



**ERIE COUNTY REQUEST FOR PROPOSAL  
(RFP) TO PROVIDE SOLAR PHOTOVOLTAIC  
(PV) SYSTEMS FOR POWER PURCHASE BY  
ERIE COUNTY**

**RFP # 1530VF**

**5/29/15**

**Erie County Department of Environment and Planning**

**EDWARD A. RATH COUNTY OFFICE BUILDING**

**95 FRANKLIN STREET**

**BUFFALO, NEW YORK 14202**

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## 1. INTRODUCTION

The County of Erie, New York (the "RFP Issuer") wishes to increase its use of environmentally friendly energy and to optimize the rates paid for electricity through the installation of one or more solar photovoltaic ("PV") systems at location(s) set forth in Section 5 hereof or location(s) owned or leased by the proposer as long as the site is within the same utility territory, NYISO Load Zone and eligible for remote net metering to the RFP Issuer under New York law.(the "Project"). Special consideration will be given to remote net metering sites that are located within the jurisdiction of the County of Erie, NY. In addition, special consideration will also be given to grandfathered remote net metering monetary credited projects. The purpose of this Request for Proposals is to seek a Solar Energy Services Provider ("Solar Provider") to design, install, finance, own, operate, and maintain one or more Projects pursuant to the terms and conditions of a Solar Energy Power Purchase Agreement (the "PPA"). The RFP Issuer will purchase from the selected Solar Provider all of the electricity output generated by the Project in accordance with the terms and conditions of the PPA. To the extent the price offered in response to this RFP is based on incentives offered by New York State or other jurisdictions, the successful bidder is solely responsible for obtaining approval to participate in the incentive programs.

The County of Erie, NY requests: One (1) original, four (4) copies and one (1) electronic copy in PDF format on CD or flash drive of sealed proposals must be received by Erie County Department of Environment and Planning (Attention: Thomas R. Hersey, Jr. Deputy Commissioner, Erie County Department of Environment and Planning, Room 1077, Rath Building, 95 Franklin Street, Buffalo, NY) no later than by **12:00 p.m. on Friday, July 10, 2015**. Proposal submissions by e-mail or fax will not be accepted. Proposals received after the date and time noted above will not be considered. Proposal submissions will only be accepted at County of Erie offices.

Proposals must be held firm and cannot be withdrawn for one hundred twenty (120) calendar days after the opening date. The RFP Issuer reserves the right to amend or terminate this Request for Proposal, accept all or any part of a proposal, reject all proposals, waive any informalities or non-material deficiencies in a proposal, and award the proposal to the proposer that, in the RFP Issuer's judgment, will be in the RFP Issuer's best interests.

This RFP may include to the extent available the provisions of Section 66-j of the New York State Public Service Law and provisions adopted by the Public Services Commission providing for remote net metering of renewable energy generation from solar. The RFP Issuer expects the Project(s) proposed will take advantage of solar incentives that are available from New York State

This RFP is not a contract offer, and no contract will exist unless and until a PPA is signed by the RFP Issuer and the successful Solar Provider. Interested parties should submit a proposal in accordance with the requirements and directions contained in this RFP. Proposers are prohibited from contacting any RFP Issuer employee, officer or official concerning this RFP, except as set forth in Section 3 below. A proposer's failure to comply with this requirement may result in disqualification. Due to the complexity of the proposed project and contemplated agreements, along with the hybrid nature of the RFP Issuer's combined request for energy pricing, system purchase option and grant of license or leasehold rights in favor of the selected provider, the RFP Issuer is not and shall not be bound to select a winning proposal based upon lowest energy pricing alone. The RFP Issuer reserves all rights to reject any or all proposals and to negotiate PPA terms and conditions in the best interests of the RFP Issuer.

No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

The RFP Issuer reserves the right to amend or terminate this RFP, accept all or any part of a proposal, reject all proposals, waive any informalities or non-material deficiencies in a proposal, and award the proposal to the proposer that, in the RFP Issuer's best judgment, will be in the RFP Issuer's best interest.

Any contracts shall be preceded by a Notice of Award and execution of a Letter of Intent and thereafter be contingent and non-binding until all approvals are received from applicable regulatory agencies and authorities, which may include the RFP Issuer, applicable planning boards and after completion of applicable project reviews, including review under the State Environmental Quality Review Act ("SEQRA").

**2. GENERAL INFORMATION**

**A. Key Dates**

Date	Action
May 29, 2015	RFP Release Date
June 10, 2015	Non-mandatory pre-proposal meeting 10:30 AM Erie County Rath Building, 95 Franklin Street , Room 1404, Buffalo, NY
June 18, 2015	Question Submission Deadline
June 24, 2015	Addendum available on website
July 10, 2015	Proposals Due by 12 PM
August 2015	Selection of Winning Proposal
September 2015	Preliminary Contract Award (Pending Legislative Approval)
October 2015	PPA's Executed (Pending Notice to Proceed)

**B. Obtaining the RFP**

The documents comprising the Request for Proposals are available electronically. The documents may be obtained in electronic format at the following link: [www.erie.gov](http://www.erie.gov)

All documents that are a part of this RFP may also be obtained by contacting Thomas R. Hersey, Jr., Deputy Commissioner, Erie County Department of Environment and Planning at [Thomas.Hersey@erie.gov](mailto:Thomas.Hersey@erie.gov) or 716.858.7674. The documents may be obtained in hard copy at Erie County Department of Environment and Planning, Room 1077, Rath Building, 95 Franklin Street, Buffalo, NY 14202.

### C. **Right to Amend or Terminate the RFP**

The RFP Issuer may, in its sole discretion, clarify, modify, amend or terminate this RFP if the RFP Issuer determines it is in the RFP Issuer's best interest. The RFP Issuer also may, at its sole discretion exercise the following rights and options to:

- Reject any or all proposals;
- Issue amendments to this RFP;
- Issue additional solicitations for proposals
- Waive any irregularities in proposals received after notification to proposers affected;
- Select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- Conduct investigations with respect to the qualifications of each proposer
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);
- To request or obtain additional information the County deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- While this is a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals **MUST** arrive at the place specified herein and be time stamped prior to the deadline

## 3. **RFP INSTRUCTIONS**

### A. **Proposal Submission Instructions**

Proposals must be received by Erie County Department of Environment and Planning (Attention: Thomas R. Hersey, Jr. Deputy Commissioner, Erie County Department of Environment and Planning, Room 1077, Rath Building, 95 Franklin Street, Buffalo, NY 14202) no later than by **12:00 p.m. on Friday, July 10, 2015**. Submissions by e-mail or fax will not be accepted. The RFP Issuer will reject proposals received after the date and time noted above. Do not send proposals directly to the RFP Issuer. All proposals must be sent to the County of Erie. One (1) original, four (4) copies and one (1) electronic copy in PDF format on CD or flash drive of all proposal documents must be submitted in sealed envelopes clearly labeled with the proposer's name, the proposer's address, the words "PROPOSAL DOCUMENTS." Proposal prices and other system information must be submitted on the

Proposal Form included in this RFP. Proposals may be withdrawn personally or in writing provided that the County of Erie, the RFP Issuer, receives the withdrawal request prior to the time and date the proposals are scheduled to be opened. Proposals are considered valid, and may not be withdrawn, cancelled or modified, for one hundred twenty (120) days after the opening date, to give the RFP Issuer sufficient time to review the proposals, investigate the proposers' qualifications, secure any required municipal approvals, and execute a PPA with the successful proposer. An authorized person representing the legal entity of the proposer must sign the Proposal Form and all other forms included in this RFP. This RFP process is conducted pursuant to Article 9 of the New York State Energy Law: Energy Performance Contracts in Connection with Public Buildings and Facilities. All proposed energy performance contracts and other financing arrangements proposed must be capable of being implemented under the laws and regulations of the State of New York.

## **B. Questions**

Questions concerning the process and procedures applicable to the RFP, and concerning this RFP's Specifications or the PPA are to be submitted in writing by e-mail or by fax and directed only to:

RFP Issuer Representative Name: Thomas Hersey

E-mail: [Thomas.Hersey@erie.gov](mailto:Thomas.Hersey@erie.gov)

Fax number: 716-858-7713

Deadline for submission of questions is **June 18, 2015**. Questions will be answered in writing. Answers to questions received will be answered in writing as an Addendum to this RFP and will be posted to the website provided when downloading the RFP. It is the responsibility of each respondent to determine whether any addenda have been issued and if so, download copies directly from the website. This Addendum will be posted to the website no later than **June 24, 2015**. **No communications of any kind will be binding against the county, except for the formal written responses to any request for clarification.**

Proposers are prohibited from contacting any RFP Issuer employee, officer or official concerning this RFP. A proposer's failure to comply with this requirement may result in disqualification.

No oral statement of the RFP Issuer shall be effective to waive, change or otherwise modify any of the provisions of this RFP, and no proposer shall rely on any alleged oral statement.

## **4. ADDITIONAL INFORMATION**

### **A. Rights Reserved**

The RFP Issuer reserves the right to ask any proposer to clarify its proposal or to submit additional information that the RFP Issuer in its sole discretion deems desirable.

### **B. Cost for Preparing Proposal**

Each proposer's costs incurred in developing its proposal are its sole responsibility, and the RFP Issuer shall have no liability for such cost.

### **C. Ownership of Proposals**

All proposals submitted become the RFP Issuer's property and will not be returned to the proposers.

#### D. **Freedom of Information Act**

All information submitted in a proposal or in response to a request for additional information is subject to disclosure under the New York State Freedom of Information Act as amended and judicially interpreted. A proposer's responses may contain financial, proprietary, trade secret or other data that it claims should not be public (the "Confidential Information"). A Proposer must identify specifically the pages and portions of its proposal or additional information that contain the claimed Confidential Information by visibly marking all such pages and portions. Provided that the Proposer cooperates with the RFP Issuer as described in this section, the RFP Issuer shall to the extent permitted by law, protect from unauthorized disclosure such Confidential Information.

If the RFP Issuer receives a request for a proposer's Confidential Information, it will promptly notify the proposer in writing of such request and provide the proposer with a copy of any written disclosure request. The Proposer may provide written consent to the disclosure, or may object to the disclosure by notifying the RFP Issuer in writing to withhold disclosure of the information, identifying in the notice the basis for its objection, including the statutory exemption(s) from disclosure. The Proposer shall be responsible for defending any complaint brought in connection with the nondisclosure, including, without limitation, appearing before the Freedom of Information Commission, and providing witnesses and documents as appropriate.

#### E. **Required Disclosures**

Each proposer shall complete and execute **Exhibits E1 through E11** to this RFP. In these Exhibits, each proposer must disclose, if applicable:

1. Its inability or unwillingness to meet any requirement of this RFP, including, but not limited to, any of the terms or provisions of the PPA. Specific exceptions or additions should be included as an attachment to ExhibitH;
2. If it is listed on the State of New York's Debarment List;
3. If it is ineligible under any applicable law or regulation to be awarded the contracts because of occupational safety and health law violations;
4. All resolved and pending arbitrations and litigation matters in which the proposer or any of its principals (regardless of place of employment) has been involved within the last ten (10) years;
5. All criminal proceedings in which the proposer or any of its principals (regardless of place of employment) has ever been the subject; and
6. Each instance in which it or any of its principals (regardless of place of employment) has ever been found to have violated any state or local ethics law, regulation, ordinance, code, policy or standard, or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on public works projects or contracts. A proposer's acceptability based on these disclosures lies solely in the RFP Issuer's discretion.

#### F. **Legal Status**

If a proposer is a corporation, limited liability company or other business entity that is required to register with the New York Secretary of the State's Office, it must have a current registration on file with that office and be in good standing in its jurisdiction of incorporation. The RFP Issuer may, in its sole discretion, request acceptable evidence of

any proposer's legal status. The RFP Issuer further reserves the right to require indemnifications and guaranties within the contemplated PPA from principals and/or parent companies of the provider.

**G. Presumption of Proposer's Full Knowledge**

Each proposer is responsible for having read and understood each document in this RFP and any addenda issued by the RFP Issuer. A proposer's failure to have reviewed all information that is part of or applicable to this RFP shall in no way relieve it from any aspect of its proposal or the obligations related thereto.

Each proposer is deemed to be familiar with and is required to comply with all federal, state and local statutes, regulations, ordinances, codes and orders that in any manner relate to this RFP or the performance of the work described herein.

By submitting a proposal, each proposer represents that it has thoroughly examined and become familiar with the scope of work outlined in this RFP, and it is capable of performing the work and executing the contracts necessary to achieve the RFP Issuer's objectives.

**H. Insurance**

The successful proposer shall, at its own expense and cost, obtain and keep in force at least the insurance listed in the Solar Energy Power Purchase Agreement (PPA) that is a part of this RFP. The RFP Issuer reserves the right to request from the successful proposer a complete, certified copy of each required insurance policy. The model PPA is attached hereto as **Exhibit H**.

**I. Advertising**

The successful proposer shall not name the RFP Issuer in its advertising, news releases, or promotional efforts without the RFP Issuer's prior written approval. If it chooses, the successful proposer may list the RFP Issuer in a statement of references or similar document required as part of its response to a public procurement. The RFP Issuer's permission to the successful proposer to do so is not a statement about the quality of the successful proposer's work or the RFP Issuer's endorsement of the successful proposer.

**J. Non-Collusion Form**

Each proposer shall submit a completed Proposer's Non-Collusion Bidding Certificate that is attached as (**Exhibit E9**) to this RFP.

**5. PROPOSAL SPECIFICATIONS**

**A. Project Description**

The RFP Issuer has determined that the location(s) highlighted below are potential site(s) for solar PV systems. The RFP Issuer will look at potential system(s) detailed in the chart below. Preliminary details of the potential systems, along with the location of the systems are attached hereto as Exhibit I. Exhibit I designs are preliminary site location drawings. These drawings are to provide guidance only to the proposer. Please design your system(s) as you see fit.

Proposers may include alternative system designs for the potential sites. In the event the

proposer would like to propose an alternative site for the solar PV system that it owns or controls to provide electricity to the RFP Issuer under a RNMA, please identify the site (which must be within the same utility territory, NYISO Load Zone and eligible for remote net metering to the RFP Issuer under New York law) and the expected production from the solar PV system (which must be approximately the same size and have comparable energy production as the sites listed below). Proof of site control should be included with the proposal. Proof of site control is defined as: Proof of ownership or site control showing that the proposer is the fee simple owner of the eligible property such as a copy of registered warranty deed or a closing statement – Proof of site control can be a leasehold interest or an option to acquire such an interest. **Special consideration will be given to remote net metering sites that are located within the jurisdiction of the County of Erie. In addition, special consideration will also be given to grandfathered remote net metering monetary credited projects.**

The selected Solar Provider(s) will design, install, finance, own, operate, and maintain solar PV systems that will maximize the solar resources at one or more of these Project sites (or alternative sites), taking into account electrical demand and load patterns, installation site, available solar resource, installation costs and other relevant factors.

The aggregated annual kWh usage across the County of Erie & Erie County Sewer Districts is greater than 59,000,000 kWh. It is anticipated that the County has sufficient T & D costs to absorb the credits that would be created. Information on usage in the National Grid and NYSEG territories is attached as Exhibit J.

The County has excess land sites it believes are viable for solar generating projects which are listed below. Proposals for alternate sites (non-county owned) are also encouraged.

### Potential Locations

Project	Name	Owner	Location SBL #	Type	Estimated Size
1	Alden Correctional Facility	County of Erie	96.00-5-9.1	Ground Mount	1MW
2	Aurora Highway Garage	County of Erie	186.00-5-6.111	Ground Mount	1 MW
3	Erie County Home & Infirmary	County of Erie	96.00-2-20	Ground Mount	1 MW
4	Erie County Sewer District No. 2 Big Sister Creek WWTP Site	County of Erie	220.00-1-16	Ground Mount	2MW
5	Erie County Sewer District No. 2 18-Mile Creek PS Site	County of Erie	193.00-1-9	Ground Mount	2MW
6	Erie County Sewer District No. 1 Cayuga ORF Site	County of Erie	124.00-5-29	Ground Mount	2MW

7	Alternate Remote Net Metering Site	Provided by Proposer	TBD	Ground Mount	2 MW
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**B. Power Purchase Agreement (PPA) and Facility Location Rights**

The RFP Issuer expects that the Projects will be designed, installed, financed, owned, operated, and maintained pursuant to the terms and conditions of a PPA between the RFP Issuer and the Solar Provider. The PPA will apply to each Project. The PPA is expected to be for a 15, 20 or 25- year term with options to extend and with available buyout options. The RFP Issuer will pay no up-front fees in connection with the installation of the Projects. If the Project is built on property owned or leased by the RFP Issuer and the RFP Issuer chooses not to purchase the solar PV systems at the end of the PPA or any renewal term, the Solar Provider will remove the Solar PV systems and return the Project location to pre-existing conditions, all at the Solar Provider's sole cost and expense and at no cost or expense to the RFP Issuer. The PPA will meet the definition of an energy contract per Article 9-102 of the New York State Energy Law.

If the Project is built on property owned or leased by the RFP Issuer, the RFP Issuer anticipates granting the selected provider with a revocable license within the PPA to install the contemplated project within and upon buildings and lands owned by the RFP Issuer. If and to the extent that any provider seeks leasehold location rights for installation, operation and maintenance of the proposed project, the RFP Issuer will be required to undertake additional authorizations in accordance with applicable law. Interested providers are encouraged to consult with counsel prior to submission of proposals to verify the applicable laws and restrictions relating to the RFP Issuer’s ability to grant leasehold rights.

The RFP Issuer expects that the PPA will be in the form attached as **Exhibit H** to this RFP. In addition, the PPA will include the following clause, as required by New York State Energy Law Article 9: “This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefore shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.”

**C. Pricing Structure**

No capital funds for the Project are available from the RFP Issuer. The only obligation of the RFP Issuer in connection with Project shall be the monthly payments for electricity produced by the Project as set forth in the PPA. The RFP Issuer will accept proposals that have a fixed electricity price for the term of the PPA or a first year electricity price with annual escalators (up to 3%) over the term of the PPA. Each proposer shall complete the PPA Pricing Table attached hereto as Exhibit B for each alternative Project and for each alternative pricing structure that it wishes to submit to the RFP Issuer for consideration.

**The County emphasizes that it will consider bids that utilize alternatives to the PPA structure outlined in the RFP. It is the responsibility of the bidder to explain all assumptions used in a proposed alternative and to quantify the benefits of the alternative proposal. Bidders should submit a separate Exhibit B and supporting documentation unique to each alternative, but do not need to submit separate proposals or duplicate submissions not unique to each alternative**

**D. Termination Values**

The RFP Issuer will not pay any termination value to the Solar Provider in the event the RFP Issuer chooses to terminate the PPA for cause or for circumstances outside the control of the RFP Issuer prior to system installation. In addition, the RFP Issuer is interested in the potential termination costs during the term of the PPA in the event the RFP Issuer chooses to terminate the PPA for convenience. Each proposer shall complete the PPA Termination Value Table attached hereto as Exhibit C for each Project and for each alternative pricing structure that it wishes to submit to the RFP Issuer for consideration.

**E. Purchase Options**

If the Project is built on property owned or leased by the RFP Issuer, the RFP Issuer may wish to purchase the proposed Facilities during the term of the PPA if it is deemed in the best interest of the RFP Issuer. Each proposer shall, as part of its proposal, provide the RFP Issuer with the dates it will allow the RFP Issuer to purchase the proposed Facilities and how the purchase option exercise price will be determined.

**F. Solar Provider Qualifications**

The selected Solar Provider or Solar Providers will demonstrate extensive training, relevant expertise and a thorough knowledge of the professional services, functions, activities and related responsibilities to successfully perform its role in the solar PV installations. The selected Solar Provider or Solar Providers, and subcontractors, shall possess all applicable valid and pertinent State of New York contractor construction licenses for the installation of commercial solar PV systems in this state, including, but not limited to PV installer certifications from NYSERDA. A listing of appropriate licenses held and license numbers, including NYSERDA eligible installer or contractor number is to be provided with submitted proposals.

**G. Project Scope and Standards**

The selected Solar Provider will design, install, finance, own, operate, and maintain the Project(s) pursuant to the terms and conditions of a PPA, and the RFP Issuer will purchase from the Solar Provider all of the energy output generated by the Projects in accordance with the terms and conditions of the PPA. The scope of this RFP is all-inclusive, a turn-key solar installation, and includes planning, engineering, labor, materials, delivery, installation and commissioning, as well as all warranties and maintenance as described more fully in the PPA.

