

# Submittal of



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Russellville, Arkansas 72801  
PO Box 3036  
Russellville, Arkansas 72811  
479.498.0500

## Request for Proposal:

### Best Use of Compost Plant

#### To:

City of Lockport, NY  
Sarah Lanzo, City Clerk  
One Locks Plaza  
Lockport, NY 14094

#### DUE:

March 1, 2024 at 2:00 p.m.

***Original***





March 1, 2024

*Via-Courier (FedEx)*

City of Lockport, NY  
Sarah Lanzo, City Clerk  
One Locks Plaza  
Lockport, NY 14094

**Re: Request for Proposal (RFP) – Best Use of Compost Plant**

Dear Ms. Lanzo,

WeCare Denali, LLC (WeCare) is pleased to respond to the City of Lockport's (City) **Request for Proposal (RFP) – Best Use of Compost Plant**. WeCare has reviewed and understands all the elements of the RFP. At WeCare, our goal is to continuously exceed our customers' expectations by providing compost management services at the highest industry standards, driven by our team of seasoned compost management professionals, our readily available assets, and backed by our outstanding environmental and safety record.

The core of our approach presented in this Proposal is to exceed the City of Lockport's expectations as a valued team member through our unparalleled experience in managing and operating compost facility's. WeCare has consistently checked all the boxes when it comes to the successful operations, maintenance, and regulatory aspects of a composting program as the current vendor of the City's state-of-the-art composting facility. The WeCare team approach provides the opportunity for the City to engage trusted compost experts throughout the term of the project.

At WeCare, we believe that it is the collective responsibility of us all to protect the quality of water through recycling waste in ways that are sustainable, beneficial to the land, and reduce or eliminate the use of landfills. It is our business, our purpose, and our value proposition to recover, recycle and reimagine waste, extracting the highest value from the byproducts of our daily lives.

The Company prides itself in putting the customers' needs, the environment, and safety first. This philosophy has been a primary driver for WeCare's success as an environmental service company, and it is the reason WeCare will continue to be the premier choice for responsive and ethical compost management services for public, private, and industrial customers across the U.S.

We are the largest organic waste management companies in the United States, specializing in composting and beneficial reuse services. We operate throughout New York State and the United States and have numerous facilities, equipment and experience in our fleet. In 2022, we managed over 7.7 million tons of organic waste in the United States and have extensive experience providing composting and beneficial reuse services to a wide range of organic waste materials. Our management team has over 100 years of combined experience.

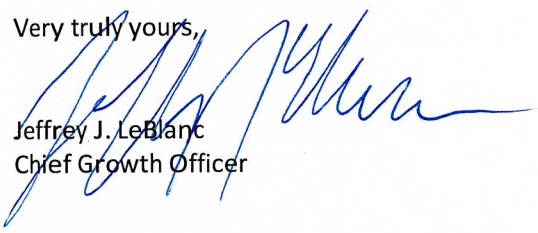
WeCare has thoroughly reviewed the proposed scope of work and evaluated the technical and operational requirements of the project. *Unfortunately, we will not be providing pricing on this project at this time due to the complexity of the project and all the unknowns.* It is Denali's intent with this submittal to have a sit-down meeting with the City decision-makers to fully evaluate the future of the compost facility and

its overall biosolids management strategy. It is our belief that for both parties to be successful we need to build a true public-private partnership and to do that we both need to fully understand the capital costs of rehabilitating (and even expanding) the compost facility. WeCare has the verifiable experience and resources to make the benefits of the proposed project a reality.

I would like to thank you for reviewing the contents of our RFP submittal and more importantly would like to thank the City of Lockport for its investment in composting over the years. Should you need additional clarification please contact me at 315-374-8645 or email at [jeffrey.leblanc@denaliwater.com](mailto:jeffrey.leblanc@denaliwater.com). Again, thank you for the opportunity to submit our proposal to the City of Lockport and we look forward to the next steps.

Thank you.

Very truly yours,



Jeffrey J. LeBlanc  
Chief Growth Officer

Cc: Brian Fleury, Executive Vice President, North



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## EXECUTIVE SUMMARY

### ORGANIZATION OF PROPOSALS AS SPECIFIED

The enclosed proposal is organized as required in the original Request for Proposal (RFP) RFP Best Use of Compost Plant document dated October 19, 2023, and subsequent Revisions. This **Executive Summary** section is followed by the **Operations Maintenance Plan, Marketing, Qualifications, and Experience, Training and Startup Plan, References,** and an **Alternate Proposal**.

Because the checklist provided in the RFP did not contain all the items listed in the text of the RFP, the enclosed proposal may vary slightly from that checklist's format and may include some additional items.

#### WECARE DENALI, LLC

WeCare Denali, LLC ("WeCare") is the respondent to the City Lockport's (the "City") Request for Proposal for Best Use of Compost Plant. WeCare is a wholly owned subsidiary of Denali Water Solutions, LLC ("Denali") with a focus on being the leader in the development, operations, and management of composting facilities throughout the United States. Since 2017, WeCare has successfully partnered in the development and operation of the existing Composting facility. WeCare's regional office is located in West Henrietta, New York.

The core of our approach is to exceed the City expectations as a valued team member through our unparalleled experience in managing the composting facility. WeCare has consistently checked all the boxes when it comes to operations, maintenance, regulatory and beneficial use of the compost product. The WeCare team approach provides the opportunity for the City to engage trusted composting experts throughout the term of the project.

#### DENALI WATER SOLUTIONS, LLC

Denali is a limited liability company co-headquartered in Russellville, Arkansas and Dallas, Texas. Denali is a national organic waste recycling and beneficial use company, operating in 50 states with over 1,600 employees. Denali also maintains offices in Alabama, Arizona, California, Georgia, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Texas, and Virginia.

Denali is the largest manager of organic waste material in the United States. Denali Water provides foodwaste, greenwaste, biosolids, organics and residual waste management solutions as well as a variety of goods and services to the municipal, agricultural, and environmental industry. Services



include contract operations of municipal compost facilities, processing of municipal waste, contract management of organic waste, technology supply and project development, land application and distribution, marketing, and beneficial use of recycled organic waste as fertilizer, compost, fuel, and animal feed. The company additionally provides dredging, mobile dewatering, outsourced dewatering, geo-textile tube dewatering, lagoon, and digester cleanout services.

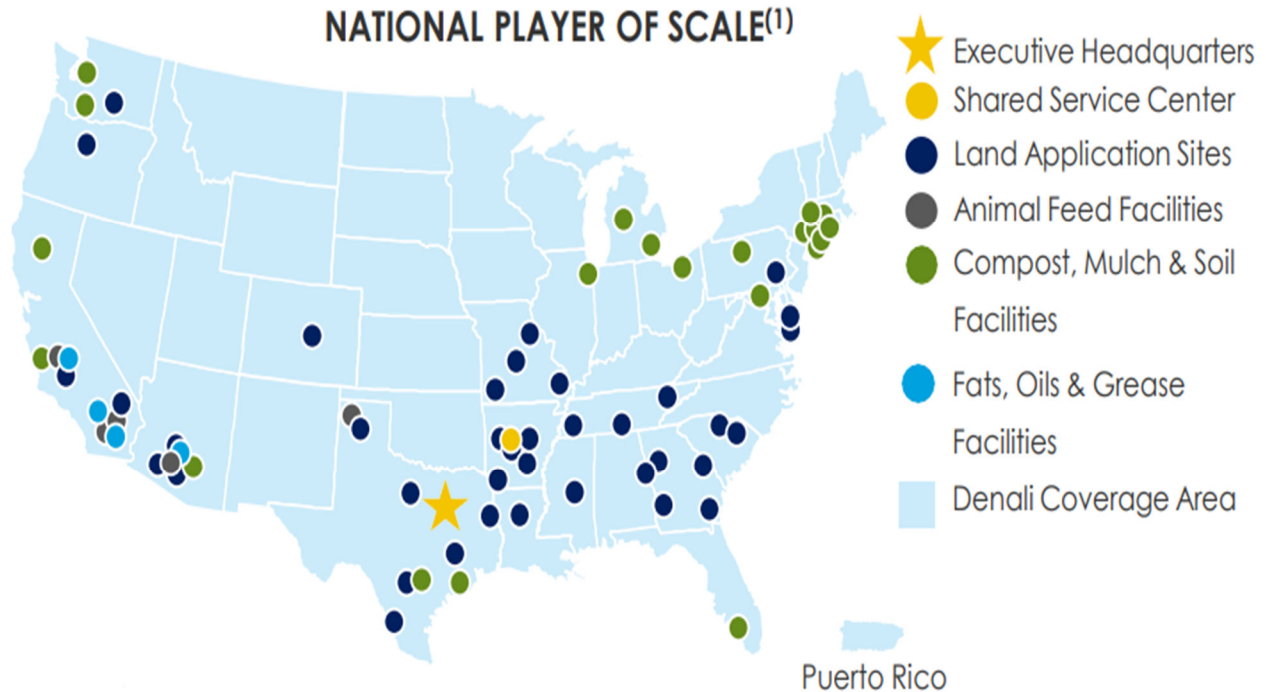
Denali is an industry leader in the conversion and manufacturing of compost products and has developed an extensive network of customers in the agricultural, horticultural, turf and soil industries. Denali markets its compost products via its WeCare™ brand including WeCare Compost®, WeCare AgAdvantage™, WeCare Engineered Soils™ and WeCare Roofmix™. In addition, Denali manufactures and sells over 20 million bags per year to Lowes, Home Depot, Walmart, and other big box retailers.

Denali has provided organic waste management services for the last 25 years and among its senior leadership are seasoned industry experts who share a passion for resource conservation, conversion, and recycling. The company prides itself in putting the customers' needs, the environment and safety first. This philosophy has been a primary driver for Denali's success as an environmental services company, and it is the reason Denali will continue to be the premier choice for responsive and ethical residuals management services for public, private, and industrial customers across the United States.

In 2016, WeCare Organics, LLC merged its assets with Denali Water and created WeCare Denali, LLC ("WeCare", a wholly owned subsidiary), to focus on the development, operations, product marketing and management of organic waste composting facilities throughout the United States. Denali Water recognized and sought out WeCare Organics due its success in compost management services and long-term public/private relationships. The combined company's mission is to promote and expand organic waste management through composting, anaerobic digestion, drying, alkaline stabilization, thermal hydrolysis, and other developing technologies.



Today, WeCare is the largest compost manufacturer in the United States and sells 100% of WeCare Compost™ produced on an annual basis.



## STAFFING

Denali is pleased to employ over 1,600 industry-leading experts in organic waste management. From general laborers to operators to general managers, Denali recruits, hires and trains only the best of the best. It has been Denali's intent to hire qualified, experience staff from within the local community.

We have above average expectations of our employees, and they deliver. Just ask our customers. Our employees are guests at our customers' facilities, and we expect them to provide first-class service, response and conduct always.

Our guiding principles are simple:

- Deliver superior service.
- Be environmentally dependable and compliant.
- Be the best value for our customers.

Denali recruits and hires the industry-leading experts because of our competitive compensation packages, bonus eligibility, company-sponsored benefits, and paid time off. Most importantly, our leadership team is committed to providing exceptional training, development, opportunity, and



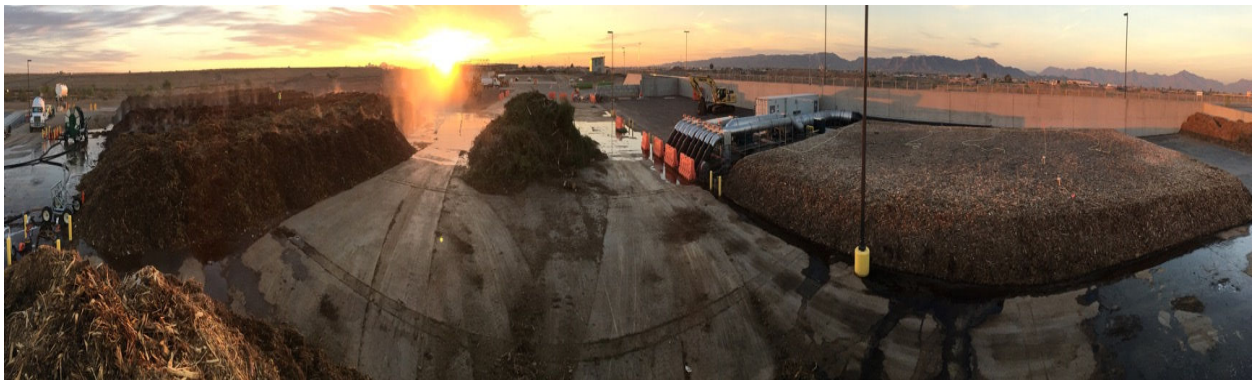


direction to our employees. We believe that is why Denali is the employer of choice in compost facility and organic waste management. Denali is an Equal Opportunity Employer.

