

CITY OF LOCKPORT

One Locks Plaza
Lockport, New York 14094
(716) 439-6631
E-mail: trusso@lockportny.gov

TIM RUSSO
Director of Finance

REQUESTS FOR PROPOSALS

The City of Lockport is requesting sealed proposals for

Best Use of Compost Plant

Notice is hereby given that sealed proposals for the services above will be received and considered by the City of Lockport up to 2:00 PM on **March 1, 2024** at the office of the City Clerk, municipal building, One Locks Plaza Lockport, New York 14094.

Proposers will provide one (1) written quote that contains the total cost of the scope of work.

Please contact City Clerk Sarah Lanzo at 716-439-6776 or cityclerk@lockportny.gov with any questions.

The City of Lockport reserves the right to reject any or all proposal, to consider the reputation and experience of the Proposal in making its selection; to waive any informalities or minor deviations from the proposal form, and to award to other than the lowest quote, if good and sufficient reasons, it is considered in the best interest of the City of Lockport to do so. The City will not reimburse any costs associated with the preparation of RFP(s).

Publish Date: October 19, 2023

Revised On: November 8, 2023 to extend due date for all interested parties

Revised On: January 29, 2024 to extend due date for all interested parties

Request for Proposal (RFP) - Compost Plant Land Use

Introduction:

The City of Lockport, hereinafter referred to as "the City," is seeking proposals from qualified third-party and private companies interested in the best use options of the City's compost plant located at 611 West Jackson Street, Lockport, New York 14094. The City desires to explore various opportunities for composting and/or wastewater management on the property and invites interested parties to submit their proposals for consideration.

Compost Facility:

The City of Lockport will require to have the Wastewater Treatment Plant be able to dispose of the biosolids at the compost facility. It is the intent to have the qualified third-party operate, maintain, and permit, as required, independent from the City. The third-party operator is solely responsible for the product produced at the facility. The City is open to discuss alternative biosolid management techniques beyond composting, such as sludge drying, pyrolysis, etc.

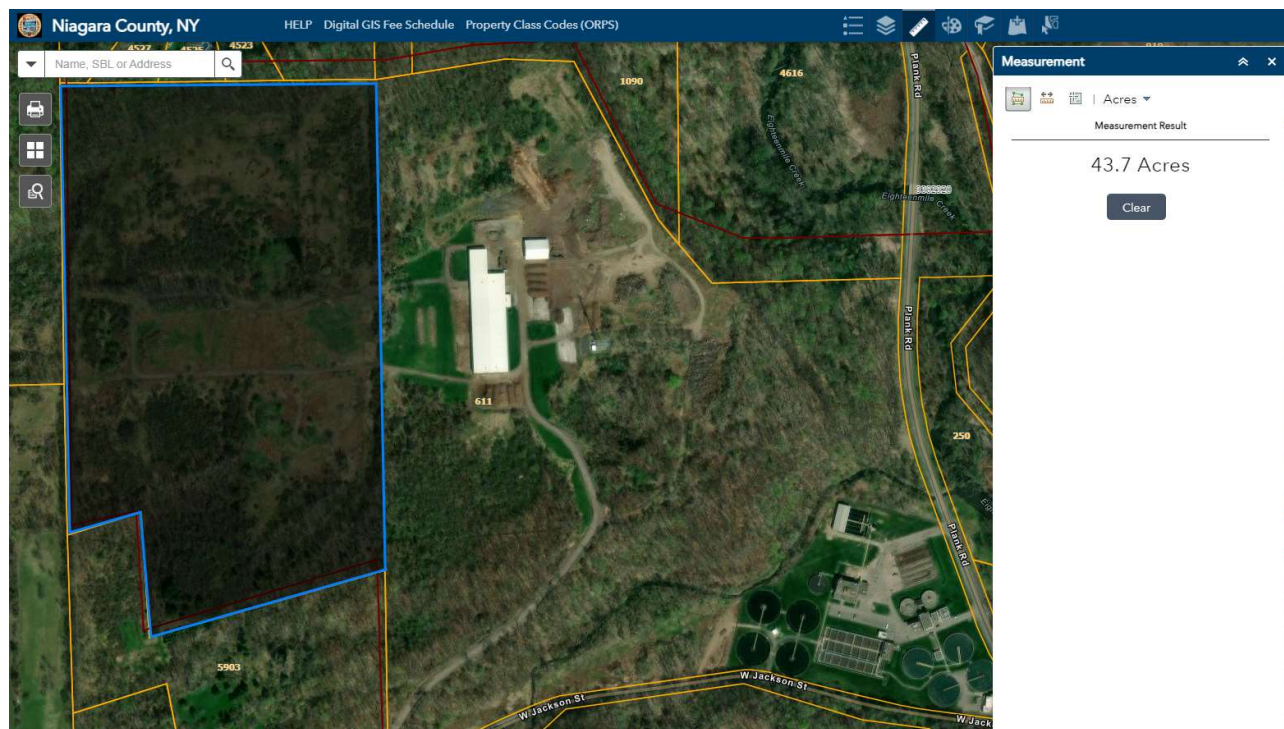
Below are the biosolids testing results (characteristics) from 2021 and 2022. In 2021, approximately 2,899 wet tons of biosolids were produced. In 2022, approximately 3,021 wet tons of biosolids were produced.

Biosolids 2021	Cd	Cr	Cu	Hg	Ni	Pb	Zn	As	Mo	Se	TKN	NH3	NO3	PHOS	K	pH	% SOLIDS	VOL.
January	1	29	261	0.67	26	49	474	11	4	4	31000	694	1.2	13160	4130	6.6	20.6	55.1
February	2	33	279	1.16	27	45	554	10	5	5	40600	831	1.1	15500	6030	6.3	18.6	60.5
March	2	32	268	0.61	24	42	532	8	5	1	41600	904	1.2	14900	8550	6.4	20.1	64.9
April	2	38	299	2.32	26	44	588	6	5	5	43900	1050	5.1	15380	8260	6.5	19.6	63.6
May	2	51	426	1.08	33	54	730	7	7	5	45200	1540	1.5	15760	9520	6.6	18.8	65.1
June	2	38	353	0.78	26	51	658	6	6	4	42940	1110	1.2	15500	6440	6.5	20.8	56.2
July	2	36	324	0.46	30	60	580	4	5	4	33600	924	1.1	14560	5040	6.7	23.3	50.8
August	1	46	290	0.33	33	81	549	7	5	4	23000	818	0.85	11000	2560	6.8	26.4	39.6
September	1	45	310	0.76	41	75	574	6	6	3	22200	701	0.94	11000	3860	6.9	24.7	40.1
October	2	44	311	0.92	34	92	612	4	7	5	25100	1020	1.0	12800	5850	6.8	23.2	41.8
November	1	28	197	0.34	27	59	404	16	4	2	20800	686	1.1	9480	1660	6.8	22.8	37.9
December	1	29	216	6.14	25	49	416	13	4	5	22000	2500	1.2	11000	1840	6.6	20.5	46.8
Yearly AVG	2	37	295	1.30	29	58	556	8	5	4	32662	1065	less than 1.5	13337	5312	6.6	21.6	51.9
MIN	1	28	197	0.33	24	42	404	4	4	1	20800	686	less than 0.9	9480	1660	6.3	18.6	37.9
													less than					
1st Q	2	31	269	0.81	26	45	520	10	5	3	37733	810	1.2	14520	6237	6.4	19.8	60.2
2nd Q	2	42	359	1.39	28	50	659	6	6	5	44013	1233	less than 2.6	15547	8073	6.5	19.7	61.6
													less than					
3rd Q	1	42	308	0.52	35	72	568	6	5	4	26267	814	1.0	12187	3820	6.8	24.8	43.5
													less than					
4th Q	1	34	241	2.47	29	67	477	11	5	4	22633	1402	1.1	11093	3117	6.7	22.2	42.2
													less than					
MAX	2	51	426	6.14	41	92	730	16	7	5	45200	2500	5.1	15760	9520	6.9	26.4	65.1

Biosolids 2022	Cd	Cr	Cu	Hg	Ni	Pb	Zn	As	Mo	Se	TKN	NH3	NO3	PHOS	K	pH	% SOLIDS	VOL.
January	1.22	27.9	216	0.24	23.0	50.5	437	8.03	4.42	2.71	35200	1120	0.98	13500	2070	6.4	19.2	55.3
February	1.10	27.7	253	0.19	19.9	45.2	468	8.91	4.10	4.73	42500	1150	1.1	14900	2950	6.5	20.3	56.7
March	1.58	37.4	272	0.34	29.9	52.1	546	6.23	5.18	4.24	37900	867	0.9	12500	3320	6.6	20.6	57.1
April	1.78	32.8	267	0.63	24.8	59.2	599	8.60	3.87	4.51	43300	1520	1.2	13400	5460	6.3	19.9	60.9
May	1.58	30.0	255	0.43	22.3	56.2	522	5.38	4.78	5.14	42040	1300	1.2	12800	8490	6.0	21.8	59.9
June	0.88	34.6	218	0.35	26.9	69.1	476	5.58	6.58	3.13	29500	906	0.9	9060	13100	5.8	25.5	51.5
July	1.40	28.3	284	0.44	20.7	56.7	525	4.63	4.58	3.46	32400	1020	3.8	12700	8220	5.9	24.6	51.9
August	0.76	29.8	221	0.38	28.5	56.8	404	10.4	4.30	2.68	19000	270	1.80	8000	2110	5.9	26.7	40.4
September	0.98	37.2	231	0.69	34.0	59.0	459	12.8	4.15	3.14	20700	430	1.60	9700	1750	6.3	23.1	42.6
October	1.11	33.5	289	0.52	30.8	70.4	581	10.7	4.60	3.68	29900	755	<1.3	16620	1960	6.5	20.0	51.7
November	1.18	32.7	317	0.43	26.6	62.9	579	7.63	5.63	3.80	34900	982	2.0	15950	4510	5.7	21.8	56.1
December	1.21	31.3	301	0.49	26.7	60.7	602	7.38	5.67	4.29	42000	1800	2.2	9700	9890	5.7	21.9	58.9
				less than									less than					
AVERAGE	1.23	31.9	260	0.43	26	58	517	8.0	4.8	3.8	34112	1010	1.6	12403	5319	6.1	22.1	53.6
				less than									less than					
MAX	1.78	37.4	317	0.69	34	70.4	602	12.8	6.58	5.14	43300	1800	3.80	16620	13100	6.6	26.7	60.9

Solar Development:

The city is also interested in leasing the remaining land that is not used for the purposes of the WWTP or the composting plant to a solar developer. The area for solar development highlighted in the picture below is approximately forty-three (43) acres. This area represents a minimum area that could be utilized for development of solar. At the time of the RFP publishing the substation adjacent to the WWTP is open and there are sub-transmission lines on the south end of the parcel. The city is also interested in purchasing some of the energy produced by the plant if the credits could provide a financial benefit to the city. The current electrical usage is approximately 5,500,000 kwh annually with a \$700k spend.



The city understands that these two business models/scopes will not necessarily come from a single respondent. The city encourages teaming so that the services are under one contract but is open to proposals that focus on the respondent's core competencies.

Background:

The City of Lockport, in accordance with Section 61 of the City of Lockport Charter, grants the Common Council management and control of all real and personal property belonging to the City. The Common Council, acting on behalf of the City, may consider various options, including leases of up to 99 years, for the purpose of maximizing the benefits and interests of the City. Council support of seeking bids for the project was authorized in resolution 072623.5.

Scope of Services:

The City of Lockport invites proposals from third-party and private companies interested in the best use of the City's compost plant land located at 611 West Jackson Street. The proposals should outline plans for the utilization of the property for composting and/or wastewater management purposes. The proposed solutions should be economically viable, environmentally sustainable, and aligned with the best interests of the City. No digging can be done on site.

Tour of Facility:

The City Engineer and Chief Wastewater Operator will provide a tour of the facility upon request. The tour will begin at 611 West Jackson Street, Lockport, New York 14094 (the front area of the compost facility). To schedule the requested tour, please contact Steven Pump (City Engineer) at spump@lockportny.gov.

Submission Guidelines:

Interested parties are requested to submit their proposals in accordance with the following guidelines:

- Cover Letter: Include a cover letter introducing your company and its interest in the project.
- Company Profile: Provide a brief overview of your company, including its background, experience, and relevant projects related to composting and/or wastewater management.
- Project Proposal: Present a comprehensive plan outlining your proposed use of the compost plant land. This plan should include details on composting and/or wastewater management processes, technology to be utilized, and any other relevant information.
- Logistics and Operations: Describe the logistical aspects of your proposal, including transportation, workforce requirements, timeline, and any other necessary operational details.
- Financial Proposal: Submit a detailed financial plan, including cost estimates, revenue projections, and any proposed terms for leasing or collaborating with the City.
 - Compost facility: At minimum the following shall, be provided.
 - Lease fee agreement for the compost facility
 - Cost per ton of sludge disposal from WWTP
 - Term (years)
 - Improvements to facility
 - Proposed grade of compost
 - Restrictions such as grade, weight, water content, content, etc. of the biosolids
 - What if any the respondents technical approach will address PFAS, Metals etc. in the biosolids.
 - Template agreement with terms and conditions
 - Renewable energy: At minimum the following shall, be provided.
 - Lease fee for land for renewable energy development
 - Cost for PPA per kwh
 - Term of PPA (20 years)

- Escalation annually (2.5%)
- Include cost for bonding of decommissioning of the plant.
- Template PPA with terms and conditions
- Sustainability and Environmental Impact: Address the sustainability measures incorporated into your proposal and its potential environmental impact.
- Presentation to the Common Council: Be prepared to make a presentation to the Common Council to discuss your proposal, its benefits, and how it aligns with the City's objectives.

Evaluation Criteria:

Proposals will be evaluated based on the following criteria:

- (15%) Technical Feasibility: The practicality and technical viability of the proposed composting and/or wastewater management solutions.
- (50%) Financial Viability: The financial soundness of the proposal, including cost-effectiveness and potential revenue generation.
- (15%) Experience and Expertise: The track record and experience of the company in similar projects.
- (10%) Sustainability: The extent to which the proposal incorporates sustainable practices and minimizes environmental impact.
- (10%) Compatibility with City Objectives: The alignment of the proposal with the City's best interests and objectives.

Submission:

To be considered, two (2) printed originals and one electronic copy (in PDF format supplied on a flash drive) of a proposal must be received by the City Clerk no later than 2 PM on **Friday, March 1, 2024**.

Proposals are to be enclosed in a sealed envelope, plainly marked as "Proposals for Best Use Compost" and directed to:

Ms. Sarah Lanzo, City Clerk
 City of Lockport
 One Locks Plaza
 Lockport, New York 14094
 (716) 439-6674
cityclerk@lockportny.gov

Note to Prospective Bidders:

This RFP is not an offer to enter into a contract. The City reserves the right to accept or reject any or all proposals received as a result of this RFP process. All costs associated with the preparation and submission of proposals are the responsibility of the submitting parties. The City is not liable for any expenses incurred by bidders in the process of responding to this RFP. Any contract resulting from this RFP will be subject to further negotiations and approvals.

Upon execution of any contract between the proposer and the City, the proposer will be required to procure and maintain for the duration of the contract, insurance (General liability, professional liability, NYS worker's compensation, NYS disability) that will protect the successful proposer and the City from and against injury and damage that may arise from the performance of the work performed under the agreement in the

amounts established by the City Attorney. Insurance shall be placed with insurers licensed in New York State with an A.M. Best rating of no less than A-. The City of Lockport and its officials, officers, employees and volunteers shall be endorsed as an additional insured on the professional liability insurance policy (SEE APPENDIX A for more details and limits). Prior to the commencement of the work hereunder, the successful proposer shall provide to the City certificates of insurance evidencing the above coverage, with said certificates to provide for thirty (30) days prior written notice to the City of any cancellation, suspension, or change to the coverage. The form and contents of the policies of insurance shall be subject to the approval of the City Attorney.

Appendix:

A – Insurance minimums

B – Example Power Purchase Agreement

C – Terms and Conditions (Use something from a recent construction project)

The City of Lockport looks forward to receiving innovative and comprehensive proposals from interested parties for the best use of the compost plant land at 611 West Jackson Street.

Thank you for your interest in this project. If you have any questions or require additional information, please contact City Clerk Sarah Lanzo at 716-439-6776 or cityclerk@lockportny.gov.

APPENDIX A
CITY OF LOCKPORT CONTRACT

THIS AGREEMENT entered into this _____ day of _____, 2024 by and between the CITY OF LOCKPORT, a municipal corporation organized under the laws of the State of New York, with offices at one Locks Plaza, Lockport, New York 14094 and _____ with an office at _____, hereinafter referred to as the "Contractor."

WITNESSETH, that the CITY and the Contractor, for the consideration hereinafter named, agree as follows:

ARTICLE 1. WORK TO BE DONE AND CONSIDERATION THEREFOR:

The CITY shall pay the sum of \$ _____ to Contractor upon the completion of services set forth in **Schedule "A"** annexed hereto.

ARTICLE 2. TIME OF COMPLETION:

The services to be rendered under this agreement shall be performed on dates set forth in **Schedule "A"**. Time of performance is of the essence of this agreement.

ARTICLE 3. ACCEPTANCE AND FINAL PAYMENT:

Upon receipt of written notice that the agreement has been fully performed, the Contractor shall file an itemized voucher with the Director of Finance for the CITY and the CITY will pay the Contractor, as per Article 1 above.

ARTICLE 4. CONTRACTORS' INSURANCE COVERAGE AND CERTIFICATES

The Contractor shall provide current Certificates of Insurance and accompanying documents as described herein for the OWNER'S approval prior to OWNER'S signing of contract(s).

