and Parcel B) to Kratos or any of its affiliates or to any lender or financier.

**FACILITIES
MANAGEMENT:**

Kratos will be retained by the City to operate, manage and maintain the Project Improvements pursuant to a Facilities Management Agreement ("FMA"). The City may elect to maintain the public portions of the Project Improvements itself and in that event there will be an adjustment to the FMA to reduce the cost and scope of the obligations performed by Kratos. The FMA will also authorize Kratos to sublease the private portions of the Project Improvements on the City's behalf. Kratos may engage third-party contractors to provide management and leasing services. The FMA (if not sooner terminated) will automatically terminate upon the expiration of the forty (40) year Master Lease term.

RENEWABLE ENERGY: Kratos Infrastructure, LLC ("Kratos Infrastructure") and its affiliates will incorporate building integrated energy facilities into the City Center Project (the "Energy Facilities"), which may include solar panels and other building integrated technologies depending upon feasibility and economics. Kratos Infrastructure will retain ownership, access and all other rights to the Energy Facilities. The City will purchase the energy output from the Energy Facilities from Kratos Infrastructure pursuant to a Power Purchase Agreement (or a series of Power Purchase Agreements associated with each separate building's integrated energy facilities). In the event that the Master Lease is terminated in accordance with its terms for any reason prior to its expiration date, Kratos Infrastructure will retain all necessary rights to own, access, remove, maintain, and operate the Energy Facilities, including being permitted access and entry to Parcels A and B as necessary.

LEASE EXPIRATION:

Upon the expiration of the forty (40) year term of the Master Lease, all Public Improvements shall revert to the City, while all Non-Public Improvements shall remain property of Kratos or its successor or assign. Kratos Infrastructure shall have the option to purchase any Non-Public Improvements from Kratos. If Kratos Infrastructure elects this option, Kratos Infrastructure shall have the option to extend the Ground Lease for two 25 year terms as

detailed in the Ground Lease term sheet, at prices based on a mechanism to be determined in definitive documentation. Notwithstanding anything to the contrary herein or in any other term sheet, the parties do not intend that the City's fee simple interest in any of the properties may be transferred to Kratos, Kratos Infrastructure, or any other party at any time except with the City's express consent.

NON-BINDING EFFECT: The parties recognize that this Term Sheet does not set forth all the matters to be included in the Master Lease and does not create any binding obligations on either party. The Master Lease will be drafted to incorporate the provisions of this Term Sheet and such other usual and customary provisions as are necessary and appropriate to carry out the intent and understanding of the parties with respect to the subject matter hereof. Nothing in this Term Sheet will obligate either party to enter into a definitive Master Lease, and any Master Lease will be subject to the approval requirements of both parties and will be contingent on the execution of other binding agreements necessary to complete the City Center Project.

Term Sheet for Depositary Trust Agreement

<u>Agreement</u>	Depositary Trust Agreement (the "Agreement")
<u>Parties</u>	Kratos SPV The City of Seat Pleasant (the "City") Third Party Trustee (the "Trustee")
<u>Purpose</u>	This Agreement will enable the Trustee to safekeep, invest and manage Project-generated funds (including the Strategic Reserve Fund) in a lock box Depositary Trust fund that will be managed and disbursed in accordance with specific directions set forth in the Agreement.
<u>Trustee</u>	An independent nationally chartered financial institution with at least one billion in deposits authorized to act as a trustee in Maryland will be engaged to serve as the depositary Trustee and to establish bank depository accounts into which Project-related funds will be deposited by Kratos SPV. Kratos SPV will pick the Trustee in cooperation with the City .
<u>Administration of the Fund</u>	<p>Funds placed into the Depositary Trust fund shall be administered by the Trustee in accordance with the following rules:</p> <p>(a) A portion of Project funding provided by Kratos SPV upon the execution of the Master Lease (either in the form of prepaid Rent under the Ground Lease or otherwise) would be placed into the Depositary Trust as a special Strategic Reserve Fund ("SRF") Account at a date certain to be agreed among the parties. To the extent that any rental under the Ground Lease is payable by Kratos SPV to the City, it would be paid by Kratos SPV through the Depositary Trust.</p> <p>(b) All rental revenue from residential and commercial property subtenants (such as the Wellness Center and Senior Residential Housing) and other revenues generated from the Facilities by the Facilities Manager (as defined in the Term Sheet for Facilities Management Agreement delivered concurrent herewith) (including but not limited to any naming rights on any of the Facilities) would be deposited into the Depositary Trust in a general Project Operations Depositary Account. The "Facilities" refers herein to City Hall, a Recreation Center, a Community Center, a Recreation Area, Senior Rental Housing, a Wellness Center, parking and other public areas.</p> <p>(c) Kratos SPV would be granted a security interest in all funds placed and held in the Depositary Trust.</p>