1. All solar panels, racking systems and inverters shall be new with acceptable warranties that meet industry standards.
2. All solar panels, racking systems, wire and conduit and anchoring equipment shall meet applicable building codes.
3. All equipment shall be UL listed.

4. The Projects must use energy-generation devices that are commercially available and offer warranties, spare parts, and service commensurate with their commercial status.
5. Solar production shall include web-based monitoring and shall monitor the electrical use of the facilities in real time. Both the solar production and avoided emissions of the Projects shall be electronically displayed for public viewing via a monitor. Solar Provider will be responsible for purchasing and setting up this software, CPU and at minimum 30" Diagonal monitor. The RFP Issuer will determine the location of this monitor.
6. The renewable electric generation shall meet the definition of renewable as defined by Article 1-103.12 of the New York State Energy Law.
7. This section does not fully list all system requirements or all of the selected Solar Provider's obligations. The PPA that is a part of this RFP contains all of the terms, standards and obligations of the selected Solar Provider or Solar Providers, and each proposer must review it carefully and make its proposal in light of its terms.

#### **H. Proposal Contents**

Proposals shall include the following information and documents, be clear and unambiguous, and be presented in the manner set forth below:

1. A Project Understanding Summary that includes: an overview of the principal elements of the proposal; demonstration of an understanding of the project objectives; a description of the proposer's approach to solar PV systems; any suggestions or special concerns about which the RFP Issuer should be aware; the proposed configuration of equipment; suggested progress reporting process; and any additional scope of work tasks proposed as necessary for the successful completion of the Projects.
2. If the Project is built on property owned or leased by the RFP Issuer, the provider's acceptance of the revocable license rights provided within the PPA, or in the alternative, a description of proposed access rights required by provider, along with a detailed narrative describing the need or requirement for alternative rights.
3. If the proposed Project is built on property owned or controlled by Provider proof of site control is to be included with the proposal. Proof of site control is defined as: Proof of ownership or site control showing that the proposer is the fee simple owner of the eligible property such as a copy of registered warranty deed or a closing statement – Proof of site control can be a leasehold interest or an option to acquire such an interest.
4. A system schematic design layout for the solar PV systems, including PV model type and model number, wattage, number of modules, year 1 expected production, expected degradation percentage per annum, inverter type and model, mounting system type, azimuth, tilt, system size AC and DC, and the

impact on time demand-related charges on the RFP Issuer's utility bills and daily demand charges (peak demand and time tariff).

5. Equipment manufacturer data sheets and warranties should be included in proposal.
6. A description of the security provisions that is included in the system design including but not limited to fencing, lighting, video surveillance, etc.
7. All site work, grading, tree trimming and/or removal are to be included in the design and the price quoted. This is to include all provisions for rock or obstructions for footings, alternative design and cost.
8. Permitting is to include all ministerial and non-ministerial permits. The cost of all engineering and permitting is to be included in the pricing.
9. A statement on the assumed interconnection costs used to determine the proposed PPA price.
10. A statement confirming Solar Provider will provide internet connection for monitoring for the duration of the Term of the PPA.
11. Please provide details regarding the expected real property, sales and use taxes that are expected to be paid in connection with the construction, operation and sale of electricity from the proposed Project. If the proposed Project is to be located in the County of Erie, NY, please include the amount of PILOT payments that the proposer has assumed will be paid to the County and other entities having jurisdiction over the property along with the amount the proposed PPA price per kWh will increase/decrease for each \$1,000 of annual PILOT payments above or below the assumed amount. If the proposed Project is located outside the County of Erie, NY, please provide the amount of the PILOT payment that will be made to the relevant taxing jurisdiction(s), confirmation that such jurisdiction(s) has approved the PILOT payment and that the proposed PPA pricing is firm and will not change due to change in property tax assessments.
12. The PPA price included in the proposal should have built in reserves for taxes, interconnection costs, permitting and engineering fees, and other miscellaneous fees. This PPA price will be firm for 120 days.
13. Details about the estimated kWh generated by the proposed photovoltaic systems, including all necessary assumptions -- for example, sun light availability, maintenance down time, MTBF (mean time between failures), efficiency of the systems proposed, efficiency losses, net metering, etc.. Copies of PV Syst., PV Watts or other industry standard reports used to estimate production for each proposed system design should be included with proposal.
14. A complete project schedule indicating major project milestones and durations. This should include method and frequency of reporting project status to RFP Issuer.

15. Sufficient information for the RFP Issuer to evaluate the Solar Provider's ability to successfully complete the scope of work. If all or part of this solar installation will be subcontracted out sufficient information on the subcontractor's ability to complete their scope of work should be included. Proof of authority to do business in New York, a listing of appropriate licenses held and license numbers, including NYSERDA eligible installer or contractor number is to be provided with submitted proposals.
16. Sufficient, current information indicating the Solar Provider's financial strength in terms of capital and liquid assets sufficient to successfully complete the projects listed in this RFP (such information may include but not be limited to bank references, tax returns, income statements, etc.), and the stability of the Solar Provider in terms of length of service, professional capabilities, construction experience and capabilities over time.
17. If the RFP Issuer will be executing the PPA with an Entity other than the Proposer include information for items 14 and 15 above in relation to the Entity that will be executing the PPA with the RFP Issuer.
18. A list of at least five (5) similar projects that the Solar Provider has completed within the last three (3) years. Project information must include project description, client name (and the person to contact, telephone number(s) and e-mail addresses), year completed, project construction and design cost, and a description of the each project's track record
19. A description of the Solar Provider's capability to monitor PV generating systems (for example only, the number of systems it monitors in centralized stations, etc.).
20. A description of the Solar Provider's ability to respond quickly, efficiently and cost effectively to service calls so the photovoltaic systems are operating at optimum output.
21. A statement that, if selected, the Solar Provider agrees to comply with all of the Terms and Conditions of all grants or NYSERDA awards that may be received.
22. The completed Proposal Submission Checklist (**Exhibit A**).
23. The completed PPA Pricing Table for **each** alternative pricing structure for the Project(s). Please provide additional versions of the PPA Pricing Tables, as needed, to account for different terms, escalators or pricing. The pricing structure must include current PON 2112 incentive, Blocks 4 and 5 of PON 2112, and NY Sun Initiative Large Block Program. (**Exhibit B**).
24. The completed PPA Termination Value Table for each alternative pricing structure for the Project(s) Please include additional versions of the PPA Termination Value Tables, as needed, to account for different terms, escalators or pricing. Pricing for each year is to be included. (**Exhibit C**).
25. Purchase option dates and how the purchase option exercise price will be determined. (**Exhibit C**).

26. The completed Equipment Specification, Cost and Production Table (**Exhibit D**). This should include a separate table for each proposed system size.
27. A proposed Power Purchasing Agreement (PPA) based on the template provided (**Exhibit H**). The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and the County:

**a. INDEMNIFICATION AND INSURANCE**

“In addition to, and not in limitation of the insurance requirements contained herein the Contractor agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Contractor or third parties under the direction or control of the Contractor; and

(b) To provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto. Upon execution of any contract between the proposer and the County, the proposer will be required to provide proof of the insurance coverage described in (**Exhibit G**) Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

**b. INTELLECTUAL PROPERTY RIGHTS**

The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and the County:

All deliverables created under this Agreement by the Contractor are to be considered “works made for hire”. If any of the deliverables do not qualify as “works made for hire”, the Contractor hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Contractor agrees to assist the County, if required, in perfecting these rights. The Contractor shall provide the County with at least one copy of each deliverable.

The Contractor agrees to indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Contractor agrees to enable the County’s continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable will be

returned.

All records compiled by the Contractor in completing the work described in this Agreement, including but not limited to written reports, source codes, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Contractor may retain copies of such records for its own use.

**c. CONFLICT OF INTEREST**

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Erie. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the firm or any of its subsidiaries or affiliates. There shall be no conflicts in existence during the term of any contract with the County. The existence of a conflict shall be grounds for termination of a contract.

**d. COMPLIANCE WITH LAWS**

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of proposals, selection of proposers and the award of contracts are subject to provisions of all Federal, State and County laws, rules and regulations.

**e. EQUAL PAY CERTIFICATION**

During the term of this Contract, the Agency shall comply with Executive Order 13 (2014), and the Agency shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Agency, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification (**Exhibit E7**) and for any other purpose reasonably related to confirming the Agency's compliance with Erie County Executive Order No. 13 (2014). Violation of the provisions of Executive Order 13 (2014), which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

**f. NON-COLLUSION**

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official (**Exhibit E9**).

**g. NEW YORK STATE PREVAILING WAGE**

All wages paid as a part of this agreement must be in accordance with the State of New York prevailing wage requirements.

28. The completed Proposer's Disclosure Forms

- a. Initial Disclosure (**Exhibit E1**).
- b. Proposer certification (**Exhibit E2**)
- c. Certification Regarding Debarment and Suspension (**Exhibit E3**)
- d. Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals (**Exhibit E4**)
- e. Certification Regarding Lobbying; Certification for Contracts, Grants, Loans, and Cooperative Agreements (**Exhibit E5**)
- f. Apprenticeship Utilization Requirements (**Exhibit E6**)
- g. County of Erie Equal Pay Certification (**Exhibit E7**)
- h. Ethics and Offenses Certification (**Exhibit E8**)
- i. Proposer's Non-Collusion Bidding Certificate (**Exhibit E9**).
- j. The completed Proposer's Legal Status Disclosure Form (**Exhibit E10**).
- k. Each proposer shall submit an executed Iran Divestment Act Certification (**Exhibit E11**)

29. County of Erie Minority and Women's Business Enterprise requirements and forms (**Exhibit F**)

**6. AWARD CRITERIA & SELECTION**

- A. All proposals will be opened and analyzed by the Issuer, the County of Erie, NY. The Issuer will rank the proposals based on the criteria listed below. The RFP Issuer will ultimately select the winning proposal or proposals and execute PPAs with the selected solar providers.
- B. The RFP Issuer and its representatives reserve the right to correct, after proposer verification, any mistake in a proposal that is a clerical error, such as a price extension or a decimal point error. If an error exists in an extension of prices, the unit price shall prevail. In the event of a discrepancy between the price quoted in words and in figures, the words shall control.
- C. The RFP Issuer reserves the rights to accept all or any part of a proposal, reject all proposals, and waive any informalities or non-material deficiencies in a proposal. The RFP Issuer also reserves the right, if applicable, to award the purchase of

individual items under this RFP to any combination of separate proposals or proposers.

- D. The RFP Issuer will accept the proposal that, all things considered, the RFP Issuer determines is in its best interests. Although price will be an important factor, it will not be the only basis for award. The RFP Issuer will use the following criteria, among others, in evaluating proposals:
1. Proposal completeness and compliance with the RFP's requirements;
  2. Financial strength and stability;
  3. Photovoltaic engineering, project and construction experience;
  4. Project engineering analysis;
  5. Recent prior PPA experience;
  6. Equipment selected for the Project;
  7. Customer service and maintenance capabilities;
  8. PPA price/energy payment rate proposal; and
  9. Likelihood that the proposal will be awarded the NYSERDA rebate.
- E. The RFP Issuer will not award the proposal to any business that or person who is in arrears or in default to the RFP Issuer with regard to any tax, debt, contract, security or any other obligation.
- F. The RFP Issuer will select the proposal(s) that it deems to be in the RFP Issuer's best interest and issue a Preliminary Notice of Award to the successful proposer(s). The award may be subject to further discussions with the proposer(s). The making of a preliminary award to a proposer(s) does not provide the proposer(s) with any rights and does not impose upon the RFP Issuer any obligations. The RFP Issuer is free to withdraw a preliminary award at any time and for any reason. A proposer(s) has rights, and the RFP Issuer has obligations, only if and when a PPA and related agreements, if any, are executed by the RFP Issuer and the proposer(s).
- G. If the proposer(s) does not execute the PPA by **December 31, 2015**, unless extended by the RFP Issuer, the RFP Issuer may enter into discussions with another proposer(s).
- H. **Insurance Requirements** - See PPA attached. The proposer and/or subcontractors will be required to carry all applicable insurance required under the PPA for the full term of the PPA.
- I. **Compliance with Law**- The selected Solar Provider(s) shall comply with all applicable laws, regulations, ordinances, codes and orders of the United States of America, the State of New York and the RFP Issuer related to its proposal and the performance of the work described in the PPA.
- J. **Required Security**  
The selected proposer(s) will be required to provide the RFP Issuer with a **\$10,000 deposit** (the "Bid Deposit") upon execution of the PPA. Such deposit will be retained by the RFP Issuer, in escrow, until (i) the Project receives interconnection approval from the applicable utility, (ii) the PPA is terminated for convenience by the RFP Issuer or (iii) the selected proposer fails to obtain a NYSERDA rebate in the amount set forth in Exhibit B to its response, or fails to receive interconnection design approval from the utility having jurisdiction, or fails to receive permits from all authorities having jurisdiction on proposed project site. In

each such event, the deposit will be returned to the selected proposer(s). If the selected proposer(s) fails to meet its obligations under the PPA or breaches any term or provision of the PPA, the RFP Issuer will keep the deposit as liquidated damages for such failure or breach.

**EXHIBITS BEGIN**

## Exhibit A Proposal Submission Checklist

	1. Proposal Understanding Summary
	2. RFP Issuer Property - Access License Rights - Acceptance or Exceptions
	3. Project built on Proposer controlled property - Proof of site control
	4. Site specific system design layout
	5. Equipment data sheets, warranties, and Country of origin
	6. Estimate of kWh generation including PV Syst, PV watts or other report.
	7. Description of site work, tree work, fencing and security included in installation
	8. Project schedule including milestones, durations, progress reporting schedule
	9. Monitoring capabilities
	10. Operations and Maintenance description
	11. Compliance with NYSERDA terms and conditions
	12. Similar Project Descriptions
	13. Solar Provider Qualifications
	14. List of appropriate licenses and contractor registration numbers
	15. Solar Provider financial qualifications
	16. Entity executing PPA with RFP Issuer
	17. Statement regarding assumed interconnection costs
	18. Statement regarding taxes
	19. Exhibit A - Proposal Submission Checklist
	20. Exhibit B - PPA Pricing Table for each alternative pricing structure
	21. Exhibit C - PPA Termination/System Buy-Out Table for each alternative price
	22. Exhibit D - Equipment Specification Cost Production Table for each design
	23. Exhibit E1 - Proposer's Initial Disclosure Form
	24. Exhibit E2 – Proposer's Certification
	25. Exhibit E3 – Certification regarding Debarment and Suspension
	26. Exhibit E4 - Certification Regarding Drug-Free Workplace Requirements
	27. Exhibit E5 - Certification Regarding Lobbying Certification
	28. Exhibit E6 - Apprenticeship Requirements
	29. Exhibit E7 - Erie County Equal Pay Certification
	30. Exhibit E8 - Ethics and Offenses Certification
	31. Exhibit E9 – Non-Collusion Bidding Certificate
	32. Exhibit E10 – Legal Status Form

	33. Exhibit E11 – Iran Divestment Certification
	34. Exhibit F – Minority and Women’s Business Enterprise Requirements
	35. Exhibit G – Standard Insurance Requirements
	36. Exhibit H – Model PPA
	37. Exhibit I - Potential Site Details

## EXHIBIT B PPA PRICING TABLE

**Project:** \_\_\_\_\_  
**Initial PPA Price:** \$ \_\_\_\_\_ /kWh  
**Escalation Factor:** \$ \_\_\_\_\_%/annum  
 NYSERDA Rebate Program: \_\_\_\_\_  
**NYSERDA Rebate:** \$ \_\_\_\_\_ /Watt

Year	Expected Production (kWh)	PPA Rate (\$/kWh)	Expected 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			

\*Please note that the prices set forth above shall include all applicable sales, use, electricity and property taxes that are presently payable, or could become payable, during the term of the PPA, all of which are the sole responsibility of the Proposer. Please provide a completed PPA Pricing Table for each alternative pricing structure for the Project(s), as needed, to account for different terms, escalators or pricing. The pricing options are to include the current PON 2112 incentive level, Blocks 4 and 5 of PON 2112 and the NY Sun Initiative Large Block Program. Any additional price considerations are to be noted and explained.

**EXHIBIT C**  
**PPA TERMINATION/SYSTEM BUY-OUT TABLE**

Project: \_\_\_\_\_  
Project Size: \_\_\_\_\_ kW DC

Year	Termination Amount (\$)	Termination Amount per kW (\$/kWh)	System Buy-Out Amount (\$)	System Buy-Out Amount per kW(\$/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				

\*Please note that termination values set forth above shall include all potential costs and expenses associated with the early termination of the PPA. Termination values must be included for all years. This should include any potential payments made to ITC recapture or depreciation recapture associated with the early termination. In the event of early termination, the Solar Provider will remove the Solar PV systems and return the Project location to pre-existing conditions. The termination values will be liquidated damages for an early termination of the PPA and the proposer(s) will not recover any additional amounts for any reason whatsoever from the RFP Issuer in connection with an early termination of the PPA. If needed, please provide additional versions of PPA Termination Value Table for multiple PPA Pricing Tables.

## EXHIBIT D

### EQUIPMENT SPECIFICATION, COST AND PRODUCTION TABLE

**Project:** \_\_\_\_\_

**Size:** \_\_\_\_\_ kW DC

**Expected Production:** \_\_\_\_\_ kWh/annum (initial at the meter)

**Equipment Specifications- Equipment data sheets and warranties must be included. Include Country of Origin for PV Modules, Inverters, Racking and Monitoring.**

PV Modules	
Manufacturer:	
Country of Origin	
Model Number:	
Quantity:	
Length and Terms of Warranty:	
Inverters	
String Inverter or Remote Inverter:	
Manufacturer:	
Country of Origin	
Quantity:	
Length of Warranty:	
Racking Systems	
Manufacturer:	
Country of Origin	
Model Number:	
Ballast Requirement:	
Expected Weight per sq ft:	
Material (Aluminum/Stainless Steel):	
Monitoring Equipment	
Manufacturer:	

#### Costs

Item	Cost(\$)	Cost/Watt (\$)
PV Modules:		
Inverter:		
Racking System:		
Monitoring Equipment:		
Balance of System:		
Construction Labor:		
Engineering:		
Permitting:		
Legal:		
Other Costs and Expenses:		
<b>Total:</b>		

**Exhibit E1**  
**INITIAL DISCLOSURE FORM**

**Initial Disclosure:**

**Exceptions to the RFP (please check the one that applies)**

This proposal does not take exception to any requirement of the RFP, including but not only any of the terms of the PPA that is a part of this RFP.

This proposal does take exception to requirements of the RFP or terms of the PPA. The specific exceptions are listed in a separate attachment.

**Exhibit E2**

**PROPOSER CERTIFICATION**

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature, Erie County Fiscal Stability Authority and/or the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

\_\_\_\_\_  
*Proposer Name*

By: \_\_\_\_\_

*Name and Title*

**Exhibit E3**

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

2) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Consultant certifies that it, and its principals:

(2) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

© Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Contractor is unable to certify to any of the statements in this paragraph, the Consultant shall attach an explanation to this certification.

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

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Title**

\_\_\_\_\_

**Organization**

**Exhibit E4**

**Certification Regarding**  
**Drug-Free Workplace Requirements**  
**Grantees Other Than Individuals**

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988, 41 U.S.C. § 701 et seq. See 48 C.F.R. Subpart 23.5.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Authorized Signature

Title:

Date:



## **EXHIBIT E6**

### **RULES AND REGULATIONS ADOPTED BY THE ERIE COUNTY COMMISSIONER OF PUBLIC WORKS REGARDING:**

#### **COUNTY OF ERIE LOCAL LAW NO. 2-2006 Apprenticeship Requirements**

A LOCAL LAW in relation to a requirement for New York State Certified Worker Training Programs by contractors and subcontractors under construction contracts, as defined herein, with the County of Erie.

Pursuant to Section 5 of Erie County Local Law No. 2-2006, "the Commissioner of the Erie County Department of Public Works shall promulgate such rules and regulations that are lawful, necessary and appropriate to implement, enforce or otherwise carry out the purposes of this Local Law..." Such rules and regulations are as follows:

#### **1. Definitions.**

**"Bidders"** – an individual or entity which submits a formal Bid for a Construction Contract, as hereinafter defined.

**"Bids"** – formal bids submitted for a Construction Contract, as hereinafter defined, in accordance with New York General Municipal Law.