- A. "Certificate Holder" shall be **City of Lockport** at the address of **One Locks Plaza, Lockport, New York 14094**.
- B. Coverage must comply with all specifications set forth herein.
- C. All insurance documents must be executed with *authorized* signatures.
- D. The Contractor's required liability policies must be endorsed to provide that any Notice of Cancellation or Notice of Non-Renewal given to the First Named Insured shall also be given to the Additional Insureds for this project. **A copy of such endorsement(s) must be furnished to the Certificate Holder.**

- E. Failure of the City to object to the Contractor's failure to furnish a Certificate or other evidence of the required insurance coverages, object to any defect in such Certificate or other evidence of coverage, or demand receipt of such Certificate or other evidence of coverage shall not be deemed a waiver of Contractor's obligation to furnish the required insurance coverages described herein. Nothing contained herein imposes on the City a duty or obligation to review any evidence of insurance coverages or issue any formal approval or acceptance of such evidence.
- F. The Contractor's liability and indemnification of the City shall not be relieved or diminished by the Contractor securing insurance coverage in accordance with the City's requirements. Any approval by the City of such insurance coverage shall not be construed as accepting in any way the deficiencies in the Contractor's insurance coverage.
- G. In addition to Certificates of Insurance and other documents, the Contractor shall provide to the Owner and other Certificate Holders, on a timely basis, copies of any subsequently issued endorsement(s) that amend coverages or limits.
- H. When any required insurance shall expire, due to the attainment of a normal expiration or renewal date, the Contractor shall supply, no later than ten (10) days prior to such expiration, the City with Certificates of Insurance and accompanying documents evidencing continuation of coverage in the same manner, limits of protection and scope as provided by the previous policy.
- I. The Contractor will assure that any and all subcontractors retained by the Contractor carry and maintain insurance with reasonably prudent limits and coverage satisfactory to the City in light of the work to be performed, written by companies meeting the same criteria as required in Section 2. LIABILITY INSURANCE, and that the City is named additional insured on the subcontractor's liability policies according to the same requirements as described in Section "Commercial General Liability" (B).
- J. The Contractor shall disclose to the City any deductible or self-insured retentions applicable to any of the coverages required herein of the Contractor.
- K. The Contractor's liability coverage must not contain any exclusions or restriction of coverage for claims involving New York Labor Law, Employer's Liability, third party over actions, or equivalent.

The CONTRACTOR agrees:

The Contractor agrees to secure and maintain, at the Contractor's own expense, all insurance coverage required herein from one or more insurance companies that are licensed to write such insurance in New York State or are eligible non-admitted insurers, per the current Excess Line Association of New York's (ELANY) official list. Insurers must carry an A.M. Best "Secure" rating of A- or better. The Contractor's insurance shall include the following, and shall be written with limits no less than hereinafter specified:

COMMERCIAL GENERAL LIABILITY

- A. Occurrence based **Commercial General Liability** coverage to include bodily injury, personal injury, and property damage applicable to ongoing operations, products & completed operations, and contractual liability, all with a per-project aggregate endorsement. There shall be no exclusions for NY State Labor Law. There shall be no exclusions for explosion, collapse, and underground operations ("XCU"). The coverage limits applicable shall be the greater of the amounts indicated below or the amounts carried by the Contractor:

General Aggregate	\$2,000,000
Products & Comp/Op. Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$ 50,000
Med. Expense (any one person)	\$ 5,000

- B. **Additional Insured:** Coverage in Commercial General Liability, Automobile Liability, and Excess Liability and/or Umbrella Liability policies or coverage sections shall be written or endorsed so as to apply to the following as **additional insured on a primary and non-contributory basis**:

"City of Lockport and its employees, authorized volunteers, committee members and board members"

This Additional Insured coverage must be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; *and* CG 2037 forms together if later revisions are used, or the equivalent. In addition, the primacy of coverage must be at least as broad as ISO Form CG 20 01 04 13. The Certificate of Insurance must clearly state how Additional Insured coverage is achieved in the General Liability, Automobile Liability, and Umbrella/Excess Liability policies. Certificates of Insurance must show the form numbers that are used to achieve all of the Additional Insured coverage. A copy of the actual policy language that achieves this coverage in each policy must be provided to the Owner with the Certificate of Insurance.

- C. **Products & Completed Operations** coverages must be maintained in force for a **minimum of three (3) years** following Final Completion of the Project.
- D. **Waiver of Subrogation:** To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Umbrella/Excess Liability, and Workers Compensation policies in favor of the City.
- E. **Pollution Liability:** *If* the Contractor's work on this project involves handling or disturbance of **asbestos or other hazardous materials**, the Contractor shall provide bodily injury and property damage liability insurance applicable to this hazardous operation, covering both **ongoing operations and products & completed operations**, at limits not less than:

If covered by this Contractor's umbrella/excess liability policy:

General Aggregate	\$1,000,000
Each Occurrence or Incident	\$1,000,000

If **NOT** covered by this Contractor's umbrella/excess liability policy:

General Aggregate	\$11,000,000
Each Occurrence or Incident	\$11,000,000

- F. **Unmanned Aircraft:** *If the Contractor's work on this project in any way involves the use of **unmanned aircraft (aka drones)**, the Contractor's General Liability policy must include form CG 24 50 06 15 or equivalent providing coverage for this project. The coverage limit applicable shall be the greater of the amount indicated below or the amount carried by the Contractor:*

Each Occurrence	\$1,000,000
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AUTOMOBILE LIABILITY INSURANCE

Bodily Injury and Property Damage, coverage for the Contractor as the owner or the lessee of automobiles, trucks, trailers, self-propelled Contractor's equipment and all other owned, hired and non-owned vehicles registered for use on the public highway and/or used in operations relating to work under contract. If any such vehicles are to be used to transport hazardous materials, the Contractor shall also provide pollution liability broadened coverage evidenced by ISO Form CA 99 48. The coverage limit applicable shall be the greater of the amounts indicated below or the amount(s) carried by the Contractor:

Combined Single Limit	\$1,000,000
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Note: See Section "Commercial General Liability" (B) above for **additional insured** requirements applicable to Automobile Liability insurance.

EXCESS LIABILITY AND/OR UMBRELLA LIABILITY COVERAGE:

Applicable to Commercial General Liability and Automobile Liability policies. The Excess Liability and/or Umbrella Liability coverage limits applicable shall be the greater of the amounts indicated below or the amounts carried by the Contractor:

Each Occurrence	\$1,000,000
Aggregate	\$1,000,000

Note: See Section 2.1(b) above for **additional insured** requirements applicable to the Excess Liability and/or Umbrella Liability insurance.

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Must include Waiver of Subrogation in favor of Owner.

Coverage required by the laws of New York State as further described below.

- A. **Requirements.** To comply with coverage provisions of Section 57 of the Workers' Compensation Law, businesses must **(1)** be legally exempt from obtaining workers' compensation insurance coverage, **(2)** obtain such coverage from insurance carriers, or **(3)** be self-insured or participate in an authorized group self-insurance plan.

B. Coverage Evidence. The Contractor must provide one of the following forms to the Owner, or the current equivalent of any of them in the event of revisions or replacements:

(a) Either: **CE-200**, Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required

Or: **CE-200**, Affidavit That An OUT-OF-STATE OR FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage
(Affidavits must be stamped as received by the N.Y.S. Workers' Compensation Board)

OR

(b) Either: **C-105.2**, Certificate of Workers' Compensation

Or: **U-26.3**, New York State Insurance Fund Certificate of Workers' Compensation Coverage

OR

(c) Either: **SI-12** – Certificate of Workers' Compensation Self-Insurance,

Or: **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance

DISABILITY BENEFITS REQUIREMENTS UNDER WCL SECTION 220 SUBD. 8

A. Requirements. To comply with coverage provisions of the New York State Disability Benefits Law, businesses must (1) be legally exempt from obtaining disability benefits insurance coverage, (2) obtain such coverage from insurance carriers, or (3) be self-insured.

B. Coverage Evidence. The Contractor must provide one of the following forms to the Owner, or the current equivalent of any of them in the event of revisions or replacements:

(a) Either: **CE-200**, Affidavit For New York Entities and Any Out of State Entities With No Employees, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage Is Not Required

Or: **CE-200**, Affidavit That an OUT-OF-STATE OR FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation and/or Disability Benefits Insurance Coverage
(Affidavits must be stamped as received by the N.Y.S. Workers' Compensation Board)

OR

(b) Either: **DB-120.1**, Certificate of Disability Benefits Insurance

Or: **DB-820/829**, Certificate/Cancellation of Insurance

OR

(c) **DB-155**, Certificate of Disability Benefits Self-Insurance

ARTICLE 5. REPRESENTATIONS OF CONTRACTOR:

The Contractor represents and warrants:

(a) That it is financially solvent and that it is experienced in and competent to perform the type of work in accordance with **Schedule "A"**; and

(b) That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or those employed therein.

ARTICLE 6. PERMITS AND REGULATIONS:

The Contractor shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 7. CITY'S RIGHT TO STOP WORK OR TERMINATE AGREEMENT:

The CITY shall have the right to stop work or terminate the agreement if:

- (a) The Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors; or
- (b) A receiver or liquidator is appointed for the Contractor or for any of its property and is not dismissed within 20 days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said 20 days; or
- (c) The Contractor refuses or fails to prosecute the work or any part thereof with due diligence; or
- (d) The Contractor fails to make prompt payment to persons supplying labor for the work; or
- (e) The Contractor fails or refuses to comply with all applicable laws or ordinances; or
- (f) The Contractor is guilty of a substantial violation of any provision of this Contract;
- (g) In any event, the CITY, without prejudice to any other rights or remedy it may have, may by seven (7) days' notice to the Contractor, terminate the employment of the Contractor and its right to proceed as to the work. In such case, the Contractor shall not be entitled to receive any further payment until the work is complete. If the unpaid balance of the compensation to be paid to the Contractor hereunder exceeds the expense of completing the work, such excess shall be paid to the Contractor. If such expense exceeds such unpaid balance, the Contractor shall be liable to the CITY for such excess.

ARTICLE 8. DAMAGES:

It is hereby mutually covenanted and agreed that the relation of the Contractor to the work to be performed by it under this Contract shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said work, as a result of the neglect or omission of Contractor, its agents, or employees have been negligent. The Contractor shall hold and keep the CITY free and discharged of and from any and all responsibility and liability of any sort or kind. To the extent of its liability the Contractor shall assume all responsibility for risks or casualties of every description, for loss or injury to persons or property arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty. The Contractor shall make good any damages that may occur in consequence of the work or any part of it. The Contractor shall assume

all blame, loss and responsibility of any nature by reason of neglect or violation of any federal, state, county or local laws, regulations or ordinances by it or its agents or employees.

ARTICLE 9. INDEMNITY AND SAVE HARMLESS AGREEMENT:

The Work performed by the Contractor shall be at the risk of the Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole expense) and hold harmless CITY, its representatives, members, designees, officers, directors, employees, agents, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorney's fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the Work performed, Materials furnished, or Services provided under this Agreement by Contractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Contractor, its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Contractor shall not be obligated to indemnify and defend the CITY for claims found to be due to the sole negligence or willful misconduct of Indemnified Parties.

Contractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Laws.

ARTICLE 10. NO ASSIGNMENT:

The Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this agreement, to any other person or corporation without the previous consent in writing of the CITY.

ARTICLE 11. REQUIRED PROVISIONS OF LAW:

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this Contract shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

- (a) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
- (b) Affirmative action as required by the Labor Law.
- (c) Prevention of dust hazard required by Labor Law Section 222-a.
- (d) Preference in employment of persons required by Labor Law Section 222.

- (e) Eight hour day as required by Labor Law Section 220(2).

ARTICLE 12. PREVAILING WAGE RATES REQUIRED BY LAW:

(a) The parties hereto, in accordance with the provisions of Section 220(3) of the Labor Law, hereby agree that there shall be paid each employee engaged in work under this Contract not less than the wage rate and supplements set opposite the trade or occupation in which he is engaged, as listed on **Schedule B** attached hereto and made a part of this agreement, which are the wage rates and supplements established as the prevailing rate of wages for the work covered by this Contract.

(b) Labor classifications not appearing on the schedule of wages can be used only with the consent of the CITY and then the rate to be paid will be given by the CITY after being advised by the Department of Labor.

(c) The Contractor shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements as specified in the Contract, for the various classes of mechanics, workingmen, or laborers employed on the work.

ARTICLE 13. AUTHORITY FOR EXECUTION ON BEHALF OF THE CITY:

The Mayor has executed this agreement pursuant to a Resolution adopted by the Common Council at a meeting thereof held on [date approved by resolution]. Mayor John Lombardi III, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the CITY. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the CITY.

ARTICLE 14. NOTICES:

Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

To CITY

To Contractor

ARTICLE 15. WAIVER:

No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 16. MODIFICATION:

This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

ARTICLE 17. APPLICABLE LAW:

This Agreement is governed by the laws of the State of New York.

IN WITNESS WHEREOF, the City of Lockport has caused its corporate seal to be affixed hereto and these presents to be signed by Mayor John Lombardi III, duly authorized to do so, and to be attested to by Sarah K. Lanzo, City Clerk, and the Contractor has caused its corporate seal to be affixed hereto and these presents to be signed by its President, the day and year first above written.

(affix seal)

City of Lockport

Authorized by Resolution No. _____

By: _____
Mayor

Director of Finance approval

ABC Company

By: _____

Corporation Counsel approval

City Clerk approval

Schedule A

To be completed upon contract execution.

Schedule B

Contractor is responsible for obtaining an updated Prevailing Wage Schedule from the New York State Department of Labor. For more information about how to obtain an original Prevailing Wage Schedule please refer to:

<http://www.labor.state.ny.us/workerprotection/publicwork/PWReqforOWS.shtm>

APPENDIX B SPECIFICATIONS

GENERAL CONDITIONS

DEFINITIONS

1. MARGINAL NOTES, ETC. - Title headlines, running headlines, and marginal notes are printed hereon merely for convenience and shall not be deemed to be any part of this Contract for any purpose whatsoever.

Whenever the following words and expressions are used in these specifications, it is understood that they have the meaning defined below.

CONTRACTOR - The person or persons or corporation performing the Contract.

CITY - The City of Lockport.

COMMON COUNCIL - The Common Council of the City of Lockport.

ENGINEER - A representative of the City of Lockport Engineering Department.

CALENDAR DAY - Every day shown on the calendar.

CONTRACT DOCUMENTS - All Plans, Bidding Sheets, Shop Drawings (upon final approval), clarification or revision drawings and all specifications, including Proposal, Agreement, Performance Bonds, Insurance's, Technical Specifications, Addenda, Easements, and other permits, codes and regulations governing the work directly or indirectly in whatever manner, together with all provisions required by Law, whether inserted in the Specifications or not.

SUPERVISION - Shall mean inspection of work, Engineering during construction, field and office work necessary to keep the City informed and protected, and to permit the Contractor to proceed with the work within the terms of the Contract Documents. It shall not in any way mean, imply or indicate either directly or indirectly, any responsibility on the part of the City and/or Engineers for determination and/or direction of the methods employed in the progress of the work which shall remain the sole responsibility of the Contractor, except where such methods would contravene the intent of the Contract Documents. In such case, the City and/or Engineers may employ sanctions as provided in the Contract Documents, without prejudice to the contract in any way.

DATE OF FINAL ACCEPTANCE - Shall be that date upon which final payment shall be approved. Such date will also be the date on which the period of various guarantees shall commence.

WORK - The term "WORK" is used to designate the work, equipment, materials and things required to be done, furnished, or performed by the Contractor, under the Specifications attached hereto.

2. SPECIFICATIONS - The following directions, requirements, etc, together with all agreements made or to be made pertaining to the method of performing the work and the quantity and quality of the materials.

CONTRACT AGREEMENT - The agreement covering the performance of the work and the furnishing of labor and materials in the construction of the work. The Contract Documents shall include the advertisement for proposals; the Contractor's proposal; the Agreement; Specifications; the Plans, and Addenda to specifications, and all provisions required by law to be inserted in the Contract, whether actually inserted or not.

MATERIALS AND METHODS - All materials and methods used in the various parts of this project shall meet the New York State Department of Transportation Standard Specifications, latest addendum, which are hereby incorporated by reference, except as modified by Specifications.

TON - Short ton of 2,000 pounds.

STREET - That strip of land reserved for the traveling public and bounded by the property lines of adjacent owners.

3. SILENCE OF SPECIFICATIONS - The apparent silence of specifications as to any details of the apparent omission of a detailed description concerning any work to be done or materials to be furnished, shall be regarded as meaning that only the best standard practice is to prevail, and that only material and workmanship of first quality is to be used in this connection, and all interpretations of these specifications shall be made on this basis.
4. ACCURACY OF PLANS AND SPECIFICATIONS - The detail plans and specifications for the Contract have been prepared with care and are intended to show as clearly as is practicable, the work required to be done. The Contractor must realize, however, that construction details cannot always be accurately anticipated, and that in executing the work, field conditions may require reasonable minor modifications in the details of plans and quantities of work involved. Work under all items in the Contract, must be carried out to meet these field conditions to the satisfaction of the Engineer, and in accordance with these instructions and the Contract specifications.
5. LINES AND GRADES - The Engineer will set suitable stakes and marks showing the locations and elevations of the various parts of the work, but the Contractor shall provide such stakes and labor and shall be undertaken until such stakes and labor and assistance as the Engineer may require in setting the same. No work shall be undertaken until such stakes and marks shall have been set by the Engineer. The Contractor shall take due and proper precautions for the preservation of these stakes and marks, and shall see to it that the work at all times proceeds in accordance therewith. The Contractor shall brush out survey lines as directed by the Engineer in advance of all survey work, in order to permit accurate and unimpeded work by the survey parties.
6. SITE INVESTIGATION - The Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, ground water table or similar physical conditions at the site, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions, will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work.
7. BORINGS AND SUBSURFACE DATA - The Contractor may examine the logs of soundings, borings, rock cores and other sub-surface data, if available, by making a request therefore to the Engineer. Such data is offered in good faith solely for the purpose of placing the Contractor in receipt of all information available, and in no event is to be considered a part of the Contract Documents. The Contractor must interpret such data according to his own judgment and acknowledges that he is not relying upon the same as accurately describing the sub-surface conditions which may be found to exist. The Contractor further acknowledges that he assumes all risk contingent upon the nature of the sub-surface conditions to be actually encountered by him in performing the work covered by the Contract, even though such actual conditions may result in the Contractor performing more or less work than he originally anticipated.

8. ALTERATIONS AND OMISSIONS - The said work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the City other than the consideration named in this agreement.

The City reserves the right, at any time during the progress of the work, to alter the plans or omit any portion of the work, as it may deem reasonably necessary for the public interest; making allowances for additions and deductions at the prices named in the proposal for this work without constituting grounds for any claim by the Contractor for allowance for damages, or for loss of anticipated profits, or for any variations between the approximate quantities and the quality of the work as done.