(d) The Trustee would be authorized to hold and invest all funds placed in the Depository Trust in accordance with guidelines set forth in the Agreement. Amendments to those guidelines would require approval by Kratos SPV and the City.

(e) Funds placed in the Project Operations Depository Account would be disbursed to cover in priority order the following: (1) operation and maintenance, taxes, utilities and insurance relating to all of the Facilities (pursuant to a project budget developed each year by Kratos SPV and approved by the City) (together, the "Property Expenses"), except to the extent that the City pays any such expenses relating to the public improvements directly; (2) payments for building integrated energy provided by Kratos Infrastructure, LLC under the Power Purchase Agreement(s) with the City; (3) the Rent (as defined in the Term Sheet for the Master Lease) payments under the Master Lease for the Facilities (excluding the public improvements); provided that, the Agreement shall contain provisions allowing funds in the Project Operations Depository Account to be applied to pay Rent due under the Master Lease with respect to the public improvements in circumstances specified in the Agreement; and (4) the management fees due to Kratos SPV under the Facilities Management Agreement (collectively, the "Priority Disbursements").

(f) If the funds placed in the Project Operations Depository Account are insufficient to cover the Priority Disbursements, the Depository Trustee would be instructed to draw funds from the SRF Account to cover the difference and make the Priority Disbursements.

(g) If subtenant rental income (including any Property Expenses paid by subtenants) is less than Priority Disbursements, and funds are not available from the SRF Account (e.g., the SRF Account has been exhausted), the City would be obligated under the Master Lease to pay the difference in the Master Lease Rent (including any Property Expenses) from its own funds.

(h) Allocation of Funds - To the extent the subtenant rental income (including any Property Expenses) and any other revenues generated by the Facilities (excluding any Master Lease Payments, as defined in the Master Lease Agreement term sheet) exceeds Priority Disbursements, the excess will be allocated and distributed according to the following defined "waterfall": *first*, funds will be retained in escrow in the SRF Account to cover at least one (1) year of Rent (including any Property Expenses) under the Master Lease, including Rent for the public improvements (inclusive of any annual escalations at the time of the escrow); *second*, a reasonable amount as reasonably determined by the Facilities Manager under the Facilities Management Agreement to cover repairs, maintenance

and capital replacement costs for Project Improvements will be retained in the SRF Account, including the public improvements if the City chooses public improvements inclusion in the FMA; and *third*, any balance after the first two criteria are met may be disbursed to the City to be deposited into the City Treasury for use by the City for budgeted City expenditures and to Kratos Infrastructure, LLC ("Kratos Infrastructure") as detailed below. With respect to provision *third* of the prior sentence, Kratos and the City agree that the funds from the SRF Account may be disbursed as detailed in the following sentence if the following criteria are met: (1) if subtenant rental income (including any Property Expenses) exceeds all Priority Disbursements and positive Net Operating Income ("NOI") for the City Center Project is achieved for two (2) consecutive years, then fifty percent (50%) of the funds in the SRF Account (subject to retention of the Minimum SRF Amount) may be disbursed to the City and Kratos Infrastructure; (ii) every two (2) consecutive years thereafter that the NOI has exceeded the Master Lease Rent (including any Property Expenses) payments (inclusive of the annual rent escalations), then an additional fifty (50%) of the SRF Account (subject to retention of the Minimum SRF Amount) may be released to the City and Kratos Infrastructure; and (iii) after six (6) consecutive years that NOI has met or exceeded the Master Lease payments (including any Property Expenses) the balance (subject to the Minimum SRF Amount (as defined below)) may be released to the City and Kratos Infrastructure if mutually agreed to by the City and Kratos Infrastructure. With respect to the provisions of the prior sentence, seventy percent (70%) of the net funds being released pursuant to this section (h) will be provided to the City with thirty percent (30%) of such total funds being provided to Kratos Infrastructure. The Depository Trust Agreement will contain provisions specifying the requisition and disbursement of funds and any associated dispute resolution procedures. Notwithstanding anything to the contrary herein, no disbursements may be made pursuant to this Section (h) unless at least two (2) years of Master Lease payments (inclusive of annual escalations at the time of disbursement and any Property Expenses) are in escrow in the SRF Account ("Minimum SRF Amount") with only amounts in excess of the Minimum SRF Amount to be disbursed under this Section.