**"Commissioner"** – Erie County Commissioner of Public Works

**"Construction Contract"** – a contract for a Project which includes more than an incidental amount of construction-type activity performed by persons in trades or careers for which there exists an NYSCATP, as hereinafter defined.

**"Contracting Agency"** – a department, division, board, agency or office of the County, an entity undertaking a Project that Erie County funds indirectly, or an entity undertaking a Project with the specific intent of leasing the completed Project to the County, which solicits and receives Bids for a Construction Contract.

**"Local Law"** – Erie County Local Law 2-2006

**"Monitoring Agency"** – the Erie County Equal Employment Opportunity Office

**"New York State Certified Apprentice Training Program" or "NYSCATP"** - a state registered and regulated apprenticeship program(s) approved by the Commissioner of the New York State Department of Labor in accordance with Article 23 of the Labor Law and the Rules and Regulations thereto.

**"Prime Contractor"** – the party with whom the Contracting Agency contracts with on a Project.

**"Project"** – the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition or otherwise of any building, facility, roads, highways, bridges, or physical structure of any kind, estimated by the Contracting Agency as having a cost to complete in excess of \$250,000, for which the County is a direct or indirect party to a Construction Contract. Projects include those: that Erie County funds directly, either in whole or in part; that Erie County funds indirectly, either in whole or in part, by providing funds to a separate entity to perform the construction-type activity; privately financed construction projects specifically built with the intent of leasing the completed project to Erie County; and construction projects built under Erie County's direction and later paid for with Erie County funds.

**"Rules"** – these rules and regulations promulgated by the Commissioner pursuant to the Local Law.

**"Subcontractor"** – A subcontractor to a Prime Contractor.

**"Workforce"** – the total worker hours anticipated on the Construction Contract to be undertaken by workers in careers or trades for which there exists an NYSCATP.

## **2. Rules and Regulations.**

a. Each Contracting Agency shall include in its bid specifications provisions for the implementation of the Local Law and these Rules. Bids shall demonstrate a Bidder's ability to comply with the Local Law and these Rules and in the event that Bidder is a successful Prime Contractor on a Construction Contract.

b. Bidder shall submit as part of the Bid a copy of the certification of approval of the NYSCATP by the New York State Department of Labor which will be used by the Bidder in connection with the Construction Contract. Such NYSCATP shall be a NYSCATP registered by the NYS Commissioner of Labor which will be utilized by the Bidder on the Construction Contract by the Bidder as a Prime Contractor or by the Bidder's Subcontractor(s).

c. As part of its' Bid, Bidder shall provide a written plan demonstrating how apprentices will be utilized by the Bidder as Prime Contractor or by Subcontractor(s) to the Bidder as Prime Contractor. Such plan shall include at a minimum, but not be limited to the following:

- i. An organized, written plan in place that embodies the terms and conditions of employment, training and supervision of one or more apprentices;
- ii. A schedule of wages to be paid to the apprentices consistent with the skills required and approved by the New York State Department of Labor;
- iii. Equal employment opportunity and affirmative action plans.
- iv. demonstration that ten percent (10%) of the Workforce of the Prime Contractor (inclusive of the workforce utilized by any Subcontractor(s) to the Bidder) shall consist of persons participating in New York State Certified Apprentice Training Programs.

d. In the alternative, Bidder may provide a statement as to the inapplicability of apprenticeship participation on the Prime Contract and the related subcontracts due to the inability of the Bidder to obtain approval of an apprenticeship training program resulting from the New York State Department of Labor's suspension of the development and approval of NYSCATP's in all trades and the addition of new participating employers to existing NYSCATPs; lack of career opportunities in NYSCATP approved by New York State Department of Labor Commissioner or that the magnitude of the Construction Contract would make use of apprentices impracticable. In the event that Bidder provides a statement that there is a lack of such career opportunities or the use of apprentices on the Construction Contract is impracticable, said Bidder may not be deemed non-responsive by virtue of the submission of such a statement, as determined by the Monitoring Agency. Applicability of this section will be viewed within the total Workforce of each Prime Contract and not as a function of each subcontract of the Construction Contract as a whole.

e. As part of its' Bid, Bidder shall provide affirmation of its commitment toward acceptable achievement or progress towards the County of Erie workforce development and diversification goal in all construction contracts of thirty percent (30%) minority and female participation combined in project personnel including trades people, trainees, journeymen, apprentices and supervisory staff.

f. Contracting Agency may determine prior to the advertisement of bids for the Project or prior to the award of Bids that the nature of the Construction Contract does not provide an adequate opportunity for the use of NYSCATP for such reasons including, but not limited to, that:

- i. 75% or more of the value of the Construction Contract involves material, equipment and/or supplies; or
- ii. there is a lack of NYSCATP approved by the Department of Labor for at least 5% of the work hours anticipated to be spent on construction-type activity involved in the Construction Contract; or
- iii. the Construction Contract is in response to an emergency condition; or
- iv. the Project is estimated to cost less than \$250,000; or

- v. none of the bids received were from Bidders who had an NYSTACP.
  
- g. All Bids shall be reviewed by the Monitoring Agency within 10 business days of delivery of the Bids by the Contracting Agency to the Monitoring Agency. A Contracting Agency shall not reject any Bid as being non-responsive to the requirements of the Local Law and these Rules, unless the Monitoring Agency, within 10 business days of receipt of Bids from the Contracting Agency, provides the Contracting Agency with a written report recommending non-responsiveness of the Bidder and the reasons therefore. Determination of a Bidder's compliance with the Local Law and these Rules shall be the responsibility of the Monitoring Agency.
  
- h. The Contracting Agency is permitted to require within the Bid specifications for a Project, a reasonable fee for the Prime Contractor to hire an independent monitor to review and report on the diversification goals of the Local Law.

**APPRENTICESHIP UTILIZATION**  
**CERTIFICATION FOR FINAL PAYMENT**

STATE OF NEW YORK  
COUNTY OF ERIE

\_\_\_\_\_ being duly sworn, deposes and says that he is the Contractor for the work associated with \_\_\_\_\_

\_\_\_\_\_ for the COUNTY OF ERIE, the Owner; and says that he is the \_\_\_\_\_, the contracting company.

Deponent certifies that in accordance with Erie County Local Law 2-2006, \_\_\_\_\_% is the final percentage of persons participating in an apprenticeship program that the undersigned employed in the performance of this Contract.

Deponent further states that he has read the above statement and knows the content thereof, and that the same is true of his own knowledge.

\_\_\_\_\_  
(Name of Contractor)

“CORPORATE SEAL”

By \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

NOTE: This form shall be executed in triplicate.

**Exhibit E7**

**Erie County Equal Pay Certification**

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together " Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

\_\_\_\_\_  
Signature

**Verification**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

A)  
\_\_\_\_\_, being duly sworn, states he or she is the owner of (or a partner in) \_\_\_\_\_, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)  
\_\_\_\_\_, being duly sworn, states that he or she is the Name of Corporate Officer \_\_\_\_\_, of \_\_\_\_\_, Title of Corporate Officer Name of Corporation the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this \_\_\_\_\_  
Day of \_\_\_\_\_, 20\_\_

---

**Exhibit E8**

**Ethics and Offenses**

**Ethics and Offenses in Public Projects or Contracts**

Has the proposer or any of its principles (regardless of the place of employment) ever been found to have violated any state or local ethics law, regulation, ordinance, code, policy or standard or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on public works projects or contracts?

- Yes
- No

If "yes," attach a sheet fully describing each such matter.

**NOTE:**

THIS DOCUMENT, IN ORDER TO BE CONSIDERED A VALID PROPOSAL MUST BE SIGNED BY A PRINCIPLE OFFICER OR OWNER OF THE BUSINESS ENTITY THAT IS SUBMITTING THE PROPOSAL. SUCH SIGNATURE CONSTITUTES THE PROPOSER'S REPRESENTATIONS THAT IT HAS READ, UNDERSTOOD AND FULLY ACCEPTED EACH AND EVERY PROVISION OF EACH DOCUMENT COMPRISING THE RFP INCLUDING THE PPA, UNLESS AN EXCEPTION IS DESCRIBED ABOVE.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNED BY

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TELEPHONE #

\* The signatory must be an authorized representative of the proposer with full power and authority to execute this Disclosure Form.

***This form must be signed and returned with bid***

**Exhibit E9**

**NON-COLLUSION BIDDING CERTIFICATE**

The undersigned bidder acknowledges and agrees that the attached response and offer submitted by bidder is submitted in connection with the proposal to provide RFP Issuer with a Power Purchase Agreement (“PPA”). By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices set forth within this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit, a bid for the purpose of restricting competition.

In compliance with this invitation for bids, and subject to the conditions thereof, the undersigned offers and agrees that the RFP Issuer may rely upon both the within representations and the indemnifications set forth within the hold harmless agreement attached hereto as **Appendix A**.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNED BY

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TELEPHONE #

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

***This form must be signed and returned with bid***

**APPENDIX A  
RFP ISSUER BIDDER HOLD HARMLESS AGREEMENT**

\_\_\_\_\_ (“Bidder”) hereby agrees that it will indemnify and save harmless the County of Erie from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against the County of Erie by reason of any omission or act of the bidder, its agents, employees, subcontractors in connection with that certain NON-COLLUSION BIDDING CERTIFICATE submitted herewith, to the extent permissible by law. This indemnification shall include all costs and disbursements incurred by the County of Erie in defending any suit, including attorneys’ fees. Furthermore, at the option of the County of Erie, as the case may be, the bidder shall provide defense for and defend all claims, demands and causes of action referred to above, and bear all other costs and expenses related thereto.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNED BY

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TELEPHONE #

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

***This form must be signed and returned with bid***

**Exhibit E10**

**LEGAL STATUS FORM**

***Please fully complete the applicable section below, attached a separate sheet if you need additional space, and sign this form.***

For purposes of this disclosure, "permanent place of business" means an office continuously maintained, occupied and used by the proposer's regular employees regularly in attendance to carry on the proposer's business in the proposer's own name. An office maintained, occupied and used by a proposer only for the duration of a contract will not be considered a permanent place of business. An office maintained, occupied and used by a person affiliated with a proposer will not be considered a permanent place of business of the proposer.

Please Check One:

Sole Proprietorship: <input type="checkbox"/>	Limited Liability Company: <input type="checkbox"/>	Corporation: <input type="checkbox"/>	Partnership: <input type="checkbox"/>
-----------------------------------------------	-----------------------------------------------------	---------------------------------------	---------------------------------------

**If a Sole Proprietorship**

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes**  **No**

If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Street Address:

City:

State:

ZIP Code:

Mailing Address (if different from Street Address):

City:

State:

ZIP Code

Owner's Full Legal Name:

Number of years engaged in business under 'Sole Proprietor' or Trade Name:

**If a Corporation**

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes**  **No**   
If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Proposer's Full Legal Name:

Street Address:

City:

State:

ZIP Code:

Mailing Address (if different from Street Address):

City:

State:

ZIP Code:

Owner's Full Legal Name:

Number of years engaged in business:

Name of Current Officers:

Chief Executive Officer:

President:

CFO/Treasurer:

Secretary:

**If a Limited Liability Company**

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes**  **No**   
If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Street Address:

City:

State:

ZIP Code:

Mailing Address (if different from Street Address):

City:

State:

ZIP Code:

Owner's Full Legal Name:

Number of years engaged in business:

Number of Current Manager(s) or Member(s):

If a Partnership		
Proposer's Full Legal Name:		
Does the proposer have a "permanent place of business" in New York, as defined above? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>		
If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.		
Street Address:		
City:	State:	Zip Code:
Mailing Address (if different from Street Address):		
City:	State:	Zip Code:
Owner's Full Legal Name:		
Number of years engaged in business:		
Names of Current Partner(s):		

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNED BY

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TELEPHONE #

\* The signatory must be an authorized representative of the proposer with full power and authority to execute this Disclosure Form.

***This form must be signed and returned with bid***

**Exhibit E11**

**IRAN DIVESTMENT ACT CERTIFICATION**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Town of Guilderland receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Town of Guilderland will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Town of Guilderland shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Town of Guilderland reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

\_\_\_\_\_  
FIRM NAME ADDRESS

\_\_\_\_\_  
SIGNED BY PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE TELEPHONE #

\_\_\_\_\_  
FEDERAL TAX IDENTIFICATION #

***This form must be signed and returned with bid***

**Exhibit F**

COUNTY OF ERIE

MINORITY AND WOMEN'S BUSINESS ENTERPRISE

PAGE NO.

Minority/Women's Business Utilization Commitment

Prime Contractor Affidavit

Minority Business Enterprise Utilization  
Report – Part A & Part D

Waiver Request

County of Erie Local Law No. 1

COUNTY OF ERIE

MINORITY AND WOMEN'S BUSINESS ENTERPRISE COMMITMENT

Minority/Women's Business Utilization Commitment:

Erie County's Minority and Women's Business Utilization Local Law No. 1, 1987 requires all prime Contractors awarded construction contracts let by the County of Erie to exemplify Affirmative Action and subcontract to minority and women's business enterprises MBE/WBE. For the purpose of these regulations, the term "Minority Business Enterprise" refers to a business at least fifty-one percent (51%) of which is owned and controlled by minority group members. Minority group members are citizens of the United States who are Blacks, Hispanics, Asian Americans, American Indians, Eskimos and Aleuts. MBE's must be certified by the Erie County and/or the Erie County/City of Buffalo Joint Certification Committee.

For the purpose of these regulations the term "Women's Business Enterprise" refers to a business at least fifty-one percent (51%) of which is owned and controlled by women. WBE's must be certified by Erie County and/or the Erie County/City of Buffalo Joint Certification Committee.

Be it further understood that in order for a Minority and/or Women's Business to be certified as such by Erie County and/or the Erie County/City of Buffalo Joint Certification Committee and the proposed business is incorporated, that the MBE/WBE must own and control 51% of the stock authorized to be issued by the corporation. Such authorization is made in the Certificate of Incorporation.

The County of Erie has determined that a goal of ten percent (10%) of the total contract value represents a fair share of minority business utilization and two percent (2%) of the total contract value represents a fair share of women's business utilization on each construction contract awarded.

This local law requires that positive efforts be made by recipients of Erie county construction contracts to utilize minority and women owned business sources for supplies, services and professional services, allowing these sources the maximum feasible opportunity to compete for contracts, subcontracts and third-tier contracts to be performed.

All prime contractors awarded Erie County contracts estimated to exceed \$100,000 are to take positive steps "to afford fair opportunities to MBEs and WBEs". Positive steps shall include be not be limited to:

- A. Utilizing a source list of bonafide minority and women's business enterprise (Appendix B);
- B. Solicitations of bids from MBEs and WBEs particularly of those located in Erie, Niagara, Cattaraugus and Chautauqua Counties.
- C. Giving minority and women firms sufficient time to submit proposals in response to solicitations; and
- D. Maintaining records showings minority and women business enterprises and specific efforts to identify and award contracts to these companies.

Each Contractor bidding on a County of Erie Contract is to contact MBEs and WBEs and solicit bids for various aspects of each project. The Contractor is to supply the County MBE/WBE office with information regarding contracts for services and products with minority and women business enterprises and the dollar amount to each contract on the Minority Business Utilization Report.

E. Where the MBE or WBE is supplier, a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE and WBE and the Contractor shall be awarded toward the fulfillment of the appropriate goal.

1. For purposes of this Section, an MBE or a WBE will be considered a supplier when it:

- a. Assumes actual and contractual responsibility to furnish supplies and/or

materials and is the manufacturer of those supplies and/or materials; or

b. Is recognized by the manufacturer involved as a distributor of its supplies and/or materials; and

c. Owns or leases a warehouse, yard, building or other facility which is necessary and customary to carry out the proposed function of the business; and

d. Distributes, delivers and services the supplies and/or materials with its own staff.

- F. Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE, the Contractor will be awarded toward the fulfillment of the appropriate goal;
- G. Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process of duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted towards the appropriate goal.
- H. The qualifications set for in subsections (E), (F) and (G), above of this Action shall be certified by the Erie County Equal Employment Opportunity Office.

The three (3) lowest bidders shall submit to Erie County the Minority Business Enterprise Utilization Report, Part A with the Bid. Part A includes a list of MBEs and WBEs from whom the Contractor has solicited bids, or with whom the Contractor has signed a binding contractual agreement or with whom the Contractor is presently negotiating an agreement. A Contractor's bid shall not be considered where the Contractor fails to submit this report or where an examination of the report evidences failure by the Contractor to comply with the Affirmative Action requirements of the Contract.

In the event of a joint venture participating in this MBE/WBE Program, the Joint Venture Disclosure Affidavit must be submitted with Part A by all parties involved. Only to the extent that a minority and/or women's business enterprise contributes to and is paid for its participation in a Joint Venture will that dollar amount be credited towards the 10% and/o 2% respectively goal of minority/women's participation in the County of Erie MBE/WBE Program.

MBEs and WBEs must be certified before their participation may be credited toward the respective 10% and 2% goal. Where the proposed MBE and/or WBE is not certified by Erie County or the Erie County/City of Buffalo Joint Certification Committee, the appropriate Certification Disclosure Affidavit must be filed with the appropriate Erie County/City of Buffalo Department. Forms and lists of certified MBEs/WBEs may be obtained by calling 858-8480.

A Minority/Women's Business Enterprise Utilization Waiver Request must be completed and submitted with the Utilization Report Part A to the County of Erie along with the Bid. Waivers shall be granted only where the availability of MBEs and/or WBEs in the market area of the project is less than the respective 10% and 2% goal.

Sufficient information must be provided on the Minority and/or Women's Business Enterprise Utilization Waiver Request to ascertain whether a waiver should be approved, conditionally approved or rejected by the Department of Public Works or the Department of Environment and Planning on the advice of the MBE/WBE Office.

A waiver approval limits the Contractors obligation to solicit MBEs and/or WBEs for a particular project only. It does not relieve the Contractor of MBE/WBE utilization for any other County of Erie project on which he submits a bid.

Conditional approval of the waiver request makes it necessary for the contractor to continue soliciting MBEs/WBEs for contracting purposes, after he has been declared the low bidder.

An MBE/WBE Utilization Waiver Request will be rejected if the Contractor:

1. Fails to provide information on the Minority and/or Women's Business Enterprise Utilization report at the time of the Bid Opening.
2. Provides fraudulent information on the MBE/WBE reports.
3. Fails to make a honest good faith effort to recruit and contract with MBEs/WBEs

4. Takes any other action which is contrary to the spirit and intent of the law.

The information provided on the MBE/WBE Waiver Request and the MBE/WBE Utilization Report will be considered concurrently to determine if a waiver should be approved, conditionally approved or rejected.

The successful low bidder shall submit to the Erie County MBE/WBE Office within 15 business days of the bid opening, a schedule for minority/women's business enterprise participation, listing the minority/women's business enterprise with whom the Contractor intends to subcontract, specifying the agreed price to be paid for such work, and identifying in detail the contract item(s) or parts to be performed by each minority/women's business enterprise.

A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the Contractor and the minority/women's business enterprise. The Prime Contractor shall not substitute or delete the listed minority and/or women's business enterprise without the written consent of Erie County. In the event that the MBE/WBE goal for the Contract is not met, the Contractor shall provide sufficient documentation to establish that every positive effort was made to identify, solicit and negotiate with MBEs and WBEs in pursuit of the goal. Such documentation includes, but is not limited to advertisement in minority-focus media, written contact with minority contractors' associations and community groups and copies of direct solicitation of individual minority businesses indicating sufficient time to prepare quotations. Where an MBE/WBE is rejected due to price, the contractor shall provide documentation of the successful bidder's price along with evidence showing the work to be performed in the same, and not a reduced portion thereof.

The Contractor shall provide to the Erie County MBE/WBE Office copies of all subcontracts and/or purchase agreements with minority/women's business enterprise within 15 days of Contract award. A Notice to Proceed with construction shall not be issued until acceptable documentation is received.

When the project is 30% complete, the Contractor shall submit to the MBE/WBE Office the Minority Business Enterprise Utilization Report – Part B. Part B lists the MBE/WBEs on the project, the dollar amounts paid to that date and the estimated amount remaining to be paid.