9. DAMAGES TO WORK - The Contractor further agrees that all damages of whatever nature resulting from the work or resulting to the work during its progress from whatever cause, shall be borne and sustained by him and that all the work shall be solely at his risk, until it has been finally inspected and accepted by the City.
10. PATENTED DEVICES, MATERIAL AND PROCESSES - It is mutually understood and agreed that the Contract prices are to include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters, patent or copyright, the Contractor shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process to be performed under the Contract, and shall indemnify the said City for any cost, expenses and damages which it may be obliged to pay by reason of any such infringement, at any time during the execution or after the completion of the work.
11. EQUIVALENT MATERIALS AND EQUIPMENT - Whenever in any of the Contract Documents, an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "or approved equal", if not inserted, shall be implied. The specific article, material or equipment mentioned shall be understood as indicating the type, function, minimum standard of design efficiency and quality desired, and shall not be construed in such a manner as to exclude manufacturers' products of comparable quality, design and efficiency.

Other manufacturers' products will be accepted provided sufficient information is submitted to the Engineer to determine that the products proposed are equivalent to those named.

Whenever material or equipment is submitted for approval as being equal to that specified, the Engineer shall make the decision as to whether or not such material or equipment is equal to that specified.

Upon rejection of any material or equipment submitted as the equivalent of that specifically named in the Contract, the Contractor shall immediately proceed to furnish the designated material or equipment.

Neither the approval by the Engineer of alternate material or equipment as being equivalent to that specified, nor the furnishing of the material or equipment specified, shall in any way relieve the Contractor of responsibility for failure of the material or equipment, due to faulty design, material, or workmanship, to perform the functions required of them by the Specifications.

12. STANDARD SPECIFICATIONS -

- (a) Whenever reference is made to any published standards, codes or standard specifications, it shall mean the latest standard code, specification or tentative specification of the technical society, organization or body referred to, which is in effect at the date of invitation for bids. Where specified articles, sections, paragraphs or other subdivisions of the referenced publications are not stated, the referenced publication shall apply in full.

- (b) The following is a partial list of typical abbreviations which may be used in the specifications, and the organizations to which they refer:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway & Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
AOAC	Association of Official Agricultural Chemists
API	American Petroleum Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscaping Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWPA	American Wood-Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
Fed. Spec.	Federal Specifications
FHWA	The Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration
MUTCD	Manual of Uniform Traffic Control Devices
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NYSDOT	New York State Department of Transportation
SAE	Society of Automotive Engineers
SPN	Standardized Plant Names adopted by the American Joint Committee on Horticultural Nomenclature and in effect on the date of advertisement of bids.
USASI	United States of American Standards Institute

12.1 SUBMITTALS

1. PROCEDURES

- A. Coordination: The contractor shall coordinate the preparation and processing of submittals with performance of construction activities. The contractor shall transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay.
1. The contractor shall coordinate each submittal with fabrication, testing, delivery, other submittals and related activities that require sequential activity.
 2. The contractor shall coordinate transmittal of different types of submittals for related elements of the Work so processing will not be delayed by the need to review submittals concurrently for coordination. The Engineer reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
 3. Processing: Allow sufficient review time so that installation will not be delayed as a result of the time required to process submittals, including time for resubmittals.

- a. Allow two weeks for initial review. Allow additional time if processing must be delayed to permit coordination with subsequent submittals, or if required specifically by the Specifications. The Engineer will promptly advise the contractor when a submittal being processed must be delayed for coordination.
- b. If an intermediate submittal is necessary, process the same as the initial submittal.
- c. Allow two weeks for reprocessing each submittal.
- d. No extension of Contract Time will be authorized because of failure to transmit submittals to the Engineer sufficiently in advance of the Work to permit processing.

B. Submittal Preparation: Place a permanent label or title block on each submittal for identification. Indicate the name of the entity that prepared each submittal on the label or title block.

1. Provide a space about 4" x 5" on the label or beside the title block on Shop Drawings to record the Contractor's review and approval markings and the action taken.

2. Include the following information on the label:

- a. Project name
- b. Date
- c. Name and address of Engineer.
- d. Name and address of contractor.
- e. Name and address of subcontractor.
- f. Name and address of supplier.
- g. Name of manufacturer.
- h. Number and title of appropriate Specification Section
- i. Drawing number and Detail references, as appropriate.

C. Submittal Transmittal: Package each submittal appropriately for transmittal and handling.

Transmit each submittal from Contractor to Engineer using a transmittal form. Submittals received from sources other than the Contractor will be returned without action.

12.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

A. Bar-Chart Schedule: Prepare a fully developed, horizontal bar-chart type contractor's construction schedule. Submit within 30 days of Notice to Proceed.

12.3 SHOP DRAWINGS

A. Submit newly prepared information, drawn to accurate scale. Highlight, encircle, or otherwise indicate deviations from the Contract Documents. Do not reproduce Contract Documents or copy standard information as the basis of Shop Drawings. Standard information prepared without specific reference to the Project is not considered Shop Drawings.

B. Shop Drawings include fabrication and installation drawings, setting diagrams, schedules, patterns, templates and similar drawings. Include the following information:

- 1. Dimensions.
- 2. Identifications of products and materials included.
- 3. Compliance with specific standards.
- 4. Notation of coordination requirements.
- 5. Notation of dimensions established by field measurement.
- 6. Sheet size: Except for templates, patterns and similar full-size drawings, submit Shop drawings on sheets at least 8½" x 11" but no larger than 36" x 48".
- 7. Submittal: Submit one correctable translucent reproducible print, four blue or black line prints for the Engineer's review.
- 8. Do not use Shop Drawings without an appropriate final stamp indicating action taken in connection with construction.

12.4 PRODUCT DATA

A. Collect Product Data into a single submittal for each element of construction or system. Product Data includes printed information such as manufacturer's installation instructions, catalog cuts, standard color charts, roughing-in diagrams and templates, standard wiring diagrams and performance curves. Where Product Data must be specially prepared because standard printed data is not suitable for use, submit as "Shop Drawings".

1. Mark each copy to show applicable choices and options. Where printed Product Data includes information on several products, some of which are not required, mark copies to indicate the applicable information. Include the following information:
 - a. Manufacture's printed recommendations.
 - b. Compliance with recognized trade association standard.
 - c. Compliance with recognized testing agency standards.
 - d. Application of testing agency labels and seals.
 - e. Notation of dimensions verified by field measurement.
 - f. Notation of coordination requirements.
2. Do not submit Product Data until compliance with requirements of the Contract Documents has been confirmed.
3. Submittals: Submit 5 copies of each required submittal: submit 2 additional copies where required for maintenance manual.
4. Distribution: Furnish copies of final submittal to installers, subcontractors, suppliers, manufacturers, fabricators, and others required for performance of construction activities. Show distribution on transmittal forms.
 - a. Do not proceed with installation until an applicable copy of Product Data applicable is in installer's possession.
 - b. Do not permit use of unmarked copies of Product Data in connection with construction.

12.5 ENGINEER'S ACTION

- A. Except for submittals for record, information or similar purposes, where action and return is required or requested, the Engineer will review each submittal, mark to indicate action taken, and return promptly.
1. Compliance with specified characteristics is the contractor's responsibility.

13. ERRORS AND DISCREPANCIES

- (a) Should any error, discrepancy or inconsistency appear or occur in drawings or specifications or in work performed by other contractors employed by the City, the Contractor before proceeding with the work, shall notify the Engineer for proper adjustment, and in no case shall he proceed with the work until advised by the Engineer. The drawings are intended to agree with the specifications. Should any discrepancies arise between them, the Contractor shall request clarification from the Engineer, and any determinations made by the Engineer in this connection shall be final and conclusive. Where work is shown diagrammatically on the drawings, the Contractor shall be responsible for the proper arrangement and coordination of the work to avoid interference with adjacent work.

14. ENGINEER'S DECISIONS - The Engineer will, within a reasonable time after presentation to him, make decisions in writing on all matters relating to the interpretation of the Contract Documents.

15. SUPERINTENDENCE - The Contractor shall keep on the work during its progress, a competent Superintendent and any necessary assistants, all satisfactory to the Engineer. The Superintendent shall not be changed except with the consent of the Engineer, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent shall represent the Contractor in his absence,

and all directions given to him, verbally or otherwise, shall be as binding as if given to the Contractor. The Engineer will confirm important oral directions to the Contractor in writing. Other oral directions will be so confirmed on written request of the Contractor. The Contractor shall give efficient supervision to the work using his best skill and attention. The Engineer shall not be responsible for the acts or omissions of the Superintendent or his assistant.

16. OBSERVATION OF WORK - If the specifications, the Engineer's instructions, laws or ordinances, or any public authority requires any work to be specially tested or approved; the Contractor shall give the Engineer timely notice of its readiness for observation, and if the observation is by an authority other than the Engineer, of the date fixed for such observation. If any work should be covered up without approval or consent of the Engineer, it shall, if required by the Engineer, be uncovered for examination and properly restored at the Contractor's expense.

At any time during the progress of the work, and up to the date of final acceptance, the Engineer shall have the right to reject any work, which does not conform to the requirements of the Contract Documents, even though such work has been previously inspected and paid for. Any omissions or failure on the part of the Engineer to disapprove or reject any work or materials at the time of inspection shall not be construed as an acceptance of any defective work or materials. If any work or materials shall be condemned by the Engineer as defective or improperly done, such work shall be removed and replaced, or the defects otherwise remedied in a manner satisfactory to the Engineer, and consistent with the intent of the Contract.

17. BARRICADES, WARNING SIGNS AND LIGHTS

- (a) The Contractor shall provide, erect and maintain as necessary, strong and suitable barricades, danger signs and warning lights along all areas accessible to the public, as required to insure safety to the public.
- (b) In addition, the Contractor shall provide and maintain such other warning signs and barricades in other areas as may be required for the safety of those employed in the work or visiting site.
- (c) The Contractor shall provide and pay for necessary watchmen and others as required to protect work and materials, and as required to permit the safe operation of pedestrian and vehicular traffic at all times.
- (d) The Contractor shall not restrict access to any private road, driveway by open trenches, or the storage of materials or excavated material. The Contractor shall provide and maintain suitable temporary crossings over open ditches at all private roads and driveways.

18. MAINTENANCE OF TRAFFIC - During the progress of the work, the Contractor shall accommodate both vehicular and pedestrian traffic as provided in these specifications and as indicated on the drawings. In the absence of specific requirements, he shall maintain such traffic. Access to fire hydrants, water and gas valves shall always be maintained. The Contractor's truck and equipment operations on public streets shall be governed by all local traffic ordinances and regulations of the Fire and Police Department, the Department of Public Works, Department of Parking and Traffic, and the New York State Department of Transportation, when applicable.

Small street openings necessary for manholes, alignment holes, sewer connections, etc., will be permitted. Such holes shall not be open longer than necessary and shall be protected in accordance with the requirements of the local Department of Public Works, Department of Parking and Traffic, and the New York State Department of Transportation, when applicable, and any traffic detouring necessary shall be done to the satisfaction of the Departments. Openings shall be covered with steel plates at pavement level secured in place at times that work is not being performed.

Detouring of traffic shall be done in accordance with the requirements of local Department of Public Works, Department of Parking and Traffic and the New York State Department of Transportation, when applicable.

Where streets are partially obstructed, the Contractor shall place and maintain temporary driveways, ramps, bridges and crossings which in the opinion of the Engineer, are necessary to accommodate the public. In the event of the Contractor's failure to comply with the foregoing provisions, the Owner may, with or without notice, cause the same to be done and deduct the cost of such work from any monies due or to become due the Contractor, under this Contract, but the performance of such work by the Owner, or at his insistence, shall serve in no way to release the Contractor from his liability for the safety of the traveling public.

The Contractor shall provide flagmen, warning lights, signs and barricades necessary to direct and protect vehicular and pedestrian traffic.

The Contractor shall inform the local Fire and Police Departments in advance of his program of street obstruction and detours, so that the Fire and Police Department can set up plans for servicing the area in case of any emergency. He shall, also, notify the Department of Public Works, and the New York State Department of Transportation, when applicable, at least one week prior to obstructing any street and obtain necessary permits.

19. TIME OF COMPLETION

- (a) The work to be completed under this Contract shall be commenced within ten (10) days after the date of Notice to Proceed.
- (b) The entire work shall be completed within 90 (ninety) calendar days from the date of commencement of said work.
- (c) Failure to complete the work within the time stipulated in this Article, including extensions granted thereto as determined by the City, shall entitle the City to deduct from the monies due, or about to become due to the Contractor, an amount equal to \$500.00 (five hundred dollars), for each calendar day of delay in the completion of the work, said sum being fixed and agreed as Liquidated Damages which the City will suffer by reason of such delay and not as a penalty.

20. PROGRESS PAYMENTS - On or before the last calendar day of the month, the Contractor shall submit a progress payment request, together with supporting data and computations, as are deemed necessary by the Engineer, to determine the accuracy of the request. Failure of the Contractor to submit a request, or lack of complete and accurate supporting data, shall be sufficient reason for withholding payment until such omissions or errors are corrected.

Payment requests may, at the discretion of the Engineer, include a payment of material or equipment not incorporated in the work, but delivered and suitably stored at or near the site. Payment requests for materials or equipment shall be accompanied by such supporting data, satisfactory to the Engineer, as will establish the City's title to the material and equipment, and protect the City's interest therein, including applicable insurance.

The Contractor shall have the full continuing responsibility to install such materials and equipment, protect them from fire, theft, vandalism, the effects of the elements, and any other damage whatsoever; and forthwith repair, replace and make good any damage thereto without cost to the City until such time as the work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that after title has passed to the City, any of such materials or equipment are rejected as being defective or otherwise unsatisfactory, title to all such materials and equipment shall be deemed to have been transferred back to the Contractor.

The request for payment shall be submitted on a form supplied by the Engineer, and must show the total value of work completed to date of request.

On the basis of an approved progress payment request, the City will, not later than the 45th calendar day after submittal make a progress payment to the Contractor. To insure proper performance of the Contract, the City shall retain five percent (5%) of the amount of each estimate, until final completion and acceptance of all work covered by the Contract. The progress payment shall not constitute an acceptance of the work.

21. ACCEPTANCE AND FINAL PAYMENT - Upon completion of the work under the terms of the Contract and notification of the Engineer by the Contractor that the work is ready for final inspection and acceptance, the Engineer shall make the final inspection. When the Engineer finds the work acceptable under the terms of the Contract and has been presented all claims for extra work and materials, the Engineer shall, within thirty (30) days make a Final Estimate of the work done, and certify in writing the amount due the Contractor; and if the work is accepted by the Common Council, the City shall pay the amount so certified. The date of the final estimate shall establish the date of acceptance of the work, and the date of the beginning of the guarantee for such work hereunder. The City of Lockport shall retain from such final payment an amount equal to two times the value of any remaining items to be completed.

Acceptance and final payment for such remaining items of work shall be in the manner provided herein for acceptance and final payment for the major portions of the Contract work.

Unless otherwise provided in this agreement, by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the owner's claims against the Contractor of his sureties under this agreement or applicable performance and payment bonds.

22. DIRECTIONS OF THE ENGINEER - It is further agreed that so long as any lawful or proper direction concerning the work or materials given by the Engineer or his representatives shall remain uncomplied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be rendered on account of work done or material furnished, until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.
23. DEDUCTIONS FOR UNCORRECTED WORK - If the Engineer and City deem it expedient to correct work damaged or done not in accordance with the Contract, an equitable deduction from the Contract Sum shall be made therefore.
24. RIGHT TO USE WORK - The City shall have the right to take possession of or use any part of the completed or partly completed work before final acceptance. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents.
25. CLAIMS FOR DAMAGES - The Contractor shall not be entitled to any claim for damages from hindrance or delay or from any cause whatsoever during the progress of the work or any part thereof, but such hindrance or delay may entitle said Contractor to an extension of time of the completion of the work.
26. AUTHORITY FOR EXTRAS - No allowance shall be made to the Contractor for extra work unless he has a written order from the Engineer authorizing such extra work, and unless the same, together with the prices thereof, are approved by the Engineer and the Common Council, and in every case where such extra work should be concealed from view when completed, it shall be measured at the time of excavation by the Engineer or his Deputy, and the Contractor shall give the Engineer time or notice to enable him to see such work before it is concealed from view.

- 26A. PAYMENT FOR WORK - Written notice of claims for Extra Work shall be given by the Contractor within ten (10) days after receipt of instructions from the Owner to proceed with the Extra Work, and also before any work is commenced, except in emergency endangering life or property. No claim shall be valid unless so made. In all cases, the Contractor's itemized estimate sheets showing all labor and material shall be submitted to the Owner. The Owner's order for Extra Work shall specify any extension of the Contract Time and one of the following methods or payment:
- (a) Unit prices or combinations of unit prices which formed the basis of the original Contract.
 - (b) Engineer will issue a written change order describing details of change and request Contractor acceptance and total cost of such change prior to accomplishing the work involved in the change.
 - (c) A lump sum based on the Contractor's estimate and accepted by the Owner.
 - (d) Actual cost plus 10 percent (10%) for overhead and 10 % profit. Actual costs are defined as follows:
 - (1) Labor costs, including time of foreman while engaged directly upon extra work.
 - (2) Labor, insurance, and taxes.
 - (3) Materials and supplies actually used on the work.
 - (4) Associated General Contractors of America standard rental rates on each piece of equipment having a value in excess of \$100. Equipment and tools of lesser value are considered "small tools", and as such, are considered to be part of overhead.
 - (e) Where the quantity of work with respect to any item that is covered by a unit price differs materially and significantly from the quantity of such work indicated in the Contract Documents, an appropriate Change Order shall be issued on recommendation of ENGINEER to adjust the unit price.
27. PAYMENTS WITHHELD - The Engineer may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary in his reasonable opinion to protect the City from loss on account of:
- (a) Defective work not remedied.
 - (b) Claims filed or reasonable evidence indicating probable filing of claims.
 - (c) Failure of the Contractor to make payments properly to subcontractors or for material of labor.
 - (d) A reasonable doubt that the Contract can be completed for the balance then unpaid.
 - (e) Damage to another contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

28. CORRECTION OF WORK BEFORE FINAL PAYMENT

- (a) Contractor shall promptly remove from the premises, all materials condemned by the Engineer as failing to meet Contract requirements, whether incorporated in the work or not; and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the City, and shall bear the expense of making good all work of other Contractors destroyed by such removal or replacement.
- (b) If the Contractor does not remove such condemned work and materials within ten (10) days after written notice, the City may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within (10) days time thereafter, the City may upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceeds thereof, after deducting all costs and expenses that should have been

born by the Contractor.