## OPERATIONS

Denali provides operations, maintenance services and product distribution services for organics processing facilities. ***Denali has more USCC Certified Compost Operators than any other company.*** Facilities are operated and maintained in accordance with good management practices and all state and federal laws and regulations. All process control, routine preventative and corrective maintenance, sampling and analysis, product marketing, reporting and record keeping, and housekeeping are provided as needed to meet the conditions of the operating contract, permits and other regulatory requirements.

Technical support is provided from Denali's Corporate office in cooperation with key equipment vendors to ensure that the managers, electricians, maintenance personnel and operators are properly trained in their perspective duties including, equipment operation and maintenance, chemical and materials handling, safe work practices, use of personal protective equipment, use of air monitoring equipment, etc. It is mandatory that all employees undergo extensive training for operational and safety procedures.



## MAINTENANCE

Denali provides for the maintenance of all its compost processing facilities. Denali understands that even the most automated and straightforward systems demand regular monitoring and maintenance. The most important factor in determining the service life and reliability of plant equipment and structures is an effective maintenance program. Preventative maintenance will be conducted to minimize unscheduled downtime. The Process Equipment Maintenance Plan will be developed and continually refined for the City of Lockport's compost facility. The plan will describe the major tasks that should be performed on all process equipment.

Maintenance schedules along with detailed Vendor Operations and Maintenance Manuals for each major piece of equipment are provided and maintained in the contractor's office always.





The Process Equipment Maintenance Outline, together with schedules will be used as the basis for the preventative maintenance program. The detailed O&M manuals and any literature supplied by the manufacturer will be referred to before performing any maintenance on a piece of equipment to preserve vendor warranties and guarantees. Enough spare parts, lubricants, and other supplies necessary for routine repairs and maintenance should be stocked at the plant.

The major components of maintenance program consist of the following:

- Preventative Maintenance
- Workload Scheduling
- Work Order Tracking
- Inventory Management
- Equipment Information
- Maintenance Management
- Management Reporting
- Standard Operation Procedures

## ENVIRONMENTAL HEALTH AND SAFETY

Denali's philosophy is that safety must be planned into a project and not be an afterthought. Denali's Philosophy of "Safety First" will be emphasized throughout the entire Denali Team.

Denali's safety culture is based on a 24/7-safety philosophy. This philosophy is such an engrained value within the Denali culture that doing things safely becomes second nature. When the Denali Team adopts this culture, no thought is given to shortcutting or bypassing safety procedures. This culture will be evident in all phases of the project.

Site safety planning provides processes, tools and information used regularly by project personnel, which has consistently improved safety performance. Denali will integrate safety into all our work plans and work processes. Safety planning is not done separately. It is an integral part of production, scheduling, and quality planning. It is a vital part of successful project execution. Our project team will have access safety training videos, inspection/work forms, Operational Hazard Analyses, MSDS sheets, links to other resources and safety concerns written by the Denali team members about lessons learned on our projects and within the industry.

Denali's Safety Plan for the project will be developed using safety procedures and guidelines from our Safety Manual which will incorporate all manufactures safety requirements. The entire Denali Team will be trained and will follow the Safety Plan. The safety processes are designed to keep all employees safe and are developed and owned by the project managers in conjunction with employees at all levels of our organization.



## PRODUCT MANAGEMENT, DISTRIBUTION AND MARKETING

WeCare Denali, LLC serves as the compost distribution and marketing arm of Denali and provides complete and comprehensive compost management services for the distribution and marketing of recycled organic waste compost products. WeCare implements best management practices and will meet and exceed all regulatory requirements for the distribution of the product. WeCare markets its compost products via its WeCare brand including WeCare Compost®, WeCare AgAdvantage™, WeCare Engineered Soils™ and WeCare Roofmix™. In addition, WeCare manufactures and sells over 20 million bags of compost, soil, and mulch in the United States annually.

WeCare's management team has 25 years of experience in the development and implementation of organics processing technologies and the production of high-quality compost products. The wide range of organic waste processed through the years, as well as the company's constant focus on the development of technologies and best management practices have enabled WeCare to develop highly efficient operations that will guarantee the quality and marketability of the end-product. WeCare is staffed with agricultural and service professionals who understand the specific needs of each customer. They remain in constant communication with the marketplace and provide keen insight on ways to improve products and services offered to its customers. Over the years, WeCare has distributed products to a growing customer base encompassing agriculture, nurseries, greenhouses, sod farms, sports turf, and topsoil manufacturers. WeCare's success in part is due to the wide acceptance of compost derived products in agricultural and horticultural, along with the dedicated support created through research and development by land grant Universities and Colleges, the United States Department of Agriculture (USDA), the USEPA, and each individual State. Because WeCare is implementing a marketing strategy that stresses high-quality end products for high end uses at an economical cost, we plan to capture a substantial portion of the agricultural and soil amendment markets near our facilities.

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**WeCare  
Organics**  
a product of  
**Denali Water Solutions**

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## PROJECT LEADERSHIP TEAM & EXPERIENCE

### **Jeffrey J. LeBlanc – Chief Growth Officer**

Jeff LeBlanc is the Chief Growth Officer of Denali and will regularly meet with project team members to help shape the project. His expected involvement will be to lead negotiations and review progress and communicate with the Team members and the City on critical issues on a regular basis during the term of the project. Mr. LeBlanc was President and CEO of WeCare Organics, LLC and led the effort, along with Andy McNeill to conclude the WeCare Denali merger. Mr. LeBlanc has over 30 years' experience in the organics and waste industry. Mr. LeBlanc has served in many industrial association leadership positions including Chair of the 2008 National Biosolids and Residuals Conference in Philadelphia and Chair of the Residual & Biosolids Committee, New York WEA. In 2008, the U.S. Composting Council honored Mr. LeBlanc with their "HI Kellogg Composter of the Year" Award. Mr. LeBlanc is a graduate of Cornell University.

Mr. LeBlanc will be the primary contact with the City representative and manage the contractual negotiation with the City.

### **Brian C. Fleury – Executive Vice President, North**

Mr. Fleury joined Denali when it acquired the key assets of WeCare Organics, LLC in 2016. Mr. Fleury is the Executive Vice President of Operations in the North Region. Mr. Fleury manages all business divisions within Denali in 18 states from Maine to Wisconsin. These business divisions include Converted Products (Compost, Mulch & Soils), Industrial Waste Streams, Municipal Biosolids, Event/Maintenance Projects & Retail Organics Collections (Organix). Prior to his position as EVP, Mr. Fleury was the General Manager of the Converted Products Group where he managed all (20+) WeCare Denali company-owned and municipally contracted composting operations. Mr. Fleury has over 20 years of experience in the residual management business and is an expert in compost and compost manufacturing. Mr. Fleury was one of the first in the United States to receive a certification through the United States Composting Council as a Certified Compost Operations Manager (CCOM™) and he is the former President of the US Composting Council.



## HISTORY OF COMPLIANCE WITH LAWS, REGULATIONS AND GUARANTEES.

WeCare Denali, LLC and its parent company, Denali Water Solutions, LLC, has not received an administrative order, civil penalty, permit or license suspension or revocation, or a bond forfeiture action brought by local, state, or federal jurisdictions, currently in effect or pending. In addition, WeCare Denali, LLC and Denali Water Solutions, LLC has followed all laws, regulations, and contractual guarantees since its incorporation.

## PROJECT APPROACH

WeCare's response to the Request for Proposal's to the City of Lockport (the "City") to operate and maintain its Composting Facility is provided herein. As stated in this document, **WeCare is the respondent and development entity for the project.** Joining WeCare in preparing this proposal is its parent company; Denali Water Solutions, LLC ("Project Guarantor").

As part of its operational responsibility, WeCare would assume all regulatory reporting, plant and maintenance control, and product marketing. **WeCare seeks to achieve 100% environmental compliance with all regulatory requirements.**

Also, WeCare would be responsible for marketing all the compost produced at the co-composting facility. **WeCare is the largest compost manufacturing and product marketing company in the United States** and distributes all compost under the trade name WeCare Compost®.



WeCare personnel have **over 100 years** in the operation and maintenance of wastewater treatment facilities and residual management facilities. WeCare is extremely active in the US Composting Council (USCC), the Water Environment Federation (WEF) and the National Soil and Bark Association.

## CONCLUSION

WeCare's response to the RFP is to enter into a long-term agreement with the City to operate and maintain the composting facility at the highest standards. **WeCare's proven composting experience clearly demonstrates that we can succeed in the City of Lockport.**

WeCare is the most qualified firm to provide the level of effort, in terms of management and capability, labor and equipment, and overall service, as outlined in the RFP, at the pricing provided



in the enclosed proposal. WeCare and its parent company, Denali Water Solutions, LLC, have the verifiable experience and resources to make the benefits of the proposed project a reality.

These multiple benefits to the City of Lockport include:

- Long-Term Cost Savings while maintaining or exceeding facility compliance.
- A trusted partnership.
- One-stop shop, when it comes to Facility Operation, Compost Marketing and Maintenance services.
- A seamless transition to the long-term agreement.
- Producing and Marketing a High-Quality Compost that is readily acceptable in the marketplace.
- The City of Lockport compost inclusion in the US Composting Council's Seal of Testing Assurance (ST A) Program; and
- Increase the beneficial use and recycling of the City's organic waste.

In addition, one main benefit that the City of Lockport will have with WeCare that sets us apart from the field of respondents to the RFP is the ability to work directly in conjunction with the leadership team of WeCare. The leadership team of WeCare will be involved in the project from the RFP submittal to the end of the term of the Agreement. We have proven this through our current contract. No other firm can offer this proven commitment to the City of Lockport.



## 2. OPERATIONS MAINTENANCE PLAN

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### FACILITY STAFFING PLAN

WeCare will hire and maintain qualified and certified staffing to manage the facility, greet and direct customers, screen organics for contamination, operate heavy mobile equipment, and maintain and repair all equipment and maintain the facilities. Staffing will include the Facility Manager and an Operations Manager with experience in managing composting, and aerated static pile facilities. Currently, WeCare anticipates operating the compost facility with twelve (12) on-site employees to manage the hour of operations required and processing required. Below you will find the detailed description of the Staffing Plan for the Lockport Compost Facility.

### SENIOR PROJECT MANAGEMENT

#### **Jeffrey J. LeBlanc – Chief Growth Officer**

Jeff LeBlanc is the Chief Growth Officer of Denali and will regularly meet with project team members to help shape the project. His expected involvement will be to lead negotiations and review progress and communicate with the Team members and the City on critical issues on a regular basis during the term of the project. Mr. LeBlanc was President and CEO of WeCare Organics, LLC and led the effort, along with Andy McNeill to conclude the WeCare Denali merger. Mr. LeBlanc has over 30 years' experience in the organics and waste industry. Mr. LeBlanc has served in many industrial association leadership positions including Chair of the 2008 National Biosolids and Residuals Conference in Philadelphia and Chair of the Residual & Biosolids Committee, New York WEA. In 2008, the U.S. Composting Council honored Mr. LeBlanc with their "HI Kellogg Composter of the Year" Award. Mr. LeBlanc is a graduate of Cornell University.

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is an expert in compost and compost manufacturing. Mr. Fleury was one of the first in the United States to receive a certification through the United States Composting Council as a Certified Compost Operations Manager (CCOM™) and he is the former President of the US Composting Council.



### 3. MARKETING, QUALIFICATIONS, AND EXPERIENCE

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WeCare Denali, LLC (WeCare) provides organic waste and residual management solutions as well as a variety of goods and services to the municipal and environmental industry throughout the United States. Services include contract operations of municipal and private compost facilities and beneficial use products and end-product marketing of WeCare Compost® and specialty engineered soils. Currently, WeCare distributes WeCare Compost® in bulk form in over twenty (20) States and Canada making it the largest product marketing company in the United States.

Our success with product marketing has been the core of our entire company and we are extremely proud of our accomplishments over the last twenty-five years. WeCare's success has been based on the following principles:

- Sell High Quality Compost from High Quality Compost Facilities in Bulk Form;
- Hire Company Employees to Sell and Market WeCare Compost®;
- Educate the Community, (Engineers, Architects, Schools, etc.) on Compost Use Benefits;
- Invest in Research and Testing; and
- Actively Participate in the US Composting Council to Promote the Industry.

WeCare's intention is to always provide for the manufacture of the highest quality compost product from a Facility, allowing for the maximum revenue derived from the sale of the product, while sustainably managing inventory.

Constantly evolving compost technologies, equipment, automation, monitoring systems, quality assurance programs and industry specification and certification offer product marketing companies the ability to work smarter and derive higher value for their products. Market research establishes that compost has become well accepted in the United States, with thousands of compost facilities currently in operation. WeCare is one of the largest compost marketing firms in the United States servicing the entire spectrum of clientele (small scale to large scale).

WeCare has differentiated itself from its competitors through marketing high quality compost and engineered soil products, offering an improved pricing structure, developing higher end markets (golf courses, athletic fields, institutions, and construction) and providing an in-house transportation network. By specializing in marketing high quality products, WeCare gains access to the largest segment of a growing compost market. This tightly focused approach has proven successful and has established WeCare as an industry leader.