The Minority Business Enterprise Utilization Report, Part C certifies the actual dollar amount expended to MBEs/WBEs. Part C must be completed by the Prime Contractor and submitted to the Erie County MBE/WBE Office at the 75% project completion level. The Final Minority Business Enterprise Utilization Report, Part D certifies the total dollar amount expended to MBEs/WBEs Part D and all cancelled checks payable to the MBEs/WBEs on the project is to be submitted to the Erie County MBE/WBE office with the request for final payment.

In the event a Contractor fails to comply with these provisions, Erie County may:

1. Summon the Contractor to a hearing.
2. Withhold progress payments in part or in full.
3. Cancel the Contract.
4. Bar awards of future contracts until the Contractor can demonstrate that he will comply.

It is, hereby, the County of Erie's commitment to assure that on all contracts awarded, Prime Contractors expend a fair share of the contract with bonafide Minority and Women Owned business enterprise in accordance with the goals set forth in the Minority Business Utilization Local Law, No. 1, 1987.

Failure to comply with the provisions of the law shall constitute a break of Contract subject to all remedies available to Erie County.

The Prime Contractor and all Minority and Women Owned Business subcontractors are bound by all requirements as put forth in the County of Erie Standard General Conditions and all modifications thereto contained in these Contract Specifications.

**PRIME CONTRACTOR AFFIDAVIT**

- According to the best of my knowledge, I certify that all the following statements are true and accurate and are made under penalty of perjury. I agree to comply with Executive order 11246, New York State Article 15-A of the Executive Law, and Erie County Local Law No. 1 & 5 to achieve Minority and Women Business Enterprise goals assigned to this contract.
- I understand that only Erie County/City of Buffalo certified MBE & WBE owned and operated business enterprises will be credited towards fulfillment of the MBE & WBE utilization goals on this construction project.
- I will make every good faith effort to meet the MBE/WBE utilization goals in which contained in the contract.
- I affirm that I have no direct or indirect control over any MBE/WBE which I propose to use in fulfillment of the MBE/WBE utilization goals of this contract.
- I understand that I will not meet the MBE/WBE goal through arrangements with minority/female individuals of firms, which are not certified as participating minority business enterprises or women business enterprises.
- I understand and acknowledge that I will not perform any services and functions to such an extent that the MBE/WBE owner/operator does not manage and control its company
- I will only utilize MBE & WBE subcontractors and/or suppliers who are certified with Erie County/City of Buffalo.
- I understand that I am responsible for ensuring that MBE & WBE firms are utilized in order to further utilization goals. I understand that failure to utilize MBE & WBE firms are represented herein, will constitute a material breach of contract.
- The MBE/WBE firm will perform all the work and/or supply all the material covered under the prime contractor and subcontractor agreement. If change occurs, it is the prime contractor's responsibility to notify Erie County-EEO Office within 2 weeks.
- I understand that I will not withhold any payments that I agree on with MBE & WBE upon completion of the project.
- I understand that any misrepresentation of fact in this affidavit may lead to criminal prosecution under State and Federal law.
- The percentage (%) of MBE utilization goals for this contract is 10%
- The percentage (%) of WBE utilization goals for this contract is 2%.

_____	_____
Date	Name of Company
	_____
	Address
	_____
	_____
	Telephone No.                      Authorized Signature

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary

County of Erie

Division of Equal Employment Opportunity

**MINORITY/WOMEN'S BUSINESS ENTERPRISE UTILIZATION REPORT**

**PART A-PART D**

**Instruction:**

1. The low bidder must complete and submit this form within (3) business days of bid opening.
2. The low bidder will only utilize MBE & WBE subcontractors and/or suppliers who are certified by Erie County/City of Buffalo.
3. The low bidder is responsible for ensuring the MBE & WBE goal set forth.
4. The percentage of MBE utilization goals for this contract is 10%.
5. The percentage of WBE utilization goals for this contract is 2%.
6. Describe MBE/WBE utilization as one of the following:  
**SC** – Subcontract construction      **TS** – Trucking or service  
**MS** – Source of materials or supplies

**CONTRACT INFORMATION**

**CHECK**  Schedule for initial contract award

**ONE**  Schedule for amending utilization    Date Received in EEO \_\_\_\_\_

Bidder \_\_\_\_\_ Fed Emp. ID No. \_\_\_\_\_

Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contract No. \_\_\_\_\_ Total Amt. Bid \_\_\_\_\_

Location \_\_\_\_\_ MBE Goal \_\_\_\_\_ % Sub.Contr. Amt \_\_\_\_\_

Letting Date \_\_\_\_\_ WBE Goal \_\_\_\_\_ % Sub.Contr. Amt \_\_\_\_\_

Fed., State, County Proj. No. \_\_\_\_\_ Combined MBE/WBE Goal \_\_\_\_\_

**UTILIZATION INFORMATION** (See Instruction Above)

MBE

Dollar Value

MBE utilization (Firm Name)	Certification Expiration Date	Utilization as (See #5)	of Utilization (see #3)
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

(See Instruction Above)

WBE utilization (Firm Name)	WBE Certification Expiration Date	Utilization as (See #5)	Dollar Value of Utilization (see #4)
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

**Erie County reserves the right to require cancelled checks to verify these amounts.**

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

---

WAIVER

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

(AREA CODE) (NUMBER)

1. Contractor has made a good faith effort to adopt subcontracting on this project to those trades, professions, supplies, etc. for which minority/women's business enterprises bids could be solicited; and
2. The total percentage of the bid which could be subcontracted in trades, professions, supplies, etc. for which minority business enterprises bids could be solicited is less than percent (10%) for MBEs and/or two percent (2%) WBEs.

A waiver, as provided for by Erie County Local Law is hereby requested on the grounds that there are no/insufficient (circle the appropriate term) minority/women's business enterprise in the market area of this project which do subcontracting in the following field (list all trades, professions, supplies, etc. which could be subcontracted on this project):

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |

(Use Additional Sheets If Necessary)

If a partial waiver is granted the Contractor will make a good faith effort to meet the reduced goal.

DATE \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF AUTHORIZED  
REPRESENTATIVE OF COMPANY

Granted In Whole: \_\_\_\_\_

Granted in Part: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ / \_\_\_\_\_

EQUAL OPPORTUNITY OFFICIAL

TITLE

DATE

\_\_\_\_\_ / \_\_\_\_\_

LETTING DEPARTMENT REPRESENTATIVE

TITLE

DATE

COUNTY OF ERIE  
LOCAL LAW NO. 1  
1987

A LOCAL LAW requiring a minority business utilization and women-owned owned business utilization commitment by persons or firms contracting with the County of Erie:

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section 1. The following provisions shall be inserted in and made a condition of all bid specifications prepared by the Erie County Department of Planning and Environment and/or the Erie County Department of Public Works and advertised after the effective date of the local law which was estimated by the County to result in a contract exceeding \$100,000.00.

Minority Business – Utilization Commitment

A) The Contractor shall take affirmative action to utilize bona fide minority business enterprises/women business enterprises for subcontracts on this project. Affirmative action shall include, but not be limited to: (1) Utilizing a source list of minority business enterprises (MBE) and women-owned business enterprises (WBE), (2) Solicitation of bids from MBE's and WBE's, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties, (3) Giving MBE's and WBE's sufficient time to submit proposals in response to solicitations, (4) maintaining records showing MBE's and WBE's and specific efforts to identify and awards contracts to those companies, and (5) a goal of awarding at least ten percent (10%) of the total dollar value of the Contract to MBE's and at least two percent (2%) of the total dollar value of the Contract to WBE's or, of those contracts governed by federal or state regulations with respect to MBE and/or WBE hiring, the prevailing percentage set forth therein, whichever is higher, subject to waiver as provided for below.

B) The three (3) lowest bidders on each contract subject to this law shall submit to the County MBE/BE office, with the bid (or within 3 business days of the bid opening), a list of all MBE's and WBE's from whom the Contractor has solicited bids or with whom the Contractor has signed a binding contractual agreement or with whom the Contractor is presently negotiating an agreement, for the purposes of meeting the MBE and WBE utilization goals provided for in subdivision (A) (5) above. A Contractor's bid shall not be considered where the Contractor fails to submit such a list as provided for herein. A Contractor's bid shall not be considered where examination of said list of MBE's and WBE's evidences failure by the Contractor to comply with the affirmative action requirements provided for herein, except that the County may, upon written request by the Contractor, grant a complete or partial waiver of the provisions of Subdivision (A) (5), where the availability of MBE's and/or WBE's in the market area of the project is less than the ten percent (10%) and two percent (2%) goals above.

C) As evidence of compliance with the goals set forth in Subdivision (A) (5) above, the Contractor shall submit to the County MBE/WBE office, within fifteen (15) business days of the bid opening, a schedule for MBE and WBE participation, listing the MBE's and WBE's with whom the Contractor intends to subcontract, specifying the agreed price to be paid for such work, and identifying in detail the contract item(s) or parts to be performed by each MBE and each WBE. A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the Contractor and the MBE or WBE. The Prime Contractor shall not substitute or delete the listed MBE's or WBE's without the written consent of Erie County.

D) As evidence of compliance with the goals set forth in subdivision (A)(5) above, the Contractor shall provide to Erie County MBE/WBE office, copies of all subcontracts and/or purchase agreements with MBE's and WBE's within fifteen (15) days of contract award. A motion (notice) to proceed with construction shall not be issued until such documentation is received.

E) As evidence of compliance with the goal set forth in Subdivision (A)(5) above, the Contractor shall submit to the County MBE/WBE office, when the project is thirty percent (30%) complete, a list of MBE's and WBE's on the project, the dollar amounts paid to that date and the estimated amount remaining to be spent. This same information is required at seventy-five percent (75%) completion and a final accounting must accompany the final payment request.

F) Failure to comply with the provisions set forth herein shall constitute a breach of this Contract subject to all remedies available to the County.

G) For the purpose of this section, the term "minority business enterprise (MBE)" shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by minority group members or, in the case of a publicly owned business, at least fifty-one percent (51%) of all stock is owned by minority group members. Such ownership shall be certified by the Erie County Equal Employment Opportunity Office. For the purposes of this paragraph, "minority group members: are citizens of the United States who are Black, Hispanic, Asian-American, American Indian, Eskimo or Aluet. (For purposes of this section, the term "subcontract" includes all construction, modification, supplies and material, and service work contracted for by the Contractor in the prosecution of this work.)

H) For the purposes of this Section, the term "women-owned business enterprise (WBE)" shall mean a business which performs a commercially useful function, at least fifty-one (51%) of which is owned by a woman or women or, in the case of a publicly owned business, at least fifty-one (51%) of all stock is owned by a woman or women. Such ownership shall be certified by the Erie County Equal Employment Opportunity Office.

I) Where the MBE or WBE is a supplier, a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE or WBE and the Contractor shall be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1 (A)(5) above.

1. For purposes of this Section, a MBE or a WBE will be considered a supplier when it:
  - a. assumes actual and contractual responsibility to furnish supplies and/or materials and is the manufacturer of those supplies and/or materials; or
  - b. is recognized by the manufacturer involved as a distributor of its supplies and/or materials; and
  - c. owns or leases a warehouse, yard, building or other facility which is necessary and customary to carry out the ported function of the business; and
  - d. distributes, delivers and services the supplies and/or materials with its own staff.

J) Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE the Contractor will be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1(A)(5) above.

K) Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process or duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the appropriate goal, as set forth in Section 1 (A)(5) above.

L) The qualifications set forth in subsections (I), (J) and (K), above, of this Action shall be certified by the Erie County Equal Employment Opportunity Office.

M) For purposes of this Section the term "subcontract" includes all construction, modification, service work, supplies and material contracted for by the Contractor in the prosecution of this work.

SECTION 2. The County Executive shall appoint a minority business enterprise and women-owned business enterprise utilization advisory board of nine (9) members consisting of County personnel, legislators, minority contractors, female contractors and community and business representatives, which shall review program administration and implementation on a regular basis and shall submit an annual report to the County Executive and County Legislature. This committee shall be empowered to promulgate regulations to provide for the administration of this local law.

SECTION 3. The Legislature shall conduct hearings annually to assess the impact of the local law.

SECTION 4. This local law shall take effect immediately.



**INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE**

1. Insurance shall be procured and certificates delivered before commencement of work or delivery or merchandise or equipment.
2. Coverage must comply with all specifications of the contract for which the insurance is being provided.
3. The insurance certificate must be executed by an insurance company, agency or broker, which is licensed by the Insurance Department of the State of New York..
- If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.
4. The completed certificate must be mailed or delivered to the County of Erie department of division identified in Box X on Page 1
5. Minimum coverage with limits are as follows:

Vendor Classification	A Construction and Maintenance	B Purchase or Lease of Merchandise or Equipment	C Professional Services	D Property Leased To Others or Use Of Facilities or Grounds	E Concession-Aires Services	F Livery Services	G All Purpose Public Entity Contracts
Comp Gen. Liab.	\$1,000,000	\$500,000 CSL	\$500,000 CSL	\$1,000,000	\$500,000 CSL	\$1,000,000	\$500,000 CSL
Prem. & OPS	Include		Include	Include	Include	Include	Include
Prod. & Comp OPS	Include	Include	Include	Include	Include	Include	Include
Indepen Contract	Include	Include	Include	Include	Include	Include	Include
Contractual	Include		Include	Include	Include	Include	Include
Broad Form P.D.	Include	Note: Comprehens. Form Not Required					see note below
X.C.U.	Include						
Personal Injury			Include	Include	Include	Include	Include
Liquor Law				Include	See note below		
Host Liquor							Include
Auto Liability	\$1,000,000 CSL		\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL
Owned	Include		Include	Include	Include	Include	Include
Hired	Include		Include	Include	Include	Include	Include
Non-Owned	Include		Include	Include	Include	Include	Include
Excess Umbrella Liability	\$1,000,000 See note below	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000 See note below
Worker's Comp. & Employers Liability	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	
Disability Bene.	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	
Prof. Liability			\$1,000,000				
Erie County to be Named Add'l Insd. on	Gen. Liab., Auto Liab., & Excess	Broad Form Vendors May Be Required	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess

- \* Construction contracts require excess Umbrella Liability limits for \$3,000,000
- \*\* Snow removal contracts require evidence of broad form property damage
- \*\*\* In the event the concessionaire is required to have a N.Y.S. license to dispense alcoholic beverages an endorsement for liquor liability is required.
- \*\*\*\* Transportation of people in buses, vans or station wagons requires \$3,000,000 excess liability

**NOTE:** Worker Compensation & Employers Liability plus NYS Disability Benefits does not apply to self employed individuals

6. In some circumstances it will be necessary to require alternate coverage and limits which will be defined in the bid specification contract lease or agreement. The alternative specifications should be evidenced on the certificate in lieu of the standards printed above.
7. The "ACCORD" form certificate may be used in place of the County of Erie Standard Insurance Certificate, provided that all of the above referenced requirements  
Including the information required on Page 1 of this certificate are incorporated into the "ACCORD" form certificate.

**Exhibit H**

**START OF MODEL PPA DOCUMENTS**

**POWER PURCHASE AND LEASE AGREEMENT**

**An Energy Performance Contract entered into pursuant to**

**Article 9 of the New York State Energy Law**

Dated as of

[\_\_\_\_\_], 2015

Between

County of Erie New York

and

**[PROVIDER]**

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## POWER PURCHASE AND LEASE AGREEMENT

An Energy Performance Contract entered into pursuant to

Article 9 of the New York State Energy Law

This Power Purchase Agreement (“**Agreement**”) is entered into as of [\_\_\_\_], 2015 (the “**Effective Date**”), by and between [\_\_\_\_], a [\_\_\_\_], together with any successors and permitted assigns (“**Provider**”), and [\_\_\_\_], a [\_\_\_\_], together with any successors and permitted assigns (“**Host**”).

WHEREAS, Host is the [lessee/owner] of the real property comprising the Site (as defined herein), and desires to make a portion of such property available to Provider for the construction, operation and maintenance of a solar powered electric generating system, and to purchase from Provider the electric energy produced by the system.

WHEREAS, Provider, desires to develop, design, construct, own and operate the system located on Host’s property, and sell to Host the electric energy produced by the system; and

WHEREAS, Host and Provider desire to enter into this Agreement as an Energy Performance Contract pursuant to Article 9 of the New York State Energy Law (the “Act”).

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. DEFINITIONS.

- (a) “AAA” has the meaning provided in Section 23(c)(i).
- (b) “Access License” has the meaning provided in Section 3(a).
- (c) “Affiliate” means, as to any person, any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person. For purposes of this definition, “control” of a person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether by contract or otherwise.
- (d) “Agreement” means this Power Purchase and Lease Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

- (e) “Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.
- (f) “Applicable Solar Program” means the program indicated on Exhibit H.
- (g) “Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.
- (h) “Change in Law” means that after the date of this Agreement, any Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of any Applicable Law (other than federal or state income tax laws) .
- (i) “Commercial Operation Date” has the meaning provided in Section 4(f).
- (j) “Confidential Information” means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided, however, that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.
- (k) “Dispute” has the meaning provided in Section 23(a).
- (l) “Early Termination Amount” means the amount determined in accordance with Exhibit B with respect to an applicable Operations Year, which includes all lost revenues from the sale or utilization of electrical energy, Environmental Attributes, Tax Attributes and benefits available under the Applicable Solar Program.
- (m) “Effective Date” has the meaning provided in the preamble.
- (n) “Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes.

- (o) “Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.
- (p) “Financing Party” means any person providing construction or permanent financing to Provider in connection with the Project, including any person to whom Provider transferred the ownership interest in the Project as part of a sale-leaseback, partnership flip or inverted lease transaction.
- (q) “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement and is not the result of the fault or negligence of the affected Party. Subject to the foregoing, Force Majeure Events may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes and (v) general power outages. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity or Environmental Attributes shall not constitute Force Majeure Events.
- (r) “Governmental Authority” means any federal, state, municipal, county, regional or local governmental, administrative, judicial or regulatory entity with jurisdiction over the Project, the Site or a Party.
- (s) “Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.
- (t) “Host” has the meaning provided in the preamble.
- (u) “Host Event of Default” has the meaning provided in Section 20(a).
- (v) “Host Indemnified Parties” has the meaning provided in Section 15(b).
- (w) “Indemnified Person” means any Host Indemnified Person or Provider Indemnified Person.
- (x) “Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

- (y) “Initial Period” has the meaning provided in Section 2(b).
- (z) “Installer” means the person designated by Provider to install the Project on the Premises.
- (aa) “Land Registry” means the county recorder’s office or other office where real estate records for the Site are customarily filed.
- (bb) “Lien” has the meaning provided in Section 8(c).
- (cc) “Local Electric Utility” means any local electric utility or distribution company providing distribution and/or interconnection services to the Host at the Site.
- (dd) “Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).
- (ee) “Lost Provider Revenues” means, for any period during which the Project is not in operation or prevented from delivering energy to the delivery point, an amount equal to the sum of:
  - (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during such period (based upon historical production data or as otherwise reasonably calculated by Provider); and
  - (ii) revenues from Environmental Attributes and/or under the Applicable Solar Program that Provider would have received with respect to electric energy that would have been produced by the Project during such period.
- (ff) “Notice of Claim” has the meaning provided in Section 15(c).
- (gg) “Operations Period” has the meaning provided in Section 2(c).
- (hh) “Operations Year” means the twelve month period commencing upon the Commercial Operations Date and each successive twelve month period thereafter throughout the Term.
- (ii) “Panel” has the meaning provided in Section 23(c)(iii).
- (jj) “Party” means either Host or Provider, as the context shall indicate, and “Parties” means both Host and Provider.
- (kk) “Point of Delivery” means the point so identified on Exhibit E.
- (ll) “Premises” means the portions of the Site described on Exhibit D.
- (mm) “Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on the Premises in accordance with this Agreement.
- (nn) “Provider” has the meaning provided in the preamble.
- (oo) “Provider Event of Default” has the meaning provided in Section 19(a).
- (pp) “Provider Indemnified Parties” has the meaning provided in Section 15(a).

- (qq) “Relocation Period” means the duration of any relocation of the Project, starting at the shutdown of the Project and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as reasonably determined by Provider.
- (rr) “Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project.
- (ss) “Responding Party” has the meaning provided in Section 23(c)(ii).
- (tt) “Site” means the parcel of real property described on Exhibit C attached hereto.
- (uu) “Submitting Party” has the meaning provided in Section 23(c)(ii).
- (vv) “Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under the Internal Revenue Code or Applicable Law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits, any grants or payments in lieu thereof and accelerated and/or bonus depreciation on the Project.)
- (ww) “Term” has the meaning provided in Section 2 hereof.