(i) During the stabilization period, SRF funds may be used to provide incentives to the subtenants, subject to the consent of the City and Kratos.

Funding of
Depository Trust

The Depository Trust and SRF shall receive initial funding at the time of effectiveness of the Master Lease. Such funding will initially derive from the difference between the cost of the Project Improvements and the amount needed to fund through stabilization of the Project.

Consideration

In consideration for providing the Depositary Trustee services set forth above, the Trustee will receive customary fees for providing such trust services. These fees will be paid out of Project-related funds.

Term

The Agreement will have a term of 40 years consistent with the term of the Master Lease Agreement and Facilities Management Agreement. The Agreement will contain standard provisions regarding termination for cause. Additionally, if either the Master Lease or the Facilities Management Agreement is terminated due to a default, then the Agreement will provide for distribution of the funds held in trust.

Non-Binding
Effect

The parties recognize that this Term Sheet does not set forth all the matters to be included in the Agreement and does not create any binding obligations on either party. The Agreement will be drafted to incorporate the provisions of this term sheet and such other usual and customary provisions as are necessary and appropriate to carry out the intent and understanding of the parties with respect to the subject matter hereof. Nothing in this Term Sheet will obligate either party to enter into a definitive Agreement, and any Agreement will be subject to the approval requirements of both parties and will be contingent on the execution of other binding agreements necessary to complete the City Center Project.

Term Sheet for Facilities Management Agreement

<u>Agreement</u>	Facilities Management Agreement (the "Agreement")
<u>Parties</u>	Kratos SPV The City of Seat Pleasant (the "City")
<u>Purpose</u>	Pursuant to this Agreement, the City will engage Kratos SPV to manage the entire City Center Project, which is anticipated to include, without limitation, City Hall, a Recreation Center, a Community Center, Recreational Area, a Senior Rental Housing, Wellness Center and parking areas (collectively, the "Facilities") for the City. The parties may agree consensually to include additional improvements that will become part of the Facilities or to exclude certain Facilities from the services to be provided under the Agreement.
<u>Facilities Manager</u>	Kratos SPV most likely will subcontract all or some of its responsibilities under this Agreement to a commercial real estate management firm (the "Facilities Manager"). The City will have the right to review and approve the selection of the Facilities Manager (or any replacement Facilities Manager), such approval not to be unreasonably withheld, conditioned or delayed. Kratos SPV will remain responsible to the City for all of its obligations under the Agreement, but the performance of some or all of those obligations most likely will be undertaken by the Facilities Manager. The Agreement will provide Kratos with the right to terminate such Facilities Manager at any time during the Term of the Agreement independently or in conjunction with a City's request for termination. The engagement of any subsequent Facilities Manager will also require the approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.
<u>Services to be Provided by Kratos SPV</u>	Kratos SPV's responsibilities under this Agreement (the "Services") will include the following (directly and/or through the Facilities Manager and other contractors supervised by Kratos SPV and/or the Facilities Manager): (a) Oversight and management of the Facilities, including coordination, oversight and supervision of building maintenance and repair, building management, utility service management, security, tenant relations and other customary building management services for the respective Facilities; provided however, that the City does not anticipate that the Facilities Manager will manage City Hall, the Community Center or the Recreation Facilities initially.