WeCare's model has been simple and successful in many States and Regions by putting a brand name on a bulk product. Since 1999, WeCare has marketed all its compost under the brand name WeCare Compost®.



WeCare maximizes compost revenue for its clients by producing a consistent product, employing a direct sales force, working with Landscape Architects and Engineers to specify WeCare Compost® on projects and being able to effectively and efficiently deliver to our customers.



## MARKET ANALYSIS

WeCare undertook substantial research prior to entering the product marketing business. The focus of this research was on the growth and acceptance of compost in general. The research results were quite encouraging. The compost marketing business has become a more mature business however there is still room for improvement. The City of Lockport's commitment to continuing compost operations at this state-of-the-art compost facility will add to the credibility and acceptance of compost products. Because of the growth of compost facilities throughout the Country, there has been a great push towards enhancing the marketability of compost products. WeCare has been marketing compost with tremendous success for years and is confident the City of Lockport Composting Facility will continue to offer high quality innovative products and services that will cater to the needs of the local market as well as to expand to the entire Southwest market.

Additional education of compost utilization has been conducted by local communities, Universities, Cooperative Extensions, garden centers, nurseries, landscapers, etc. Also, the closing of landfills and the global push to recycle has made composting a household name. Much of the groundwork for compost market development has been established and WeCare is proud to have played a major role in that development.

In the Lockport and New York market areas, there are a multitude of landscapers, nurseries and garden centers, golf courses, site contractors, excavators and numerous athletic fields and parks that are potential customers for bulk compost. Despite having a stronghold with this customer base already, WeCare feels the market can be further developed. Since WeCare is implementing a marketing strategy that stresses high quality compost for high end uses at an economical cost, the company expects that it will continue to capture the target market, as well as gain traction in other niche markets.



## MARKETING STRATEGY

### VALUE BASED CHARACTERISTICS OF CITY OF LOCKPORT WECARE COMPOST®

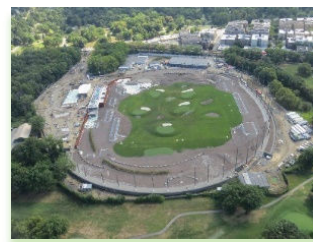
- + Improving Physical Structure of Soil
- + Improvement of Soil Moisture Retention capacity
- + Modification and Stabilization of Soil pH
- + Increase in Cation Exchange Capacity
- + Provides Macro and Micro Nutrients
- + Provides Soil Biota
- + Suppression of Plant Disease
- + Binding of Contaminants
- + Degradation of Some Toxic Organic Compounds
- + Wetland Restoration
- + Erosion Control
- + Weed Control

### TARGET MARKETS

WeCare will market all compost produced at the City of Lockport Composting Facility under the recognizable WeCare Compost® brand name. It is a name that has been in the marketplace for years and is well known to bagging companies, landscapers, contractors, and landscape architects. In addition, WeCare Compost® is specified in many projects throughout the Country. WeCare anticipates its primary marketing area to be within 100 miles of the compost facility.

WeCare will sell to a network of distributors and end users by emphasizing value and identifying with their operating, timing and budgetary needs. Product markets will include:

- + Wholesale Distributors (bulk and bag)
- + Nurseries
- + Garden Centers
- + Landscapers
- + Contractors
- + Turf (Golf Course and Athletic Fields)
- + Soil Manufacturers





WeCare may sell our products to some bagging companies, however, we will also look to bag the material ourselves. It is our intention to expand the Lockport compost produced into bagging under our own brands however we will do it with a sustainability twist. WeCare is currently developing multiple bagging lines that we will sell to our existing customer base, (Lowes, Home Depot, Walmart, Kroger, etc.) where we will process their organic waste at the City of Lockport Compost Facility, and they will in turn purchase and resell our “custom” bagging lines. The goal is to create a circular economy and to market it differently. On each bag, we will place a “QR Code” that a consumer will be able to click on and watch a video or receive information on how the material was made, how it should be used and where else you can find similar products.

Our in-house marketing department will spearhead the creation of the videos and they can be updated throughout all four seasons of the year. In addition, and more importantly to the City of Lockport, we will be able to highlight the composting program and City personnel detail the strategy the City is creating through increased organic waste diversion.

Below is a picture of bags we are creating for a large National big box retailer:



WeCare will market itself as offering the same or higher quality products than its competitors, but at a reasonable price. WeCare will forgo many of the trappings of its competitors, by producing all marketing materials in-house while maintaining low overhead.

WeCare will market product directly to landscape contractors for construction jobs at a rate that will reflect the volume of material they anticipate purchasing. WeCare will focus on projects where products may be beneficial and look to supply large volumes.





WeCare will also market to soil manufacturers. Currently, there are numerous soil blenders in the marketplace that WeCare has worked with. Additionally, we continue to focus on identifying more soil manufacturers as this has become a fast-growing industry. These customers are important in the winter months since they often have the ability and desire to receive material in the winter months.

A key to WeCare Compost® long-term acceptance has been the ability to get Landscape Architects to specify our product in their projects. WeCare will continue to solicit Landscape Architects and provide information on specifying compost on projects. WeCare has developed a *Product Use Guide for Landscape Architects/Engineers*. Although a long process, Landscape Architects are always looking for ways to improve soil structure and reduce costs on projects. Currently, WeCare is specified into products across the United States.

## SALES TOOLS AND EDUCATION

Over the years WeCare has created several Sales tools, such as the *WeCare Compost® Product Use Manual*, product specifications, brochures, trade show booth(s), etc. In addition, WeCare has a state-of-the-art point of purchase program for tracking sales, volumes, bill of ladings, customers and logistics. WeCare will provide the necessary marketing tools to its customers, such as product use brochures, analytical data, research reports, co-op-advertising, etc. Also, training of customers on the uses of compost/soils and the value of the end product will be provided always. WeCare strongly believes that *Education Builds Value* and we work diligently to educate our customers, and their customers. We have the experience and expertise to support the end use of our products and do so throughout the United States.

WeCare will do market research on the demand for various products and services. Although much research has been done on compost and compost utilization, specific research projects with Cornell University will be used to target specific markets for the City of Lockport's compost that will help enhance product acceptance. WeCare intends to work with certified soil testing facility for the turf industry, to develop product quality standards for the turf industry.

## ADVERTISING

The preferred mode of advertising is word-of-mouth. However, WeCare recognizes that it needs to continue developing brand recognition in the marketplace. WeCare has joined a variety of trade associations, such as the American Nurserymen's Association, US Composting Council and various State and Local Turf and Landscape Associations. These associations sponsor trade shows and newsletters in which WeCare will advertise. In addition, WeCare exhibits at roughly 25 tradeshow per year, including local New York, New Jersey, and Pennsylvania trade association





shows, Home and Garden Flower Shows and multiple shows catered to site constructors, excavators, and municipalities.

WeCare will also utilize its state of the art and updated website, social media outlets including Facebook, Twitter, and Instagram and link with the City to promote the facility and products. Seasonal advertising in local papers and billboards are also good to bring attention to the facility.



We will also enroll the City of Lockport's compost into the United States Composting Council Seal of Testing Assurance Program (*USCC STA*) registry. WeCare was one of the first adopters of this program and believes this program will become more critical as time goes on. To learn more about the *USCC STA* Program, please visit the web site at ([www.compostingcouncil.org](http://www.compostingcouncil.org)).



## TRANSPORTATION

WeCare will use a combination of company owned as well as independently owed vehicles for the transportation of its products. WeCare values the relationships built with our sub-contractor trucking companies and understands that they play an integral part in our success. We will continue to develop and nurture these relationships to ensure we have reliable transportation options for our customers.

## QUALITY ASSURANCE

### US COMPOSTING COUNCIL SEAL OF TESTING ASSURANCE PROGRAM

WeCare Compost® will be tested under the US Composting Seal of Testing Assurance program. The product will also be sold in accordance with the State and Federal Guidelines. WeCare will submit to the City the test results and certification records as well as publish on our website no less than quarterly.



WeCare will maintain a product specification for its product lines based upon specific customer needs for each finished landscape product line. WeCare shall propose the testing protocol and schedule for each product line that includes frequency and types of lab tests that will be conducted to maintain the specification.



## INVENTORY INSPECTION

WeCare sales personnel will be responsible to educate customers on the proper storage and handling of WeCare products. Operational instruction, including written direction, on the proper storage, processing and handling of the product will be given to customers.

## SHIPMENT INSPECTIONS

Product will be inspected before it leaves the compost facility.

## CONTINGENCY PLANNING

## DEVELOPMENT OF ALTERNATIVE MARKETS

WeCare has been creating many alternative markets for WeCare Compost®, with the biggest being the engineered soils market. WeCare has been working with a group of engineers to create engineered soils for specific uses. We have created green roof, wetland and landfill closure soils and have many examples of actual projects. We believe this is the future of compost sales and use and have been developing a system to create engineered soils throughout the United States.

## EMERGENCY STORAGE OF MATERIALS

Should it be needed, WeCare has several locations (typically our Distributors) that will be able to store material in an emergency.



## QUALIFICATIONS AND EXPERIENCE

### ORGANIZATION OF QUALIFICATIONS AS SPECIFIED

The enclosed Request for Proposal (RFP) is generally organized as requested in the RFP document and includes the following Sections:

- 🌱 Company Information, Company Background and Financial Information
- 🌱 Project Management Team and Operations Experience
- 🌱 Project Management Plan and Methodology
- 🌱 Experience and References

### WECARE DENALI, LLC

WeCare Denali, LLC (“WeCare”) is the respondent to the City of Lockport’s (the “City”), Request for Proposal for Best Use of Compost Plant. WeCare is a wholly owned subsidiary of Denali Water Solutions, LLC (“Denali”) with a focus on the development, operations, and management of composting facilities throughout the United States. WeCare proposal is backed by the financial strength of its parent company, Denali, who will provide the required performance bonds and guarantees, insurance and project financing as contemplated in our proposal.

### DENALI WATER SOLUTIONS, LLC

Denali Water is a limited liability company headquartered in Russellville, Arkansas. Denali is a national organics recycling and beneficial use company, operating in 48 states with over 1,600 employees. Denali also maintains offices in Alabama, Arizona, California, Delaware, Massachusetts, Michigan, New Jersey, New York, Oregon, Texas, Virginia, and Washington.

Denali is the largest manager of organic waste in the United States. Denali provides for yardwaste, foodwaste, biosolids, organics and residual waste management solutions as well as a variety of goods and services to the municipal, agricultural, and environmental industry. Services include contract operations of municipal organics processing facilities, merchant processing of municipal waste, contract management of biosolids and organic waste, animal feed processing, biodiesel production, technology supply and project development, land application and distribution, marketing and beneficial use of recycled compost, mulch, and soil amendments. The company additionally provides dredging, mobile dewatering, outsourced dewatering, geo-textile tube dewatering, lagoon and digester and tank cleanout services.

Denali is an industry leader in the conversion and manufacturing of high-quality compost, mulch and soil amendment products and has developed an extensive network of customers in the agricultural, horticultural, turf and soil industries. Denali markets its compost and mulch products



via its WeCare brand including WeCare Compost®, WeCare AgAdvantage™, WeCare Engineered Soils™ and WeCare Roofmix™.

Denali has provided residuals management services for the last 25 years and among its senior leadership are seasoned composting industry experts who share a passion for resource conservation, conversion, and recycling. The company prides itself in putting the customers' needs, the environment and safety first. This philosophy has been a primary driver for Denali's success as an environmental services company, and it is the reason Denali will continue to be the premier choice for responsive and ethical residuals management services for public, private, and industrial customers across the United States.

## COMPANY BACKGROUND

Denali was originally founded as Terra Renewal in 1995. The original focus of the company was the handling and disposal of wastewater residuals from industrial plants via traditional land application for beneficial use as a fertilizer. The focus of the business quickly expanded to include municipal biosolids, spent fryer oil and grease, and handling of spent gas and oil exploration and production fluids. At its peak, with operations in 20 states, Terra Renewal was land applying greater than one billion gallons of wastewater residuals on over 225,000 acres of farm fields. Ultimately, the company divested of its oil & gas business and its rendering business. As a result of these divestitures, the name of the company was changed to Denali Water Solutions.

In 2016, WeCare Organics, LLC merged its assets with Denali and created WeCare Denali, LLC ("WeCare", a wholly owned subsidiary), to focus on the development, operations, product marketing and management of yardwaste, foodwaste and/or biosolids composting facilities throughout the United States. Denali recognized and sought out WeCare Organics due its success in Class A biosolids compost management services and long-term public/private relationships. The combined company's mission is to promote and expand organics conversion and recycling through composting, drying, alkaline stabilization, thermal hydrolysis, and other developing technologies. Denali will continue to grow based upon its' successful track record in land application and the development of its Class A technologies and products.