29. GUARANTEE PERIOD

- (a) At the completion and acceptance of the work, the Contractor shall submit to the City duplicate copies of the general guarantee for the entire work. The guarantee shall be unconditional and cover all labor, material and equipment furnished. All guarantees shall be written in a form satisfactory to the City.
- (b) The Contractor shall remedy any defective work appearing within one (1) years from the date of acceptance of the work, and shall pay for any damages caused by such defective equipment, work, or materials or occasioned in correcting the same.
- (c) If any defects occur within the guarantee period, the Contractor shall within three (3) days after receipt of notification of such defect, take the necessary action to correct such defects. The correction of any defects in equipment, materials and workmanship, which may develop during the guarantee period, shall be at the expense of the Contractor. If the Contractor fails to comply with the requirements of this paragraph within the time stated, the City may have the corrective work done and charge the Contractor therefore.

30. CITY'S RIGHT TO TERMINATE AND/OR COMPLETE CONTRACT

Should the Contractor become insolvent, or should he refuse or neglect to execute the work in a proper manner and as directed by the City, or otherwise fail in the performance of any of his obligations under this contract and surety after proper request fails to complete the Contract, then the City, upon the certification of the Engineer that sufficient cause exists to justify such action, and after giving the contractor and his surety seven (7) days written notice, may, without prejudice to any of the right or remedy, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such cases, no further payment shall be made to the Contractor until the work is completed. At which time, if the unpaid balance of the Contract Price shall exceed the expenses of finishing the work, such excess shall be paid to the Contractor. Should such expense exceed the unpaid balance, the Contractor and his sureties shall pay the difference to the City. The City shall audit and certify the expense incurred by him in finishing the work and the damage incurred through the Contractor's fault.

31. CONTRACTOR'S LIABILITY INSURANCE

- (a) The Contractor shall secure and maintain such insurance policies as will protect himself, his sub-contractors, and unless otherwise specified, the city from claims for bodily injuries, death or property damage which may arise from operations under this Contract, whether such operations be by himself or by any sub-contractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - (1) Statutory Workmen's Compensation - Proof **must** be submitted that the contractor has obtained the required Workers' Compensation and disability benefits. (State Forms C-105.2 and DB-120.1 or Form U-26.3, and Form SI-12 or DB-155) If the contractor is not required by law to provide Workers' Compensation and/or disability benefits he must submit State Form C-105.21.
 - (2) Contractor's Public Liability of Property Damage. (Bodily injury, property damage, combined \$1,000,000 each occurrence; \$2,000,000 aggregate.)
 - (3) Contractor's Protective Public Liability covering operation of subcontractors, with same limits.

- (4) Automobile Public Liability and Property Damage covering both owned and hired vehicles. (Bodily injury and property damage \$1,000,000 combined single limit; \$1,000,000 aggregate.)
 - (5) Prior to the storage or use of explosives, the contractor shall provide evidence of increase in limits of Public Liability, Property Damage and Contractor's Protective Public Liability Insurance to: Bodily Injury \$1,000,000 each accident; Property Damage \$500,000 each accident.
 - (6) Fire and Extended Coverage. (In an amount equal to the bid price of the Contract.)
 - (b) Binders of such insurance shall be filed with the City prior to start of work and shall be subject to approval for adequacy of protection. Said Certificates of Insurance shall contain a ten (10) day notice of cancellation in favor of the City.
32. CITY'S LIABILITY INSURANCE - For the duration of this Contract, the Contractor shall maintain insurance in the name of the City and Engineer for the same limits of liability and containing the same specific endorsements which the Contractor places on the insurance required in paragraph 31. This insurance shall conform to the requirements and restrictions imposed by paragraph 31. Original and one certified copy of the policy shall be filed with the City.
33. SURETY BONDS - The Contractor shall furnish and pay for surety bonds each in an amount at least equal to 100 percent (100%) of the contract price as security for the faithful performance of the contract, and for the payment to all persons performing labor and furnishing materials in connection with the contract. The surety shall be in such form or forms as the City may prescribe and with such sureties as he may approve.
- The Surety shall guarantee that the contractor shall remedy any defective work appearing within two (2) years from the date of acceptance of the work, and shall pay for any damages caused by such defective equipment, work or materials or occasioned in correcting the same under the terms of the Contract.
34. LIENS AND OUTSTANDING DEBTS - Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the City a complete release of all liens arising out of this Contract, or receipts in full in lien thereof, and if required in either case, an affidavit which certifies so far as he has knowledge or information that the release and receipts include all the labor and materials for which a lien could be filed; but the contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City, to indemnify the City against any lien. Upon request of the City, the Contractor shall at his own expense, by bonding it or otherwise, secure the prompt discharge of any lien or liens which may be filed against the property as a result of this Contract. Before the final payment is made for the work completed under this Contract, the Contractor shall submit evidence satisfactory to the City, that all payrolls, material bills and other indebtedness connected with the work have been paid.
35. ADDITIONAL ENGINEERING EXPENSE - In the event that the Engineer is required to provide additional engineering services as a result of Contractor's errors, omissions or failure to conform to the requirements of the Contract Documents, or if the Engineer is required to examine and evaluate any changes proposed by the Contractor solely for the convenience of the Contractor, then the Engineer's expense in connection with such additional services shall be paid to City by the Contractor.
36. RESPONSIBILITY FOR ADJOINING STRUCTURES - The Contractor shall assume full responsibility for the protection of all pavements, curbs, bridges, railroads, poles and any other surface structures, and all water mains, sewers, telephone, gas mains, and other underground services and structures along and near the work which may be affected by his operations, and shall indemnify, defend and save harmless the City against all damages or alleged damages to any such structure arising out of his work. The Contractor shall be responsible

for notifying the Utilities sufficiently in advance of any contemplated work, and shall obtain from the Utility accurate locations of their facilities. All such structures shall be maintained in good working order at all times during the progress of the work. If necessary, they shall be shored up in a manner suitable to the Engineer.

If the contractor for any reason removes the whole or part of any culvert, subdrain, drain pipe or other subsurface structure, same shall be replaced at the expense of the Contractor to a condition equal to that existing before operations started and to the satisfaction of the Engineer. No additional item of payment will be made by virtue of the expense incurred by the Contractor for this purpose, and the Contractor shall take this into consideration when preparing his bid.

If the material from the excavation in any way becomes lodged in any culvert, drain or gutter, said material shall be removed and the culvert, drain and gutter restored to its original condition at the expense of the Contractor.

37. PROTECTION OF TREES AND SHRUBBERY - No trees or shrubbery of any kind shall be removed or destroyed by the Contractor without the written permission of the Engineer, and the Contractor will be held fully responsible for any damages caused by his work to adjoining trees and shrubs. Ample precautions shall be taken by the Contractor to protect such trees and shrubs as are to remain in place by surrounding them with fences or other protection before construction work begins. Shrubby that has to be removed shall be preserved and replaced in a manner acceptable to the Engineer.

Any trees or shrubbery damaged that are not in the actual trench line shall be replaced by the Contractor at his own expense. If, in the opinion of the Engineer, a tree which is in the line of the trench can be saved by tunneling, the Contractor shall tunnel under such tree or trees, doing all the work necessary as directed by the Engineer. Trees indicated to be removed are within three (3) feet of the trench center line. Wherever possible, trees shall be saved. No additional item of payment will be made for the work so ordered.

38. FINAL RESTORATION - The Contractor shall restore any and all objects and areas, which are disturbed in any way as a result of the project, to a condition at least equal to the condition of quality and quantity which existed prior to the project, in accordance with the respective items of the contract, the requirements of the Engineer, the requirements of the City Street Department and the reasonable request of the property owners involved. The cost of final restoration shall be included in the various items of the Contract, or as otherwise noted.

39. SUNDAY AND NIGHT WORK - The normal work week is Monday through Friday between the hours of 8 a.m. and 5 p.m. Ordinarily, no other work shall be carried on which will require the presence of the Engineer or an inspector, except with written request to, and permission of the Engineer.

40. PROGRESS SCHEDULE - The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work.

41. CERTIFICATE OF COMPLETION - A Certification of proper completion of the Contract, prepared by the Engineer, shall be issued and signed by the Engineer and the Contractor prior to issuance of Final Payment and shall include a full release by the Contractor and his Subcontractors for any and all claims against the City of Lockport.

42. CERTIFIED PAYROLLS - The contractor shall submit weekly for each week in which any contract work that is performed a certified copy of all payrolls to the City Engineering Office. This information may be submitted in any form desired - Form WH-347 is available for this purpose and may be obtained from the City Engineering Office. The prime contractor is responsible for the submission of certified copies of payrolls by all subcontractors.

43. CONTRACTOR'S LICENSE - Prior to starting construction the Contractor awarded the project shall have a City of Lockport Contractor's License. This license is available at the City Building Inspection Department upon completion of the license application, proof of insurance and Workman's Compensation and payment of \$200.00. The license is valid from January through December of the year issued. Proof of insurance shall be a Certificate of insurance in the amounts listed in the General Conditions, Paragraph 31. Form C-105.2 must be submitted for proof of Workers' Compensation.

44. PRE-CONSTRUCTION CONFERENCE & PROGRESS MEETINGS -

- A. The Contractor shall schedule a pre-construction conference and organizational meeting at the City Engineering Department or at another convenient location prior to commencement of construction activities. The Contractor shall conduct the meeting to review responsibilities and personnel assignments.
- B. Attendees: Authorized Representatives of the Owner, the Engineer, Architect and their consultants, the Contractor and its superintendent, major subcontractors, manufacturers, suppliers, and other concerned parties shall be represented at the conference. All participants at the conference shall be familiar with the project and authorized to conclude matters relating to the Work.
- C. Agenda: Discuss items of significance that could affect progress including such topics as:
 - 1. Tentative construction schedule.
 - 2. Critical Work sequencing.
 - 3. Designation of responsible personnel.
 - 4. Procedures for processing field decisions and Change Orders.
 - 5. Procedures for processing Applications for Payment.
 - 6. Distribution of Contract Documents.
 - 7. Submittal of Shop Drawings, Product Data and Samples.
 - 8. Preparation of record documents.
 - 9. Use of premises.
 - 10. Parking available.
 - 11. Office, Work and storage areas.
 - 12. Equipment deliveries and priorities.
 - 13. Safety procedures.
 - 14. First aid.
 - 15. Security.
 - 16. Housekeeping.
 - 17. Working hours.
 - 18. Subcontractors.
 - 19. Preliminary schedule of Shop Drawings and Samples.
 - 20. Minority Business Enterprise Goals.
 - 21. Co-ordination with other contractors.
 - 22. Insurance in force.
 - 23. Contractor's Schedule of Values.

D. PROGRESS MEETINGS

- A. The Contractor shall conduct progress meetings at the Project site at regularly scheduled intervals. Notify the Owner and Engineer of scheduled meeting dates. Coordinate dates of meetings with preparation of the payment request.

End of General Conditions

APPENDIX C – SOLAR ENERGY POWER PURCHASE AGREEMENT

THIS SOLAR ENERGY POWER PURCHASE AGREEMENT (this “PPA” or “Agreement”) is made and entered into as of this [XX] day of [XX], 2021 (the “Effective Date”), by and between [SELLER], a [XX] (“Seller”), and Livingston County (“Buyer”). Seller and Buyer are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, as part of this Agreement, Buyer is granting Seller a license to construct and own solar energy equipment on a portion of Buyer’s premises (the “Solar Premises”) located on Buyer’s XXXXX in Livingston County, New York (the “Premises”), which Premises are more particularly described in Exhibit A hereto, for the sole purpose of selling to Buyer the Energy Output pursuant to this PPA;

WHEREAS, the Solar Premises is located in the service territory of NEW YORK STATE ELECTRIC AND GAS (“NYSEG”), the local electric utility providing service to the area;

WHEREAS, Seller intends to install, finance, and own, and maintain solar energy equipment (the “System”) as more particularly described in Exhibit C hereto;

WHEREAS, Buyer and Seller intend for the System to be operated and maintained in accordance with the terms and conditions of this Agreement;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Energy Output generated by the System during the Term in accordance with the terms and conditions of this PPA; and

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINED TERMS

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in this PPA, including the Schedule of Definitions attached hereto as Exhibit D and made an integral part of this PPA by this reference.

ARTICLE II TERM

2.1 Term. The term of this PPA shall commence on the Effective Date and shall be in effect until 00:00 hours Eastern Daylight Time on the twentieth (20th) anniversary of the System Operation Date, unless amended, extended or terminated pursuant to this PPA (the “Term”).

2.2 Conditions Precedent. The respective rights and obligations of the Parties under this PPA are expressly conditioned upon the satisfaction in full (or written waiver) of all of the following conditions, which the Parties shall pursue diligently and in good faith:

(a) The System shall be qualified for [INSERT] under Applicable Law and the NYSEG Net Metering Successor Tariff as of the System Operation Date;

(b) Seller shall have designed the System and received Buyer's consent to final construction plans in accordance with Section 5.1, which plans shall, for purposes of clarity, ensure that the System is able to qualify for [INSERT] under Applicable Law and the NYSEG Net Metering Successor Tariff as of the System Operation Date;

(c) Seller shall have entered into an engineering, procurement and construction agreement for the System;

(d) Seller shall have obtained adequate financing for the project;

(e) Seller shall have obtained all Building and Electrical Permits required to construct the System; and

If all of the conditions precedent above are not satisfied, or waived in writing by both Parties, by the one year anniversary of the Effective Date (the "Early Termination Date"), either Party may terminate this PPA without penalty, subject to Section 2.4 and Section 2.5, by providing the other Party with notice pursuant to Section 16.1 within thirty (30) calendar days after the Early Termination Date.

2.3 [Intentionally left blank]

2.4 Removal of System Upon Termination of Agreement. Unless Buyer exercises its Purchase Option pursuant to Section 8.1, Section 9.3 or Article XIII, Seller shall remove the System and all System Assets (including mounting pads and other support structures) from the Solar Premises, within one hundred eighty (180) days following the termination of this Agreement at Seller's sole cost and expense. To effectuate removal, Buyer shall provide Seller with access to the System pursuant to Section 18.2 for purposes of such removal, and Seller shall take Commercially Reasonable Efforts to avoid negatively affecting the integrity of the Buyer's roof or voiding or interfering with roofing system warranties. If the integrity of the roof is compromised, or if any roofing system warranty is voided or interfered with, following the Termination of the Agreement and the removal of the System, the Parties agree to move to arbitration per Article XV. Seller shall not proceed with the dismantling or removal of the System without receiving Buyer's written approval of the contractor or subcontractor performing such work. Notwithstanding the foregoing, if Seller fails to remove the System and all System Assets from the Solar Premises pursuant to this Section 2.4, Buyer shall have the right but not the obligation to remove, or cause to be removed, the System and all System Assets from the Solar Premises, and Seller shall be responsible for all of Buyer's costs to effectuate such removal.

2.5 Termination and Survival. Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA and shall be released and

discharged from any obligations or liabilities arising or accruing thereunder from and after the date of such termination, except (i) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this PPA prior to termination of this PPA, (ii) as provided in Section 14.1, and (iii) that the obligations of the Parties under this PPA with respect to indemnification will survive the termination of this PPA and will continue (but only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the termination of this PPA or during System removal under Section 2.4) for a period of three (3) years following any termination of this PPA; provided, however, that if this PPA is terminated for any reason before the System Operation Date, Seller shall refund the Initial Payment to Buyer within thirty (30) days of such termination; provided, that Seller can withhold the Initial Payment in escrow in case the termination is due to an Event of Default by Buyer, until the Termination Fee, if any, has been determined. Notwithstanding the foregoing or anything else to the contrary in this Agreement, if Buyer elects to continue to make payments to Seller pursuant to Section 3.2 after the twentieth (20th) anniversary of the System Operation Date, the terms and conditions of this Agreement shall remain effective on a month-to-month basis until terminated in writing by either party on thirty (30) days' written notice to the other party. For any period in which this PPA remains effective beyond the twentieth (20th) anniversary of the System Operation Date, the Energy Payment Rate shall equal the Energy Payment Rate applicable for the twentieth (20th) Contract Year plus 2%, as set forth in Exhibit E hereto.

ARTICLE III PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

3.1 Purchase and Sale of Energy. Seller shall make available to Buyer, and Buyer shall take delivery of and purchase all of the Energy Output for the duration of the Term.

3.2 Price for Total Delivered Energy. Buyer shall pay Seller for Total Delivered Energy at the applicable Energy Payment Rate as set forth on Exhibit E for the duration of the Term. The payment to be made by Buyer to Seller shall equal the Total Delivered Energy for the relevant period multiplied by the Energy Payment Rate for such period. Any payment calculations and invoice adjustments that may be applicable by virtue of this Section 3.2 shall be subject to all terms and conditions of this Agreement, including Article X.

3.3 Test Energy. Seller shall make available to Buyer and Buyer shall take delivery of all Test Energy produced by the System. Buyer shall not pay for Test Energy.

3.4 Delivery; Title and Risk of Loss. Title to and risk of loss of all Energy Output will pass from Seller to Buyer at the Metering Device. Seller warrants that it will deliver all Energy Output to Buyer at the Metering Device free and clear of all liens, security interests, claims, and other encumbrances.

3.5 Taxes and Other Governmental Charges. Buyer shall be responsible for and pay Governmental Charges imposed directly on Buyer as a result of Buyer's purchase of the Energy Output pursuant to this Agreement (including but not limited to all sales and use, gross receipts, or similar tax), and shall promptly reimburse Seller for any such Governmental Charges paid by

Seller, whether imposed before, upon or after the delivery of Energy Output to Buyer at the Metering Device.