## 2. **TERM.**

(a) Term. The “**Term**” shall consist of the Initial Period, the Operations Period and, if applicable, any extension mutually agreed by the Parties pursuant to Section 2(d) below, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement.

(b) Initial Period. The “**Initial Period**” will commence on the Effective Date and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Section 4(b) or 4(d).

(c) Operations Period. The “**Operations Period**” will commence on the Commercial Operation Date and will terminate on the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date unless extended pursuant to Section 2(d).

(d) Extensions. Eighteen months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated energy and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

### 3. ACCESS LICENSE FOR INITIAL PERIOD; LEASEHOLD RIGHTS FOR OPERATIONS PERIOD.

(a) Access License Rights and Specifications. Host hereby grants Provider and its designees (including Installer, its subcontractors and any Financing Party) a revocable license to access the Site during the Term, prior to Commercial Operation Date, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Project and any other purpose set forth in this Agreement (“**Access License**”). If Host is not the fee owner of the Site, Host shall deliver to Provider an acknowledgment from the fee owner of the Site in form and substance reasonably acceptable to Provider. The Access License includes without limitation:

(i) Vehicular & Pedestrian Access. Reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit D for purposes of designing, installing, operating, maintaining, repairing and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(ii) Transmission Lines & Communication Cables. The right to locate transmission lines and communications cables across the Site as designated on Exhibit D. The location of any such transmission lines and communications cables outside the areas designated on Exhibit D shall be subject to Host’s approval and shall be at locations that minimize any disruption to Host’s activities occurring on the Site.

(iii) Storage. Adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation, and maintenance of the Project, including shelter for stored items; provided, that Host shall have no responsibility for the loss, damage or theft of any item stored at the Site unless the Host or any of its employees, agents or invitees is responsible for such loss, damage or theft.

(iv) Utilities. Water, drainage, electrical, and ethernet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

(v) Removal and Restoration. Provider’s Access License with respect to removal of the Project and restoration of the Site shall continue for ninety (90) days following the termination of this Agreement, and at the end of such period Provider shall restore the Premises to the condition delivered as of the date hereof.

(vi) Premises. Provider shall have the right to use a portion of the Premises where the Project is located, as set forth in Exhibit D.

(b) Leasehold Rights and Requirements.

(i) Lease of Premises. Beginning as of the Commercial Operation Date, the Host hereby leases the Premises to the Provider and the Provider hereby rents and leases the Premises from the Host upon the terms and conditions of this Agreement.

(ii) Remedies to be Pursued Against Contractors and Subcontractors and their Sureties. In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Project or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Provider

at its expense, either separately or in conjunction with others, shall pursue any and all remedies available against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Provider shall prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Provider deems reasonably necessary, and in such events the Host, at the Provider's expense, hereby agrees to cooperate fully with the Provider and to take all action necessary to effect the substitution of the Provider for the Host in any such action or proceeding; provided that Provider shall pay all costs and expenses, including but not limited to reasonable attorney fees, in connection with any such cooperation and/or substitution.

(iii) Duration of Lease Term; Quiet Enjoyment. The Host shall deliver to the Provider possession of the Premises on the Commercial Operation Date (subject to the provisions hereof) and the leasehold estate created hereby shall commence on said Commercial Operation Date. The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at the end of the Operations Period or any extension mutually agreed between the Parties pursuant to Section 2(d), or on such other earlier date as may be permitted hereunder.

(c) Recording. Upon written notice by Provider, and following the Commercial Operation Date, the Parties shall execute and record with the appropriate Land Registry a memorandum of lease in the form attached as Exhibit G or such other instruments documenting the leasehold interest granted herein as may be reasonably requested by Provider. The cost of recording shall be borne by Provider.

(d) Remote Monitoring. Host will provide and maintain in good working order throughout the Operations Period an internet portal or equivalent access by means of which Provider will communicate data from the revenue grade performance monitoring system. Provider will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Provider and Host to remotely monitor the Project.

#### **4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.**

(a) Site Assessment and Planning. During the Initial Period, Provider shall, at its own expense, assess the suitability of the Premises for the Project, including the inspection of the physical condition of the structures or land on which the Project will be located; applying for any permits or other governmental authorizations necessary for the construction of the Project; arranging interconnections with the Local Electric Utility; making any applications to the appropriate Public Utilities Commission or other Governmental Authority for receipt of payments for the Project under the Applicable Solar Program; applying to any other Governmental Authority or other persons for grants, approvals or other determinations necessary for the construction of or receipt of revenues from the Project; and making any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

(b) Termination of Development Activities. At any time during the Initial Period, Provider shall have the right to cease development of the Project for any reason in its sole discretion. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, for any reason, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; and (ii) Provider shall restore any portions of the Site disturbed by Provider to their pre-existing condition and (iii) Provider will forfeit any security granted to the Host in the event the Agreement is terminated for any reason whatsoever other than (a) failure to obtain permits or other governmental

authorizations necessary for the construction of the Project, (b) failure to obtain interconnection with the Local Electric Utility or (c) failure to obtain an authorization or award of expected incentives under the Applicable Solar Program.

(c) Commencement of Construction, Modification of Design. At any time during the Initial Period, upon at least ten (10) Business Days written notice to Host, Provider shall have the right to commence installing the Project on the Premises provided that all applicable required permits have been obtained.

(i) As of the Effective Date, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its reasonable discretion, may determine, provided, however, that such changes will not materially change this project and shall not result in the Project exceeding the nameplate capacity, building footprint, location, weight, and height set forth in Exhibits D and E or change components that result in lower electricity production or greater warranty risk without Host's approval.

(d) Construction Commencement Deadline. If within 180 days following the Effective Date (not including any days in which a Force Majeure Event existed), Provider has not commenced the installation of the Project on the Premises, Host may give notice to Provider of its intention to terminate this Agreement. If Provider does not commence installation of the Project within twenty-one (21) days of such notice, this Agreement shall terminate. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other Party, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their pre-existing condition, (iii) Provider will forfeit any security granted to the Host unless construction has not commenced due to (a) the failure to obtain permits or other governmental authorizations necessary for the construction of the Project, (b) the failure to obtain interconnection with the Local Electric Utility or (c) the failure to obtain an authorization or award of expected incentives under the Applicable Solar Program and (iii) if Provider has obtained an authorization or award of expected incentives under the Applicable Solar Program, the Provider will assign such award to the Host or its designee.

(e) Contractors. Provider shall advise Host of the identity of Installer prior to commencement of the work on the Site. Provider shall cause Installer to use licensed contractors or subcontractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work upon reasonable prior notice to Host. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work performed on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Section 4 of Exhibit F. Copies of such certificates of insurance are to be provided to Host upon reasonable request.

(f) Status Updates; Commercial Operation Date. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Host shall have the right to have its representatives present during the testing process to observe the tests and operation of the Project. After Provider has determined, in its reasonable judgment, that the Project meets the

requirements of the Local Electric Utility, and has received all necessary approvals to operate, has been installed in accordance with all Applicable Laws and is capable of delivering energy to the Point of Delivery on a continuous basis, Provider shall so notify Host and shall specify the date (“**Commercial Operation Date**”) for the Project, which may be immediately upon delivery of such notice to Host. All energy produced by the Project prior to the Commercial Operation Date shall be delivered to Host and Host shall pay for such energy at the rate applicable to the first Operations Year provided that the Host receives credit for such energy from the local electric utility.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the solar generation industry. Such work shall be at Provider’s sole expense, except as otherwise provided pursuant to this Agreement. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host’s employees, visitors, tenants and licensees and their customers to the extent commercially practical. Provider shall keep the Site reasonably clear of debris, waste material and rubbish, and comply with reasonable safety procedures established by Host for conduct of business on the Site. Host shall ensure that its employees, contractors and invitees shall not tamper or interfere with the Project, and Host shall be responsible for any damage or injury caused by any such tampering or interference.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project, provided that Host shall have no responsibility for the loss, damage or theft of any item incorporated in the Project unless the Host or any of its employees, agents or invitees is responsible for the loss, damage or theft of such item. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as soon as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations.

(j) System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project or as directed by the Local Electric Utility and shall notify Host of such emergency shutdown as soon as reasonably practicable. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing energy that would have been produced by the Project but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation, except as may be required in accordance with prudent electric industry safety practices.

(k) Applicable Solar Program Requirements. If applicable, Exhibit H identifies certain requirements of the Applicable Solar Program. The Parties shall comply with the obligations identified in Exhibit H or subsequently adopted by the Applicable Solar Program. In the event of any inconsistency between the obligations of the Parties under this Agreement or any of the requirements of the Applicable Solar Program, the more stringent obligation shall govern, and if such cannot be determined, the requirements of the Applicable Solar Program shall govern.

## **5. SALE OF ELECTRIC ENERGY.**

(a) Sale of Electricity. Throughout the Term, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Project, whether or not Host is able to use all such electric energy. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery.

(b) Delivery of Electricity. The electric energy from the Project shall be delivered from Provider to Host at the specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utility.

(c) Limits on Obligation to Deliver. Provider does not warrant or guarantee the amount of electric energy to be produced by the Project for any hourly, daily, monthly, annual or other period. Provider is not an electric utility or public service company and does not assume any obligations of an electric utility or public service company to supply Host's electric requirements. Provider is not subject to rate review by any Governmental Authority.

(d) Meter Testing. Provider shall install one or more meter(s) at the Project, as Provider deems appropriate, to measure the output of the Project at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project. Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards. Host may, at its sole expense, arrange for independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary at its sole cost and expense. If any testing should reveal an error of less than or equal to 2% no billing adjustments will be made. In the event there is an error of greater than 2%, Provider shall (i) make corresponding adjustments to the records of the amount of electrical energy provided by the Project delivered for the period that is half-way in between the date of such testing and the last testing date of the meter and (ii) cause any related amounts owing to or from Host as a result of such adjustments to be reflected in the next invoice to be delivered under Section 6(b) hereof and (iii) Provider pays for the cost of independent testing.

## 6. PAYMENT AND BILLING.

(a) Rates. Host shall pay Provider for energy produced by the Project at the rates set forth in Exhibit A attached hereto. Such rates shall become effective on the Commercial Operation Date at the "Year 1" rate shown in Exhibit A and shall adjust annually thereafter in accordance with Exhibit A on each anniversary of such date.

(b) Monthly Payments. Host shall pay Provider for electricity produced by the Project at the rates set forth on Exhibit A. Promptly after the end of each calendar month during the Term, Provider shall provide the Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such electricity, and the total amount due, which shall be the product of the quantities delivered and the applicable rates.

(c) Payment. Unless otherwise agreed in writing between Provider and Host, all payments under this Agreement shall be made via Electronic Funds Transfer (EFT) to an account designated by Provider in a written notice delivered to Host. Host shall pay the amount invoiced pursuant to Section 6(b) above within fifteen (15) Business Days after receipt of such invoice. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate of 1% per month, compounded monthly. All payments made hereunder shall be non-refundable and not subject to reduction, withholding, set-off or adjustment of any kind.

(d) Disputed Amounts. The Parties shall attempt to resolve any Dispute regarding payments under the Agreement amicably. If the Parties cannot resolve the Dispute within sixty (60) days, either Party may submit the Dispute to arbitration in accordance with Article 23; provided that, during the time the Dispute is pending, the disputing Party shall not be deemed in default of this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including the payment of undisputed amounts owed hereunder. No Party may withhold, deduct or set-off against amounts or credits any undisputed amounts owed by such Party to the other Party during the time that a Dispute is pending.

(e) Executory Clause. Municipal Lease and Energy Performance Contract. Pursuant to and in accordance with Energy Law Section 9-103(2), this contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. Provider acknowledges and agrees that the foregoing clause deems this Agreement executory only to the extent that the Host has appropriated funds sufficient to pay for the rates set forth herein.

## 7. SUPPLEMENTAL POWER, NET METERING AND RECS.

(a) Back-up and Supplemental Electricity. Host shall be responsible for obtaining and paying for all of its requirements for back-up energy or supplemental energy in excess of the amounts produced by the Project. Provider shall have no obligation to obtain or pay for such back-up or supplemental energy.

(b) Net Metering & Utility Credits. At any time that electric production from the Project is greater than Host's requirements at such time, Host shall nevertheless pay Provider for all of the electricity produced by the Project at the rates and in the manner provided in this Agreement. Host

may make arrangements so that electricity in excess of Host's requirements may be delivered to the Local Electric Utility through the Point of Delivery and Host shall be permitted to retain any credits or payments from the Local Electric Utility that may be available under net metering or similar programs excluding any such credits or payments to which Provider is entitled pursuant to Sections 7(d) through 7(g). Provider shall reasonably cooperate with Host to facilitate Host's receipt of payments or benefits under such net metering or similar programs.

(c) Interconnection. Provider shall configure the interconnection of the Project with Host's Local Electric Utility in a manner that permits delivery of excess energy on a bi-directional or "net metering" basis.

(d) Applicable Solar Program Incentives. Provider shall receive all payments available under any Applicable Solar Program during the Term. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this paragraph (d) is limited to any payments actually received by Host.

(e) Ownership of Tax Attributes. Provider (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(f) Environmental Attributes. Provider (and/or Financing Party) shall be the owner of any Environmental Attributes which may arise as a result of the operation of the Project during the Term and shall be entitled to transfer such Environmental Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider.

(g) Capacity & Ancillary Services. Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project during the Term. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

(h) No Resale of Electricity. Except as contemplated by the provisions of Section 7(b), the energy purchased by Host from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provider, which approval shall not be unreasonably withheld, and Host shall not take any action which would cause Host or Provider to become an electric utility or public service company.

- (i) Provider Is Not A Utility. Neither Party shall assert that Provider is an electric utility

or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Provider's obligations or performance under this Agreement. If at any time as a result of any Change in Law, Provider would be subject to regulation as an electric utility or public service company (or its equivalent) by any Governmental Authority by virtue of this Agreement, Host will use its best efforts to restructure this Agreement so that Provider will not be subject to such regulation (while preserving for both Parties the substantive economic benefits conferred hereunder).

## **8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES**

(a) Permits. Provider shall pay for and obtain all approvals from Governmental Authorities necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval save for any such approvals that are related to the use or occupancy of the Site or the Premises. Host shall cooperate with Provider in obtaining and maintaining any such approvals. Provider shall provide the Host with copies of all applications and approvals received from Governmental Authorities that are necessary for the construction and operation of the Project.

(b) System Ownership. Provider or Host-approved Financing Party shall be the legal and beneficial owner of the Project at all times during the Term. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by Governmental Authorities for taxes ("**Lien**") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access License granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided, however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

## **9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.**

(a) Early Purchase Options. On each of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>) and fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date, provided no Host Event of Default has occurred and is continuing, Host shall have the option to purchase the Project from Provider at a price equal to the

greater of (i) the Fair Market Value of the Project at such anniversary date or (ii) the Early Termination Amount applicable to such anniversary date. If Host desires to evaluate this option, it shall no later than one hundred eighty (180) days prior to the applicable anniversary date notify Provider of its interests in evaluating the option. On or before such anniversary date, Host shall pay the purchase price to Provider by electronic transfer in immediately available funds to an account designated by Provider. At any time following receipt of the notice from Host, but no later than sixty (60) days after the date Host gives notice of its interests in evaluating the option, Provider may notify Host if it believes the Fair Market Value of the Project exceeds the Early Termination Amount, and, in the same notice, Provider shall notify Host regarding its determination of the Fair Market Value. If Host agrees with the determination of the Fair Market Value it shall pay such sum to Provider on or before such anniversary date. If Host disagrees with the determination of Fair Market Value, the Host may decline to pursue the Early Purchase Option or the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. The valuation of the appraiser shall be binding on both parties absent manifest error. The cost of the appraisal shall be borne equally by the both Parties. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction.

(b) End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve (12) months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its desire to evaluate the End of Term Purchase Option. Within ninety (90) days of its receipt of such notice, Provider shall notify Host of its determination of the Fair Market Value of the Project at the end of the Term. If Host agrees with the determination of the Fair Market Value it shall pay such sum to Provider on or before such expiration date by electronic transfer in immediately available funds to an account designated by Provider. If Host disagrees with the determination of the Fair Market Value of the Project, the Host may decline to pursue the End of Term Purchase Option or the Parties shall utilize the appraisal process set forth in Section 9(a) for purposes of determining the Fair Market Value. Notwithstanding the foregoing, in the event that Provider enters into a sale/leaseback transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction

(c) Transfer of Ownership. Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such sale shall be as is, where is and the bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use reasonable efforts to transfer any remaining manufacturer's warranties on the Project or components thereof to Host.

(d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) Decommissioning. If Host does not exercise the option set forth in Section 9(b) above, then Provider, at its expense, shall promptly decommission and remove the Project following the expiration of the Operations Period and restore the property to its original condition, except that Provider shall not be obligated to remove any support structures for the Project which are affixed to Host's structures or any below grade structures (including foundations and conduits) or any roads. Provider's access during such decommissioning shall be governed by the Access License. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(f) No Survival of Purchase Option. The options for Host to purchase the Project under Sections 9(a) and 9(b) shall not survive the termination of this Agreement.

## **10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.**

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider all Lost Provider Revenues with respect to the period of such shutdown.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance or emergency repairs as provided in Section 4(j), Provider may shutdown the Project if in the exercise of its reasonable judgment, Provider believes Site conditions or activities of persons on the Site which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce the duration of any shutdown. In the event of such a shutdown, Host shall be deemed to have acted under Section 10(a) to shut down the Project, and shall pay Provider all Lost Provider Revenues with respect to the period of the shutdown; provided, that if the safety shutdown is a direct result of a Force Majeure Event then the provisions of Article 17 shall apply and take precedence over this Section 10(b). If a shutdown pursuant to this Section 10(b) continues for three hundred and sixty (360) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Project Relocation. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider and Financing Party in each of their sole discretion. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, Host will pay Provider all Lost Provider Revenues with respect to any Relocation Period.

(d) Host Facility Shutdown. In the event that any facilities of the Host are closed or inoperable as a result of an event that is not: (i) a Force Majeure Event; or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall nevertheless continue to pay Provider for all energy produced by the Project on the Premises and delivered to the Point of Delivery.

(e) Interconnection Deactivated. If an interconnection with the Local Electric Utility becomes deactivated such that the Project is no longer able to produce energy or deliver energy to the Local Electric Utility for reasons that are not: (i) a Force Majeure Event; or (ii) caused by or related to any unexcused action or inaction of Provider, Host will pay Provider any Lost Provider Revenues associated with the period of such deactivation.

(f) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

## 11. TAXES.

(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(c) Property Taxes. Host shall be responsible for all ad valorem personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon, except that Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Payment of Delinquent Taxes. In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such other Party may pay such amounts and in such event shall be entitled to recover such paid amount, together with interest thereon at the rate of one percent (1%) per month compounded monthly, from the Party that failed to pay same.

(f) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice therefor from the Party who paid the taxes.

## 12. INSURANCE.

- (a) The Consultant agrees to procure and maintain insurance naming the County as additional insured where indicated, as provided and described in **Exhibit "B"**, entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof.

For all matters other than those arising out of the Consultant's professional services, the Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the County, its officials, officers, departments, employees, agencies, and agents, from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss(es), arising out of the performance or failure to perform under this Agreement by the Consultant or third parties under the direction or control of the Consultant. In addition, Consultant shall reimburse the County for any amounts incurred by or on behalf of the County in enforcing this provision, including, but not limited to, attorneys' fees.

For all matters arising out of the Consultant's professional services, the Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the County, its officials, officers, departments, employees, agencies, and agents, from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss(es), arising out of an actual or alleged acts, errors, or omissions of the Consultant, or third parties under the Agreement which are logically or causally connected by any common fact, situation, event, transaction, advice, or decision. In addition, Consultant shall reimburse the County for any amounts incurred by or on behalf of the County in enforcing this provision, including, but not limited to, attorneys' fees.

- (b) Applicable Solar Program Requirements. Host and Provider will also maintain the additional insurance requirements (if any) specified in **Exhibit H** to satisfy the requirements of the Applicable Solar Program.
- (c) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days written notice before the insurance is cancelled or materially altered.
- (d) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.
- (e) Insurance Providers. All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).
- (f) All casualty insurance required herein shall name the Host as a named insured and all other insurance required shall name the Host as an additional insured. All insurance shall be procured and maintained with financially sound and generally recognized responsible

insurance companies selected by the Provider and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Provider is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Provider, the Host as its interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Provider and Host.