Since 2016, Denali has acquired ~25 companies and has grown to be the clear leader in organic waste management, including biosolids, food processing residuals, foodwaste, packaged foodwaste, used cooking oil, compostable material, etc. Today, Denali has operations in 48 States and has over 1,600 hard working professionals dedicated to sound sustainable practices in the recycling and beneficial use of organic waste.

## FINANCIAL CAPABILITIES



As stated, WeCare Denali is a wholly owned subsidiary of Denali. Denali will be the Project Guarantor for the project and its financials are attached. Denali Water has the financial capability to provide the resources required to fulfill the services as described within including the provision of project financing, performance bonds and all insurance requirements.

WeCare Denali or Denali has not had over the last 5 years or even in its history where a bond has been forfeited for performance reasons. Also, WeCare Denali and/or Denali Water have never been unable to obtain a requested performance or payment bond for any reason.

## STAFFING

Denali is pleased to employ over 1,600 industry-leading experts in organic waste management. From general laborers to operators to general managers, Denali recruits, hires and trains only the best of the best. It would be Denali's intent to continue to hire qualified, experience staff from within the local community.

We have above average expectations of our employees, and they deliver. Just ask our customers. Our employees are guests at our customers' facilities, and we expect them to provide first-class service, response and conduct at all times.

Our guiding principles are simple:

- Deliver superior service.
- Be environmentally reliable and compliant.
- Be the best value for our customers.

Denali recruits and hires the industry-leading experts because of our competitive compensation packages, bonus eligibility, company-sponsored benefits, and paid time off. Most importantly, our leadership team is committed to providing exceptional training, development, opportunity, and direction to our employees. We believe that is why Denali is the employer of choice in organic waste management and currently employs over sixty (60) individuals in the Lockport area. Denali is an Equal Opportunity Employer.

## OPERATIONS

Denali provides operations, maintenance services and product distribution services for yardwaste, foodwaste, biosolids and industrial composting facilities. Facilities are operated and maintained in accordance with good management practices and all state and federal laws and regulations. All process control, routine preventative and corrective maintenance, sampling and analysis, product marketing, reporting and record keeping, and housekeeping are provided as needed to meet the conditions of the operating contract, permits and other regulatory requirements.





Technical support is provided from Denali's Corporate office in cooperation with key equipment vendors to ensure that the managers, electricians, maintenance personnel and operators are properly trained in their perspective duties including, equipment operation and maintenance, chemical and materials handling, safe work practices, use of personal protective equipment, use of air monitoring equipment, etc. It is mandatory that all employees undergo extensive training for operational and safety procedures.

## MAINTENANCE

Denali provides for the maintenance of its composting facilities. Denali understands that even the most automated and straightforward systems demand regular monitoring and maintenance. The most important factor in determining the service life and reliability of plant equipment and structures is an effective maintenance program. Preventative maintenance will be carried out to minimize unscheduled downtime. The Process Equipment Maintenance Plan will continue to be developed and updated for the Lockport composting facility on a regular basis. The plan will describe the major tasks that should be performed on all process equipment. Maintenance schedules along with detailed Vendor Operations and Maintenance Manuals for each major piece of equipment are always provided and maintained in the contractor's office.

The Process Equipment Maintenance Outline, together with schedules will be used as the basis for the preventative maintenance program. The detailed O&M manuals and any literature supplied by the manufacturer will be referred to before performing any maintenance on a piece of equipment to preserve vendor warranties and guarantees. Sufficient spare parts, lubricants, and other supplies necessary for routine repairs and maintenance should be stocked at the plant.

The major components of maintenance program consist of the following:

- Preventative Maintenance
- Workload Scheduling
- Work Order Tracking
- Inventory Management
- Equipment Information
- Maintenance Management
- Management Reporting
- Standard Operation Procedures

## ENVIRONMENTAL HEALTH AND SAFETY

Denali's philosophy is that safety must be planned into a project and not be an afterthought. Denali's Philosophy of "Safety First" will be emphasized throughout the entire Denali Team.



Denali's safety culture is based on a 24/7-safety philosophy and is a critical aspect for the City of Lockport composting facility. This philosophy is such an engrained value within the Denali culture that doing things safely becomes second nature. When the Denali Team adopts this culture, no thought is given to shortcutting or bypassing safety procedures. This culture will be evident in all phases of the project.

Site safety planning provides processes, tools and information used regularly by project personnel, which has consistently improved safety performance. Denali will integrate safety into all our work plans and work processes. Safety planning is not done separately. It is an integral part of production, scheduling, and quality planning. It is a vital part of successful project execution. Our project team will have access safety training videos, inspection/work forms, Operational Hazard Analyses, MSDS sheets, links to other resources and safety concerns written by the Denali team members about lessons learned on our projects and within the industry.

Denali's Safety Plan for the project will be developed using safety procedures and guidelines from our Safety Manual which will incorporate all manufactures safety requirements. The entire Denali Team will be trained and will follow the Safety Plan. The safety processes are designed to keep all employees safe and are developed and owned by the project managers in conjunction with employees at all levels of our organization.



## PRODUCT DISTRIBUTION AND MARKETING

As stated above, WeCare Denali, LLC is the composting arm of Denali and markets compost and mulch products under the established brand name of WeCare Organics. WeCare Organics has developed several product lines including WeCare Compost®, WeCare AgAdvantage™, WeCare Engineered Soils™ and WeCare Roofmix™.



WeCare Denali provides complete and comprehensive compost management services including the distribution and marketing of recycled organic compost and mulch products. WeCare implements best management practices and will meet and exceed all regulatory requirements for the distribution of the product.

WeCare Denali's management team has 20 years of experience in the development and implementation of organics processing technologies and the production of high-quality compost products. The wide range of organics processed through the years, as well as the company's constant focus on the development of technologies and best management practices have enabled WeCare Denali to develop highly efficient operations that will guarantee the quality and marketability of the end-product. WeCare Denali is staffed with agricultural and service professionals who understand the specific needs of each customer. They remain in constant communication with the marketplace and provide keen insight on ways to improve products and services offered to its customers. Over the years, WeCare Denali has distributed products to a growing customer base encompassing agriculture, nurseries, greenhouses, sod farms, sports turf, and topsoil manufacturers. Since WeCare Denali is implementing a marketing strategy that stresses high-quality end products for high end uses at an economical cost, we plan to capture a substantial portion of the agricultural and soil amendment markets near our facilities.



## PROJECT LEADERSHIP & EXPERIENCE

### **Todd Mathes – Chief Executive Officer**

Todd Mathes is Chief Executive Officer of Denali. Mathes has worked in the organic waste recycling industry for more than two decades, and he has been CEO of Denali since early 2023. As CEO, Mathes succeeded Andy McNeill, who now serves as Denali's Founder and Chairman. Mathes was previously Chief Operations Officer of Denali, overseeing Denali's organic waste recycling work across 48 states and Puerto Rico. Prior to joining Denali, Mathes was a senior executive at Darling Ingredients, a multi-billion-dollar rendering firm. His history with Denali dates back the early 2000's, when Mathes served as an executive at Terra Renewal Services, an organics recycling company that eventually became part of Denali. Mathes lives with his family in Dallas, Texas, where Denali has two offices.

### **Jeffrey J. LeBlanc – Chief Growth Officer**

Jeff LeBlanc is the Chief Growth Officer of Denali and will regularly meet with project team members to help shape the project. His expected involvement will be to lead negotiations and review progress and communicate with the Team members and the City on critical issues on a regular basis during the term of the project. Mr. LeBlanc was President and CEO of WeCare Organics, LLC and led the effort, along with Andy McNeill to conclude the WeCare Denali merger. Mr. LeBlanc has over 30 years' experience in the organics and waste industry. Mr. LeBlanc has served in many industrial association leadership positions including Chair of the 2008 National Biosolids and Residuals Conference in Philadelphia and Chair of the Residual & Biosolids Committee, New York WEA. In 2008, the U.S. Composting Council honored Mr. LeBlanc with their "HI Kellogg Composter of the Year" Award. Mr. LeBlanc is a graduate of Cornell University.

### **Brian C. Fleury – Executive Vice President, North**

Mr. Fleury joined Denali when it acquired the key assets of WeCare Organics, LLC in 2016. Mr. Fleury is the Executive Vice President of Operations in the North Region. Mr. Fleury manages all business divisions within Denali in 18 states from Maine to Wisconsin. These business divisions include Converted Products (Compost, Mulch & Soils), Industrial Waste Streams, Municipal Biosolids, Event/Maintenance Projects & Retail Organics Collections (Organix). Prior to his position as EVP, Mr. Fleury was the General Manager of the Converted Products Group where he managed all (20+) WeCare Denali company-owned and municipally contracted composting operations. Mr. Fleury has over 20 years of experience in the residual management business and is an expert in compost and compost manufacturing. Mr. Fleury was one of the first in the United States to receive a certification through the United States Composting Council as a Certified Compost Operations Manager (CCOM™) and he is the former President of the US Composting Council.



## EXPERIENCE AND REFERENCES

### OVERALL COMPOSTING EXPERIENCE

From the largest of US cities to the “Ma and Pa” home garden center, WeCare brings a passion for organics recycling and composting. WeCare operates many waste recycling facilities, processing a variety of organic/residual waste materials including yardwaste, foodwaste and biosolids. Our list of client references is diverse, and the following references provide a brief overview of the breadth of experience the company brings to the composting industry and this proposal. Further Detail is provided below.

Current Composting Management Project References				
Client	Compost Services	Type/Technology	Status	Tons
City of Ann Arbor, MI	Contract Operations	Windrow	Current	14,000/YR
City of Phoenix, AZ	Contract Operations	ASP	Current	55,000/YR
New York City, NY -DSNY	Contract Operations	Windrow Agitated/Aerated Bay/Gore Cover	Current	35,000/YR
Fellsmere, Florida	Owner-Operator	ASP	Current	90,000/YR
Rockland County, NY	Contract Operations	Agitated/Aerated Bay	Current	30,000/YR
Burlington County, NJ	Contract Operations	Agitated/Aerated Bay	Current	50,000/YR

WeCare has significant experience in the development, operations, and maintenance of municipal composting operations. WeCare is operating many different composting technologies and facility configurations including traditional windrow composting, aerated static pile (ASP) composting and Agitated/Aerated Bay composting. There is no other Company that operates and manages the variety of compost facilities as WeCare.



The Ann Arbor compost facility and the New York City compost facilities both utilize traditional windrow technology and both facilities incorporate post-consumer foodwaste into the compost process. The City of Phoenix utilizes ASP compost technology for the processing of yardwaste, and foodwaste. WeCare's privately owned, Fellsmere, FL, utilizes ASP compost technology and processes yardwaste and biosolids.

**The most sophisticated processing facilities operated by WeCare are the Agitated/Aerated Bay facilities located in Rockland County, New York, and Burlington County New Jersey. Both facilities process yardwaste and biosolids and are the same technology as the City of Lockport.**

## OTHER EXPERIENCE THAT PROVIDES VALUE TO THE CITY OF LOCKPORT

### Residential Foodwaste Experience

WeCare has several facilities working with post-consumer foodwaste. WeCare will work with the City to develop a post-consumer foodwaste program that can take up to 10% of incoming volume. As part of the program, WeCare worked with the City of Ann Arbor to develop its "Kitchen Catcher" which allows residence to transfer foodwaste from the kitchen to the garage where the foodwaste is added to the yardwaste cart.

### Source Separated Organics Management

WeCare has invested significantly into technology that provides for the de-packaging of food related products for the purpose of composting and or anaerobic digestion, including at the City of Phoenix Compost facility. Currently, WeCare has six depackaging facilities operating with two other depackaging units are in the process of being installed. The depackaging technology creates an



additional high value, source separated organics feedstock that can be composted. This means additional revenue that can be generated by the composting facility.

### WeCare Denali Manages and Composts Biosolids

WeCare Denali is the second largest biosolids manager in the US. We believe there may be opportunity to compost or further treat biosolids from the City's WWTP should we look to expand the capacity of the Lockport Compost Facility. The development of the site could take into consideration biosolids. We believe biosolids could be composted, however we would recommend a separate process allowing for the separation of yardwaste compost and biosolids compost. For instance, we would recommend the composting of biosolids under roof with appropriate odor





control. WeCare is prepared to consider biosolids as a potential feedstock if the City would be interested.

### **US Composting Council STA Program Members**

WeCare is an active member of the US Composting Council (USCC), and all its facilities participate in the Seal of Testing Assurance Program.



### **Compost Manufacturers Alliance**

WeCare is also a founding member of the Compost Manufacturers Alliance (CMA). The CMA is a nationwide Partnership of Compost Manufacturing Facilities Providing Field Disintegration Testing for Food Service Products. This organization provides real time data related to the development of manmade compostable materials that can be safely utilized in sustainable composting operations. WeCare has two facilities currently participating in the Alliance. Please visit the website at [www.compostmanufacturingalliance.com](http://www.compostmanufacturingalliance.com).