(a) Both Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize all Governmental Charges. In the event any sales of Energy Output or Environmental Attributes, if any, hereunder are eligible to be exempted from or not subject to one or more Governmental Charges, promptly upon Buyer's request Seller shall provide Buyer with all necessary documentation to obtain such exemption or exclusion at no cost to Seller other than ordinary administrative costs.

(b) Each Party shall be responsible for all taxes and fees assessed against it due to its ownership of its respective personal and real property, and Seller shall be responsible for all taxes associated with ownership of the System. The Buyer acknowledges that, as of the Effective Date, the Solar Premises, including the property thereon, is located on a tax-exempt parcel. Buyer agrees that it shall cooperate with Seller (at no cost to Buyer beyond ordinary administrative costs) to verify the tax-exempt status of the Solar Premises and the property thereon, in connection with such financing of the System, including (i) the furnishing of information related to such tax-exempt status and (ii) providing such documents as Seller and its financing parties may reasonably request provided, that to the extent that Buyer incurs anything more than administrative costs, Seller shall reimburse Buyer for such costs. Notwithstanding the above, the Parties agree that the requirements of clauses (i) and (ii) of this Section 3.5(b) shall only apply upon the initial financing transactions undertaken by Seller and upon any change in circumstances which renders such verification necessary, and not on an annual basis.

(c) Should the tax-exempt status of the Solar Premises or property thereon be revoked or challenged, Buyer may, at its sole discretion, undertake such actions or efforts as Buyer deems appropriate to ensure that such tax-exempt status is reinstated or retained, provided however that Seller shall reimburse Buyer for all reasonable costs that Buyer incurs pursuant to this Section 3.5(c).

(d) The Parties agree that, should the Solar Premises or any property thereon not retain tax-exempt status, after Buyer has undertaken actions or efforts to reinstate or retain such tax-exempt status (or, in its sole discretion, declined to undertake any such actions or efforts) under Section 3.5(c) above, such loss of tax-exempt status shall be considered a Change in Law under Section 21.5.

ARTICLE IV ENVIRONMENTAL ATTRIBUTES

4.1 Title to Environmental Attributes. Notwithstanding the purchase and sale of Energy pursuant to Section 3.1, both Parties acknowledge and agree that, as between Buyer and Seller, Buyer shall have the right, title and interest in or to any Environmental Attributes. Both Parties shall not enter any transaction that would, or may be intended to, result in the exportation or transmittal of any Energy Output created by the System to any party or system outside of New York State. Seller shall take Commercially Reasonable Efforts to cooperate with Buyer in obtaining, securing and transferring all Environmental Attributes. To avoid any conflicts with fair

trade rules regarding claims of solar or renewable energy use, each Party shall submit to the other Party for approval any press releases regarding Buyer's use of solar or renewable energy and neither Party shall submit for publication any such releases without the prior written approval of the other Party. Approval shall not be unreasonably withheld, and such Party's review and approval shall be made in a timely manner to permit timely publication. The Parties agree that Buyer shall at all times accurately represent to third parties, including but not limited to media outlets and Buyer's business partners, that Seller owns the System.

ARTICLE V CONSTRUCTION AND INSTALLATION OF THE SYSTEM

5.1 Seller Responsibilities.

(a) Seller will cause the System to be designed, engineered, installed and constructed in accordance with Applicable Law, Applicable Industry Standards, applicable utility tariffs, Buyer's electrical design standards (including applicable standards and requirements of the Buyer's insurance provider(s)), roof and roofing system warranties, and the terms of this PPA. The Buyer's electrical design standards (including applicable standards and requirements of the Buyer's insurance provider(s)) and the roof and roofing system warranties shall be provided upon execution of this Agreement.

(b) Seller shall be responsible for and bear all costs associated with System design, engineering, installation and construction, including all costs associated with interconnection of the System with the Buyer's electrical distribution system, as necessary.

(c) Seller shall not proceed with System construction without receiving Buyer's written consent to final construction plans, including plans for interconnection to Buyer's electrical distribution system and the nys grid, such consent not to be unreasonably withheld. Buyer shall provide its consent or written comments within thirty (30) days of receiving final construction plans from the Seller. Upon such consent from Buyer, such final construction plans shall be attached hereto as Exhibit C and incorporated herein by reference. Buyer's consent to the construction plans shall not constitute a waiver of any rights Buyer has under this Agreement. If Buyer requires material changes that require expenditures that increase the estimated cost of the equipment of the final construction plans submitted by Seller in order to release consent, the Parties will attempt to reach an agreement regarding such equipment upgrades. Copies of all component manuals, warranties, stamped plan drawings, Building and Electrical Permits and as-built drawings will be provided to Buyer promptly following the System Operation Date.

(d) Seller shall be responsible for ensuring that System installation does not void or interfere with roof system warranties. Prior to commencing construction and installation of the System, Seller shall provide reasonable documentation to Buyer demonstrating that Seller has consulted with a certified installer of the roof system and that such installer has agreed that Seller's final construction plans will not void any warranty for the roof or any roofing system. Seller shall not make any roof penetrations without Buyer's approval. Notwithstanding anything to the contrary contained herein, if during the Term, Buyer, in its reasonable discretion, determines that the roof at the Premises (or major sections or components thereof) requires replacement, Buyer

shall have the right to cause such roof to be replaced and Seller shall be required to remove the System (or portion of the System affected by the required repairs or replacement) prior to the roof replacement and re-install the System on the roof once the roof replacement has been completed. Buyer shall be responsible for reimbursing Seller for (i) any payments that Buyer would have owed to Seller under this PPA associated with Energy Output that would have been produced but for such roof replacement and (ii) all of the costs that Seller incurs in order to accommodate Buyer's roof replacement under this Section 5.1(d); provided, however, that Buyer will have no reimbursement obligations under this Section 5.1(d) if the roof replacement is required due to the acts or negligence of Seller or its agents, employees or Affiliates.

(e) Throughout the Term, Seller shall not: (i) make any modifications or alterations to the Solar Premises or the System; or (ii) operate the System, in a way that may result in Buyer or the System no longer qualifying for Service Classification No. [XX] of NYSEG's electric tariff as defined on the Effective Date. Notwithstanding the above, the Parties agree that any material change to the eligibility requirements for Service Classification No. [XX] that is approved by the New York State Public Service Commission and results in Buyer or the System becoming ineligible for Service Classification No. [XX] will be considered a Change in Law subject to Section 21.5 as of the effective date of such tariff change.

(f) Seller shall be responsible for obtaining all power it needs during System construction and installation, and Seller shall bear all costs associated with obtaining and using such power.

(g) Seller shall be responsible for providing internet connectivity for use by both Parties to conduct long-term monitoring and reporting of System performance. Seller may utilize Buyer's existing wireless local area network, at no additional cost to Seller; provided, however, that if Seller elects to utilize Buyer's existing wireless local area network Seller will do so at its own risk. Buyer makes no representation regarding the adequacy, capability, availability or security of Buyer's existing wireless local area network. To the extent Buyer's existing wireless local area network is not adequate or capable of satisfying Seller's responsibilities under this Agreement, Seller shall be responsible for providing a substitute means of internet connectivity at its sole cost and expense.

5.2 Building and Electrical Permits.

(a) Seller shall be responsible for and bear all costs associated with applying for and obtaining all Building and Electrical Permits, including but not limited to the Interconnection Agreement with NYSEG, and Buyer shall reasonably assist Seller in obtaining all Building and Electrical Permits provided, that any costs incurred by Buyer other than ordinary administrative costs shall be reimbursed by Seller.

(b) Buyer shall not make any material changes to its electrical equipment at the Premises after Buyer consents to final construction plans under Section 5.1(c) unless any such changes, individually or in the aggregate, would not adversely affect System interconnection with Buyer's electrical distribution system.

(c) If any applicable authority fails to approve or issue any Building and Electrical Permits by the Early Termination Date, provided that such failure is no fault of Seller, Seller may terminate this Agreement without penalty or further obligation, subject to Section 2.4 and Section 2.5, by providing Buyer with notice pursuant to Section 16.1. If the local inspector or any applicable authority requires material upgrades that require expenditures that increase the estimated cost of the equipment set forth in Exhibit C in order to approve any Building and Electrical Permits, the Parties will attempt to reach an agreement regarding such equipment upgrades. If the Parties cannot reach such an agreement, either Party may terminate this Agreement without penalty or further obligation, subject to Section 2.4 and Section 2.5, by providing the other Party with notice pursuant to Section 16.1.

5.3 Notice of System Operation. Seller shall provide written notice to Buyer of the System Operation Date no than less five (5) Business Days prior to such date.

5.4 Installation at Seller's Discretion. Notwithstanding the provisions of this Article, if Seller determines, in its reasonable discretion, before the Early Termination Date that it is unable to install the System at the Solar Premises due to material physical obstacles, including but not limited to structural weakness or materially impaired access to the Solar Premises, the Parties will attempt to reach an agreement regarding such physical obstacles. In case no agreement is reached, Seller shall have the option, at its sole discretion, to terminate this Agreement without penalty or further obligation, subject to Section 2.4 and Section 2.5, by providing Buyer with notice pursuant to Section 16.1.

5.5 System Operation Date Deadline. If the System Operation Date has not occurred by [DATE] ("Guaranteed System Operation Date"), subject to a day-for-day extension approved by Buyer, Seller shall continue using commercially reasonable efforts to ensure that the System Operation Date occurs as soon as practicable thereafter and Seller shall pay to Buyer liquidated damages ("Delay Damages"), for each day after the Guaranteed System Operation Date until the earlier of (i) the System Operation Date is achieved or (ii) the date that is one hundred eighty (180) days after the Guaranteed System Operation Date (subject to day-for-day extension for a Force Majeure Event, if any), in an amount equal to the product of (x) the amount of energy the System would have generated on such day had the System been in commercial operation on such day, multiplied by (y) the Energy Payment Rate; provided, however, that no Delay Damages shall be payable for any such days that the occurrence of the System Operation Date is delayed as a result of a Force Majeure Event. In the event that Delay Damages are owed by Seller to Buyer, beginning with the next month following the commencement of Delay damages, Seller shall calculate the Delay Damages and issue an invoice for the prior month's Delay Damages as if the Initial Term has commenced. In the event that the System Operation Date has not occurred within one hundred eighty (180) days after the Guaranteed System Operation Date (subject to day-for-day extension for a Force Majeure Event), Buyer may terminate this PPA without penalty or further obligation, subject to Section 2.4 and Section 2.5, by providing Seller with notice pursuant to Section 16.1. Alternatively, in the event that the System Operation Date has not occurred by the Guaranteed System Operation Date, the Parties may mutually agree to amend this Agreement.

(a) Delay Damages as Sole Remedy. The payment of Delay Damages and Buyer's termination right set forth in this Section 5.5 shall be Buyer's sole and exclusive remedy,

and Seller's sole and exclusive liability, for any failure to achieve, or delay in achieving, the System Operation Date. The Parties acknowledge and agree that the terms, conditions and amounts determined according to this Section 5.5 for Delay Damages are reasonable considering the damages that Buyer would sustain if any failure described in the immediately preceding sentence occurs. The Parties have agreed upon and established the amounts of the Delay Damages because of the difficulty of ascertaining the exact amount of damages that Buyer would sustain in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Delay Damages are not penalties and shall be paid regardless of the amount of damages that Buyer actually sustains.

ARTICLE VI OWNERSHIP; OPERATION AND MAINTENANCE OF SYSTEM

6.1 Ownership of System by Seller. Seller shall own the System and all System Assets, and shall be entitled to own, claim and retain any and all federal, state, or local tax benefits associated with the ownership of the System, including any federal income tax credits or grants, as well as any and all federal, state or local incentives for the installation of solar energy facilities or the production of electricity from renewable energy sources (excluding the Environmental Attributes).

(a) Except for Environmental Attributes as set forth in Article IV, in the event Buyer receives any payment or remittance for any federal or state income tax credits or grants, or any federal, state or local incentives for the installation of solar energy facilities or the production of electricity from renewable energy sources related to the System and properly owned by Seller pursuant to this Section 6.1, Buyer shall immediately deliver such payment or remittance to Seller, in the exact form received without deduction or offset, and all accompanying documentation.

(b) Seller shall provide monthly summaries of the Energy Output delivered to Buyer from the System. Seller shall also provide fifteen (15) minute real-time meter kilowatt and totalizer values to the Buyer via the internet connectivity required to be installed by Seller under Section 5.1. Information on actual energy production on a monthly basis will be included in such monthly summaries. Seller also shall make available for educational and research purposes any other real-time data available at the Solar Premises for student and faculty research projects via internet connectivity. Buyer shall share with Seller any student and faculty research projects that employ System data at Seller's reasonable request, subject to Buyer's legal, policy or contractual restrictions.

(c) The System is property of Seller and is not to be regarded as a fixture or otherwise part of the Premises or Solar Premises on which it may be located.

(d) Buyer shall endeavor to keep the System free from all claims, liens, encumbrances and legal processes, and in no event shall anyone claiming by, through or under Buyer (including but not limited to any present or future mortgagee or lender against the Premises) have any rights in or to the System at any time. Buyer shall release, discharge or bond over any such claims, liens or encumbrances placed on the System by Buyer's actions, representations or

omissions (or placed by Buyer's lenders or mortgage parties in any case) within thirty (30) days of their attachment.

6.2 Operation and Maintenance of System by Seller. Except for the Buyer's Maintenance Responsibilities set forth in Exhibit B, attached hereto and made a part hereof, Seller shall be responsible for the operation and maintenance of, the System during the Term in accordance with applicable contractor, subcontractor and vendor warranties and guarantees and manufacturers' instructions and specifications, all Applicable Laws, the Building and Electrical Permits, Applicable Industry Standards, applicable requirements of the insurance policies maintained by the Parties with respect to the System, all roof and roofing system warranties, and the terms of this PPA. Seller will provide Buyer with copies of all applicable warranties, guarantees, manufacturers' instructions and specifications, and Building and Electrical Permits no less than five (5) Business Days prior to the System Operation Date.

(a) During the Term, Seller, as the owner of the System and System Assets, shall remain responsible for pursuing all rights and remedies available under applicable contractor, subcontractor and vendor warranties and guarantees in the event of System malfunction or improper or defective function, and defects in parts, workmanship and performance. Seller shall notify Buyer whenever defects in System Assets or System performance occur which give rise to warranty rights and remedies and whenever those rights and remedies are exercised by Seller. Seller shall ensure that any vendor performing work at the Premises pursuant to any System warranty obtains and maintains the insurance coverages required of a third party contractor or subcontractor under Article XX, for all times that such vendor is on the Premises, and Seller shall provide Buyer with proof of such coverages before any vendor enters the Premises. The cost of any risk of damage or damage to the System or System Assets, including damage to property and equipment of the Buyer or the Premises, due to Seller's failure to exercise its warranty rights, shall be borne solely by Seller. If the System or System Assets fail to comply with applicable warranties or guarantees, Buyer shall give Seller written notice of such failure with reasonable promptness following Buyer's discovery thereof and in no event later than thirty (30) days after the expiration of the warranty or guarantee period, and Seller shall promptly repair or replace the defective materials, equipment, parts or defective workmanship, at the cost and expense of Seller. Notwithstanding the foregoing, nothing in this Section 6.2(a) shall be construed to relieve either Party from complying with its obligations to perform under all terms and conditions of this PPA.

6.3 Buyer's Interference with Energy Output. Buyer will use reasonable good faith efforts to conduct its activities in a way that does not interfere with the Energy Output, and shall provide Seller as much notice as possible prior to (a) any shut down or other activities of Buyer or Buyer's tenants at the Premises or (b) any events or activities known to Buyer that would cause a significant reduction in the Energy Output of the System. The Parties agree that Buyer and its invited guests shall be entitled to tour the Solar Premises so long as such touring is not reasonably expected to conflict with Seller's rights under this Section 6.3 or any other rights herein.

ARTICLE VII METERING DEVICE AND METERING

7.1 Metering Equipment. Seller shall at Seller's sole cost and expense install a Metering Device at the Premises or in the Other System Space, which Metering Device shall be

owned, operated and maintained by Seller at Seller's sole cost and expense, subject to the provisions of Sections 6.2 and 7.2.

7.2 Testing and Correction. Either Party may request a test of the Metering Device to verify the accuracy of its measurements and recordings (the "Requesting Party") by providing the other Party with written notice describing with specificity their reasons for making such request. Within ten (10) Business Days after receiving such notice from Buyer or providing such notice to Buyer, Seller shall have the Metering Device tested by a third party mutually agreed upon by the Parties to verify the accuracy of its measurements and recordings. Each Party and its Representatives shall have the right to witness any Metering Device test; provided, however, that after the System Operation Date Seller or its Representatives may only be present upon prior written consent from Buyer. If such test finds the Metering Device to be inaccurate by not more than one-quarter of one percent (0.25%), any previous recordings of the Metering Device shall be deemed accurate, and the Requesting Party shall bear the cost of inspection and testing of the Metering Device. If such test finds the Metering Device to be inaccurate by more than one-quarter of one percent (0.25%) or finds the Metering Device is out of service or fails to register, then:

(a) Seller shall be responsible for the prompt repair of the Metering Device to correct any inaccuracies or replace the Metering Device, in accordance with the procedures outlined in Section 6.2(a); and

(b) Seller shall bear the cost of inspection and testing of the Metering Device; and

(c) future Seller invoices and Buyer payments shall reflect the Adjusted Energy Output, as defined in Section 7.3; and

(d) if Buyer has paid Seller for any Energy Output during the period beginning with the delivery of Requesting Party's notice and ending with the repair or replacement of the Metering Device pursuant to Section 7.2(a) (the "Meter Malfunction Period") then the amount of such Energy Output (the "Meter Malfunction Output") shall be compared to the Adjusted Energy Output. To the extent the Meter Malfunction Output exceeds the Adjusted Energy Output, Seller shall promptly issue Buyer a credit in the amount of such excess multiplied by the prevailing Energy Payment Rate. To the extent the Adjusted Energy Output exceeds the Meter Malfunction Output, Buyer shall promptly pay Seller an amount of such excess multiplied by the prevailing Energy Payment Rate.