- (g) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Host on or before the commencement of the term of this Agreement. Prior to expiration of the policy evidenced by said certificates, the Provider shall furnish the Host evidence that the policy has been renewed or replaced or is no longer required by this Agreement.
- (h) Within one hundred twenty (120) days after the end of each of its fiscal years, the Provider shall file with the Host a certificate to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Section and that duplicate copies of all policies or certificates thereof have been filed with the Host and are in full force and effect.

### **13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.**

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Host to Not Restrict Solar Access. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

(c) Adjoining Properties. If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider.

### **14. PRESS RELEASES AND CONFIDENTIALITY.**

(a) Press Releases. The Parties acknowledge that they each may desire to publicize information about this Agreement and the Project. The Parties therefore agree that each may make press releases, including all other marketing materials about entering into this Agreement, the size and location of the Project, and the identity of the other Party, with mutual prior written consent of the other Party, subject to the provisions of Section 14 (e). However, the terms of this Agreement and information about the Project other than that described above constitutes Confidential Information, as defined below, and is subject to the remaining provisions of this Section 14.

(b) Limits on Disclosure of Confidential Information. Subject to the exceptions set forth below in Section 14(c), each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its

obligations under this Agreement.

(c) Permissible Disclosures. Provider may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provider in connection with the Project. In addition, if a receiving Party is required by Applicable Law (including the Freedom of Information Act or any similar law), validly issued subpoena, required filing, or the rules of any stock exchange, to disclose any Confidential Information provided by the disclosing Party, the receiving Party may make disclosure as required by law, but the receiving Party shall prior to making any disclosure notify the disclosing Party of the requested disclosure and shall use its reasonable efforts to cooperate with the disclosing Party, but at the expense of the disclosing Party, in any efforts by the disclosing Party to minimize the extent of the Confidential Information disclosed and the persons to whom disclosed.

(d) Enforcement of Confidentiality Provisions. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 14 and agrees that the provisions of this Section 14 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 14. The provisions of this Section 14 shall survive until three years after the effective date of any termination of this Agreement.

(e) Reporting Rights. Provider shall retain publicity rights with respect to the Project as long as Provider owns the rights to the Environmental Attributes and/or Tax Attributes. Without the express written consent of Provider, which shall not be unreasonably withheld or delayed, Host shall not make or publish any public statement or notice regarding any Environmental Attribute or Tax Attribute with respect to the Project or the energy output of the Project. After consultation with Provider, Host shall have the right to publicize that it is serving as a “site host” for the Project and to display photographs of the Project in its advertising and promotional materials; provided, however, that (i) any such materials shall identify Provider as the owner and developer of the Project, and (ii) any such publication shall be in compliance with Applicable Laws, including but not limited to FTC rules and regulations.

## 15. INDEMNIFICATION.

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its board members, directors, officers, employees, agents, volunteers, and invitees (“**Host Indemnified Parties**”), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Provider’s (or its contractor’s or subcontractor’s) negligence or willful misconduct; (ii) Provider’s violation of Applicable Law; or (iii) any failure of Provider to properly interconnect or comply with the procedures of the Local Electric Utility. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of energy from the Project shall not extend to incidents occurring on Host’s side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. Host shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, Installer and Financing Party (“**Provider Indemnified Parties**”), harmless from and against all Losses incurred by the Provider’s Indemnified Parties to the extent arising from or out of (i) any claim for or arising out of

injury to or death of any person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Host's Indemnified Parties; (ii) Host's violation of Applicable Law; or (iii) the presence, removal or remediation of any Hazardous Materials on the Site (other than any Hazardous Materials brought on to the Site by Provider's Indemnified Parties). Host shall not be obligated to indemnify Provider or any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "**Notice of Claim**"). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense of the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

## **16. REPRESENTATIONS AND WARRANTIES.**

(a) Mutual Representations. The Parties hereby represents and warrants to the other, as of the Effective Date, that:

(i) Provider Organization. The Provider is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation and of the state in which the Project is located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder. The Host is a municipal corporation empowered to enter into this Agreement pursuant to and in accordance with the Act and has duly authorized the execution and delivery of this Agreement.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any Governmental Authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of the Effective Date, that:

(i) Electric Usage. Host has provided to Provider complete and correct records of its electric usage at the Site for the preceding three (3) years.

(ii) Condition of Premises. Host has provided to Provider complete and accurate records and information of the physical condition of the Premises. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project is to be installed, are materially different from the information presented by Host, then the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions; provided, that if such adjustments increase the rates payable by the Host for electricity on Exhibit A the Host shall have the option to terminate this Agreement.

(iii) Financial Information. The financial statements Host has provided to Provider present fairly in all material respects the financial condition and results of operations of Host.

(iv) Title. The title to the Site is not impaired by any outstanding contract, covenant, interest, lien, or mortgage in conflict with this Agreement. Host has full authority to grant the Access License.

## **17. FORCE MAJEURE.**

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.

(c) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a contiguous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Section 9(e). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the termination, and the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.

## 18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will promptly submit to Host a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Subject to verification of the change in Applicable Law and receipt of the computations regarding the cost of complying with such change, Host agrees to an adjustment in the then-applicable and future rates set forth in Exhibit A such that the new rates compensate Provider for one-half of the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider; provided, however any such increase shall be no greater than ten percent (10%) of the rates set forth in Exhibit A.

## 19. PROVIDER DEFAULT AND HOST REMEDIES.

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("**Provider Events of Default**") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within thirty (30) days after receipt of notice from Host identifying the defect.

(ii) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(a) (relating to Force Majeure Events), and such failure is not cured within sixty (60) days after receipt of notice from Host identifying the failure.

(iii) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property or assets; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or

composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon an Event of Default by Provider, provided that Host complies with its obligations under Section 21 and Financing Party does not cure such Event of Default by Provider within the time period provided under Section 21(a)(iii), Host may terminate this Agreement and pursue remedies available at law or equity.

## 20. HOST DEFAULT AND PROVIDER REMEDIES.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following (“**Host Events of Default**”) shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within thirty (30) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within fifteen (15) days after receipt of notice thereof from Provider.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) Business Days after receipt of notice thereof from Provider, even if such payment failure is due to any failure to appropriate monies as described in Section 6 (e) hereof.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(a) (relating to Force Majeure Events), and such failure is not cured within sixty (60) days after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property or assets; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Default Damages. Upon an Event of Default by Host, and subject to the terms hereof, Provider may (i) require Host to pay to Provider the Early Termination Amount, and/or (ii) pursue other remedies available at law or in equity. After Provider’s receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from the termination of this agreement.

## 21. COLLATERAL ASSIGNMENT, FINANCING PROVISIONS.

(a) Financing Arrangements. Provider may mortgage, pledge, grant security interests, or otherwise encumber its interests in this Agreement to any persons providing financing for the Project. Host acknowledges that Provider may obtain construction financing for the Project from a third party and that Provider may either obtain term financing secured by the Project or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Host acknowledges that in connection with such transactions Provider may secure Provider's obligations by, among other collateral, a first security interest in the Project. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Financing Party, Host agrees as follows:

(i) Consent to Collateral Assignment. Host hereby consents to the provision of a first security interest and lien in the Project to a Financing Party and the collateral assignment to the Financing Party of the Provider's right, title and interest in and to this Agreement (or, in the case of a sale-leaseback transaction, ownership of the Project).

(ii) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Financing Party, as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Project;

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the intended transferee or assignee of this Agreement, which shall be subject to the Host's approval, which shall not be unreasonably withheld. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) consider any consents to assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project; provided that the Provider shall be responsible for any cost and expense incurred by Host associated with any request under subsection (ii).

(d) This Agreement may not be assigned or subleased in whole or in part except to a Related Person of the Provider (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and the Project may not be assigned or subleased, in whole or in part, by the Provider without the prior written consent of the Host. Any assignment of this Agreement shall require the prior written consent of the Host upon application 45 days prior to a regularly scheduled meeting of the Host. A transfer in excess of 50% of the equity voting interests of the Provider, other than to a Related Person of the Provider, shall be deemed an assignment and require the prior written consent of the Host.

Any assignment or sublease, if and once approved by the Host, shall be on the following conditions, as of the time of such assignment:

(i) no assignment shall relieve the Provider from primary liability for any of its obligations hereunder unless relief of such liability is agreed to by Host in writing;

(ii) the assignee shall assume the obligations of the Provider hereunder to the extent of the interest assigned;

(iii) the Provider shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Host a true and complete copy of such assignment and the instrument of assumption; and

(iv) the Agreement shall continue to constitute an “Energy Services Contract” as such quoted term is defined in the Act.

If the Host shall so request, as of the purported effective date of any assignment pursuant to subsection (a) above, the Provider at its cost shall furnish the Host with an opinion, in form and substance satisfactory to the Host as to items (i), (ii) and (iv) above. Any such assignment or sublease is subject to the review and approval by the Host and its counsel (at no cost to the Host; any such cost to be paid by the Provider, including attorneys’ fees), and shall contain such terms and conditions as reasonably required by the Host and its counsel.

## **22. LIMITATIONS ON DAMAGES.**

EXCEPT WITH RESPECT TO PAYMENT OF THE EARLY TERMINATION AMOUNT OR IN CONNECTION WITH THIRD-PARTY INDEMNIFICATION CLAIMS, NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

## **23. DISPUTE RESOLUTION.**

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “**Dispute**”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Mediation. If, after such negotiation in accordance with Section 23(a), the Dispute remains unresolved, either Party may require that a non-binding mediation take place. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator’s fee and expenses shall be paid equally by each Party.

(c) Arbitration of Disputes.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 23(a) or 23(b) shall (except as provided in Section 23(d)) be settled by binding arbitration between the Parties conducted in New York, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “**AAA**”) in effect on the date that a Party gives notice of its demand for arbitration.

(ii) Dispute Submission. The Party initiating the Arbitration (the “**Submitting Party**”) shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the “**Responding Party**”), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation claimed to have been breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

(iii) Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliates. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, “**Panel**” means either a single arbitrator or a group of three arbitrators selected as provided herein.

(iv) Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.

(v) Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vi) Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel’s costs shall be made on a monthly basis prior to the Award.

(d) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bona fide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

(e) Survival of Arbitration Provisions. The provisions of this Section 23 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

**24. NOTICES.**

Delivery of Notices. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email, addressed as follows:

If to Host:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

If to Provider:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

Notices shall be effective when delivered in accordance with the foregoing provisions.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

## 25. MISCELLANEOUS.

(a) Governing Law. This Agreement shall be governed by the laws of the State of New York without regard to conflict of law principles.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; Governmental Authorities; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23(c) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement; provided, however, with respect to Host, such surviving entity is acceptable to Financing Party in its reasonable discretion.

(f) Service Contract. The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701 (e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the Purchaser of electric energy produced at an alternative energy facility. This Agreement is an Energy Services Contract pursuant to the Act and a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code.

(g) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by facsimile, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(i) The Provider and the Host hereby agree and acknowledge that notwithstanding the Facility's presence on the Site, Host shall have no ownership interest in the Facility and no responsibility for its operation or maintenance. Neither Host nor any party related thereto shall have the right or be deemed to operate the Facility for purposes of Section 7701 (e)(4)(A)(i) of the Internal Revenue Code.

(j) Notwithstanding any provision to the contrary under this Agreement, neither Host nor any party related to Host shall bear or be deemed to bear any significant financial burden if there is nonperformance by Provider under this agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701 (e)(4)(A)(ii) of the Internal Revenue Code.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase and Lease Agreement as of the Effective Date.

**[Provider]**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

**[Host]**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

**EXHIBIT A**

**ENERGY PURCHASE RATES AND MONTHLY PAYMENT AMOUNTS**

Operations Year	Price per kWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**EXHIBIT B**

**EARLY TERMINATION AMOUNTS**

Operations Year	Early Termination Amount
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	Fair Market Value

**EXHIBIT C**

DESCRIPTION OF SITE

To include:

Site Address

Aerial Photograph

Legal Description of Host's property



## **EXHIBIT D**

### **DESCRIPTION OF PREMISES**

Location of buildings or portion of Site where the Project will be located

Location of access routes to Premises

Location of interconnection routes for Project across the Site

Location of storage facility

## **EXHIBIT E**

### **DESCRIPTION OF PROJECT**

Nameplate capacity

Building Footprint

Output Criteria [60 cycle 120 hertz 3 phase]

System CEC-AC rated Capacity (kW)

Quantity and type of Photovoltaic Modules

Quantity and type of Inverters

Type of Mounting Structure

Other Balance-of-System items, and

Data Monitoring Equipment

Perimeter Fencing

Point of Delivery

**EXHIBIT F**

**INSURANCE REQUIREMENTS**  
 COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE  
 LAW-1INS (rev. 3/06)

This certificate does not amend, extend or alter the coverage afforded by the standard from policies listed below.

I. Name Insured: Address Zip Phone No. _____	III. Companies Affording Coverages _____ <b>A</b> _____ <b>B</b> _____
II. Name Issuing Address Agency Zip Phone No. _____	<b>C</b> _____ <b>D</b> _____

IV. This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

Indicate Type of Insurance by Checking the Box	Policy Number	Effective Date & Expiration	Limits of Liability in Thousand		
			Check the Box	Each Occurrence	Aggregate
<b>COMPANY LETTER</b> from III above 1. General Liability <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises and Operations <input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Contractual <input type="checkbox"/> Personal Injury <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Explosion, Collapse <input type="checkbox"/> Underground Hazard			<input type="checkbox"/> Bodily Injury <input type="checkbox"/> Property Damage OR <input type="checkbox"/> Combine Single Limit		
2. Automobile Liability Comprehensive Form OR <input type="checkbox"/> Schedule Form <input type="checkbox"/> owned <input type="checkbox"/> hired <input type="checkbox"/> non-owned			<input type="checkbox"/> Bodily Injury <input type="checkbox"/> Property Damage OR <input type="checkbox"/> Combined Single Limit		
3. Excess Liability <input type="checkbox"/> Umbrella Form OR <input type="checkbox"/> other than umbrella <input type="checkbox"/> auto <input type="checkbox"/> general <input type="checkbox"/> both			Bodily Injury & Property Damage Combined \$ _____ Self Insured Retention \$ _____		
4. Workers Compensation & Employer's Liability Disability Benefits			Statutory Statutory		
5. Other <input type="checkbox"/>					

V. County of Erie is included as an additional insured under the following Policy numbers:

VI. Description of Operations. It is understood that this coverage on behalf of the insured is for all locations in the County of Erie, NY.

VII. Cancellation/Non-Renewal: Should any of the policies noted above be cancelled before expiration thereof or not renewed by the insured, the issuing company will endeavor to mail \_\_\_\_\_ days advance written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

VIII Name and Address of Certificate Holder & Recipient of Notice County of Erie c./o Department of Law 69 Delaware Avenue Suite 300 Buffalo, NY 14202 716-858-2200	IX. Date Issued _____ Auth. Representative _____ Firm Name & Address _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------

X. FOR COUNTY USE ONLY:      Name of County Dept. Requesting Certificate \_\_\_\_\_  
                                          Purchase Order or Contract Number \_\_\_\_\_  
                                          Vendor Insurance Classification \_\_\_\_\_

**INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE**

1. Insurance shall be procured and certificates delivered before commencement of work or delivery or merchandise or equipment.
2. Coverage must comply with all specifications of the contract for which the insurance is being provided.
3. The insurance certificate must be executed by an insurance company, agency or broker, which is licensed by the Insurance Department of the State of New York,.

If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.

4. The completed certificate must be mailed or delivered to the County of Erie department of division identified in Box X on Page 1
5. Minimum coverage with limits are as follows:

Vendor Classification	A Construction and Maintenance	B Purchase or Lease of Merchandise or Equipment	C Professional Services	D Property Leased To Others or Use Of Facilities or Grounds	E Concession-Aires Services	F Livery Services	G All Purpose Public Entity Contracts
Comp Gen. Liab.	\$1,000,000	\$500,000 CSL	\$500,000 CSL	\$1,000,000	\$500,000 CSL	\$1,000,000	\$500,000 CSL
Prem. & OPS	Include		Include	Include	Include	Include	Include
Prod. & Comp OPS	Include	Include	Include	Include	Include	Include	Include
Indepen Contract	Include	Include	Include	Include	Include	Include	Include
Contractual	Include		Include	Include	Include	Include	Include
Broad Form P.D.	Include	Note: Comprehens. Form Not Required					see note below
X.C.U.	Include						
Personal Injury			Include	Include	Include	Include	Include
Liquor Law				Include	See note below		
Host Liquor							Include
Auto Liability	\$1,000,000 CSL		\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL
Owned	Include		Include	Include	Include	Include	Include
Hired	Include		Include	Include	Include	Include	Include
Non-Owned	Include		Include	Include	Include	Include	Include
Excess Umbrella Liability	\$1,000,000 <i>See note below</i>	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000 <i>See note below</i>
Worker's Comp. & Employers Liability	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	
Disability Bene.	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	
Prof. Liability			\$1,000,000				
Erie County to be Named Add'l Insd. on	Gen. Liab., Auto Liab., & Excess	Broad Form Vendors May Be Required	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess

\* Construction contracts require excess Umbrella Liability limits for \$3,000,000

\*\* Snow removal contracts require evidence of broad form property damage

\*\*\* In the event the concessionaire is required to have a N.Y.S. license to dispense alcoholic beverages an endorsement for liquor liability is required.

\*\*\*\* Transportation of people in buses, vans or station wagons requires \$3,000,000 excess liability

**NOTE:** Worker Compensation & Employers Liability plus NYS Disability Benefits does not apply to self employed individuals

6. In some circumstances it will be necessary to require alternate coverage and limits which will be defined in the bid specification contract lease or agreement. The alternative specifications should be evidenced on the certificate in lieu of the standards printed above.

7. The "ACCORD" form certificate may be used in place of the County of Erie Standard Insurance Certificate, provided that all of the above referenced requirements

Including the information required on Page 1 of this certificate are incorporated into the "ACCORD" form certificate.

**EXHIBIT G**

**MEMORANDUM OF ACCESS LICENSE**

After recording return to:

[Provider]  
[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

BE IT KNOWN THAT [\_\_\_\_], a [\_\_\_\_] (“**Provider**”), and [\_\_\_\_], a [\_\_\_\_] (“**Host**”) executed that certain Power Purchase and Lease Agreement (“**Agreement**”) dated as of [\_\_\_\_] concerning the property described in the attached Schedule ”A” (the “**Site**”). Initial capitalized terms used and not otherwise defined in this Memorandum of Access License shall have their respective meanings as set forth in the Agreement.

Pursuant to the Agreement, Host has granted to Provider and its designees a non-exclusive, royalty-free, revocable license coterminous with the term of the Agreement (plus an additional ninety (90) days with respect to removal) to access the Site, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Project, and any other purpose set forth in the Agreement.

The term of the Agreement shall be until the last day of the calendar month in which the twentieth (20th) anniversary of the Commercial Operations Date (as that term is defined in the Agreement) occurs, subject to any extensions or early termination pursuant to the terms of the Agreement.

(Signature pages follow)



**EXHIBIT H**

Applicable Solar Program Requirements

**EXHIBIT I**

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

1) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Consultant certifies that it, and its principals:

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Consultant is unable to certify to any of the statements in this paragraph, the Consultant shall attach an explanation to this certification.

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

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Title**

\_\_\_\_\_

**Organization**

**EXHIBIT J**

**Certification Regarding  
Drug-Free Workplace Requirements  
Grantees Other Than Individuals**

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988, 41 U.S.C. § 701 et seq. See 48 C.F.R. Subpart 23.5.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

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Organization

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Authorized Signature

Title

Date

EXHIBIT K

**Certification Regarding Lobbying**  
**Certification for Contracts, Grants, Loans,**  
**and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member or Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization

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Authorized Signature      Title                      Date

**NOTE:** If Disclosure Forms are required, please contact: Mr. Will Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

EXHIBIT L

**Erie County Equal Pay Certification**

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

\_\_\_\_\_  
Signature

**Verification**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

A)  
\_\_\_\_\_, being duly sworn, states he or she is the owner of (or a partner in) \_\_\_\_\_, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)  
\_\_\_\_\_, being duly sworn, states that he or she is the (Name of Corporate Officer)  
\_\_\_\_\_, of \_\_\_\_\_,  
(Title of Corporate Officer) (Name of Corporation)

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT M**

COUNTY OF ERIE

MINORITY AND WOMEN'S BUSINESS ENTERPRISE

PAGE NO.