### **Sustainability Statement**

At Denali, we believe that it is the collective responsibility of us all to protect the quality of water through recycling waste in ways that are sustainable, beneficial to the land, and reduce or eliminate the use of landfills. It's our business, our purpose, and our value proposition to recover, recycle and reimagine waste, extracting the highest value from the byproducts of our daily lives.

Our commitment to ESG reflects who we are and who we strive to be as a company. ESG and sustainability are front and center at Denali. As such, we are committed to:

- Setting an industry standard: Doing things right goes beyond following the rules and asking ourselves—each day—how we can do things a little bit better to deliver value for our customers and stakeholders.
- Environmental stewardship: Companies like Denali exist because we live in a world with finite resources. There is a limited quantity of water in the world. We have a responsibility to keep water clean so that we can use it today and future generations can use it, too.

Attached please find our initial ESG Summary Report for 2022.





# WHO WE ARE

## DENALI

is one of the largest recyclers of organic waste in the U.S. In addition to competing on price, we provide customers with sustainable solutions to their waste management challenges. We partner with our customers to address their own priorities of facilitating resource recovery and keeping organic waste out of landfills.

Our municipal customers are pushing for more sustainability and circularity in their management of waste. With our commercial customers, we interact increasingly with sustainability leads and environmental teams, in addition to their operations teams.

*"Denali has grown from a small, regional waste service provider to one of the leading recyclers of organic material in the U.S."*

**Todd Mathes, CEO**

7  
priority  
ESG topics

**OUR BUSINESS**  
Improving our commitment to sustainability year after year

2  
New employee positions  
focused on sustainability

**GOVERNANCE**  
Continuing our commitment to integrity, our culture, and our values by expanding our sustainability team

7,720,190  
tons of organics waste recycled

**ENVIRONMENTAL**  
Expanding service offerings for our customers, improving circularity, and replenishing the earth

75%  
increase in  
employee  
participation

**SOCIAL**  
Maintaining our culture of safety

# EMBEDDING ESG AT DENALI

## Guiding Principles

A focus on environmental, social, and governance issues is central to who we are and who we strive to be.

### ENVIRONMENTAL

Our work is essential to keeping water clean, reducing the need for new landfill capacity, building soil fertility, helping farmers become resilient, minimizing greenhouse gas emissions, and reducing society's reliance on fossil fuels. Our services and products touch thousands of acres, hundreds of locales, millions of tons of material, and nearly every person who purchases and consumes food in the U.S.

In 2022, Denali continued to use diverse, technology-agnostic, proven, and affordable processes to divert more than 7 million tons of organic waste from landfills. We converted this material into animal feed, farm fertilizer, and fuel.

Much of the material managed and recycled by Denali re-enters the U.S. agricultural system as useful and cost-effective animal feed or fertilizer substitutes. In both cases, Denali captures the nutrient content of materials.

The result is more fertile land, less raw material use, and cost-competitive inputs. Denali's services provide additional environmental benefits by carrying out processes that reduce embodied carbon emissions.

As a waste management provider, Denali helps customers achieve waste diversion goals and compliance with legislative mandates while supporting the growth of the circular economy.

### SOCIAL

Our operations rely on an extensive fleet of vehicles. We prioritize driver and operator safety through workplace training, the adoption of technology, and worker engagement. We have re-evaluated how we organize, execute, and gain value from safety activities as we grow.

In 2022, an important focus for Denali was on integrating new team members into our company. The acquisition of Imperial Western Products (IWP) in April, 2022 was transformational. Our effort to onboard IWP employees was an important step towards

an integrated company and a common culture.

As our workforce becomes increasingly diverse, we've strengthened our focus on diverse recruiting, onboarding, and training practices. With many Spanish-speaking employees, we are prioritizing inclusive communications.

### GOVERNANCE

We are committed to conducting business with honesty and integrity, and in line with our purpose and values. Our 2023 Denali Employee Handbook was approved by senior leadership and requires that everyone at Denali acknowledge sections concerning confidentiality, anti-harassment, anti-discrimination, diversity, workplace safety, and conflicts of interest.

An important part of our work in transforming waste into valuable products is in shaping public policy and advocating for our industry. We proactively engage with regulators, municipalities, communities, and policymakers about our unique and complex business.

Deliver superior service.

Be environmentally reliable and compliant.

Be the best value for our customers.

## About Denali

Denali converts millions of tons of organic material into useful products each year across the United States. Our facilities transform waste into compost, animal feed, renewable fuels, soils, mulch, paint, lubricants, and other products.

## PEOPLE

1,604 EMPLOYEES

## OPERATIONS

100s OF FIELD SITES  
24 COMPOSTING CENTERS  
4 ANIMAL FEED CONVERSION CENTERS  
48 COVERAGE IN US STATES + PUERTO RICO

## FLEET

5,981 TOTAL VEHICLES  
1,034 TRUCKS  
4,947 OTHER ROLLING ASSETS

## ORGANIC WASTE MANAGED

165,820 tons BAKERY WASTE  
515,168 tons FOOD WASTE  
106,285 tons GREASE TRAPS  
32,922 tons USED COOKING OIL  
581,269 tons WOOD WASTE  
235,514 tons YARD WASTE

## PRODUCTS MADE FROM RECYCLED WASTE

4,264,000 dmt\* FOOD PROCESSING RESIDUALS LAND APPLIED  
2,191,235 dmt BIOSOLIDS LAND APPLIED  
21,950 tons ANIMAL FEED (cotton seed)  
230,168 tons ANIMAL FEED (bakery meal)  
7,554 tons PROTEIN ANIMAL FEED  
8,112,440 gal BIODIESEL  
308,246 tons COMPOST  
2,152,196 tons MULCH

\* DRY METRIC TONS

## SCOPE 1 EMISSIONS:

ENERGY AND GHG 792,885 metric tons CO<sub>2</sub>e

## SCOPE 2 EMISSIONS:

4,246 metric tons CO<sub>2</sub>e

DENALI

[denallicorp.com](https://denallicorp.com)





## 4. TRAINING AND STARTUP PLAN

### TRAINING AND STARTUP PLAN

WeCare has considerable experience in the operations of the technology employed at the Lockport Compost Facility, however, training is a constant focus. WeCare's company purpose is to replenish the Earth by repurposing waste and to accomplish this mission we need to have all employees properly trained at all times for a multitude of reasons, including safety and individual self-advancement. It is important that all employees understand our corporate values and why we love what we do:



WeCare provides internal training and instruction for its employees. We provide the required training manuals for major equipment and hands on experience in the operation and maintenance of the major equipment. We work with our employees to understand O&M procedures, Health and Safety procedures and overall operational scope of work. WeCare is active with the US Composting Facility in the development of the Compost Operators Workshop as participants as well as workshop instructors. WeCare is also active with the US Composting Councils National



Operators Certification program. It is our intent to have all our operators at the Lockport Compost Facility to be Certified Compost Operators.

In addition, WeCare will periodically have employees join in Company sponsored training off-site, along with 3<sup>rd</sup> Party training by outside organizations. Any training, if interested, can also be provided to City personnel if desired.

Since, WeCare is the current operator, the training and startup plan should be a little easier than others as we are already on-site and are up to date on all employee training. Prior to start-up of the new contract, WeCare will update all O&M manuals, along with conducting an equipment and site review to ensure all health and safety protocols are-in place. In addition, WeCare will focus on the following items initially during the Startup of the new contract:

## EMERGENCY ACTION AND NOTIFICATION

An emergency response plan will be updated prior to the start-up of the new contract for the composting operation. The emergency response plan would include:

- First Aid Response and Procedures
- 911 Protocol
- Emergency Contact Information
- Emergency Evacuation Procedures
- Fire Alarm and Procedures
- Severe Weather Operating Procedure and Shelter

## HEALTH AND SAFETY INFORMATION

WeCare instills a strong team commitment to safety for all aspects of the facility operations and services provided. WeCare's philosophy is that safety must be planned into a project and not be an afterthought. WeCare's philosophy of "Safety First" will be emphasized throughout the entire WeCare Team.

WeCare's safety culture is based on a 24/7 safety philosophy. This philosophy is such an engrained value within the WeCare culture that doing things safely becomes second nature. When this culture is adopted by the WeCare Team, no thought is given to shortcutting or bypassing safety procedures. This culture will be evident in all phases of the project.

Site safety planning provides processes, tools and information used regularly by project personnel, which has consistently improved safety performance. WeCare will integrate safety into all our work plans and work processes. Safety planning is not done separately from production, scheduling, and quality planning. It is a vital part of successful project execution.



Our project team will have access to safety training videos, inspection/work forms, Operational Hazard Analyses, MSDS sheets, links to other resources and safety concerns written by the WeCare team members about lessons learned on our projects and within the industry.

WeCare's Safety Plan for the project will be developed using safety procedures and guidelines from our Safety Manual which will incorporate all manufactures safety requirements. We will train the entire WeCare Team to follow the Safety Plan. The safety processes are designed to keep all employees safe and are developed and owned by the project managers in conjunction with employees at all levels of our organization.

Since safety concerns with composting are primarily related to equipment operation, it is imperative that the operator become thoroughly familiar with the detailed O&M manuals for each piece of equipment before he/she operates or maintains the equipment. The O&M manuals referenced in the Equipment Manual contain specific safety precautions throughout their text. The following sections contain general safety information that the operator should understand before operating and maintaining the compost facility.

## EXPOSURE TO DUST AND AIRBORNE PARTICULATES

Facility employees will abide by WeCare's Corporate Injury Prevention Program in addition to Federal, state, and local safety regulations. Compost facility workers can be exposed to dusts, which contain a variety of chemical and biological agents. Airborne particles can include plant material particles and the products of their decomposition, consisting primarily of minute fungal spores and bacteria. Chemical products of decomposition, which may also be released, include carbon dioxide, carbon monoxide, ammonia, nitrogen oxides, and hydrogen sulfide. These compounds can be produced in significant amounts if compost was allowed to become anaerobic, a condition of insufficient oxygen within the composting material. Proper windrowing intervals and materials management eliminates these conditions.

Most workers should experience no adverse health effects from the composting environment. However, the chemical products of decomposition, listed above, when in sufficient quantity, can produce symptoms of headache, tearing, and nose and throat irritation. A few sensitive individuals may experience symptoms of dry cough, fever, tiredness, or difficulty in breathing. Symptoms usually begin several hours after fine organic dusts are inhaled and may last for hours or several days. This can be caused by a type of allergic reaction to substances in the compost material. Highly allergic employees may not benefit from the use of a respirator and may have to change occupations. Careful completion of the Occupational/Medical History during pre-employment and periodic physical evaluations can also help to identify employees with a potential for sensitivity to organic dusts.

Significant hazards, such as oxygen deficiency, can occur when these products are allowed to accumulate in confined areas such as manholes, pits, or trenches, and if appropriate safety precautions are not followed.



Dust control and using enclosed air-filtered cabs on composting equipment are the best forms of protection. Using a respirator is the next alternative. Dust, mist, and fume respirators can do a good job of filtering organic dusts. Low levels of chemical decomposition products can be addressed by combining acid gas or ammonia cartridges with dust and mist pre-filters. Concentrations above the Permissible Exposure Limits of OSHA should be addressed with HEPA and Ammonia/Acid mist filters.

## PERSONAL HYGIENE

Close attention to personal hygiene is important to prevent exposure to biological agents such as fungi and bacteria. Appropriate use of personal protective equipment is also important to protect workers from both microorganisms and chemical agents such as ammonia, which are produced during the composting process. The following sanitary measures should be followed:

- ✦ Keep hands below collar while working.
- ✦ Do not smoke when in the processing area and when working on compost facility equipment.
- ✦ Wear rubber gloves when performing duties requiring contact with organics.
- ✦ Wash gloves before removing them.
- ✦ Wash hands with hot water and germicidal soap before using the toilet, eating, or smoking.
- ✦ Keep work clothes and street clothes separate.
- ✦ Receive first aid treatment for cuts and scratches.
- ✦ Shower after the work shift.

## ELECTRICAL EQUIPMENT

Maintenance of major equipment should be performed in such a way that eliminates electrical hazards. This requires knowledge of the electrical hazards. Refer to the following as a list of minimum safety precautions:

- ✦ Only qualified and authorized personnel should work on electrical equipment and wiring or perform electrical maintenance.
- ✦ Use lockout devices and tags at all locations. Adhere to OSHA's standard regarding the control of hazardous energy.
- ✦ Always assume electrical equipment and lines are energized unless they are positively proven to be de-energized and properly grounded. If it is not properly grounded it is not dead.
- ✦ Prohibit the use of metal ladders or tape measures around electrical equipment.
- ✦ Use approved rubber gloves on voltages above 300V.
- ✦ Do not open an energized electrical control panel.
- ✦ Do not test a circuit with any part of the body.
- ✦ Prevent grounding by avoiding body contact with water, pipes, drains, or metal objects while working on electrical equipment or wiring.
- ✦ Do not bypass or render inoperative any electrical safety device.