7.3 Measurements; Adjusted Energy Output. Readings of the Metering Device shall be conclusive as to the amount of Total Delivered Energy and Test Energy delivered, provided that if the Metering Device is found to be inaccurate, failed or out of service pursuant to Section 7.2, the amount of Total Delivered Energy or Test Energy delivered during the Meter Malfunction Period (the "Adjusted Energy Output") shall be determined by utilizing the usage data (kWh) from Buyer's internal billing meter for the Premises, and shall exclude operational power consumed by the System or System Assets.

ARTICLE VIII
LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; FORCE MAJEURE

8.1 System Loss.

(a) Seller shall bear the risk of any System Loss.

(b) Either Party shall, upon becoming aware of any System Loss or any other malfunction of the System or interruption of Energy Output, provide written notice describing the extent and cause (to the extent reasonably ascertainable) of such System Loss to the other Party immediately and in no case later than the next Business Day.

(c) In the event of any System Loss, Seller and Buyer shall in good faith mutually determine whether the reconstruction of an economically viable System is impracticable, either because (A) the insurance proceeds or other award made available to Seller or Buyer are not sufficient to repair such loss or damage to the extent that the System would be viable as originally built or (B) such reconstruction cannot be carried out under then applicable laws, including then-current building or zoning laws or laws governing interconnection or net metering. In case reconstruction is deemed impracticable by both Buyer and Seller, in writing, either Party shall have the right to terminate the Agreement, subject to Section 2.4 and Section 2.5. If Buyer and Seller do not both deem reconstruction to be impracticable pursuant to the preceding sentence, then this PPA shall remain in full force and effect and the Parties shall be required to use all insurance proceeds collected in connection with any System Loss towards the repair or replacement of the System, which repair or replacement shall be performed by contractors or subcontractors that are retained by Buyer, such contractors or subcontractors being mutually agreeable to Seller and Buyer, each in their reasonable discretion. Such repair or replacement under this Section 8.1(c) shall restore the System's Energy Output to the greatest extent possible; provided however, that the Parties may, but shall not be obligated to, perform any repairs or replacements in excess of the insurance proceeds made available therefor.

(d) Each Party shall be entitled to all proceeds of any insurance policy that such Party maintains with respect to the System, in connection with any System Loss; provided, however, that in the event the Parties decide not to repair or reconstruct the System following a System Loss, the proceeds of any insurance policy shall be used to pay (A) first, all obligations due and owing to the Lenders, and (B) second, to each Party, one-half of the proceeds remaining after payment of the obligations set forth in the foregoing sub-clause (A).

8.2 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the "Claiming Party") gives written notice containing details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this PPA for the duration of the Force Majeure event (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, and except as otherwise provided in Section 8.1). Notwithstanding the above, any Party affected by a Force Majeure will use Commercially Reasonable Efforts to eliminate or avoid the Force Majeure and to resume performing its

obligations as soon as reasonably possible; provided however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion.

ARTICLE IX EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) such Party fails to make, when due, any payment required under this PPA if such failure is not cured within ten (10) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;

(b) such Party fails to perform any material obligation or covenant set forth in this PPA (except to the extent constituting a separate Event of Default): (i) if such failure is not cured within thirty (30) days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party; or (ii) if such failure to perform cannot reasonably be cured within such thirty (30) days, the Defaulting Party has not notified the Non-Defaulting Party and commenced and diligently pursued a cure within such thirty (30) days and cured the failure to perform within ninety (90) days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party (or other such time period that has been mutually agreed so long as the Defaulting Party is undertaking Commercially Reasonable Efforts to cure such Event of Default);

(c) If any representation or warranty of such Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) business days following receipt of written notice from the Non-Defaulting Party demanding such cure;

(d) such Party becomes Bankrupt; or

(e) such Party fails to provide or maintain in full force and effect any insurance required pursuant to Article XX if such failure is not cured within ten (10) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party.

9.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “Non-Defaulting Party”) may, by written notice to the Defaulting Party, suspend performance of its obligations under this PPA and/or pursue any legal or equitable remedies that the Non-Defaulting Party may have available under this PPA or Applicable Law. Furthermore, the Non-Defaulting Party may, by written notice to the Defaulting Party, designate a date not earlier than ten (10) or later than thirty (30) Business Days after the date such notice is delivered as an early termination date in respect of this PPA (the “Default Termination Date”). This PPA shall terminate at 5:00 pm Eastern Standard Time on the Default Termination Date, subject to Section 2.5.

9.3 Buyer Rights Upon Termination for Default. If Buyer is the Non-Defaulting Party and elects to terminate this PPA as provided in Section 9.2, Buyer may, as its sole and exclusive

remedy, by written notice to Seller and in Buyer's sole and absolute discretion, exercise one or more of the following remedies:

- (a) require that Seller remove the System pursuant to the provisions of Section 2.4;
- (b) exercise the Purchase Option provided in Section 13.1, provided however, that the Buyer may not exercise the Purchase Option at any time prior to the fifth (5th) anniversary of the System Operation Date; and/or
- (c) pursue any other legal or equitable remedies Buyer may have available under this PPA or Applicable Law.

9.4 Seller Rights Upon Termination for Default. If Seller is the Non-Defaulting Party and elects to terminate this PPA as provided in Section 9.2, Seller may, as its sole and exclusive remedy, by written notice to Buyer and in Seller's sole and absolute discretion, remove the System within thirty (30) Business Days after the Default Termination Date pursuant to the provisions of Section 2.4 except that removal for Buyer's default shall be at Buyer's sole cost and expense, and pursue any other legal or equitable remedies Seller may have available under this PPA or Applicable Law.

9.5 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order in which it exercises any rights and remedies available under this PPA.

ARTICLE X INVOICING AND PAYMENT

10.1 Invoicing and Payment. All invoices under this PPA including but not limited to those pursuant to Article III will be due and payable not later than thirty (30) days after receipt (or if such day is not a Business Day then on the next Business Day). Any amounts not paid by the applicable due date will accrue interest compounding every two weeks at the Late Payment Interest Rate until paid in full. Each Party will make payments under this PPA to the account designated by the other Party.

10.2 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice or any adjustment to any invoice under this PPA at any time within six (6) months following the delivery of the invoice or invoice adjustment. If either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment on the applicable payment due date, except as expressly provided otherwise elsewhere in this PPA, and to give written notice of the objection to the other Party.

10.3 Records and Audits. Each Party will keep, for a period not less than three (3) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. During such period each Party may, at its sole cost and expense and upon reasonable written notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours.

ARTICLE XI
REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

11.1 Representations and Warranties.

(a) Each Party represents and warrants to the other Party that:

(i) the execution, delivery and performance of this PPA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(ii) subject to all conditions precedent described herein, this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation and is enforceable against it in accordance with such documents' terms subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies at the discretion of the applicable court;

(iii) it is acting for its own account, and has made its own independent decision to enter into this PPA, and is not relying upon the advice or recommendations of the other Party in so doing;

(iv) it is capable of assessing the merits of and understands and accepts the terms, conditions and risks of this PPA;

(v) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates; and

(vi) that the various terms, obligations, charges and fees contained in this PPA are the result of arm's length transactions, or, to the extent that such charges and fees are not the result of arm's length transactions, represent market rate charges and fees and that the cost to the Seller is equivalent to fair market value.

(b) Buyer further represents and warrants to Seller that:

(i) it has all the rights, interest, possession and legal authority in the Premises necessary and sufficient to fulfill its obligations under this Agreement during the Term;

(ii) Buyer is the fee owner of the real estate upon which the Premises is located, subject to all liens or encumbrances of record;

(iii) there is no existing lien, encumbrance, mortgage or deed of trust on the Premises or Solar Premises affecting Seller's License to use the Solar Premises for the System, and Buyer shall make no action, representation or omission to subject the Solar Premises to any such future lien, encumbrance, mortgage or deed of trust;

(iv) Buyer has received all necessary internal consents, and all consents (if any) required by Buyer's agreements with third parties, to the installation of the System;

(v) Buyer shall operate its electrical equipment at the Premises in accordance with all Applicable Laws, the Building and Electrical Permits, and applicable utility tariffs; and

(vi) none of the Energy Output generated by the System will be used for the purposes of heating any swimming pool.

(c) Seller further represents and warrants to Buyer that:

(i) it is not an electric corporation as defined by the New York State Public Service Law Section 2.13 or otherwise subject to the jurisdiction of the New York State Public Service Commission; and

(ii) Seller is a company duly organized, validly existing, and in good standing under the laws of the State of New York, and is qualified to do business in the State of New York.

11.2 Hazardous Materials.

(a) Seller shall not introduce or use any Hazardous Materials on, in or under the Premises in violation of any Applicable Law. If Seller becomes aware of any Hazardous Materials, Seller shall promptly notify Buyer of the type and location of such materials in writing. Seller agrees to assume full responsibility for (and protect, indemnify and defend Buyer against) any liability or cleanup obligations for any introduction of Hazardous Materials on, in or under the Premises that are directly attributable to the actions or negligence of Seller, its Affiliates, agents, contractors and employees. The liability of Seller, and any indemnities provided by Seller, shall not extend to contamination of the Premises by Hazardous Materials that (i) were introduced to the Premises prior to Seller's occupation of, or conduct of operations on, the Premises, or (ii) were introduced to the Premises by Buyer, or by any of Buyer's agents, contractors or employees.

(b) Buyer represents that it is not aware of any Hazardous Materials on, in or under the Solar Premises in violation of any Applicable Law or regulation. If Buyer becomes aware of any Hazardous Materials on, in or under the Solar Premises, Buyer shall promptly notify Seller of the type and location of such materials in writing.

(c) To the fullest extent permitted by law, Buyer hereby agrees to indemnify, defend and hold harmless Seller together with its agents, employees and assigns, from and against any and all losses, liabilities, actions, damages, costs, expenses and reasonable attorneys' fees, whether incurred by settlement or otherwise, whether or not involving a third-party claim, caused by, resulting from, relating to or arising out of any Hazardous Materials introduced to the Solar Premises, whether prior to or during Seller's occupation of, or conduct of operations on, the Solar Premises unless introduced by Seller or its Affiliates, agents, employees or assigns.

(d) Notwithstanding anything in this Agreement to the contrary, Buyer shall not pass on to Seller directly or indirectly, any cost incurred by Buyer in monitoring, reporting, testing, abating and/or removing Hazardous Materials that were introduced to the Solar Premises prior to or during Seller's occupation of, or conduct of operations on, the Solar Premises, unless such costs are the result of Seller's gross negligence or intentional misconduct.

ARTICLE XII INDEMNITY; LIMITATIONS

12.1 Indemnity. To the fullest extent permitted by law, each Party (the "Indemnitor") hereby agrees to indemnify, defend and hold harmless the other Party (the "Indemnatee") from and against any and all losses, liabilities, damages, costs, expenses and reasonable attorneys' fees, whether incurred by settlement or otherwise (the "Indemnity Claims"), whether or not involving a third-party claim, caused by, resulting from, relating to or arising out of the performance of any work under this PPA including, but not limited to, those arising out of bodily or personal injury, sickness, disease, death, or injury or destruction of tangible property, including the loss of use resulting therefrom, to which the Indemnatee or any of its directors, officers, employees or agents may be subjected by reason of any negligent act or omission, willful misconduct, violation of law, or breach of this PPA by Indemnitor (which shall also include, solely in the case of Seller as Indemnitor, any of Seller's subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the Buyer), except to the extent caused by Indemnatee's own negligence. At no time will Buyer be responsible for indemnifying Seller for any Indemnity Claim presented by either: (i) an employee or subcontractor of Seller; or (ii) a contractor or subcontractor of Buyer. In the event that either Party is requested but refuses to honor the indemnity obligations hereunder, then the Party indemnifying shall, in addition to all other obligations, pay the cost of bringing any such action, including attorneys' fees, to the Party requesting indemnity. Neither the Buyer's final acceptance of the work to be performed hereunder nor the making of any payment shall release the Seller from its obligations under this Section. The enumeration elsewhere in the PPA of particular risks assumed by the Seller or of particular claims for which the Seller is responsible shall not be deemed to limit the effect of the provisions of this Section or to imply that the Seller assumes or is only responsible for risk or claims of the type enumerated.

ARTICLE XIII SYSTEM PURCHASE AND SALE OPTIONS

13.1 Purchase Option. Buyer shall have the right and option to purchase all of Seller's right, title and interest in and to all the System Assets at Buyer's sole discretion (the "Purchase Option") provided that, Buyer may only exercise the Purchase Option: (x) on the fifth, tenth or fifteenth anniversary of the System Operation Date; (y) at the conclusion of the Term; or (z) pursuant to Section 9.3(b). Buyer may use the Purchase Option by providing Seller written notice of its intent to pursue the Purchase Option: (i) not later than 105 days prior to the fifth, tenth or fifteenth anniversary of the System Operation Date or the conclusion of the Term, (ii) pursuant to Section 8.1(c), or (iii) pursuant to Section 9.3(b).

13.2 Determining Purchase Price.

(a) Upon notice of Buyer's intent to pursue the Purchase Option, Buyer and Seller shall make reasonable efforts to mutually agree upon an appropriate purchase price for (i) Seller's right, title and interest in and to all System Assets; (ii) the net present value of the right and title to all revenues associated with the sale of all expected future Energy Output at the corresponding yearly Energy Payment Rate in Exhibit E of this Agreement up until the end of the then-current Term, and (iii) less the net present value of the costs of contracted operating and maintenance and related agreements and warranties assigned to Buyer as provided in Section 13.6, based on fair market value (the "System Purchase Price"). For the avoidance of doubt, the System Purchase Price shall not include the value of the Investment Tax Credit described in Section 48 of the Internal Revenue Code, the value of accelerated depreciation deductions claimed under the Modified Accelerated Cost-Recovery System [or the value of payments under the NYSERDA NY-Sun Incentive described in Article XIX to the extent the benefits of these programs have been recognized by Seller prior to the exercise of the Purchase Option].

(b) If the Parties fail to reach agreement on fair market value after making such reasonable efforts, Buyer shall have the option to either: (i) terminate the Purchase Option, or (ii) initiate the procedure set forth in Section 13.3.

13.3 Determination of System Purchase Price.

(a) Within ten (10) Business Days of delivery of a notice by Buyer under Section 13.2 (or if this Section 13.3 is invoked pursuant to Section 9.3 of this PPA, the Default Termination Date), Seller and Buyer shall make reasonable efforts to mutually agree upon a Purchase Price Appraiser. If Seller and Buyer have not agreed upon the appointment of a Purchase Price Appraiser by the conclusion of such period then:

(i) at the end of such five (5) Business Day period, each Party shall by written notice to the other Party designate three Independent Appraisers;

(ii) within five (5) Business Days of receipt of such notice each Party shall select one of the three Independent Appraisers designated by the other Party and shall provide written notice thereof to the other Party of such selection, and Buyer shall provide the two Independent Appraisers selected with written notice of their selection and a summary of the provisions of this Article XIII;

(iii) within two (2) Business Days of delivery of such notice to the two Independent Appraisers, such Independent Appraisers shall select a third Independent Appraiser as the Purchase Price Appraiser and provide concurrent written notice thereof to Seller and Buyer. The Purchase Price Appraiser cannot be any of the Independent Appraisers considered and rejected under Section 13.3(a)(i). Such appointment shall be final and binding on Seller and Buyer.

(b) The Purchase Price Appraiser shall be provided with a copy of this PPA and, within twenty (20) Business Days of appointment, make a preliminary determination of the fair market value of the System Purchase Price (the "Preliminary Determination") and shall issue

a statement concurrently to the Parties containing the Preliminary Determination together with all supporting documentation detailing the calculation of the Preliminary Determination. Within five (5) Business Days of receiving such statement either Party may object to the Preliminary Determination by providing Purchase Price Appraiser and the other Party concurrently with a statement describing such objections and any supporting documentation.

(c) The Purchase Price Appraiser shall, within thirty (30) Business Days of appointment, make a final determination of the System Purchase Price (the “Final Determination”) and shall issue a statement concurrently to the Parties containing the Final Determination and which shall specifically address the objections received by the Purchase Price Appraiser and whether such objections were taken into account in making the Final Determination. The Final Determination must consider, but is not limited to, the factors listed in Section 13.2(a). Except in the case of fraud or manifest error, the Final Determination shall be final in regard to the fair market value of the System Purchase Price under the Purchase Option.

(d) Seller and Buyer shall each be responsible for payment of one half of the costs and expenses of the Purchase Price Appraiser, as well as any costs or expenses incurred during the selection process pursuant to Section 13.3(a).

13.4 Exercise of Purchase Option. Buyer shall have fifteen (15) Business Days from the date the System Purchase Price is determined, whether by agreement pursuant to Section 13.2 or by Final Determination of the Purchase Price Appraiser pursuant to Section 13.3(a), (the “Exercise Period”) to exercise the Purchase Option at the System Purchase Price. Buyer may exercise its Purchase Option, at its sole discretion, by providing written notice to Seller and upon delivery such exercise shall be irrevocable.

13.5 Terms of System Purchase. If Buyer exercises the Purchase Option, then no later than thirty (30) Business Days following Seller’s receipt of written notice of same: (a) Seller shall surrender and transfer to Buyer (i) all of Seller’s right, title and interest in and to all System Assets free of liens and encumbrances, (ii) the right and title to all future Energy Output, and (iii) the assignment of related agreements and warranties as provided in Section 13.6; (b) Buyer shall pay to Seller an amount equal to the Final Determination of the System Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System Assets from and after the Transfer Date, and (c) both Parties shall execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System Assets in Buyer, and deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System Assets to Buyer.

13.6 Assignment, Warranties or Supply Contracts. If Buyer exercises the Purchase Option, Seller shall assign to Buyer and Buyer shall accept from Seller, any then-existing warranties and any equipment, maintenance and operations contracts pertaining to the System or its operation.

13.7 Inspection of Records. Seller shall make the System Assets, including records relating to the operations, maintenance, and warranty repairs, available to:

(a) Buyer for its inspection during normal business hours at any time following Buyer's notice to Seller pursuant to Section 13.1 or Section 13.4 upon at least three (3) Business Days' prior written notice from Buyer to Seller; and

(b) Purchase Price Appraiser during normal business hours between the date of the Purchase Price Appraiser's appointment and the Final Determination.