- (b) Maintaining the public access, parking and recreational areas adjacent to and surrounding the Facilities, including but not limited to landscaping, vegetation control trash collection and snow removal.
- (c) Developing and implementing a Subleasing Program for the Senior Rental Housing and Wellness Center Buildings as more fully described below.
- (d) Invoicing and collecting rent from the Senior Rental Housing and Wellness Center Buildings pursuant to sublease agreements established in accordance with the Subleasing Program.
- (e) Notwithstanding paragraph (a) of this section, in the event that the City elects to have the Facilities Manager manage any or all of City Hall, the Community Center, Recreation Area or the Recreation Center, it shall agree to pay the Facilities Manager an additional Management Fee to be determined, and such fee shall be a reasonable market fee consistent with a formula to be agreed in the terms of the Facilities Management Agreement.

Subleasing
Program

Under a Subleasing Program to be managed for the City by the Facilities Manager, the City will sublease space within the Senior Rental Housing and Wellness Center Buildings to subtenants.

- (a) The Facilities Manager will develop and propose for approval by the City minimum terms and criteria for the Subleasing Program, including minimum rental values for the different Senior Rental Housing and Wellness Center Buildings (the "Subleasing Program Guidelines").
- (b) The Subleasing Program would be managed by the Facilities Manager on behalf of Kratos SPV under the Subleasing Program Guidelines approved by the City.
- (c) The Facilities Manager would be authorized to act as the City's agent to negotiate and execute subleases on behalf of the City with tenants of the Senior Rental Housing and the Wellness Center Buildings that are consistent with the Subleasing Program Guidelines. Proposed subleases that are not consistent with the Subleasing Program Guidelines would require separate approval by the City, which approval should not be unreasonably withheld, delayed or conditioned.

(d) Rentals from the Senior Rental Housing and Wellness Center subleases will be collected by the Facilities Manager and paid into a lock-box Depository Trust, to be used and disbursed as discussed in the separate Term Sheet for the Depository Trust Agreement.

The City's
Responsibilities

The City's responsibilities will include the following:

- (a) Authorizing the execution of the Agreement and the services that Kratos SPV and/or the Facilities Manager will perform thereunder.
- (b) Reviewing and approving the terms of the Subleasing Program Guidelines developed by Kratos SPV and/or the Facilities Manager.
- (c) Cooperating with the obtaining of any necessary permits, authorizations or other government approvals necessary to operate and manage the Facilities.
- (d) Arranging for Kratos SPV to have access to City staff as reasonably necessary to carry out its obligations under the Agreement.

Consideration

In consideration for providing the Services set forth above, Kratos SPV will receive a Management Fee in addition to compensation for the operating, maintenance and repair/replacement costs ("O&M Costs") associated with providing the Services based on an annual O&M Costs budget established by Kratos SPV and approved by the City. All O&M Costs through the Term will be borne by the City, except only to the extent that any repair or replacement costs are covered by any warranties provided in connection with the initial construction of the improvements. It is expected that most of the repair/replacement costs for the private improvements will be passed on to the subtenants of those Facilities. An escrow fund will be established as further described in the Depository Trust Agreement Term Sheet to provide for any necessary replacement or capital costs incurred for certain structural components of the Facilities, (i.e. roofs, structural costs incurred for walls and foundation) so that sufficient funds would be available to cover these types of expenses.

In the event that the City asks the Facilities Manager to manage any additional Facilities, including but not limited to the City Hall, Community Center or Recreational Area, the City and Kratos SPV shall agree to an additional Management Fee, which fee shall be reasonable and consistent with similar market fees, and determined consistent with the prior paragraph.