- ✦ When working in close quarters, cover all energized circuits with approved insulating blankets.
- ✦ All tools must have insulated handles.
- ✦ Never use metal-cased flashlights.
- ✦ Do not wear jewelry when working with or near electric circuitry.
- ✦ Ground or double-insulate all tools.
- ✦ Use rubber mats at control centers and electrical panels.
- ✦ Always keep electric motors, switches, and control boxes clean.
- ✦ Keep all electrical controls accessible and well-marked.
- ✦ Do not attempt to perform electrical repairs beyond your qualifications.
- ✦ Do not use extension cords with exposed wires or missing electrical prongs.
- ✦ When defective equipment is discovered or identified, it shall be immediately tagged or removed, repaired, or replaced.
- ✦ Circuits must be identified. Equipment disconnects must also be marked.
- ✦ Electrical circuits must be equipped with Ground Fault Interruptions (GFIs) to shut a circuit down before a person gets shocked.

## MECHANICAL EQUIPMENT

Mandatory Requirement: All operators must review the Equipment Manual prior to operation of any piece of equipment. The operators will acknowledge a review of the operational and safety discussion from the Equipment Manual.

- ✦ Tag and lockout procedures must be followed.
- ✦ Only qualified and authorized personnel will work on mechanical equipment.
- ✦ All mechanical equipment, including fixed machines will be properly guarded to protect personnel from moving parts such as wheels, belts, etc. Any moving or stationary parts that present a potential hazard to workers will be properly guarded. Those guards will be maintained in good condition and replaced as necessary. If machine guards are removed during repair or maintenance, they will be replaced immediately when the work is complete.
- ✦ Consider noise levels produced by equipment and protect yourself with earplugs, etc. A noise survey will be conducted to identify areas where ear protection would be mandatory--where the 8-hour time weighted average (twa) is greater than 85 decibels. Keep all controls for the machinery accessible and well-marked. Any electrical disconnect switches or circuit breakers for the mechanical equipment will be locked out and tagged when work is being done on the equipment.
- ✦ Wear protective eyewear and safety boots when working on equipment. Remove jewelry and tuck in shirttails and long hair.
- ✦ Never try to adjust or repairs to mechanical equipment that is in operation.
- ✦ Keep all equipment in good working order. Inspect before and after using.
- ✦ Keep floors and other surfaces free of grease, oil, or other material, which may cause slips or falls.



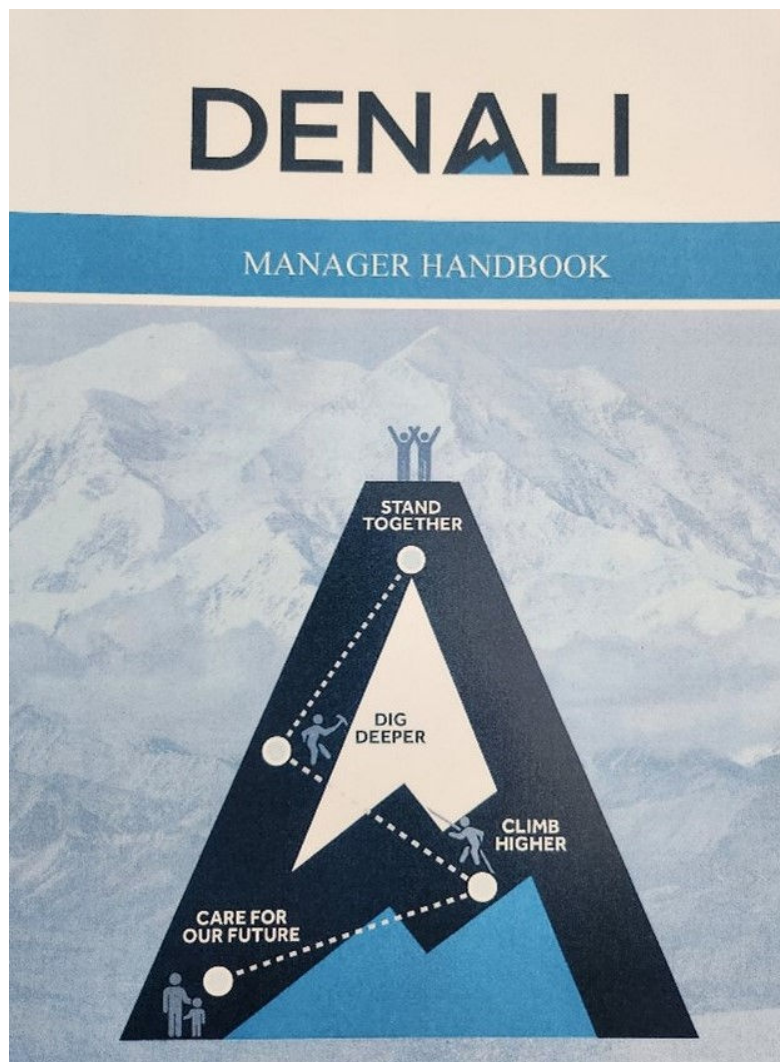
- 🌿 Affix "Danger," "Warning," or "Caution" labels as appropriate.
- 🌿 Keep emergency phone numbers posted by all telephones.

## SAFETY EQUIPMENT

Safety attire recommended for working at the composting site facility include protective eyewear, uniforms, and safety boots.

## MANAGER HANDBOOK

Any WeCare (or Denali) Manager will receive training on managing employees and will have a “Denali Manager Handbook” they have read and comprehended.







## 5. REFERENCES

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### WECARE DENALI COMPOST REFERENCES

Please find below WeCare Denali's Project References and Project Descriptions.

#### CITY OF ANN ARBOR, MICHIGAN COMPOST FACILITY

##### **Reference Contact Information**

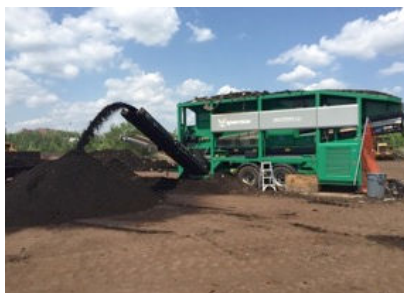
Christina Gomes, Solid Waste and Recycling Coordinator  
301 E. Huron Street, P.O. Box 8647  
Ann Arbor, Michigan 48107  
734-794-6430  
CGomes@a2gov.org

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In 2010 WeCare was awarded a 7-year contract with the City of Ann Arbor to manage their 20,000-ton (80,000 yard a year) per year, yard trimmings and residential food waste composting facility. WeCare is responsible for the reception and processing of yard waste, wood waste and residential food waste into compost and mulch products for sale and distribution. With the success of the residential food waste collection and composting program the City has expanded the food waste program to include merchant post-consumer commercial food waste to be processed at the compost facility on a voluntary drop off basis.

In 2017 WeCare entered an agreement with the University of Michigan Athletics Department to support their athletic facilities "Zero Waste Initiative". WeCare will begin processing all the organic and compostable materials from their major athletic facilities including Michigan Stadium, The Crisler Center and Yost Ice Arena.

In 2017 the City had to rebid the compost facility operation due to the expiration of WeCare's initial term and extension provisions. WeCare was selected again by the City to manage the compost operation for an initial term of 5 years plus 2, 5-year extension options.





The City is also now looking to expand into its own collection of post-consumer food waste for its commercial businesses. The partnership between the City and WeCare has substantially reduced the city's cost for yard waste and mulch processing by over \$400,000 annually. In addition to processing waste derived from the City, the agreement allows for the processing of merchant materials from other independent contractors and other communities.

The City of Ann Arbor receives a revenue share for all merchant materials as well as a revenue share on product sales. The City participates in the US Compost Councils Standards of Testing and Assurance Program (STA).

## NEW YORK CITY DEPARTMENT OF SANITATION COMPOST FACILITY (DSNY)

### Reference Contact Information

Ian Twine, Deputy Director, Composting  
Bureau of Solid Waste Management  
Beneficial Reuse Planning, Infrastructure  
Development & Management, NYC Department of  
Sanitation  
Phone: 212-437-4666  
[itwine@dsny.nyc.gov](mailto:itwine@dsny.nyc.gov)



WeCare is the service provider for the Department of Sanitation New York City (DSNY) three compost facilities located in Staten Island, Soundview Park, and Rikers Island. The long-term agreement calls for the management of the facilities including the reception, processing, screening, and supply of organic product back to the DSNY for distribution and beneficial use. In July 2007, WeCare began a ten (10) year operations contract with the DSNY.

Under this contract, WeCare maintains and operates two (2) outdoor leaf and yard trimmings compost facilities in the Bronx & Staten Island and one (1) **enclosed agitated/aerated bay in-**



**vessel** food scraps compost facility on Rikers Island. The Fresh Kills leaf and yard waste compost facility encompasses 27-acres within the borders of the former Fresh Kills landfill on Staten Island. The Soundview leaf composting facility is located on 12-acres within Soundview Park in the southeastern section of the Bronx. The leaf composting program includes most New York City's Community Districts, which together generate 25,000 tons of autumn leaves each year. In addition, private landscapers deliver approximately 8,000 tons of yard waste to the Fresh Kills Composting Facility annually, and each year WeCare processes 2,500 tons of Christmas trees into mulch. WeCare operates and maintains all the equipment necessary to produce finished compost at the three (3) processing facilities. Some of the equipment includes Scarab windrow turners, trommel de-baggers/screeners, front-end loaders, dump & water trucks, skid steers and horizontal grinders. The City participates in the US Compost Councils Standards of Testing and Assurance Program (STA)

## FELLSMERE, FLORIDA- DENALI WATER COMPOST FACILITY

### Reference Contact Information

Randy Sollie  
nuTerra SE Florida Organics, LLC  
PO Box 225  
7098 County Road 512  
Fellsmere, FL 32948  
Mobile Phone: 251-463-3730



Denali Water owns and operates nuTerra SE FL Organics aerated static pile (ASP) composting facility located Indian River County, in Fellsmere, Florida. The facility manages merchant biosolids and yardwaste, which are delivered to the facility 6 days per week.

This new facility began operations in July of 2018 and has a capacity to process over 100,000 tons of biosolids annually. The facility is on a 16-acre site and is all under roof. The ASP process produces a Class A biosolids compost which is recognized in Florida as Class AA. 100% of the resulting compost product has been sold to date.





## BURLINGTON COUNTY, NEW JERSEY COMPOST FACILITY

### **Burlington County Resource Recovery Complex**

#### **Reference Contact Information**

Florence Township, New Jersey  
Jerome Sheehan- Director of Solid Waste  
609-499-1001  
[jsheehan@co.Burlington.nj.us](mailto:jsheehan@co.Burlington.nj.us)



WeCare operates and maintains this state-of-the-art yardwaste and biosolids composting facility, utilizing the in-vessel BDP ICS composting technology. This facility is the largest in-vessel biosolids compost facility on the East Coast producing 70,000 cubic yards of WeCare Compost® annually. In 2008, WeCare was awarded a ten-year operating contact, including Class A product marketing services and facilities upgrade construction contract worth \$4 million, which was completed by WeCare in September 2009. Operations began February 2009. Construction upgrades included Corrosion control, structural repairs and replacement, Elastomeric roof (4-acre building) and computer systems upgrade. The facility processes approximately 50,000 tons annually of biosolids in addition to wood chips and yard waste. The City participates in the US Compost Councils Standards of Testing and Assurance Program (STA).



WeCare was awarded a second 10-year contract in 2019.



## ROCKLAND COUNTY, NEW YORK – HILLBURN, NEW YORK – COMPOST FACILITY

### Rockland Green

#### Reference Contact Information

Gerald Damiani Jr, Executive Director  
Rockland County Solid Waste Management Authority  
420 Torne Valley Road  
Hilburn, NY 10931  
(845)753-2200 Ext. 610  
[gdamiani@rocklandrecycles.com](mailto:gdamiani@rocklandrecycles.com)



WeCare operates and maintains a state-of-the-art composting facility, utilizing the in-vessel BDP ICS composting technology, processing 100 wet tons per day of biosolids and 80 tons per day of wood/yard trimmings. WeCare sells all finished compost under the WeCare Compost® label to soil manufacturers, landscapers, and various turf-grass applications.

WeCare was awarded a ten-year operating contract with an annual O&M budget of \$1.7 million and facilities upgrade construction contract worth \$4 million. The construction contract was completed in December of 2009 with the operating contract commencing February 2010. The County participates in the US Compost Councils Standards of Testing and Assurance Program (STA). Construction upgrades included Corrosion control, structural repairs and replacement, Elastomeric roof (4-acre building) and computer systems upgrade. The facility processes approximately 30,000 tons annually of biosolids in addition to wood chips and yard waste. WeCare is responsible for the distribution and marketing of the compost which it markets under its WeCare Compost® trademark.



WeCare renewed its contract with the County in 2022 for an additional five (5) years.