ARTICLE XIV CONFIDENTIALITY

14.1 Confidentiality. Neither Party will use any Confidential Information for any purpose except such Party's performance under this PPA. Furthermore, neither Party will disclose any Confidential Information to any third party other than the Party's or the Party's Affiliates' officers, employees, lenders, counsel, accountants or advisors (collectively, "Representatives"), who have a need to know such information and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein; provided however, that a Party may disclose Confidential Information in order to comply with the requirements of (i) any Applicable Law or (ii) any rule, tariff or agreement of any utility, transmission and distribution provider (including regional interconnect, independent system operator or regional transmission operator) or (iii) in connection with any judicial or regulatory proceeding or request by a governmental authority, provided further however, that each Party will use reasonable efforts to prevent or limit any such disclosure.

(a) The obligations of the Parties under this Article will survive for whichever is longer of (i) the duration of the Term and (ii) a period of three (3) years from and after the termination of the Transaction to which any Confidential Information relates.

ARTICLE XV DISPUTE RESOLUTION AND ARBITRATION

15.1 Notice of Dispute/Negotiated Resolution. Buyer and Seller shall attempt to resolve in good faith any controversy, claim or dispute between the Parties arising out of or related to this PPA or its breach (a "PPA Dispute"). Notwithstanding the foregoing, either Party may invoke the formal dispute resolution procedures set forth herein by providing written notice to the other containing in reasonable detail the nature, background and circumstances of any PPA Dispute. During the twenty (20) Business Days following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute, and either Party may request the utilization of the services of a professional mediator, and the other Party or parties to this dispute shall cooperate with such request and share evenly the reasonable costs of such mediator.

15.2 Arbitration Procedures.

(a) In the event that any PPA Dispute is not settled or resolved amicably by the Parties at the conclusion of the twenty (20) Business Day period of good faith negotiations provided for in Section 15.1, then either Party may submit such PPA Dispute for arbitration by providing a written Notice of Intent to Arbitrate in accordance with the AAA Rules (“Notice of Intent to Arbitrate”) concurrently on the other Party and the New York Office of the American Arbitration Association (or nearest American Arbitration Association office thereto). The Notice of Intent to Arbitrate shall be served within (20) Business Days of the conclusion of the twenty Business Day period of good faith negotiations and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

(b) Any arbitration under this Article XV shall be before a single neutral arbitrator in accordance with the provisions contained herein and the Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules”); provided however, that notwithstanding any provisions of such AAA Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided by Applicable Law, to the extent that the arbitrator deems fair and reasonable. The arbitrator shall determine all questions of fact and law relating to any PPA Dispute, including but not limited to whether or not any such PPA Dispute is subject to the arbitration provisions contained herein. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. The decision of the arbitrator shall be final, binding, and non-appealable except for fraud or lack of jurisdiction.

(c) All arbitration proceedings shall be held in Monroe County, New York. The arbitrator shall have no authority to award any relief which could not be awarded by a court applying the laws of the State of New York. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

15.3 Acknowledgment of Arbitration. EACH PARTY UNDERSTANDS THAT THIS PPA CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTES OR NEEDS OF INTERPRETATION PERTAINING TO THIS PPA. AFTER SIGNING THIS PPA, EACH PARTY UNDERSTANDS THAT IT MAY NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE AND THAT IS COVERED BY THE ARBITRATION PROVISION. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO IMPARTIAL ARBITRATION AS SET FORTH IN THIS PPA.

ARTICLE XVI NOTICES

16.1 Notices. All notices, requests, statements or payments required by or provided for in this PPA (“Notice” or “Notices”) will be made to the addresses and persons specified below. All Notices shall be made in writing and shall be delivered by hand delivery or overnight delivery, or by electronic mail. Notice to Buyer is not complete unless Buyer has been given Notice at both addresses below. Notice by hand delivery or overnight delivery will be deemed to have been

received when delivered. Notice by electronic mail is deemed to have been given and received on the day sent by electronic mail, provided confirmation of receipt of such email is received by sender. A Party may change its address by providing notice of the same in accordance with the provisions of this Section.

Buyer:

Seller:

ARTICLE XVII ASSIGNMENT AND PROVISIONS BENEFITING LENDER

17.1 Assignment. The Parties shall not without the prior written consent of the other, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer any or all rights or obligations under this PPA, whether voluntarily or by operation of law. Any such assignment or transfer without such consent will be null and void. Notwithstanding the foregoing, upon prior notice to Buyer, Seller may assign its rights and interests in this PPA for collateral purposes in connection with any equity or debt financing involving the System, Seller or Seller's Affiliates. Seller shall be entitled to file informational financing statements or fixture filings in such jurisdictions as it deems appropriate to establish public record of its rights in the System or in connection with the grant of a security interest in the System to any of its Lenders.

(a) Notwithstanding the foregoing, Seller and Buyer agree that nothing in this Agreement shall prohibit or restrict Buyer from selling, leasing, or otherwise conferring any ownership rights to the buildings or real property on which the System will be located to a transferee with a similar credit profile; provided, however, if Buyer sells or leases the entirety of (except to residential tenants occupying separate apartment units) or otherwise confers any ownership rights to the Solar Premises or any interest therein that has a material adverse impact on Seller's ability to carry out its rights and obligations under this Agreement, without the conferee having first agreed to and assumed the terms and conditions of this Agreement, then Buyer shall be deemed to have committed an Event of Default under Section 9.1(b) and if such Event of Default is not cured within the time frames set forth in Section 9.1(b), Seller shall have the option to exercise its rights under Section 9.2 and Section 9.4 of this Agreement.

17.2 Cooperation with Financing.

(a) Buyer acknowledges that Seller will be financing the development and acquisition of the System and Buyer agrees that it shall cooperate in a commercially reasonable manner with Seller (at no cost to Buyer beyond ordinary administrative costs) and its financing parties in connection with such financing of the System, including (i) the furnishing of such information, (ii) the giving of such certificates, and (iii) providing such consents and other documents as Seller and its financing parties may reasonably request provided, that to the extent that Buyer incurs anything more than administrative costs, Seller shall reimburse Buyer for such costs.

(b) In connection with any financing or refinancing of the System, Buyer shall negotiate in good faith with the Seller's financing parties or collateral assignees (collectively,

“Lenders”) to agree upon a consent to collateral assignment of this PPA that shall be in form and substance agreed to by both Parties and Lenders, which agreement will not be unreasonably withheld, and shall include among other terms and conditions the following provisions:

(i) The Parties shall not amend or modify this PPA in any material respect without the prior written consent of the Lenders;

(ii) Whenever Buyer is required to provide notice to Seller pursuant to the default provisions of Article IX, Buyer shall give concurrent written notice to any Lenders which Buyer has been provided written notice of;

(iii) Lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this PPA, provided that Lenders shall be provided an additional time period (as to be agreed to in a consent to collateral assignment) from the end of the cure periods provided in Section 9.1, to effect a cure of such Event of Default; and

(iv) Lenders shall have the right, but not the obligation, to exercise their rights under the financing documents entered by Seller and to assign their interests in this PPA to a third party with experience operating solar energy facilities similar to the System in connection with the exercise of such rights.

17.3 Further Amendments. At Seller’s request, Buyer shall amend this PPA to include any provision that may reasonably be requested by an existing or proposed Lender, and shall execute such additional documents as may reasonably be required to evidence such Lender’s rights hereunder; provided, however, that no such amendment or additional documents shall materially and adversely affect the rights and obligations of Buyer hereunder, and shall not extend the Term of this PPA.

17.4 Notice of Lenders. Seller shall from time to time as required provide Buyer with written notice of any Lenders and provide contact information therefor for notice purposes. Upon receipt of such notice, Buyer shall recognize a particular entity as a Lender and will accord to such entity all the rights and privileges of a Lender hereunder.

17.5 Access Restrictions Extend to Lender. For the avoidance of doubt, all restrictions in this Agreement on the License and on Seller’s access to the Premises or the Solar Premises shall apply to all Lenders, and nothing in any collateral assignment or other financing document involving this PPA or the System shall extend to Lender greater access rights than are provided to Seller under this Agreement.

ARTICLE XVIII LICENSE AND GRANT OF RIGHTS

18.1 Exclusive License. Subject to Section 6.2 and Section 18.2, Buyer hereby grants to Seller an exclusive license (the “License”) to use the area at the Premises depicted as the “Solar Premises” in Exhibit A for the sole purpose of constructing, installing, owning, operating, maintaining, and, if necessary, repairing and reconstructing pursuant to Section 8.1, the System

pursuant to the terms set forth in this Agreement. Seller's License shall include reasonable access, in accordance with the terms and conditions in this PPA, to such additional areas within the Premises (including, without limitation, certain utility closets or outdoor appurtenances) where Seller shall reasonably require System Assets (including but not limited to wiring, conduits, junction and distribution boxes, monitoring systems, disconnects or inverters) to be installed (the "Other System Space"). The License shall terminate immediately upon termination of this Agreement. Buyer hereby warrants that the License shall remain in effect for so long as the Agreement remains in effect; that the License may not be terminated unless the Agreement is terminated; and that unless prohibited by law, Buyer shall either retain all the rights, interest, possession and legal authority in the Premises necessary and sufficient to fulfill its obligations under this Agreement during the term or shall require the same of any successor or assign of the Buyer.

18.2 Access to Premises.

(a) During normal business hours and at other times as are acceptable to Buyer in its reasonable judgment, (or in emergency conditions as soon as practicable), and in all instances subject to Seller's compliance with Article XX, Buyer shall provide Seller and its Affiliates, employees, agents, consultants, contractors and subcontractors and local utility personnel access to the Solar Premises, Other System Space and all System Assets and any areas required to interconnect the System with the Premises electrical system, including by allowing Seller to enter and pass through other land controlled by Buyer if necessary ("Access to Solar Premises") and any documents, materials and records and accounts relating to the System, for purposes of installation, construction, operation, maintenance, inspection, repair, reconstruction and removal of the System under the PPA. Buyer shall not withhold such Access to Solar Premises or such documents materials and records and accounts unreasonably. Seller acknowledges that all access rights provided to it under this Agreement, including the Access to Solar Premises, shall expire on the System Operation Date. After the System Operation Date, in no event shall Seller or any of its Affiliates, employees, agents, consultants, contractors or subcontractors access the Solar Premises or Other System Space without the prior written consent of Buyer, which may be withheld by Buyer in its reasonable discretion.

(b) Prior to any entry onto the Premises by Seller or any of Seller's Affiliates, employees, agents, consultants, contractors, subcontractors or guests authorized under this Agreement, Seller shall (i) provide Buyer with prior notification of such entry; (ii) provide Buyer with proof of insurance as required by Section 20.2(c); (iii) be accompanied by an employee or agent of Buyer, if Buyer so requires; and (iv) comply with any other reasonable request from Buyer, including but not limited to requests related to the safety of Buyer's employees, visitors, and/or other personnel. At least sixty (60) days prior to starting System construction, Seller shall provide a one-time notification to Buyer that shall cover entry by Seller onto the Premises for the entire construction period (the "Construction Notice"). The Construction Notice shall contain Seller's anticipated construction schedule, the days and times that Seller anticipates performing construction activities and the name and contact information for a construction manager that can be reached 24 hours a day, 7 days a week. Within ten (10) days of receipt, Buyer shall review the Construction Notice and notify Seller of any dates within the anticipated construction schedule when Seller's access rights under this Section 18.2 may be restricted. Seller shall provide Buyer

with an updated notification if any of the information in the Construction Notice is materially modified during System construction.

(c) Seller and its Affiliates, agents, consultants, contractors, subcontractors, guests and representatives shall comply with Buyer's reasonable safety and security procedures, and shall make Commercially Reasonable Efforts to conduct their activities in such a manner as to cause minimum interference with Buyer's activities at the Premises.

(d) Throughout the Term, Buyer shall have unrestricted access to all areas of the Premises, including the Solar Premises. Notwithstanding the foregoing, Seller, at Seller's sole cost and expense, shall have the right to implement (prior to the System Operation Date) reasonable and appropriate security measures, which security measures shall be reasonably acceptable to Buyer, on the Premises to prevent third parties from having access to the System. Buyer will advise Seller upon observing any damage to the System. If either Party receives data indicating irregularities or interruptions in the operation of the System, then that Party will, as promptly as reasonably practicable, notify the other Party of such irregularities and the Parties will manage such irregularity consistently with each Party's obligations under this Agreement.

18.3 Buyer's Obligations.

(a) Insolation; Non-interference with the System. Buyer acknowledges and agrees that access to sunlight ("Insolation") is essential to the value to Seller of the license granted hereunder and is a material inducement to Seller in entering into this Agreement. Accordingly, Buyer shall not permit any interference with Insolation at the Solar Premises. Without limiting the foregoing, Buyer shall not do any of the following if doing so would reasonably be expected to adversely affect the insolation levels or the System at the Solar Premises: (i) construct or permit to be constructed any structure on the Premises; or, (ii) permit the growth of foliage on the Premises. If Buyer becomes aware of any potential development or other activity on nearby properties that could adversely affect the Insolation or the System to the Solar Premises, Buyer shall promptly provide Seller with notice of such information and reasonably cooperate (at no cost to Buyer) with Seller's measures to preserve existing levels of Insolation at the Solar Premises. At any time during the Term, Buyer may relocate all or a portion of the System to other portions of the Premises roof, so long as Insolation levels for the System are not adversely affected and such relocation does not create a breach of any material Seller obligation to Lenders. Buyer shall bear all costs associated with any such relocation under this Section 18.3(a), which shall include costs to physically move the System Assets and any payments that Buyer would have owed to Seller under this PPA associated with Energy Output that would have been produced but for the relocation requested by Buyer. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Seller shall be irreparably harmed by a breach of the provisions of this Section 18.3(a), (ii) an award of damages shall be inadequate to remedy such a breach, and (iii) Seller shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 18.3(a).

(b) Non-Disturbance Agreement. Buyer represents that the License is not subject or subordinate to any underlying leases, ground leases, agreements, mortgages or deeds of trust held by a third party. In the event that the Solar Premises is subject and subordinate or becomes subject and subordinate to any underlying leases, ground leases, agreements, mortgages

or deeds of trust held by a third party, and also any renewals, modifications, consolidations and extensions of the same, the Buyer agrees to use Commercially Reasonable Efforts to obtain a non-disturbance agreement from such third party in return for which Seller agrees to subordinate this License to the third party. Such non-disturbance agreement shall (a) acknowledge and consent to the Seller's rights in the Solar Premises, (b) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this PPA and (c) subordinates any lien the third party may have in and to the System that is or may from time to time hereafter be located at the Solar Premises.

(c) Public Filing of Memorandum of License. At the request of Seller, Buyer agrees to execute and deliver a Memorandum of the License for filing in the Office of the County Clerk of the county in which the Solar Premises are located. The Memorandum shall contain the name and address of the parties, the description of the Solar Premises, a summary of the terms described in this Article XVIII, and the term of twenty (20) years coterminous with the PPA.

ARTICLE XIX NY-SUN INCENTIVE PROGRAM

19.1 New York Sun Incentive Program. The Parties acknowledge that the Project will be applying to and participating in the NYSERDA's NY-Sun Incentive Program for Nonresidential (Upstate) projects. Buyer agrees that it shall cooperate with Seller (at no cost to Buyer beyond ordinary administrative costs) and NYSERDA in connection with the NY-Sun Incentive Program, including (i) the furnishing of such information, (ii) the giving of such certificates, and (iii) providing such consents and other documents as Seller and NYSERDA may reasonably request.

ARTICLE XX INSURANCE

20.1 It is expressly understood that Seller will maintain insurance coverage, as described in Section 20.2, and that from the System Operation Date forward Buyer is expressly responsible for maintaining the insurance coverages in Section 20.3. Either Party shall give prompt notice to the other in case of fire or other casualty or accidents in the Premises, or of defects therein or in the figures or equipment. By requiring insurance herein, neither Party represents that coverage limits will necessarily be adequate to protect the other and such coverage and limits shall not be deemed as a limitation on either Party's liability under the indemnities granted in this Agreement.

20.2 Seller's Insurance Obligations.

(a) At all times commencing on the date Seller enters the Premises for any purpose, and continuing through the Term, Seller shall carry and maintain, at its sole cost and expense, the following insurance coverages:

(i) commercial general liability insurance applicable to the premises and its appurtenances including, without limitation, the common areas, with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars

(\$2,000,000) in the aggregate, providing coverage for claims including but not limited to coverage for Premises-Operations, Independent Contractors' Protective, Products and Completed Operations, Contractual Liability, Personal and Advertising Injury, Broad Form Property Damage (including full coverage for Explosions, Collapse and underground hazards) and covering: (1) damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; (2) personal injury; (3) damages because of injury to or destruction of tangible property; bodily injury or property damage arising out of completed operations; and (5) contractual liability applicable to Seller's obligations under Section 12.1 of this Agreement. Such coverage shall be written on ISO Form CG0001 or an equivalent form providing equivalent coverage. The general aggregate limit shall be a designated Construction Project General Aggregate limit, as shown on ISO endorsement GC2503 or its equivalent. Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years after either ninety (90) days following Substantial Completion or final payment, whichever is later. The Contractual Liability insurance shall include coverage sufficient to meet the obligations of Section 12.1 of this Agreement.

(ii) workers compensation insurance covering all persons employed in connection with the construction of any improvements by Seller and the operation of its business upon the Premises in New York State, at statutory limits, provided that if (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage, or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(iii) employer's liability coverage limits not less than One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) for disease policy limit, and One Million Dollars (\$1,000,000) for disease limit for each employee.

(iv) Automobile Liability Insurance covering vehicles owned by Seller and non-owned vehicles used by Seller with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section 20.2(a)(iv), along with any other statutorily required automobile coverage. The Automobile Liability coverage shall include contractual liability coverage..

(v) Professional Liability insurance covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate including limited contractual liability coverage and coverage for negligent or wrongful errors or omissions in the rendering of professional services and breach of the professional standard of care, with all coverage retroactive to the date of this Agreement or the commencement of professional services in relation to the System, said coverage to be maintained for a period of five (5) years after the date of final payment to Seller under this Agreement. Seller shall require the following consultants to maintain limits of Five Million Dollars (\$5,000,000) per claim and in the aggregate for the duration set forth in

this Section 20.2(a)(v): (1) structural engineering; and (2) mechanical, electrical, plumbing and fire protection engineering.