<u>Term</u>	The Agreement will have a term of 40 years consistent with the term of the Master Lease. The Agreement will contain standard provisions regarding termination for cause. The City will have the option to opt out of having Kratos SPV manage the public facilities (e.g. City Hall, Recreation Center, Community Center, Recreational Area) or any aspect thereof (such as maintenance) and in that event upon not less than 90 days notice the Agreement will be modified to reflect a reduction in scope as well as cost (to reflect the reduced responsibilities).
<u>Force Majeure</u>	A party's inability to perform under the Agreement will be excused to the extent it results from uncontrollable circumstances (events or conditions beyond the reasonable control of the affected party). The Agreement will contain a mutually-acceptable definition of uncontrollable circumstances, and a process for addressing events of uncontrollable circumstances.
<u>Recreational Facility</u>	The Recreational Facility shall be managed initially by the Maryland-National Capital Park and Planning Commission. The City may, at any time, request that the Facilities Manager assume management of the Recreational Facility or any portion thereof, provided that the City shall pay the Facilities Manager a reasonable market fee to be determined for such management.
<u>Non-Binding Effect</u>	The parties recognize that this Term Sheet does not set forth all the matters to be included in the Agreement and does not create any binding obligations on either party. The Agreement will be drafted to incorporate the provisions of this term sheet and such other usual and customary provisions as are necessary and appropriate to carry out the intent and understanding of the parties with respect to the subject matter hereof. Nothing in this Term Sheet will obligate either party to enter into a definitive Agreement, and any Agreement will be subject to the approval requirements of both parties and will be contingent on the execution of other binding agreements necessary to complete the City Center Project.

Term Sheet for Power Purchase and Sale Agreements

<u>Agreement</u>	Power Purchase and Sale Agreements (each, a "PPA")
<u>Parties</u>	Kratos Infrastructure, LLC ("Kratos LLC") The City of Seat Pleasant ("City" or "the City")
<u>Purpose</u>	Kratos LLC will construct, own and operate a series of building integrated energy facilities ("BIEFs"), such as solar energy facilities located on rooftops, parking lots or other improvements developed by Kratos LLC as part of the City Center Project. Kratos LLC will sell the energy output of each BIEF to City under a PPA relating to such BIEF. The PPA for each BIEF will be effectively identical to the PPA for every other BIEF.
<u>Kratos LLC's Responsibilities</u>	<p>Kratos LLC's responsibilities under the PPAs will include the following:</p> <ul style="list-style-type: none">(a) Kratos LLC, at its own expense, will construct, own, operate, maintain, repair and replace a series of BIEFs on the City Center Project improvements and will sell the energy output of the BIEFs to City under the PPAs.(b) Kratos LLC will be responsible for the interconnection of the BIEF system to the site's electrical system, including all studies, reports, upgrades, new equipment and installation costs, equipment maintenance, costs and repairs associated with interconnection.(c) Kratos LLC will sell and deliver to City, and City will purchase and receive, all of the energy output produced by the BIEFs. The energy output of the BIEFs will be delivered by Kratos LLC to and received by City at a specified delivery point.(d) Kratos LLC will be entitled to all tax benefits and environmental attributes resulting from or relating to the BIEFs and the energy output during the term of the PPAs, including but not limited to renewable energy credits, tax credits and similar incentives and allowances.(e) Kratos LLC will construct the BIEFs in accordance with the specifications set forth in the PPAs and will maintain the BIEFs in good condition and repair in accordance with applicable vendor and contractor warranties, instructions and specifications.(f) Kratos LLC will own and maintain the metering devices which will be used to measure energy output from the BIEFs. Specific

requirements related to testing and correction of the metering devices will be set forth in the PPAs.

(f) Kratos LLC will bear the risk and cost of any loss, theft, damage or destruction to the BIEFs ("BIEF Loss") other than any BIEF Loss caused in whole or in part by the negligence or intentional misconduct of City or City's agents, representatives, customers, vendors, visitors, employees, contractors, or invitees (not, however, including Kratos LLC) (collectively, "City Misconduct").