## 5. ALTERNATE PROPOSAL – SOLAR FIELD AT THE LOCKPORT COMPOST PLANT BY NATIONAL SOLAR DEVELOPMENT

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WeCare is pleased to provide the City of Lockport with a proposal from National Solar Development (NSD). It is WeCare's intent to share this information as an incentive for the City to begin negotiating an Agreement with NSD or someone else to assist in the reduction of utility costs at the compost plant. It is WeCare's sole desire to benefit with the City in a significant reduction in electrical costs at the Compost Plant and even the Wastewater treatment facility.

We look forward to our discussion.





January 5, 2024

Best of Use Compost Plant  
City of Lockport  
Waste Water Treatment Plant  
611 West Jackson St.  
Lockport, NY 14094

RFP: Solar Energy System

**Joint Solar Development Partnership Companies:**

National Energy Development LLC.

166 Taylor Drive  
Depew, NY 14043

Main Point of Contact for this Project: Paul Vargovich, (716) 725-5913, [pv@nedrenewables.com](mailto:pv@nedrenewables.com)

New Energy Equity LLC  
2530 Riva Rd. Suite 200  
Annapolis, MD 21401

**About National Energy Development**

National Energy Development (NED) was founded in 2020 by Paul Vargovich and Jim Bodecker. Paul has been in the solar industry for 23 years. Paul is a NABCEP Certified Photovoltaic Installation Professional and has been involved in over 150 projects ranging from commercial/government rooftop systems and ground mounted systems as well as remote site solar/battery power for the US Military. Jim's background is in real estate and development of commercial projects. Jim is a certified real estate broker with 4-years experience handling land acquisitions and leases for solar energy projects. NED currently has 40MW of solar projects in Upstate NY completed or in middle to end stage development. Our sister company National Solar Technologies has been in the solar industry since 1997. National Solar Technologies engineers, builds and maintains solar energy systems primarily within New York State. Paul is the President of National Solar Technologies.

**New Energy Equity About Us**

New Energy Equity (NEE) was founded in 2014 by a group of energy & finance professionals with a background in project financing, tax equity, project construction, and engineering. NEE has completed financing and construction on over 310MW of solar energy projects. National Energy Development & New Energy Equity have a legally registered joint development partnership in NY State.

**Solar Energy System Information**

- System kW DC: 4.733MW
- System kW AC: 3.23MW
- System Solar Racking Type: Single Axis Trackers
- Acreage for Solar Farm: 25 acres
- Estimated Year 1 System Production: 6,722,036 kWh

## **Project Revenue Stream Options for City of Lockport**

### **Option 1:**

#### **5% VDER Savings (PPA), and Land Lease**

-5% VDER Savings: Estimated Year 1 Electric Savings \$26,888.00

-Land Lease: \$25,000 per year. Total 25-year land lease amount \$625,000.00

-Estimated Annual Property Tax: \$19,380.00

### **Option 2:**

#### **5% VDER Savings (PPA) and Upfront Land Lease Payment**

-5% VDER Savings: Estimated Year 1 Electric Savings \$26,888.00

-Upfront Land Lease Payment: \$150,000.00

-Estimated Annual Property Tax: \$19,380.00

### **Option 3:**

#### **No VDER (PPA) Savings, Annual Lease Payment**

-Annual Lease Payment: \$55,000.00. Total 25-year land lease amount \$1,375,000.00

-Estimated Annual Property Tax: \$19,380.00

### **Option 4:**

#### **No VDER (PPA) Savings, Upfront Land Lease Payment**

-Upfront Land Lease Payment: \$487,000.00

-Estimated Annual Property Tax: \$19,380.00

## **Sustainability and Environmental Impact: Address sustainability measures incorporated into our proposal and its potential environmental impact.**

National Energy Development will perform all required due diligence and environmental impact engineering reviews required by NY State & Federal law. Environmental impacts foreseen are tree removal and site clearing.

## **Attached Documents**

-Preliminary Site Plan

-Decommissioning Plan and Costs

-Template PPA Contract







# **Lockport, NY Solar Array**

## **Decommissioning Plan**

**Prepared for:**

**National Energy Development**

**166 Taylor Drive  
Buffalo, NY 14043  
(716) 228-2294**

**Location: Lockport, NY  
January 4, 2024**



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## 1.0 Introduction

The purpose of this report is to describe the decommissioning process for the Lockport, NY solar photovoltaic generation facility (“the project”) located at 611 West Jackson St, Lockport, NY 14094. The project consists of 8160 solar modules mounted to a driven pile, Single Axis Tracker system. After final circuit consolidation at the equipment pad mounted switchboard, the system’s voltage will be stepped-up to distribution level at a transformer and interconnected, onto an existing utility distribution circuit.

The project converts approximately 20.26 acres of agricultural land into a power generation facility. Construction includes solar modules mounted on driven steel piles, inverters, concrete transformer and equipment pads, and gravel access roads.

## 2.0 Summary Statement of Expected Decommissioning Cost

The expected residual value of the solar facility is the difference between the removal/restoration cost and the salvage value. The decommissioning cost to remove the solar PV facility and reestablish the property back to a grassy field is not expected to exceed a net expenditure of \$350,512.79.

## 3.0 Basis of Plan Narrative

The following is a list of assumptions and clarifications to further define the methodology used to establish the scope and values of the removal costs and salvage values.

### 3.1 General

- The intent of the decommissioning work will be to fully remove the solar facility, dispose of any components, and restore the site to a permanently stabilized grassed field.
- The service life of the facility is assumed to be 35 years. Because of this there is inherent uncertainty with pricing estimates that far into the future. All dollar amounts are in net present value (NPV). It is assumed that all values will inflate/deflate consistent with inflation, therefore, the NPV comparison of removal cost to salvage value will remain relevant at the end of the service life.
- Costs associated with this plan represent a “turn key” operation for a general contractor to be hired for this work, including permits, mobilization, contingency, etc.
- Haul costs assume a maximum distance of 60 miles between the project and nearest disposal or recycling facility.
- No maximum duration has been assigned for this work. It has been assumed that this work would be handled by a single crew without full time site personnel.



## Lockport, NY Decommissioning Plan

### 3.2 Civil Infrastructure

- Topsoil used to backfill excavations will be borrowed from onsite locations. No topsoil import is included.
- Removal of rip rap at stormwater basins is included.
- Aggregate removal will be the full depth of the aggregate section for roads, equipment pads, and other areas utilizing aggregate. No aggregate will be buried. Includes subgrade scarification prior to backfilling with topsoil.
- Turf establishment includes mulch, fertilizer, and water as necessary to achieve 70% ground cover as required to satisfy the NPDES Construction General Permit.
- Sediment control cost consists of silt fence but could also be fiber logs. Location of sediment control will be downslope from exposed soils only in areas where sedimentation offsite or into onsite water bodies can reasonably be expected.
- Trees and shrubs shall be protected and shall remain in place.

### 3.3 Structural Infrastructure

- Steel pile foundation removal is estimated at 25% the effort and cost as pile installation.
- Steel racking removal is estimated at 50% the effort and cost of racking installation.

### 3.4 Electrical Infrastructure

- PV modules to be recycled. Assumption is that the module value will be based off the module wattage. i.e. a higher wattage module will be worth more than a lower one.
- Switchgear including transformers will be removed from their respective concrete pads and recycled or returned to the manufacturer.
- Copper wiring will be dug up (if required) and recycled.
- Aluminum wiring will be dug up (if required) and recycled.
- Customer owned site riser or interconnection poles shall be removed.
- A two-person crew can dismantle a string inverter and recycle the components.
- Transformers are pad mounted and weigh approximately 8,500 pounds. These are dry type transformers, so there is no need for any oil disposal.
- Underground power and communication cables can be removed by excavating with a power trencher or excavator.

### 3.5 Recycling PV Modules

- Recycling solar modules have environmental benefits such as
  - o Creating a useful and sustainable method of disposal
  - o Providing raw materials for repurposing and reprocessing
  - o Recovering up to 90% of the photovoltaic glass and up to 95% of the semiconductor material necessary for further production
  - o Recycling of rare earth metals.

## 4.0 Schedule of Removal and Restoration Costs

Removal and Restoration Costs						
CIVIL INFRASTRUCTURE						
		QUANTITY	UNITS	\$/UNIT	COST	NOTES
1	Road Aggregate, Rip Rap, and Geotextile Removal	6750	ft <sup>3</sup>	\$ 1.00	\$ 6,750.00	Remove full section of aggregate road, rip rap, and geotextile fabrics
2	Road Aggregate, Rip Rap, and Geotextile Haul and Offsite Disposal	6750	ft <sup>3</sup>	\$ 3.32	\$ 22,400.00	Hauling offsite
3	Topsoil Backfill	7500	ft <sup>3</sup>	\$ 1.00	\$ 7,500.00	Onsite relocation of topsoil to backfill road and equipment pad excavations
4	Chainlink Fence Removal	3,775	ft	\$ 1.00	\$ 3,775.00	Includes fence mesh, post framing, concrete foundations, gates, etc.
5	Chainlink Fence Haul and Offsite Disposal	18,875	lbs	\$ 0.04	\$ 800.00	
6	Concrete Equipment Pad Removal	2	EA	\$ 5,000.00	\$ 10,000.00	
7	Concrete Waste Haul and Offsite Disposal	2	EA	\$ 2,500.00	\$ 5,000.00	
8	Site Grading	2.026	Acres	\$ 5,000.00	\$ 10,130.00	Grading smooth all areas disturbed by removals, excavations, etc, assumed (0.1 x project area) + Road Area + Equipment Pad Area
9	Turf Establishment	20.26	Acres	\$ 1,500.00	\$ 30,390.00	Hydroseed all areas disturbed by removals, excavations, etc
10	Sediment Control	1258	ft	\$ 10.00	\$ 12,583.33	Silt fence installation
Structural Infrastructure						
11	Foundation Removal	1796	EA	\$ 18.72	\$ 33,626.31	~25% of Install cost
12	Foundation Haul and Offsite Disposal	1796	EA	\$ 5.97	\$ 10,716.76	
13	Racking Removal	252960	lbs	\$ 0.33	\$ 83,336.98	~50% of Install cost
14	Racking Haul and Offsite Disposal	252960	lbs	\$ 0.03	\$ 7,726.03	
Electrical Infrastructure						
15	Removal of Solar Modules	8,160	EA	\$ 5.00	\$ 40,800.00	
16	Removal of String Inverters	3.23	EA	\$ 1,000.00	\$ 3,230.00	
17	Removal of Switchgear/Xfmr	2	EA	\$ 5,000.00	\$ 10,000.00	
18	Removal of Riser and Interconnection Poles	6	EA	\$ 1,000.00	\$ 6,000.00	
19	Removal of SCADA/Aux Panel/Weather Station	1	EA	\$ 200.00	\$ 200.00	
20	Removal of DC Copper Wire	4,733	lbs	\$ 2.00	\$ 9,466.00	
21	Removal of AC Aluminum Wires	5,814	lbs	\$ 2.00	\$ 11,628.00	
	<b>Total Cost</b>				<b>\$ 326,058.41</b>	

## 5.0 Schedule of Salvage Values

Salvage Values					
Structural Infrastructure					
		QUANTITY	UNITS	\$/UNIT	VALUE
1	Steel Pile	350880	lbs	\$ 0.10	\$ 34,210.80
2	Steel Racking	252960	lbs	\$ 0.10	\$ 24,663.60
3	Chainlink Fence	3,775	ft	\$ 0.49	\$ 1,840.31
Electrical Infrastructure					
		QUANTITY	UNITS	\$/UNIT	VALUE
4	PV Modules	8,160	\$/Panel	\$ 29.00	\$ 236,640.00
5	Equipment Switchgear in Xfmrs	2	EA	\$ 1,200.00	\$ 2,400.00
6	DC Copper Wires	4,733	lbs	\$ 1.10	\$ 5,206.30
7	AC Aluminum Wires	5,814	lbs	\$ 0.62	\$ 3,604.68
	<b>Total</b>				<b>\$ 308,565.69</b>

## 6.0 Schedule of Summary

Summary		
Description	Cost	Units
Decommissioning Estimate (DE)	\$ 326,058.41	\$
Factor of Safety (FoS)	1.075	
DE with FoS	\$ 350,512.79	\$
Salvage Estimate (SE)	\$ 308,565.69	\$
Total Cost (DE-SE)	\$ 41,947.10	\$
Average Inflation rate	2.50%	%
Time Period	35	Years
Total Cost with FoS and Inflation after Time Period	\$ 97,121.05	\$

## Solar Power Purchase Agreement

(\_\_\_\_\_ Project)

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	Purchaser Name [_____] Street Name City, State 00000-000 Attention: Customer Contact	Name and Address	[Project Company Name] c/ New Energy Equity LLC 2530 Riva Road, Suite 200 Annapolis, Maryland 21401 Attention: Matthew Hankey
Phone	( ) -	Phone	443-267-5012 -
E-mail	@	E-mail	<a href="mailto:mhankey@newenergyequity.com">mhankey@newenergyequity.com</a>
Premises Ownership	Purchaser [ ] owns [ ] leases the Premises.  List Premises Owner, if different from Purchaser: _____		
Tax Status			
Project Name			

This Agreement sets forth the terms and conditions of the purchase and sale of System Output (defined below) from the solar electricity generation system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- |                         |  |
|-------------------------|--|
| <b><u>Exhibit 1</u></b> | Basic Terms and Conditions                           |
| <b><u>Exhibit 2</u></b> | System Description, Delivery Point and Premises      |
| <b><u>Exhibit 3</u></b> | General Terms and Conditions                         |
| <b><u>Exhibit 4</u></b> | Form of Performance Guaranty of Purchaser (optional) |

Purchaser: [Purchaser Name]

Seller: [Seller Name]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit 1**

### **Basic Terms and Conditions**

1. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
2. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
3. **Environmental Incentives and Environment Attributes:** Accrue to Seller.
4. **Contract Price:**

Contract Year	\$/kWh
1	[\$_____]
2	[\$_____]
3	[\$_____]
4	[\$_____]
5	[\$_____]
6	[\$_____]
7	[\$_____]
8	[\$_____]
9	[\$_____]
10	[\$_____]
11	[\$_____]
12	[\$_____]
13	[\$_____]
14	[\$_____]
15	[\$_____]
16	[\$_____]
17	[\$_____]
18	[\$_____]
19	[\$_____]
20	[\$_____]
21	[\$_____]
22	[\$_____]
23	[\$_____]
24	[\$_____]
25	[\$_____]

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

5. **Contract Price Inclusions.** The Contract Price is based on the following assumptions:
  - a. A Purchaser Parent Guaranty is \_\_\_is not\_\_\_being provided.
  - b. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of **Exhibit 3**) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).
2. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:
  - a. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - b. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - c. Roof membrane maintenance or reroofing work.

