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November 27, 2019

Ms. Tanowa Troupe, Secretary  
Public Utilities Commission of Ohio  
180 E. Broad St., 11th Floor  
Columbus, OH 43215-3793

Re: Case No. 19-0810-EL-AEC  
Contract for an Economic Development Arrangement

Dear Ms. Troupe:

I am filing herewith a copy of a Contract for Economic Development Arrangement approved by the Public Utilities Commission of Ohio in the October 23, 2019 Opinion and Order in the above referenced proceeding. The economic development arrangement is between Fuyao Glass America Inc., a mercantile customer, and the Dayton Power & Light Company, an electric utility.

Very truly yours,

/s/ Michael J. Settineri

Michael J. Settineri  
Attorney for Fuyao Glass America Inc.

Enclosure

## CONTRACT FOR ECONOMIC DEVELOPMENT ARRANGEMENT

**THIS CONTRACT FOR ECONOMIC DEVELOPMENT ARRANGEMENT** (the "Contract") is entered into by and between the Dayton Power and Light Company, its successors and assigns (the "Company" or "DP&L"), and Fuyao Glass America Inc., its permitted successors and assigns (the "Customer" or "Fuyao"), and is effective as set forth below (the "Effective Date").

### WITNESSETH

**WHEREAS**, DP&L is a regulated public utility subject to the authority of the Public Utilities Commission of Ohio ("PUCO"); and

**WHEREAS**, under Section 4905.31 of the Ohio Revised Code, a utility and a customer may enter into any financial device practicable or advantageous to the Parties interested, including a device to recover costs incurred, such as revenues foregone, in conjunction with any economic development and job retention program of the utility; and

**WHEREAS**, under Section 4901:1-38-03 of the Ohio Administrative code, the Commission has authority to approve an economic development arrangement between a utility and a customer; and

**WHEREAS**, the Company currently provides electric service to the Customer at the Customer's auto glass manufacturing facility in Moraine, Ohio (the "Facility"); and

**WHEREAS**, Customer has invested in the Facility and its employees to construct a state-of-the-art auto glass manufacturing operation; and

**WHEREAS**, the Customer wishes to secure a reliable supply of electricity pursuant to terms and conditions that will align Customer's electric service and charges to support additional investment in, and development of, its workforce at the Facility; and

**WHEREAS**, on September 17, 2019, in order to obtain such a supply of electricity, the Customer and the Company submitted to the Public Utilities Commission of Ohio (the "Commission") a joint application for an economic development arrangement in Commission Case No. 19-0810-EL-AEC (the "Joint Application"); and

**WHEREAS**, the Joint Application was approved by the Commission in its October 23, 2019 Finding and Order (the "Order");

**NOW, THEREFORE**, in consideration of the Commission's Order approving the Joint Application for the economic development arrangement, the Company and the Customer enter into this Contract.

#### 1. Definitions.

- a. "Delta Revenue" shall have the same meaning as set forth in section 4901:1-38-

01(C) of the Ohio Administrative Code.

- b. "Installation" shall mean the Fuyao property located at 2801 West Stroop Road in Moraine, Ohio.
- c. "Monthly Billing Demand" shall mean that demand defined Tariff Sheet D21.
- d. "Party" shall mean Fuyao or DP&L individually, and "Parties" shall mean Fuyao and DP&L collectively.
- e. "PUCO" shall mean the Public Utilities Commission of Ohio or its successor.
- f. "P.U.C.O. No. 17 Electric Service Tariffs" or "Tariffs" refers to the DP&L Electric Service Schedule of Rates, Classifications, Rules and Regulations, or successors to said schedules, as approved by and on file with the PUCO at the point in time at which said schedules shall be applied hereunder, or specific versions of said schedules as set forth herein.
- g. Terms such as "herein," "hereunder," and other similar compounds of the word "here" shall mean and refer to this entire Contract rather than any particular part.
- h. Certain other definitions, as required, appear in subsequent parts of this Contract.

**2. Effective Date and Term.** Pursuant to the terms of the economic development arrangement proposed in the Joint Application, as approved by the Commission in its Order (the "Approved Arrangement"), this Contract shall begin on the Effective Date under the Order and terminate as of the conclusion of the October 2022 billing cycle, during which time Customer may receive generation and capacity from a CRES supplier. The Customer may elect to terminate the Contract at any time upon thirty (30) days' notice without minimum monthly billing demand charges or other penalties. This Contract shall also terminate if the Commission subsequently modifies the Approved Arrangement as proposed in the Joint Application and the Company and the Customer agree in writing to terminate the Contract.

**3. Conditions and Adjustments.**

For the term of this Contract, the Company shall adjust the monthly billed tariff charges (excluding the Customer's generation charges from its CRES provider, if any) for distribution service and all non-bypassable transmission and ancillary services and non-bypassable riders (together, "Wire Service") to the Facility by \$0.004 per kWh of monthly usage ("Credit") subject to annual caps set forth in the Joint Application. Under no circumstances will Customer be subject to claw back of discounts or other benefits received under the Contract or the Approved Arrangement.

Fuyao shall meet the terms and conditions set forth in paragraph 21 sub-sections (e)

through (h) and paragraph 26 of the Joint Application.

If employment or capital investment commitments are not met or not maintained, then the credit per kWh provided for under the arrangement would reduce in accordance with paragraph 22 of the Joint Application.

DP&L will seek to recover all Delta Revenue associated with this Contract in accordance with Ohio law and the Approved Arrangement under the Company's Economic Development Rider, and the provision of service at the rates specified herein is conditioned upon DP&L's recovery of the associated Delta Revenue over the Term of this Contract.