(vi) Pollution Liability covering performance of Seller's obligations under this Agreement, with policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

(vii) Excess/Umbrella Insurance coverage in the amount of Ten Million Dollars (\$10,000,000) per claim and aggregate, following form coverage. The excess/umbrella coverage shall be no more restrictive than the underlying coverages and shall include coverage for general liability, automobile liability, and employer's liability claims. Seller shall advise Buyer if the size and nature of the solar energy equipment to be installed, operated, and maintained at the Premises under this Agreement will require a higher limit.

(viii) Installation Floater Insurance coverage with limits of at least One Hundred Thousand Dollars (\$100,000.00) written on a Special Covered Cause of Loss Form. Such insurance shall cover materials and equipment to be installed at the Premises in the event of theft, faulty workmanship, mechanical or electrical damage during testing, labor costs incurred to repair damaged work, and expediting expenses. Coverage shall include losses to materials and equipment to be installed at the Premises while in transit and while stored at a temporary location. Such policy shall not include a coinsurance provision or any exclusions for underground exposures. The coverage required by this Section 20.2(a)(viii) shall be held until such time as Seller has completed construction and installation of the System at the Premises and has provided written notice to Buyer of the System Operation Date pursuant to Section 5.3 of this Agreement. In the event of a loss to materials and equipment to be installed at the Premises before such installation, Seller shall make a claim for such loss against the insurance described herein, in addition to any other actions taken by Buyer.

(b) The insurance required under Section 20.2(a)(i) and the employer liability coverage under Section 20.2(a)(iii) above shall, to the extent permitted by law, name Buyer, Buyer's property manager, trustees, officers, directors, employees, consultants, contractors, mortgagees and ground Buyers of the Premises designated by Buyer in writing to Seller and their successors and assigns, as additional insureds ("Additional Insureds") as their interests may appear. All insurance policies required to be maintained by Seller shall be written by insurance carriers licensed to do business in the State of New York and in which the Premises is located, and having a policy holder rating no lower than "A" and a financial rating not lower than "IX" in the Best's Insurance Guide, latest edition in effect as of the date of this Agreement. With Buyer's prior written approval, any insurance required of Seller under this Agreement may be furnished by Seller under a blanket policy so long as and provided such policy: (i) strictly complies with all other terms and conditions contained in this Agreement; and (ii) contains an endorsement that: (A) identifies with specificity the particular address of the Premises as being covered under the blanket policy; and (B) expressly waives any pro rata distribution requirement contained in Seller's blanket policy covering the Premises.

(c) Prior to any entry on to the Premises by Seller or Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees, and at least thirty (30) days

prior to the expiration date of any policy, Seller shall furnish to Buyer evidence of: (i) purchase by Seller (or by Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees) of all insurances required to be maintained under Section 20.2(a); and (ii) payment of premiums thereon. Such insurance shall be in form reasonably satisfactory to Buyer and without limitation, shall provide that no cancellation or non-renewal thereof or change therein shall be effective until after thirty (30) days' written notice to Buyer. Seller shall ensure that insurance similar to that required of the Seller is also provided by or on behalf of all of Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees to cover their own operations performed under this Agreement. The Seller shall be held responsible for any modifications in these insurance requirements as they apply to subcontractors.

(d) Seller shall have included in all policies of property insurance respectively obtained by them with respect to the Solar Premises or Premises a waiver by the insurer of all right of subrogation against the Buyer (and against the Additional Insureds) in connection with any loss or damage to real or personal property insured against even if such loss or damage shall have been caused by the fault or negligence of the Buyer, or anyone for whom such party may be responsible. To the fullest extent permitted by law, Seller waives all right of recovery from Buyer and their agents, servants, employees, partners, shareholders, and members, and, property manager, and releases the Buyer from liability for loss or damage to the extent such loss or damage is covered or is required by this Agreement to be covered, by insurance even if such loss or damage shall have been caused by the fault or negligence of the Buyer or anyone for whom such party may be responsible.

(e) Each insurance policy required to be maintained by Seller or by Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees under this Agreement shall state that (i) with respect to the interest of Buyer and the Additional Insureds the insurance maintained pursuant to each such policy shall not be invalidated by any action or inaction of Seller or Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees and shall insure Buyer and the Additional Insureds regardless of any breach or violation of any warranties, declarations, conditions or exclusions by Seller or Seller's Affiliates, contractors, subcontractors, licensees, agents, visitors or employees, (ii) all provisions of each such insurance policy, except for the limits of liability, shall operate in the same manner as if a separate policy had been issued to each person or entity insured thereunder, (iii) neither Buyer nor any of the Additional Insureds shall be liable for the premiums therefor, and (iv) as to liability insurance policies, the insurance provided thereunder is primary insurance without any right of contribution from any other insurance which may be carried by or for the benefit of Buyer and the Additional Insureds. Buyer makes no representation that the limits or forms of coverage of insurance specified in this Section 20.2 are adequate to cover Seller's property or obligations under this Agreement.

(f) Failure of Seller to maintain any of the insurance required to be maintained under this Agreement or to cause to be provided in any insurance policy pursuant to the requirements set forth in this Article XX shall constitute a default by Seller under this Agreement.

(g) Buyer may, reasonably and from time to time, require higher limits of insurance, and additional forms of insurance in the future, consistent with Applicable Industry Standards.

(h) Without limiting any other rights or remedies of Buyer under this Agreement, if at any time any of the insurance policies required under this Section 20.2 should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if the Buyer shall so direct, Seller shall suspend performance of its work (or the work of its Affiliates, contractors, subcontractors, licensees, agents, visitors or employees) covered in the PPA. If the said work is so suspended, no extension of time shall be due on account thereof. Buyer may, at its option, obtain insurance affording coverage equal to that required under this Section 20.2, at Seller's expense.

20.3 Seller's Performance Bond and Payment Bond Obligations. Buyer shall have the right to require Seller to furnish performance and/or payment bonds covering the faithful performance of and the labor and materials under this Agreement and the payment of all obligations arising hereunder if and as required as follows: [TBD]

20.4 Buyer's Insurance Obligations.

(a) [INTENTIONALLY LEFT BLANK]

ARTICLE XXI MISCELLANEOUS

21.1 Governing Law/Venue. This PPA will be governed by the laws of the State of New York without giving effect to principles of conflicts of laws.

21.2 Entire Agreement; Amendments. This PPA (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Any amendment, modification or change to this PPA will be void unless in writing and signed by both Parties, subject to Section 17.2.

21.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.

21.4 Severability. If any part, term, or provision of this PPA is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, interpreted or replaced with a legal, enforceable, and valid provision to achieve as nearly as possible the same objectives and economic effect as the original provision, within the limits of Applicable Law, and the remainder of this PPA will remain in full force.

21.5 Change in Law. In the event there is a Change in Law that is applicable to the construction and operation of the System, the sale or use of the Energy Output, or any other obligation of either party hereunder, and compliance with the Change in Law results in a material increase in Seller's costs to build, operate and/or maintain the System or materially limits Buyer's

ability to utilize the Energy Output or receive the benefits associated with the use of the Energy Output in the manner intended under this Agreement, the Seller and the Buyer shall promptly meet and confer and negotiate, in good faith, possible changes to the Agreement including, for example and without limitation, whether to adjust the then applicable and future Energy Payment Rates set forth in Exhibit E to this Agreement, and/or how to restructure the Agreement to ensure that the Energy Output is available for use by Buyer at the Premises or other Buyer site(s) or the Energy Output is made available for sale to the market for Buyer's benefit. Notwithstanding the obligations in the preceding sentence of this Section 21.5, neither party shall be obligated to accept any material reduction in economic benefits to which it is entitled under this Agreement.

21.6 No Third Party Beneficiaries. Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind other than: (i) with respect to the Lenders to the extent provided herein; (ii) in any consent to assignment with the Lenders; or (iii) as otherwise provided under Article XVII.

21.7 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any Affiliate or Representative of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

21.8 Relationships of Parties. This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

21.9 Attorneys' Fees. If any action, arbitration, judicial reference or other proceeding is instituted between the parties in connection with this PPA, each party shall be responsible for any attorneys' and experts' fees and costs that it incurs in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

21.10 Counterparts. This PPA may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

21.11 Further Assurances. The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

21.12 Construction of Agreement; Headings. This PPA and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against all Parties to this PPA, it being expressly agreed that the parties hereto participated equally in the negotiation and preparation of this PPA or have had equal opportunity to do so. Accordingly, the parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the party who caused the uncertainty to exist. The headings in this PPA are

solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provisions herein.

21.13 Exhibits and Schedules. Any and all exhibits and schedules referenced herein and/or attached hereto are hereby incorporated into this Agreement by reference.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ___th day
of _____, 2021.

BUYER

Livingston County

By: _____

Name:

Title:

SELLER

[NAME]

A [XX]

By: _____

Name:

Title:

EXHIBIT A
DESCRIPTION OF PREMISES, SOLAR PREMISES AND ACCESS TO SITE

EXHIBIT B
BUYER'S MAINTENANCE RESPONSIBILITIES

Buyer's Maintenance Responsibilities shall be limited to the following:

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EXHIBIT C
PRELIMINARY DETAILED DESCRIPTION OF THE SYSTEM

EXHIBIT D SCHEDULE OF DEFINITIONS

Definitions. The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

“AAA Rules” shall have the meaning ascribed to such term in Section 15.2.

“Access to Solar Premises” shall have the meaning ascribed to such term in Section 18.2.

“Adjusted Energy Output” shall have the meaning ascribed to such term in Section 7.3.

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Applicable Industry Standards” shall mean those practices, methods, standards of safety and performance and acts engaged in or approved by persons regularly engaged in the construction and maintenance of solar photovoltaic generation facilities as reflected in and that, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety and environmental protection.

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, tariff, authorization, guideline, governmental approval, consent or requirement of any governmental authority (including any administrative agency) or utility company, including those related to taxation, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to

(vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Building and Electrical Permits” means all permits, licenses, registrations and approvals required to install and construct the System on the Solar Premises whether required by any Applicable Law, utility, transmission or distribution provider or any governmental authority with jurisdiction over the System. The Interconnection Agreement is excluded from this definition.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Change in Law” means that after the Effective Date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws.

“Commercially Reasonable Efforts” shall mean, when used with reference to either Party, such prompt, substantial and persistent efforts of the Party as are commercially reasonable under the circumstances to carry out the intent of the Parties with respect to the transactions contemplated by this Agreement. Commercially Reasonable Efforts shall not require a Party to expend unlimited amounts of money or effort, but shall require a Party to make such reasonable expenditures as are consistent with performing such substantial and persistent efforts. Neither Party shall be required to take steps that would jeopardize the safety or health of either Party’s employees, agents, contractors, customers or any third party or the public as a whole.

“Confidential Information” means any non-public or proprietary information disclosed by a Party, its agents or employees and relating to this PPA or the System or any System Assets that is explicitly designated as “Confidential” by the disclosing Party, either orally or in writing, at the time of disclosure. Any oral designation must be confirmed in writing by the disclosing Party within five (5) Business Days thereafter.

“Contract Year” shall mean any 12-month period beginning on the same day and month of the System Operation Date.

“Default Termination Date” shall have the meaning ascribed to such term in Section 9.2.

“Delay Damages” shall have the meaning ascribed to such term in Section 5.5.

“Effective Date” shall have the meaning ascribed to such term in the recitals.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Payment Rate” shall be the price Buyer shall pay Seller for Total Delivered Energy under this PPA, as described in Exhibit E to this PPA hereby incorporated by reference and expressed in dollars per kilowatt-hour.

“Energy Output” means the Energy generated by the System and measured at the Metering Device in whole kilowatt-hours (kWh).

“Environmental Attributes” means any and all credits, certificates, benefits, emissions reductions, offsets, and allowances, howsoever entitled, administered by any governmental authority, utility, transmission and distribution provider (including regional interconnect, independent system operator or regional transmission operator) or any other similar entity, attributable to the generation from the System and its displacement of conventional energy generation including but not limited to Renewable Energy Credits as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) any reporting rights to these avoided emissions including but not limited to Green Tag Reporting Rights. Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the System; (ii) production or investment tax credits associated with the construction or operation of the energy projects, Treasury grants made pursuant to Section 1603 of the American Recovery and Reinvestment Act and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; or (iii) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits.

“Event of Default” shall have the meaning ascribed to such term in Section 9.1.

“Exercise Period” shall have the meaning ascribed to such term in Section 13.4.

“Force Majeure” means any event or circumstance that (a) is not within the reasonable control, or the result of the negligence, of the Claiming Party, and (b) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. This definition shall include, without limitation, (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) acts of vandalism or theft, (v) terrorist acts affecting the Premises, (vi) flood, ice storms, explosion, fire, or lightning, (vii) requirement by local electric utility that the System curtail or discontinue operation for any reason (excluding any breach by Buyer of the Interconnection Agreement with such utility), (ix) appropriation or diversion of electricity by sale or order of any governmental authority having jurisdiction thereof, or (x) any other action by any governmental authority which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement. This definition shall not include economic hardship of either Party and shall not include: (xi) equipment failure (except to the extent that such failure itself arises from Force Majeure), (xii) acts or omissions of Seller’s contractors or agents (except to the extent that such acts or omissions themselves arise from Force Majeure), (xiii) changes in costs of services, materials, labor, (xiv) Buyer’s economic ability to pay for or to use the Energy Output purchased hereunder, or (xv) Seller’s ability to sell Energy Output at a price greater than the Energy Payment Rate under this PPA.

“Governmental Charges” means all federal, state and local taxes, governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by any governmental authority, utility, transmission and distribution provider (including regional interconnect, independent system operator or regional transmission operator) or any other regulatory entity resulting from the generation, distribution or sale of Energy Output.

“Guaranteed System Operation Date” shall have the meaning ascribed to such term in Section 5.5.

“Hazardous Materials” shall mean any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Applicable Law, including any material, substance or waste that is: (i) listed as a “toxic pollutant” pursuant to Section 307 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (iii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (iv) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called “superfund” or “superlien” law; (v) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1261; (vi) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) 15 U.S.C. §§ 2601, *et seq.*; (vii) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, *et seq.*; or (viii) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under any Applicable Law or the regulations adopted pursuant to any Applicable Law.

“Indemnity Claims” shall have the meaning ascribed to such term in Section 12.1.

“Independent Appraiser” means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Buyer or Seller or any Affiliate of Seller or Buyer.

“Late Payment Interest Rate” means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such date (or if not published on such date, on the most recent preceding date), plus five percent (5%); and (ii) the maximum rate permitted by Applicable Law.

“Lender” shall have the meaning ascribed to such term in Section 17.2.

“License” shall have the meaning ascribed to such term in Section 18.1.

“Meter Malfunction Output” shall have the meaning ascribed to such term in Section 7.2(d).

“Meter Malfunction Period” shall have the meaning ascribed to such term in Section 7.2(d).

“Metering Device” means any and all utility-grade energy metering devices installed and owned by Seller to measure Energy Output. The Metering Device(s) shall be clearly indicated in the final construction plans pursuant to Section 5.1(c).

“Non-Defaulting Party” shall have the meaning ascribed to such term in Section 9.2.

“Notice of Intent to Arbitrate” shall have the meaning ascribed to such term in Section 15.2.

“Notices” shall have the meaning ascribed to such term in Section 16.1.

“NYSERDA” shall mean the New York State Energy Research and Development Authority.

“Other System Space” shall have the meaning ascribed to such term in Section 18.1.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“PPA Dispute” shall have the meaning ascribed to such term in Section 15.1.

“Preliminary Determination” shall have the meaning ascribed to such term in Section 13.3(b).

“Premises” shall have the meaning ascribed to such term in Exhibit A.

“Purchase Price Appraiser” shall mean the Independent Appraiser selected pursuant to Section 13.3.

“Representatives” shall have the meaning ascribed to such term in Section 14.1.

“NYSEG” shall mean New York State Electric and Gas.

“NYSEG Net Metering Successor Tariff” shall mean the meaning ascribed to it in the recitals.

“Solar Premises” shall have the meaning ascribed to such term in the recitals, as more particularly depicted in Exhibit A.

“System” means the solar electric generating equipment owned by Seller and more particularly described in Exhibit C.

“System Assets” means the each and all of the assets of which the System is comprised, including Seller’s solar energy panels, mounting systems, energy monitoring systems, inverters, monitoring systems, Metering Devices, disconnects, boxes, integrators and other related equipment installed on the Premises, electric lines required to connect such equipment to the Premises, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property

rights and contract rights required for the installation, construction, and maintenance of the System.

“System Loss” means any loss of or damage to the System or System Assets that prevents the System from operating at full capacity, resulting from or arising out of any cause or occurrence including but not limited to theft, casualty, accident, condemnation or Force Majeure other than: (i) Seller’s negligence or intentional misconduct, (ii) Seller’s breach of any of its duties and obligations under the PPA, or (iii) normal wear and tear of the System.

“System Operation Date” means the date that construction and installation of the System is complete and the System is connected to the electrical system of the Premises and the System is capable of delivering uninterrupted Energy Output; such date shall be determined at the sole discretion of the Seller.

“System Purchase Price” shall have the meaning ascribed to such term in Section 13.2; provided, however, that the System Purchase Price at the conclusion of the Term or following a System Loss shall be based solely on: (x) the fair market value of Seller’s right, title and interest in and to all System Assets at that time; minus (y) the reasonable costs of removing the System from the Premises in a manner that avoids negatively affecting the integrity of the Buyer’s roof or voiding or interfering with roofing system warranties.

“Term” shall have the meaning ascribed to such term in Section 2.1.

“Test Energy” shall mean all Energy Output produced before the System Operation Date as measured at and delivered to the Metering Device, subject to Section 7.3.

“Total Delivered Energy” shall mean all Energy Output produced on and after the System Operation Date, as measured at the Metering Device(s), subject to Section 7.3, and shall exclude operation power consumed by the System or the System Assets. For the avoidance of doubt, Total Delivered Energy shall include all Energy, if any, consumed by Buyer’s facilities prior to or upstream of the Metering Device(s).

“Transaction” means any transaction between the Parties under the terms of the PPA or any other agreement, instrument, or undertaking between the Parties.

EXHIBIT E
ENERGY PAYMENT RATE

Contract Year	Energy Payment Rate (\$/kWh)
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