If, during the term of any Power Purchase Agreement, Kratos LLC performs site repairs or maintenance, it will coordinate with the City to minimize the disruption of output during such repairs, maintenance or equipment replacement. Kratos LLC will also restore the system to full capacity in a timely manner; provided, however that the duration of the repairs, maintenance or replacement shall not constitute a Forced Outage (as defined below) on the part of the Kratos LLC for periods to be specified in the PPAs. (Such periods are expected to match or hew closely to North American Electric Reliability Council standards.)

If the system or any BIEF is down for an extended period of time due to a condition in which the equipment is unavailable due to unanticipated failure ("Forced Outage") or for a period in excess of the periods stated in the PPAs with respect to scheduled repairs, maintenance or replacement, the City may need to purchase electricity from the utility provider (assumed to be PEPCO). In the event of this situation and the City electricity purchases are at a rate higher than the current PPA, Kratos LLC will compensate the City for any increased electricity costs (the monetary difference between the utility system electricity cost and the BIEF electricity cost).

(g) Kratos LLC will grant City an option to purchase all of Kratos LLC's right, title and interest in and to the BIEFs that are a part of the Public Improvements (as defined in the Term Sheet for Master Lease approved concurrent with this term sheet) (the "Public BIEFs"), including the environmental attributes, on terms set forth in the PPAs (the "Purchase Option"). References to the PPAs in this subsection (g) and in the following subsection (h) are intended to refer to only the PPAs with respect to the Public Improvements. The Purchase Option will be exercisable by City effective upon the end of the initial or any exercised extension term of the PPAs or earlier upon the occurrence of any event of default by Kratos LLC under the PPAs. Not later than 180 days prior to the end of the initial or any exercised extension term of the PPAs, or effective upon an event of default by Kratos LLC under the PPAs, City will have the right to provide a notice to Kratos LLC requiring a determination of the fair market value of the Public BIEFs. The

purchase price payable by City for the Public BIEFs under the Purchase Option will be equal to the higher of (a) the fair market value of the Public BIEFs and (b) the present value of the aggregate purchase price payable for any energy output remaining to be delivered through the end of the then applicable initial or extension term of the PPAs. If the City exercises the Purchase Option, Kratos LLC will transfer the required Renewable Energy Credits ("REC") certification(s), including RECs from solar or other renewable energy production, and also assist the City in selling/trading the RECs, if any.

(h) If City does not exercise the Purchase Option prior to or effective as of the end of the term of the PPAs (including any exercised extension options), and if the Parties do not, prior to the expiration of the PPAs (including any exercised extension options), reach agreement regarding the extension of the term of the PPAs on mutually acceptable terms and conditions (including as to the applicable energy payment rate), Kratos LLC, at its sole cost and expense, must remove the Public BIEFs and restore the affected facilities and/or sites affected to their substantially original condition, normal wear and tear excepted. In addition, Kratos LLC, at its sole cost and expense, must repair and restore any structural damage to the affected facilities and site caused by the Public BIEFs; provided, however, Kratos LLC will not be required to replace equipment needed in the building due to such removal. Kratos LLC will be required to provide a bond or escrow account to guarantee that such costs will be paid.

City's Responsibilities

City's responsibilities will include the following:

- (a) City will be responsible for all taxes and other government charges imposed on or with respect to the sale of energy output from Kratos LLC to City.
- (b) To the extent any BIEF Loss is caused in whole or in part by City Misconduct, City will pay any and all costs and expenses associated with repair or replacement of the BIEFs, compensate Kratos LLC for any loss or damage resulting from such BIEF Loss, including any damages resulting from any lost tax benefits and environmental attributes, and pay for the deemed amounts of energy output for each month or portion thereof during any period in which such BIEF Loss caused by City Misconduct prevents or limits deliveries of energy output to City.

Insurance

Each Party will, at its own cost and expense, maintain commercial general liability insurance, umbrella or excess liability insurance, worker's

compensation and employer's liability insurance, except with regard to any legal limitations on the City's ability to provide the same.