Minority/Women's Business Utilization Commitment

Prime Contractor Affidavit

Minority Business Enterprise Utilization  
Report – Part A & Part D

Waiver Request

County of Erie Local Law No. 1

COUNTY OF ERIE  
MINORITY AND WOMEN'S BUSINESS ENTERPRISE COMMITMENT

Minority/Women's Business Utilization Commitment:

Erie County's Minority and Women's Business Utilization Local Law No. 1, 1987 requires all prime Contractors awarded construction contracts let by the County of Erie to exemplify Affirmative Action and subcontract to minority and women's business enterprises MBE/WBE. For the purpose of these regulations, the term "Minority Business Enterprise" refers to a business at least fifty-one percent (51%) of which is owned and controlled by minority group members. Minority group members are citizens of the United States who are Blacks, Hispanics, Asian Americans, American Indians, Eskimos and Aleuts. MBE's must be certified by the Erie County and/or the Erie County/City of Buffalo Joint Certification Committee.

For the purpose of these regulations the term "Women's Business Enterprise" refers to a business at least fifty-one percent (51%) of which is owned and controlled by women. WBE's must be certified by Erie County and/or the Erie County/City of Buffalo Joint Certification Committee.

Be it further understood that in order for a Minority and/or Women's Business to be certified as such by Erie County and/or the Erie County/City of Buffalo Joint Certification Committee and the proposed business is incorporated, that the MBE/WBE must own and control 51% of the stock authorized to be issued by the corporation. Such authorization is made in the Certificate of Incorporation.

The County of Erie has determined that a goal of ten percent (10%) of the total contract value represents a fair share of minority business utilization and two percent (2%) of the total contract value represents a fair share of women's business utilization on each construction contract awarded.

This local law requires that positive efforts be made by recipients of Erie county construction contracts to utilize minority and women owned business sources for supplies, services and professional services, allowing these sources the maximum feasible opportunity to compete for contracts, subcontracts and third-tier contracts to be performed.

All prime contractors awarded Erie County contracts estimated to exceed \$100,000 are to take positive steps "to afford fair opportunities to MBEs and WBEs". Positive steps shall include be not be limited to:

- A. Utilizing a source list of bonafide minority and women's business enterprise (Appendix B);
- B. Solicitations of bids from MBEs and WBEs particularly of those located in Erie, Niagara, Cattaraugus and Chautauqua Counties.
- C. Giving minority and women firms sufficient time to submit proposals in response to solicitations;  
and
- D. Maintaining records showings minority and women business enterprises and specific efforts to identify and award contracts to these companies.

Each Contractor bidding on a County of Erie Contract is to contact MBEs and WBEs and solicit bids for various aspects of each project. The Contractor is to supply the County MBE/WBE office with information regarding contracts for services and products with minority and women business enterprises and the dollar amount to each contract on the Minority Business Utilization Report.

- E. Where the MBE or WBE is supplier, a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE and WBE and the Contractor shall be awarded toward the fulfillment of the appropriate goal.

1. For purposes of this Section, an MBE or a WBE will be considered a supplier when it:
  - a. Assumes actual and contractual responsibility to furnish supplies and/or materials and is the manufacturer of those supplies and/or materials; or
  - b. Is recognized by the manufacturer involved as a distributor of its supplies and/or materials; and
  - c. Owns or leases a warehouse, yard, building or other facility which is necessary and customary to carryout the proported function of the business; and
  - d. Distributes, delivers and services the supplies and/or materials with its own staff.
  
- F. Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE, the Contractor will be awarded toward the fulfillment of the appropriate goal;
  
- G. Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process of duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted towards the appropriate goal.
  
- H. The qualifications set for in subsections (E), (F) and (G), above of this Action shall be certified by the Erie County Equal Employment Opportunity Office.

The three (3) lowest bidders shall submit to Erie County the Minority Business Enterprise Utilization Report, Part A with the Bid. Part A includes a list of MBEs and WBEs from whom the Contractor has solicited bids, or with whom the Contractor has signed a binding contractual agreement or with whom the Contractor is presently negotiating an agreement. A Contractor's bid shall not be considered where the Contractor fails to submit this report or where an examination of the report evidences failure by the Contractor to comply with the Affirmative Action requirements of the Contract.

In the event of a joint venture participating in this MBE/WBE Program, the Joint Venture Disclosure Affidavit must be submitted with Part A by all parties involved. Only to the extent that a minority and/or women's business enterprise contributes to and is paid for its participation in a Joint Venture will that dollar amount be credited towards the 10% and/o 2% respectively goal of minority/women's participation in the County of Erie MBE/WBE Program.

MBEs and WBEs must be certified before their participation may be credited toward the respective 10% and 2% goal. Where the proposed MBE and/or WBE is not certified by Erie County or the Erie County/City of Buffalo Joint Certification Committee, the appropriate Certification Disclosure Affidavit must be filed with the appropriate Erie County/City of Buffalo Department. Forms and lists of certified MBEs/WBEs may be obtained by calling 858-8480.

A Minority/Women's Business Enterprise Utilization Waiver Request must be completed and submitted with the Utilization Report Part A to the County of Erie along with the Bid. Waivers shall be granted only where the availability of MBEs and/or WBEs in the market area of the project is less than the respective 10% and 2% goal.

Sufficient information must be provided on the Minority and/or Women's Business Enterprise Utilization Waiver Request to ascertain whether a waiver should be approved, conditionally approved or rejected by the Department of Public Works or the Department of Environment and Planning on the advice of the

MBE/WBE Office.

A waiver approval limits the Contractor's obligation to solicit MBEs and/or WBEs for a particular project only. It does not relieve the Contractor of MBE/WBE utilization for any other County of Erie project on which he submits a bid.

Conditional approval of the waiver request makes it necessary for the contractor to continue soliciting MBEs/WBEs for contracting purposes, after he has been declared the low bidder.

An MBE/WBE Utilization Waiver Request will be rejected if the Contractor:

1. Fails to provide information on the Minority and/or Women's Business Enterprise Utilization report at the time of the Bid Opening.
2. Provides fraudulent information on the MBE/WBE reports.
3. Fails to make a honest good faith effort to recruit and contract with MBEs/WBEs  
or
4. Takes any other action which is contrary to the spirit and intent of the law.

The information provided on the MBE/WBE Waiver Request and the MBE/WBE Utilization Report will be considered concurrently to determine if a waiver should be approved, conditionally approved or rejected.

The successful low bidder shall submit to the Erie County MBE/WBE Office within 15 business days of the bid opening, a schedule for minority/women's business enterprise participation, listing the minority/women's business enterprise with whom the Contractor intends to subcontract, specifying the agreed price to be paid for such work, and identifying in detail the contract item(s) or parts to be performed by each minority/women's business enterprise.

A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the Contractor and the minority/women's business enterprise. The Prime Contractor shall not substitute or delete the listed minority and/or women's business enterprise without the written consent of Erie County. In the event that the MBE/WBE goal for the Contract is not met, the Contractor shall provide sufficient documentation to establish that every positive effort was made to identify, solicit and negotiate with MBEs and WBEs in pursuit of the goal. Such documentation includes, but is not limited to advertisement in minority-focus media, written contact with minority contractors' associations and community groups and copies of direct solicitation of individual minority businesses indicating sufficient time to prepare quotations. Where an MBE/WBE is rejected due to price, the contract shall provide documentation of the successful bidder's price along with evidence showing the work to be performed in the same, and not a reduced portion thereof.

The Contractor shall provide to the Erie County MBE/WBE Office copies of all subcontracts and/or purchase agreements with minority/women's business enterprise within 15 days of Contract award. A Notice to Proceed with construction shall not be issued until acceptable documentation is received.

When the project is 30% complete, the Contractor shall submit to the MBE/WBE Office the Minority Business Enterprise Utilization Report – Part B. Part B lists the MBE/WBEs on the project, the dollar amounts paid to that date and the estimated amount remaining to be paid.

The Minority Business Enterprise Utilization Report, Part C certifies the actual dollar amount expended to MBEs/WBEs. Part C must be completed by the Prime Contractor and submitted to the Erie County MBE/WBE Office at the 75% project completion level. The Final Minority Business Enterprise Utilization Report, Part D certifies the total dollar amount expended to MBEs/WBEs Part D and all cancelled checks payable to the MBEs/WBEs on the project is to be submitted to the Erie County MBE/WBE office with the request for final payment.

In the event a Contractor fails to comply with these provisions, Erie County may:

1. Summon the Contractor to a hearing.
2. Withhold progress payments in part or in full.
3. Cancel the Contract.
4. Bar awards of future contracts until the Contractor can demonstrate that he will comply.

It is, hereby, the County of Erie's commitment to assure that on all contracts awarded, Prime Contractors expend a fair share of the contract with bonafide Minority and Women Owned business enterprise in accordance with the goals set forth in the Minority Business Utilization Local Law, No. 1, 1987.

Failure to comply with the provisions of the law shall constitute a break of Contract subject to all remedies available to Erie County.

The Prime Contractor and all Minority and Women Owned Business subcontractors are bound by all requirements as put forth in the County of Erie Standard General Conditions and all modifications thereto contained in these Contract Specifications.

**PRIME CONTRACTOR AFFIDAVIT**

- According to the best of my knowledge, I certify that all the following statements are true and accurate and are made under penalty of perjury. I agree to comply with Executive order 11246, New York State Article 15-A of the Executive Law, and Erie County Local Law No. 1 & 5 to achieve Minority and Women Business Enterprise goals assigned to this contract.
- I understand that only Erie County/City of Buffalo certified MBE & WBE owned and operated business enterprises will be credited towards fulfillment of the MBE & WBE utilization goals on this construction project.
- I will make every good faith effort to meet the MBE/WBE utilization goals in which contained in the contract.
- I affirm that I have no direct or indirect control over any MBE/WBE which I propose to use in fulfillment of the MBE/WBE utilization goals of this contract.
- I understand that I will not meet the MBE/WBE goal through arrangements with minority/female individuals of firms, which are not certified as participating minority business enterprises or women business enterprises.
- I understand and acknowledge that I will not perform any services and functions to such an extent that the MBE/WBE owner/operator does not manage and control its company
- I will only utilize MBE & WBE subcontractors and/or suppliers who are certified with Erie County/City of Buffalo.
- I understand that I am responsible for ensuring that MBE & WBE firms are utilized in order to further utilization goals. I understand that failure to utilize MBE & WBE firms are represented herein, will constitute a material breach of contract.
- The MBE/WBE firm will perform all the work and/or supply all the material covered under the prime contractor and subcontractor agreement. If change occurs, it is the prime contractor's responsibility to notify Erie County-EEO Office within 2 weeks.
- I understand that I will not withhold any payments that I agree on with MBE & WBE upon completion of the project.
- I understand that any misrepresentation of fact in this affidavit may lead to criminal prosecution under State and Federal law.
- The percentage (%) of MBE utilization goals for this contract is 10%
- The percentage (%) of WBE utilization goals for this contract is 2%.

_____	_____
Date	Name of Company
	_____
	Address
	_____
	_____
	Telephone No.
	Authorized Signature

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary

County of Erie

Division of Equal Employment Opportunity

**MINORITY/WOMEN'S BUSINESS ENTERPRISE UTILIZATION REPORT**

**PART A-PART D**

**Instruction:**

1. The low bidder must complete and submit this form within (3) business days of bid opening.
2. The low bidder will only utilize MBE & WBE subcontractors and/or suppliers who are certified by Erie County/City of Buffalo.
3. The low bidder is responsible for ensuring the MBE & WBE goal set forth.
4. The percentage of MBE utilization goals for this contract is 10%.
5. The percentage of WBE utilization goals for this contract is 2%.
6. Describe MBE/WBE utilization as one of the following:

**SC** – Subcontract construction      **TS** – Trucking or service

**MS** – Source of materials or supplies

**CONTRACT INFORMATION**

**CHECK**  Schedule for initial contract award

**ONE**  Schedule for amending utilization      Date Received in EEO \_\_\_\_\_

Bidder \_\_\_\_\_ Fed Emp. ID No. \_\_\_\_\_

Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contract No. \_\_\_\_\_ Total Amt. Bid \_\_\_\_\_

Location \_\_\_\_\_ MBE Goal \_\_\_\_\_ % Sub.Contr. Amt \_\_\_\_\_

Letting Date \_\_\_\_\_ WBE Goal \_\_\_\_\_ % Sub.Contr. Amt \_\_\_\_\_

Fed., State, County Proj. No. \_\_\_\_\_ Combined MBE/WBE Goal \_\_\_\_\_

**UTILIZATION INFORMATION** (See Instruction Above)

	MBE		Dollar Value
MBE utilization	Certification	Utilization	of Utilization
(Firm Name)	Expiration Date	as (See #5)	(see #3)
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

(See Instruction Above)

	WBE		Dollar Value
WBE utilization	Certification	Utilization	of Utilization
(Firm Name)	Expiration Date	as (See #5)	(see #4)
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

**Erie County reserves the right to require cancelled checks to verify these amounts.**

Date \_\_\_/\_\_\_/\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

---

WAIVER

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

(AREA CODE) (NUMBER)

1. Contractor has made a good faith effort to adopt subcontracting on this project to those trades, professions, supplies, etc. for which minority/women's business enterprises bids could be solicited; and
  
2. The total percentage of the bid which could be subcontracted in trades, professions, supplies, etc. for which minority business enterprises bids could be solicited is less than percent (10%) for MBEs and/or two percent (2%) WBEs.

A waiver, as provided for by Erie County Local Law is hereby requested on the grounds that there are no/insufficient (circle the appropriate term) minority/women's business enterprise in the market area of this project which do subcontracting in the following field (list all trades, professions, supplies, etc. which could be subcontracted on this project):

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |

(Use Additional Sheets If Necessary)

If a partial waiver is granted the Contractor will make a good faith effort to meet the reduced goal.

DATE \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF AUTHORIZED  
REPRESENTATIVE OF COMPANY

Granted In Whole: \_\_\_\_\_

Granted in Part: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_

EQUAL OPPORTUNITY OFFICIAL

TITLE

DATE

\_\_\_\_\_/\_\_\_\_\_

LETTING DEPARTMENT REPRESENTATIVE

TITLE

DATE

COUNTY OF ERIE  
LOCAL LAW NO. 1  
1987

A LOCAL LAW requiring a minority business utilization and women-owned owned business utilization commitment by persons or firms contracting with the County of Erie:

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section 1. The following provisions shall be inserted in and made a condition of all bid specifications prepared by the Erie County Department of Planning and Environment and/or the Erie County Department of Public Works and advertised after the effective date of the local law which was estimated by the County to result in a contract exceeding \$100,000.00.

Minority Business – Utilization Commitment

A) The Contractor shall take affirmative action to utilize bona fide minority business enterprises/women business enterprises for subcontracts on this project. Affirmative action shall include, but not be limited to: (1) Utilizing a source list of minority business enterprises (MBE) and women-owned business enterprises (WBE), (2) Solicitation of bids from MBE's and WBE's, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties, (3) Giving MBE's and WBE's sufficient time to submit proposals in response to solicitations, (4) maintaining records showing MBE's and WBE's and specific efforts to identify and awards contracts to those companies, and (5) a goal of awarding at least ten percent (10%) of the total dollar value of the Contract to MBE's and at least two percent (2%) of the total dollar value of the Contract to WBE's or, of those contracts governed by federal or state regulations with respect to MBE and/or WBE hiring, the prevailing percentage set forth therein, whichever is higher, subject to waiver as provided for below.

B) The three (3) lowest bidders on each contract subject to this law shall submit to the County MBE/BE office, with the bid (or within 3 business days of the bid opening), a list of all MBE's and WBE's from whom the Contractor has solicited bids or with whom the Contractor has signed a binding contractual agreement of with whom the Contractor is presently negotiating an agreement, for the purposes of meeting the MBE and WBE utilization goals provided for in subdivision (A) (5) above. A Contractor's bid shall not be considered where the Contractor fails to submit such a list as provided for herein. A Contractor's bid shall not be considered where examination of said list of MBE's and WBE's evidences failure by the Contractor to comply with the affirmative action requirements provided for herein, except that the County may, upon written request by the Contractor, grant a complete or partial waiver of the provisions of Subdivision (A) (5), where the availability of MBE's and/or WBE's in the market area of the project is less than the ten percent (10%) and two percent (2%) goals above.

C) As evidence of compliance with the goals set forth in Subdivision (A) (5) above, the Contractor shall submit to the County MBE/WBE office, within fifteen (15) business days of the bid opening, a schedule for MBE and WBE participation, listing the MBE's and WBE's with whom the Contractor intends to subcontract, specifying the agreed price to be paid for such work, and identifying in detail the contract item(s) or parts to be performed by each MBE and each WBE. A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the Contractor and the MBE or WBE. The Prime Contractor shall not substitute or delete the listed MBE's or WBE's without the written consent of Erie County.

D) As evidence of compliance with the goals set forth in subdivision (A)(5) above, the Contractor shall provide to Erie County MBE/WBE office, copies of all subcontracts and/or purpose agreements with MBE's and WBE's within fifteen (15) days of contract award. A motion (notice) to proceed with construction shall not be issued until such documentation is received.

E) As evidence of compliance with the goal set forth in Subdivision (A)(5) above, the Contractor shall submit to the County MBE/WBE office, when the project is thirty percent (30%) complete, a list of MBE's and WBE's on the project, the dollar amounts paid to that date and the estimated amount remaining to be spent. This same information is required at seventy-five percent (75%) completion and a final accounting must accompany the final payment request.

F) Failure to comply with the provisions set forth herein shall constitute a breach of this

Contract subject to all remedies available to the County.

G) For the purpose of this section, the term “minority business enterprise (MBE)” shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by minority group members or, in the case of a publicly owned business, at least fifty-one percent (51%) of all stock is owned by minority group members. Such ownership shall be certified by the Erie County Equal Employment Opportunity Office. For the purposes of this paragraph, “minority group members: are citizens of the United States who are Black, Hispanic, Asian-American, American Indian, Eskimo or Aluet. (For purposes of this section, the term “subcontract” includes all construction, modification, supplies and material, and service work contracted for by the Contractor in the prosecution of this work.)

H) For the purposes of this Section, the term “women-owned business enterprise (WBE)” shall mean a business which performs a commercially useful function, at least fifty-one (51%) of which is owned by a woman or women or, in the case of a publicly owned business, at least fifty-one (51%) of all stock is owned by a woman or women. Such ownership shall be certified by the Erie County Equal Employment Opportunity Office.

I) Where the MBE or WBE is a supplier, a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE or WBE and the Contractor shall be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1 (A)(5) above.

1. For purposes of this Section, a MBE or a WBE will be considered a supplier when it:
  - a. assumes actual and contractual responsibility to furnish supplies and/or materials and is the manufacturer of those supplies and/or materials; or
  - b. is recognized by the manufacturer involved as a distributor of its supplies and/or materials; and
  - c. owns or leases a warehouse, yard, building or other facility which is necessary and customary to carry out the proported function of the business; and
  - d. distributes, delivers and services the supplies and/or materials with its own staff.

J) Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE the Contractor will be awarded toward the fulfillment of the appropriate goal, as set forth in Section 1(A)(5) above.

K) Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process or duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the appropriate goal, as set forth in Section 1 (A)(5) above.

L) The qualifications set forth in subsections (I), (J) and (K), above, of this Action shall be certified by the Erie County Equal Employment Opportunity Office.

M) For purposes of this Section the term “subcontract” includes all construction, modification, service work, supplies and material contracted for by the Contractor in the prosecution of this work.

SECTION 2. The County Executive shall appoint a minority business enterprise and women-owned business enterprise utilization advisory board of nine (9) members consisting of County personnel, legislators, minority contractors, female contractors and community and business representatives, which shall review program administration and implementation on a regular basis and shall submit an annual report to the County Executive and County Legislature. This committee shall be empowered to promulgate regulations to provide for the administration of this local law.

SECTION 3. The Legislature shall conduct hearings annually to assess the impact of the local law.

SECTION 4. This local law shall take effect immediately.

**END OF MODEL PPA DOCUMENTS**

## EXHIBIT I POTENTIAL SITE DETAILS

The RFP Issuer will accept proposals with alternative system size and design, site locations, and incentive structures. This Exhibit I provides possible designs and preliminary drawings. These drawings are to provide guidance only to the proposer. Please design your system(s) as you see fit.