4. **Service.** Nothing herein is intended to modify, reduce, or increase the obligations that DP&L has with respect to delivery, metering or other utility services that it provides Fuyao other than described in this Contract. It is therefore the Parties' understanding that DP&L will continue to meter the load at a voltage level at which it currently receives services for the purposes of administering and billing this Contract. No changes in service type or voltage level at the Installation served after the signing of this Contract shall be made except to the extent made in conformance with notice and other requirements that DP&L may require under its PUCO approved tariff. Notice of any such changes shall also be provided to DP&L.
5. **Customer Options.** Notwithstanding Paragraph 2 of this Contract, during the term of this Contract, the Customer shall have the right, but not the obligation, to participate in additional arrangements or opportunities that may become available or offered by Company, including Company's Transmission Cost Recovery Rider opt-out pilot program.
6. **Notices.** Any notice required or desired by either Party to be given hereunder shall be made:

***If to the Company at:***

The Dayton Power and Light Company  
1900 Dryden Road  
Dayton, Ohio 45439  
ATTN: Kent Gardner

The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
ATTN: Michael Schuler

***If to the Customer at:***

Fuyao Glass America Inc.  
800 Fuyao Avenue  
Moraine, OH 45439  
ATTN: Athena Hou, Chief Legal Officer

***With copy to:***

Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, Ohio 43215  
ATTN: Michael Settineri

Either Party may submit to the other Party a written notice of a change in location, address, or title of contact person and such notice shall serve to modify this Section 4 of this Contract. Any communications required to be in writing pursuant to this Contract shall be delivered by first class U.S. Mail, courier service, or commonly used forms of electronic



communication (e.g., fax or email) consistent with the provisions set forth in this Section 4. Notice shall be deemed to be received upon actual receipt if delivered by courier, fax or email, or three (3) days after postmarked if sent by first class U.S. Mail, postage prepaid.

- 7. Other Events of Default; Termination.** The Parties agree that upon ninety (90) days' prior written notice, the Company may terminate this Contract if the Customer becomes insolvent, makes a general assignment for the benefit of creditors, or admits in writing its inability to pay debts as they mature, if any court appoints a trustee or receiver for the Customer or any part of the Customer's assets, or if proceedings are instituted by or against the Customer under any provisions of the Federal Bankruptcy Code or any state insolvency law or result in an adjudication in bankruptcy or insolvency. The Company shall not have any liability to the Customer if the Company terminates this Contract pursuant to this paragraph.
- 8. Reporting.** Subject to such confidentiality requirements as may be appropriate, and under O.A.C. 4906:1-38-06, the Customer shall, no later than April 30th of each year during the term of this Contract, provide the Company and Commission Staff with an annual report that demonstrates the Customer's compliance with the applicable commitments set forth in Paragraphs 21-22 and 26 of the Joint Application.
- 9. Dispute Resolution.** If a dispute arises out of this Contract the Parties agree first to try in good faith to settle the dispute. If settlement is not possible and the dispute relates to a subject matter which is within the Commission's exclusive or primary jurisdiction, the matter shall be taken to the Commission. If the dispute concerns a question outside of the Commission's jurisdiction, and the Parties are unable to resolve such dispute through negotiations then either Party may initiate litigation in the appropriate court or forum and Company and Customer knowingly, intentionally and irrevocably waive their right to trial by jury in such litigation.
- 10. Mutual Cooperation.** The Customer and the Company agree to provide mutual and timely support for purposes of effectively administering this Contract, at no cost to the other. Such support shall include, without limitation, reasonable and timely access to documents and personnel of the other Party.
- 11. Governing Law and Continuing Jurisdiction.** The validity, construction and performance of this Contract shall be determined in accordance with the laws of the State of Ohio not taking into account any conflict of law provisions.
- 12. Interpretation.** The Contract, all addendums, exhibits and documents referenced or incorporated by reference herein, and the Company's Service Contracts and standard tariffs (including the terms and conditions of service), as applicable to Customer and as amended from time to time by the Commission, sets forth the entire agreement between the Parties. Nothing in this Contract or in the Approved Arrangement shall prevent or foreclose Customer from availing itself of additional arrangements or opportunities that may become available or offered by Company. In the event of any conflict between the Company's

Service Contracts or standard tariffs and this Contract, this Contract shall control.

- 13. Consequential Damages.** Neither Party will be liable to the other Party under any circumstances for consequential damages (including lost opportunities or profits) or punitive damages.
- 14. Binding Nature.** The terms, conditions, and covenants of this Contract shall be binding upon and shall insure to the benefit of each of the Parties hereto, their successors, and assigns.
- 15. Waiver.** Failure of either Party to enforce, at any time or for any period of time, any provision of this Contract shall not be construed as a waiver of any provision or the right of either Party to enforce each and every provision of this Contract.
- 16. Severability.** The Parties understand and agree that the terms and conditions set forth herein in the aggregate may not be acceptable if any individual term or condition of this Contract is eliminated, or modified. In the event that any term or condition of this Contract is deemed to be illegal, void, or unenforceable, either Party may choose to terminate this Contract without further obligation hereunder provided that the Parties agree to work in good faith to first amend this Contract to the extent necessary to accommodate its continued effectiveness.
- 17. Headings.** The heading and subheadings used in this Contract are for convenience and reference purposes only and shall in no way effect the meaning or interpretation of the provisions of this Contract.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Contract to be executed by their duly authorized officers or representatives as of the Effective Date.

**THE DAYTON POWER AND LIGHT  
COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_




President & CEO

**FUYAO GLASS AMERICA INC.**

By \_\_\_\_\_

Title \_\_\_\_\_



President

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/27/2019 9:06:40 AM**

**in**

**Case No(s). 19-0810-EL-AEC**

Summary: Contracts Contract for an Economic Development Arrangement electronically filed by Mr. Michael J. Settineri on behalf of Fuyao Glass America Inc.