Nature of Energy Output

The Parties acknowledge that (a) the energy output from the BIEFs is an intermittent, as-available energy product, (b) Kratos LLC is providing no warranty or guarantee of any particular level of energy output and (c) City is solely responsible, at City's cost and expense in accordance with the requirements of the Master Lease, for meeting any and all of the City Center Project's energy needs not met from BIEF-generated energy, unless the energy shortfall is the result of Forced Outage or in excess of periods stated in the PPAs with respect to scheduled repair, maintenance or replacement activity (in either such case, Kratos LLC is responsible for compensating the City for such costs).

Consideration

City will pay Kratos LLC for the energy output, as metered at each metering device, at the applicable energy payment rate specified in each PPA. The payment to be made by City to Kratos LLC will equal the product of (a) the energy output for the relevant period and (b) the energy payment rate for such period. The energy payment rate for each contract year will be fixed in the PPA and will, in the case of each PPA, be an amount equal to 80 percent of the then-current PEPCO rate (which rate shall be set before completion of the City Center Project), for facilities of a type comparable to the facility with which the applicable BIEF is associated, plus an escalation adjustment of 2% per year.

The definitive PPAs will address which Parties are responsible for payment of any property tax or private use tax or any other tax, charge or other assessment in lieu of property tax charged with respect to the BIEFs that is calculated separate and apart from such taxes, charges or other assessments levied generally on the improvements constituting the City Center Project.

Kratos LLC will each month prepare and send an invoice to City for the aggregate amount due to Kratos LLC in consideration for the metered energy output sold and delivered to City during the preceding month.

Term

The PPAs will have an initial delivery term of 40 years, commencing on the date on which the BIEFs commence commercial operation. At the option of either party, subject to the consent of the other party, the PPAs may be renewed for up to two additional terms of 25 years on the same terms and conditions but at a revised energy payment rate calculated in accordance with the provisions of the PPAs. Each renewal option may be exercised only if the prior 25 year renewal option was exercised. Such renewal options shall be stated separately with respect to the Public Improvements and the Private Improvements (as defined in other term

sheets relating to the City Center Project); extension of the PPAs relating to the Public Improvements shall not be conditioned upon extension of the PPAs relating to the Private Improvements, and vice versa.

The obligations of the Parties under the PPAs are conditioned on Kratos LLC or its financing partners having satisfied or waived all conditions precedent to the effectiveness of the financing documents and the initial drawdown of funds, and Kratos LLC having obtained all consents, permits, approvals, authorizations, qualifications and orders of all governmental entities required in connection with the PPAs.

Forward Contract The parties intend that (i) each PPA constitutes a "forward contract" per 11 U.S.C. § 101(25), (ii) each party to a PPA is a "forward contract merchant" as defined in 11 U.S.C. § 101(26) and (iii) in a case under Title 11 of the United States Code (the "Bankruptcy Code") or any analogous insolvency regime at any time during the term of a PPA (including any exercised extension term), the PPA (and the transactions contemplated by the PPA) shall be treated in all respects as a forward contract, and the Parties shall be treated in all respects as forward contract merchants for purposes of the provisions of the Bankruptcy Code or similar insolvency regime, relating to forward contracts and/or forward contract merchants, including, without limitation, the provisions of 11 U.S.C. §§ 101, 362(b)(6), 546(e), 553, 556 and 561. The parties agree that they will not assert in any case or proceeding under the Bankruptcy Code or analogous insolvency regime, or in any proceeding or contested proceeding arising in or related to a case under the Bankruptcy Code or analogous insolvency regime, that the PPA (or the transactions contemplated by the PPA) is not a forward contract or that any Party to the PPA is not a forward contract merchant.

Assignment

Kratos LLC or its affiliates shall not assign any PPA, except to another affiliate of Kratos LLC, without the prior written consent of the City, which consent may be given or withheld in the sole discretion of the City.

Non-Binding Effect

The Parties recognize that this Term Sheet does not constitute an offer or a commitment by either Party. The PPAs will be drafted to incorporate the provisions of this Term Sheet and such other usual and customary provisions as are necessary and appropriate to carry out the intent and

understanding of the Parties with respect to the subject matter hereof. Any commitment to do any of the foregoing shall be made only after the Parties agree to and enter into the PPAs and after the satisfaction of all conditions thereto.