Project	Name	Owner	Location SBL #	Type	Estimated Size
1	Alden Correctional Facility	County of Erie	96.00-5-9.1	Ground Mount	1MW
2	Aurora Highway Garage	County of Erie	186.00-5- 6.111	Ground Mount	1 MW
3	Erie County Home & Infirmary	County of Erie	96.00-2-20	Ground Mount	1 MW
4	Erie County Sewer District No. 2 Big Sister Creek WWTP Site	County of Erie	220.00-1-16	Ground Mount	2MW
5	Erie County Sewer District No. 2 18-Mile Creek PS Site	County of Erie	193.00-1-9	Ground Mount	2MW
6	Erie County Sewer District No. 1 Cayuga ORF Site	County of Erie	124.00-5-29	Ground Mount	2MW
7	Alternate Remote Net Metering Site	Provided by Proposer	TBD	Ground Mount	2 MW



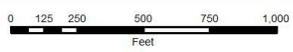
SBL #: 96.00-5-9.1

**POTENTIAL AREA  
FOR PV ARRAY  
(~8a)**

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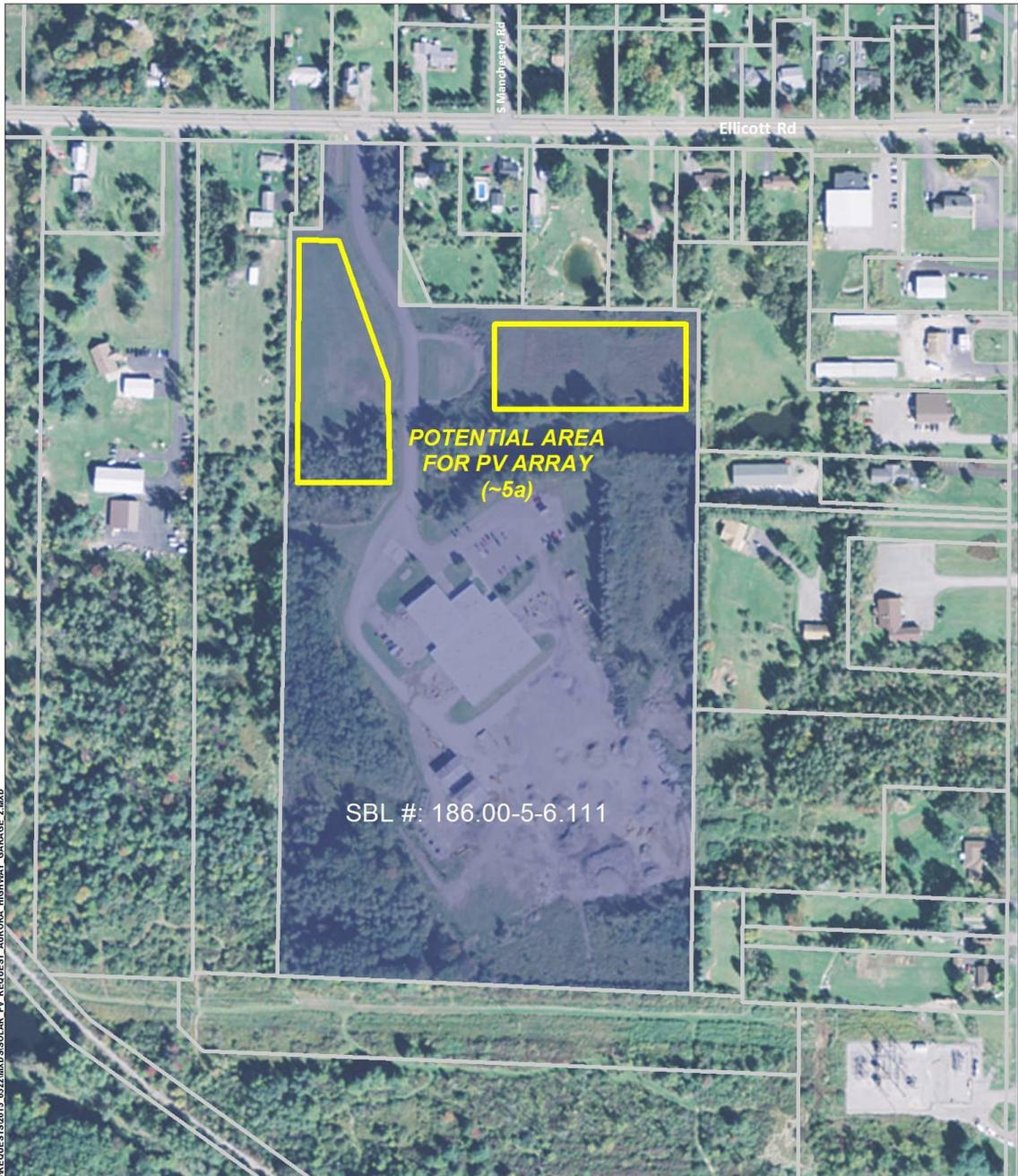
TAX PARCELS (2014)

THE HIGHLIGHTED AREAS DESIGNATED FOR THE PV AREA ARE APPROXIMATE AND WILL BE FINALIZED AT THE SITE VISIT.



**ERIE COUNTY CORRECTIONAL FACILITY  
ALDEN SITE  
(~103 Total Acres)  
ALDEN, NY**

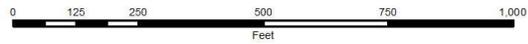
MAP PREPARED BY THE ERIE COUNTY DEPARTMENT OF ENVIRONMENT  
& PLANNING ENVIRONMENTAL COMPLIANCE SERVICES, 5/26/2015



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TAX PARCELS (2014)

THE HIGHLIGHTED AREAS DESIGNATED FOR THE PV AREA ARE APPROXIMATE AND WILL BE FINALIZED AT THE SITE VISIT.



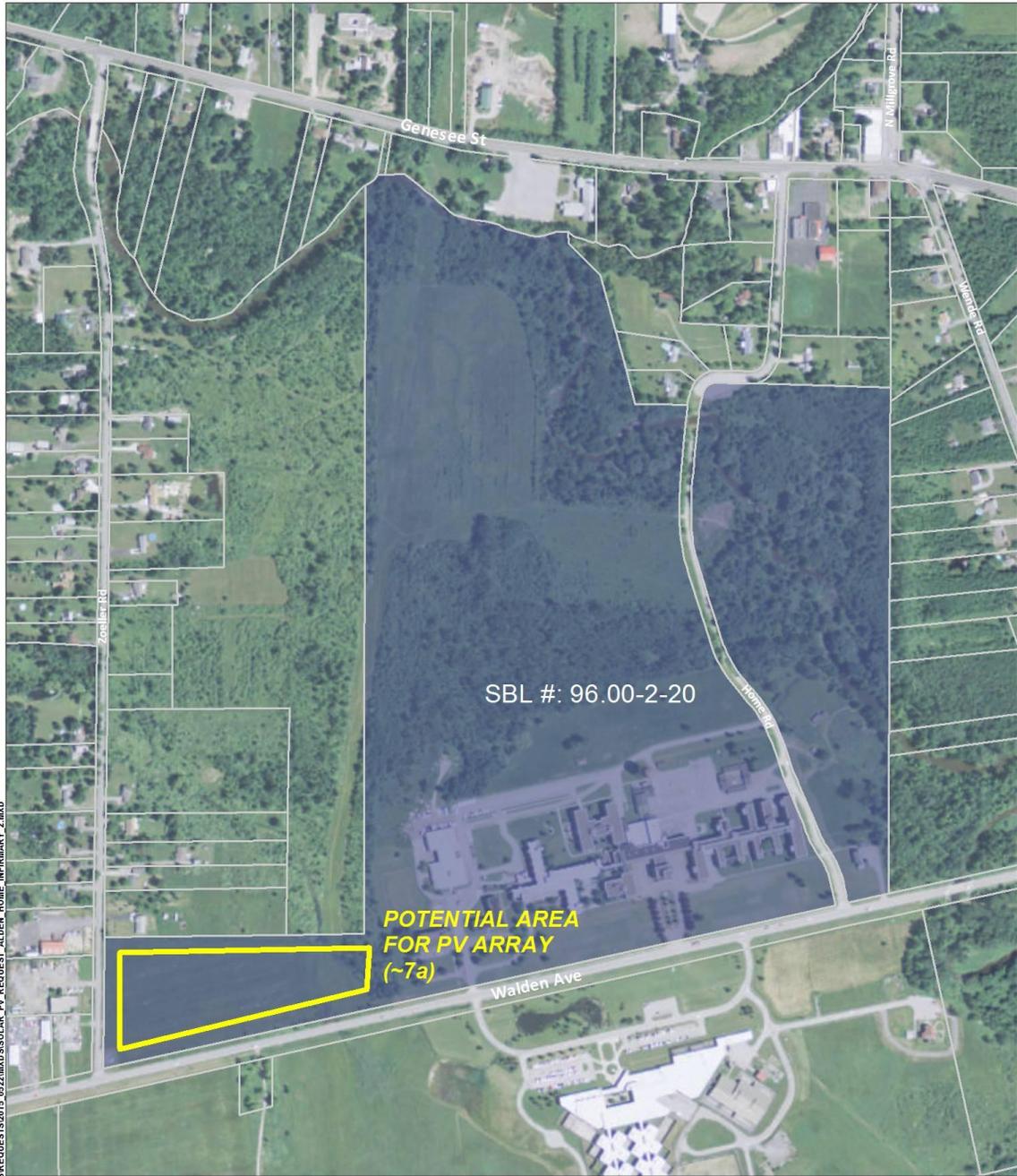
**ERIE COUNTY HIGHWAY DISTRICT  
AURORA HIGHWAY GARAGE SITE**

(~33 Total Acres)

AURORA, NY



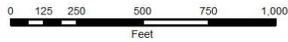
MAP PREPARED BY THE ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING ENVIRONMENTAL COMPLIANCE SERVICES. 5/26/2015



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 TAX PARCELS (2014)

THE HIGHLIGHTED AREAS DESIGNATED FOR THE PV AREA ARE APPROXIMATE AND WILL BE FINALIZED AT THE SITE VISIT.



**ERIE COUNTY HOME  
AND INFIRMARY SITE**  
(~147 Total Acres)  
ALDEN, NY



MAP PREPARED BY THE ERIE COUNTY DEPARTMENT OF ENVIRONMENT  
& PLANNING ENVIRONMENTAL COMPLIANCE SERVICES, 5/26/2015



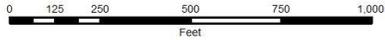
**POTENTIAL AREA  
FOR PV ARRAY  
(~20a)**

SBL #: 220.00-1-16

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 TAX PARCELS (2014)

MAP IS A USER GENERATED STATIC OUTPUT AND IS FOR REFERENCE ONLY. DATA LAYERS THAT APPEAR ON THIS MAP MAY OR MAY NOT BE ACCURATE, CURRENT, OR OTHERWISE RELIABLE. THIS MAP IS NOT TO BE USED FOR NAVIGATION



**ERIE COUNTY SEWER DISTRICT NO. 2  
BIG SISTER CREEK WWTP SITE  
(~104 Total Acres)  
EVANS, NY**



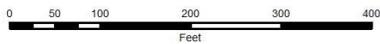
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DIVISION OF SEWERAGE MANAGEMENT. 5/26/2015



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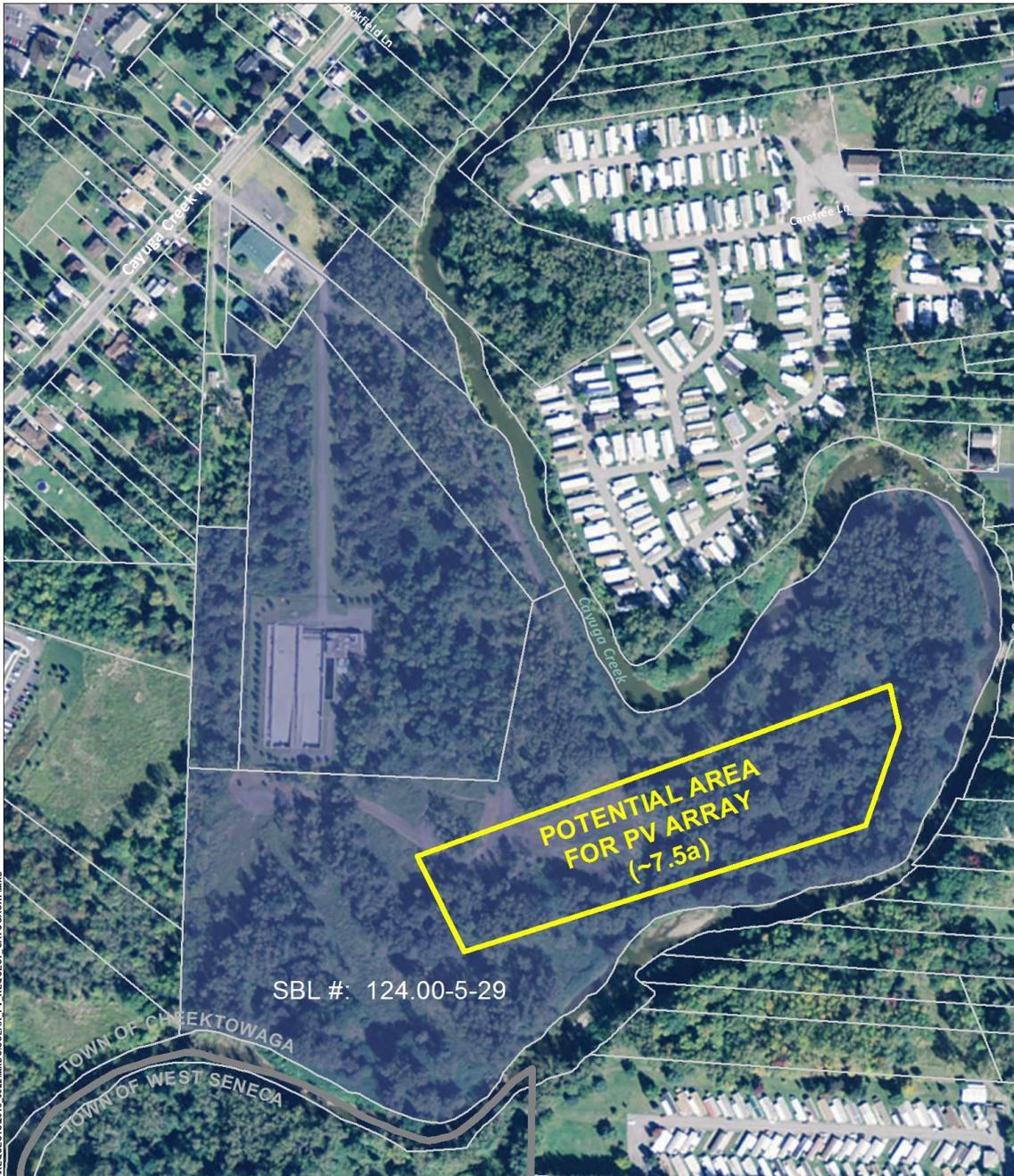
MAP IS A USER GENERATED STATIC OUTPUT AND IS FOR REFERENCE ONLY. DATA LAYERS THAT APPEAR ON THIS MAP MAY OR MAY NOT BE ACCURATE, CURRENT, OR OTHERWISE RELIABLE. THIS MAP IS NOT TO BE USED FOR NAVIGATION



**ERIE COUNTY SEWER DISTRICT NO. 2**  
**18-MILE CREEK PS SITE**  
 (~11 Total Acres)  
 EVANS, NY



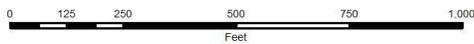
ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING  
 DIVISION OF SEWERAGE MANAGEMENT. 5/26/2015



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 TAX PARCELS (2014)

MAP IS A USER GENERATED STATIC OUTPUT AND IS FOR REFERENCE ONLY. DATA LAYERS THAT APPEAR ON THIS MAP MAY OR MAY NOT BE ACCURATE, CURRENT, OR OTHERWISE RELIABLE. THIS MAP IS NOT TO BE USED FOR NAVIGATION



**ERIE COUNTY SEWER DISTRICT NO. 1**  
**CAYUGA ORF SITE**  
 (~60.5 Total Acres)  
 CHEEKTOWAGA, NY



ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING  
 DIVISION OF SEWERAGE MANAGEMENT. 3/28/2015

**END OF EXHIBIT I**

## EXHIBIT J Electric Account Usage Summary

The RFP Issuer has provided information related to the annual estimated usage and associated Transmission and Distribution (T&D) costs to assist proposers in developing system size and design, site locations, and incentive structures. The exhibit below should only be used to provide guidance to the proposer. Please design your system(s) as you see fit.

Erie County Electric Accounts							
Zone	Utility	Cost Center	# Accounts	Annual kWh	2012 T&D	2013 T&D	2014 T&D
GENESE (B)	National Grid	Bldgs & Gmds	1	17,478	\$ 596	\$ 1,362	\$ 1,321
WEST (A)	National Grid	Bldgs & Gmds	15	25,349,732	\$ 951,815	\$ 836,736	\$ 797,503
		Detention	1	1,035,713	\$ 40,237	\$ 36,200	\$ 33,810
		Hgwy Dept	5	128,766	\$ 7,686	\$ 8,922	\$ 8,235
		Library	26	5,207,691	\$ 272,049	\$ 235,237	\$ 229,924
		Parks & Recreation	26	301,561	\$ 42,172	\$ 38,556	\$ 37,330
	<b>National Grid WEST (A) Total</b>		<b>73</b>	<b>32,023,463</b>	<b>\$ 1,313,959</b>	<b>\$ 1,155,651</b>	<b>\$ 1,106,802</b>
WEST (A)	NYSEG	Bldgs & Gmds	14	1,014,190	\$ 29,231	\$ 30,091	\$ 29,621
		COE - DISS	1	54,695	\$ 2,406	\$ 2,301	\$ 2,473
		County Clerk	4	115,753	\$ 7,034	\$ 7,277	\$ 7,335
		Hgwy Dept	19	960,539	\$ 35,292	\$ 40,339	\$ 41,298
		Library	11	1,200,136	\$ 52,902	\$ 55,779	\$ 54,952
		Parks & Recreation	48	644,759	\$ 38,541	\$ 41,623	\$ 44,407
		Weights & Measures	1	60,114	\$ 2,269	\$ 2,443	\$ 2,128
	<b>NYSEG WEST (A) Total</b>		<b>98</b>	<b>4,050,186</b>	<b>\$ 167,674</b>	<b>\$ 179,853</b>	<b>\$ 182,214</b>
WEST (A) Total			171	36,073,649	\$ 1,481,633	\$ 1,335,503	\$ 1,289,016
Grand Total			172	36,091,127	\$ 1,482,229	\$ 1,336,866	\$ 1,290,338

Erie County Sewer Districts Electric Accounts							
Zone	Utility	Cost Center	# Accounts	Annual kWh	2012 T&D	2013 T&D	2014 T&D
WEST (A)	Grid	Sewer Dist #1,4,5	1	25,178	\$ 1,904	\$ 1,709	\$ 1,296
		Sewer Dist #2	19	6,871,219	\$ 236,700	\$ 246,470	\$ 231,246
		Sewer Dist #3	13	9,411,159	\$ 321,127	\$ 313,981	\$ 278,894
		Sewer Dist #6	10	2,330,586	\$ 117,710	\$ 116,702	\$ 121,939
	<b>National Grid WEST (A) Total</b>		<b>43</b>	<b>18,638,142</b>	<b>\$ 677,441</b>	<b>\$ 678,862</b>	<b>\$ 633,375</b>
	NYSEG	Sewer Dist #1,4,5	35	2,654,272	\$ 120,957	\$ 145,222	\$ 141,114
		Sewer Dist #3	32	2,522,967	\$ 75,958	\$ 83,108	\$ 87,937
	<b>NYSEG WEST (A) Total</b>		<b>67</b>	<b>5,177,239</b>	<b>\$ 196,915</b>	<b>\$ 228,331</b>	<b>\$ 229,050</b>
WEST (A) Total			110	23,815,381	\$ 874,356	\$ 907,193	\$ 862,426
Grand Total			110	23,815,381	\$ 874,356	\$ 907,193	\$ 862,426

**END OF RFP AND EXHIBITS**