- d. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
- e. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser's energy use, the Premises and the Improvements, including building plans and specifications.

3. Termination Payment Schedule (Exhibit 3, Section 11(b)):

Contract Year	Termination Payment (\$)
1	[\$ ]
2	[\$ ]
3	[\$ ]
4	[\$ ]
5	[\$ ]
6	[\$ ]
7	[\$ ]
8	[\$ ]
9	[\$ ]
10	[\$ ]
11	[\$ ]
12	[\$ ]
13	[\$ ]
14	[\$ ]
15	[\$ ]
16	[\$ ]
17	[\$ ]
18	[\$ ]
19	[\$ ]
20	[\$ ]
21	[\$ ]
22	[\$ ]
23	[\$ ]
24	[\$ ]
25	[\$ ]



**Exhibit 2**

**System Description, Delivery Point and Premises**

1. **System Location:**
2. **System Size (DC kW):**
3. **Host Utility:**
4. **System Description (Ground mount, rooftop, car port, etc.):**
5. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
  - a. Premises, including the Improvements (as applicable);
  - b. Proposed System location;
  - c. Delivery point for electricity generated by the **System** (the “**Delivery Point**”);
  - d. Access points needed for Seller to install and service the System (building. access, electrical room, stairs etc.); and
  - e. Construction assumptions (if any).

**[Insert Schedule A]**

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### **Exhibit 3**

#### **General Terms and Conditions**

1. **Purchase and Sale of System Output.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, [all] of the [net metering credits] (the “System Output”) generated by the System during the Term (as defined in Section 2(a)) (the “Purchase Commitment”). System Output generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the System Output generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser's electricity consumption requirements at the Premises exceed the output of the System.
2. **Term and Termination.**
  - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The System Output supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 6) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “Term”).
  - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for one or more Additional Term(s) at a Contract Price to be agreed.
  - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 5 of Exhibit 1, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have attempted to negotiate a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
  - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred [365] days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. Neither Purchaser nor Seller shall be liable for any damages in connection with such termination.
3. **Billing and Payment; Taxes.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the System Output generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “Contract Price”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of System Output generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in **Exhibit 1**, Item 4 are Purchaser’s responsibility.
  - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of System Output produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
  - c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at an annual rate being the higher of (i) two and one-half percent (2.5%) above the Prime Rate or (ii) ten percent (10%), (but in either case, not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
  - d. **Taxes.**
    - i. **Purchaser’s Taxes.** Purchaser is responsible for: (1) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of System Output produced by the System, any personal property taxes imposed on the System, or the interconnection of the System to the utility’s electricity distribution system; and (2) property taxes.

ii. **Seller's Taxes.** Seller is responsible for payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of System Output under this Agreement ("**Seller's Taxes**").

e. **Disputed Invoices.** If Purchaser objects to all or a portion of an invoice, Purchaser shall notify Seller in writing within ten days of receipt of any invoice of any portion of the invoiced amount that it has a reasonable basis to dispute. Purchaser shall (i) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections, and (ii) on or before the date payment of the invoice is due, pay the undisputed portion of the invoice. The contested portion of any invoiced amount shall not relieve Purchaser of its obligation to pay the uncontested portion of such invoice when due. If Purchaser does not object within ten days of receipt of any invoice, Purchaser shall be obligated to pay the full amount of such invoice; provided, however, that Purchaser may subsequently object to such invoice and, if such objection proves to be correct, Purchaser shall be entitled to a full refund of the disputed amount, plus interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

4. **RECs and Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the RECs and Incentives. Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs and Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller. In the event of any damages accruing to Seller hereunder for the loss of System Output, such damages shall automatically include applicable losses of RECs or other Incentives.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System.

5. **Project Completion.**

a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c), Section 11, and the remaining provisions of this Section 5.

b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "**Approval**"):

- i. any zoning, land use and building permits required for Seller to construct, install and operate the System; and
- ii. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within 365 days after the Effective Date. "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.

d. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver System Output to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
  - ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, (b) Seller shall remove the System as required under Section 9; provided that if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement, Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
  - iii. **“Force Majeure Event”** means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of System Output due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; epidemic; pandemic (inclusive of the ongoing COVID-19 pandemic; however, in such case, only to the extent of events or circumstances arising after the Effective Date); terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller’s control or due to a Force Majeure Event.
- e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date of such notice, the **“Commercial Operation Date”**). **“Commercial Operation”** means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to operate from the relevant Governmental Authority. Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser’s reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **Seller’s General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulation and local building codes.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have ten (10) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such ten (10) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser’s approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 2(c) above.



- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any disruption to Purchaser's operations. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for System Output from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of System Output that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits. In the case of any such relocation, Purchaser shall reimburse Seller for all costs of such relocation, including the loss of revenues, and any loss of RECs or Incentives ("Lost Income").

## 7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Site Lease Access Rights.** Purchaser and Seller are entering into a separate Site Lease Agreement providing for access to, on, over, under and across the Premises during the Term (the "Site Lease"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. During the Term, Purchaser shall preserve and protect Seller's rights under the Site Lease and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller may record a customary memorandum of lease in the land records respecting the Site Lease.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors.
- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("Insolation") is essential to Seller's

performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.

e. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.

f. **Liens.**

- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System, other than liens for financing as to which the lienholder has provided Seller an executed SNDA in the form attached hereto as Exhibit 4. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).

## **8. Relocation of Purchaser Operations.**

If, during the Term, Purchaser ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Purchaser is otherwise unable to continue to accept the System Output for any other reason (other than an Event of Default by Seller), Purchaser shall provide Seller with as much advance notice as is practicable under the circumstances. Purchaser shall assist Seller in facilitating the assumption of this Agreement by the new occupant of the premises as permitted under Section 17 or a new power purchase agreement between Seller and a new subscriber. In the event no assignment or new agreement is accomplished for the same Purchase Commitment within 365 days of Purchaser's notice to Seller, Purchaser may elect to terminate this Agreement and pay the Termination Payment. This situation shall not be considered an Event of Default and Purchaser's liability to Seller for such early termination shall be limited to the payment of the Termination Payment.

## **9. Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and

repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

**10. Measurement.**

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter (the "**Meter**"). Purchaser shall have access to the metered energy output data via online access to the monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter regularly in accordance with manufacturer's recommendations. If the meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior invoices shall be adjusted accordingly, and any amounts owed to Purchaser shall be credited against future invoices for System Output. If the meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior invoices shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during the twelve-month period preceding the test and any amounts owed to Purchaser shall be credited against future invoices for System Output.

**11. Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is an "**Event of Default**":
  - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within thirty (30) days of the date such payment is due ("**Payment Default**");
  - ii. failure of a Party to secure the release of any lien not expressly permitted under this Agreement within thirty (30) days following notice of such non-permitted lien by the other Party;
  - iii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Event of Default cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
  - iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
  - vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Purchaser pays the Termination Payment determined under Section 6 of Exhibit 1 within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- b. **Remedies.**
  - i. **Suspension and Step-in Rights.** Upon the occurrence and during the continuation of an Event of Default by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Event of Default in full, or (b) of termination of

this Agreement. Seller's rights under this Section 11(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity. In the event of an Event of Default by Seller, Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser's and Seller's obligations under this Agreement shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

- ii. **Termination.** Upon the occurrence and during the continuation of an Event of Default, and subject to the Step-in Rights of subsection (i) above, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of an Event of Default under Section 11(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
  - iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
    - (1) **Termination by Seller.** If Seller terminates this Agreement for an Event of Default by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.
    - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11(b)(iii)(2) cannot be less than zero.
  - iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
  - v. **Limitation of Liability.** Seller's maximum liability under this Agreement, whether in contract, warranty, indemnity, tort, negligence, strict liability, or otherwise, shall in no event exceed the aggregate amount of the remaining payments to be made by Purchaser pursuant to Section 3 of this Agreement calculated as of the date of the last event or occurrence giving rise to Seller's alleged liability.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of an Event of Default by Purchaser pursuant to Section 11(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 11(b)(ii), nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Event of Default under this Agreement.
  - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for an Event of Default, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Event of Default; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Section 6 of Exhibit 1 following an Event of Default by Purchaser.

- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for System Output that would have been delivered to Purchaser but for a Purchaser breach or Event of Default.

## 12. **Representations and Warranties.**

### a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

### b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Site Rights.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the rights conferred in the Site Lease; (b) such grant does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the rights under the Site Lease to Seller so that Seller may perform its obligations under this Agreement.
- ii. **No Litigation.** No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser.
- iii. **Financial Information.** Audited financial statements of Purchaser for the most recent three calendar years, together with any unaudited interim financial statements of Purchaser, have been provided to Seller and: (i) have each been prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein; and (ii) present fairly and accurately the financial condition of Purchaser as of the dates thereof and results of its operations for the periods covered thereby. Purchaser further represents and warrants to Seller that since the date of the most recent of the above-referenced financial statements, there has been no material adverse change in Purchaser's financial condition, business, operations, or prospects.
- iv. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- v. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.
- vi. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- vii. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

### c. **Seller's Warranties.**



- i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
  - ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. IF A PERFORMANCE GUARANTY IS BEING PROVIDED BY PURCHASER AS NOTED IN SECTION 4(d) OF EXHIBIT 1, THE PERFORMANCE GUARANTY WILL REPRESENT A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

### 13. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
  - i. **Seller's Insurance.** Seller shall maintain or ensure the following is maintained (a) property insurance on the System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
  - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the other Party is named as an additional insured and the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

### 14. **Ownership; Option to Purchase.**

- a. **Ownership of System.**
  - i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System, and all RECs and Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of

personal property as defined under Article 9 of the Uniform Commercial Code.

**b. Option to Purchase.**

- i. Exercise of Option. At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment set forth in Section 6 of Exhibit 1 applicable as of the date of the transfer of title to the System. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. Fair Market Value. The “**Fair Market Value**” of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iii. Title Transfer; Warranties; Manuals. Seller shall transfer good title to the System to Purchaser upon Seller’s receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold “as is, where is, with all faults”. Seller will assign to Purchaser any manufacturer’s warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller’s possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser’s reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), Seller will have no further liabilities or obligations hereunder for the System.

**15. Indemnification and Limitations of Liability.**

- a. General. Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party’s and its affiliates’ respective directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (1) any Claim (as defined in Section 15(b) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 12 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).
- b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(b) for any Claim for which such notice is not provided if the

failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(iv)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
  - ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
  - iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 16, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(d).
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES, IN COMBINATION WITH ANY REMEDIES PROVIDED UNDER THE SITE LEASE, ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination; provided, however, that if such Change in Law is the result of any application or action of Purchaser, then Purchaser shall be liable to pay Seller the applicable amount listed in the Termination Payment Schedule.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable

Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

**17. Assignment and Financing.**

**a. Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i):
  1. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
  2. Purchaser may, by providing prior notice to Seller, assign this Agreement:
    - a. to an affiliate of Purchaser or a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness; and
    - b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

- c. Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

**18. Confidentiality.**

- a. Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

**b. Permitted Disclosures.** Notwithstanding Section 18(a):

- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

**c. Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

**d. Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

**19. General Provisions**

**a. Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.

**b. Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to the conflicts of law principles thereof.

**c. Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.

- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of System Output from the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of Exhibit 3







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