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Solar Procurement Guidelines for Local Governments in New York State

December 2015

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Solar Procurement Guidelines for Local Governments in New York State

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1 Why Procure Solar?

Developing solar electric (also known as photovoltaic or PV) projects can provide numerous benefits for local governments in New York State.[1] Municipal solar projects may be used to provide local, reliable, and affordable sources of energy for local governments, make productive use of otherwise unused or vacant rooftops and parcels of land, and demonstrate leadership on environmental issues to local residents and businesses.

In New York State, a suite of solar friendly policies supports municipalities that wish to go solar, organized through the NY-Sun initiative.[2] Still, managing a successful solar procurement can be a complicated process, particularly for municipalities that are unfamiliar with solar PV technology or third-party ownership arrangements.

To assist local governments that are interested in solar, the NY-Sun PV Trainers Network has developed this solar procurement toolkit, which provides resources to governments throughout the development process. The toolkit includes:

- Step-by-step guidance to the procurement process (found in this guide).
- A sample Request for Proposals (RFP).
- A sample Power Purchase Agreement (PPA).
- An Excel-based Bid Evaluation Form.
- A database of PPA Prices and Terms.
- One-on-One Technical Assistance for municipalities interested in solar procurement.

These, as well as a variety of resources designed to support local governments with developing local solar markets, are available on the PV Trainers Network website (training.ny-sun.ny.gov).

When developing a solar procurement, local governments should evaluate the overall goals of the process and tailor their procurements to best meet the individual circumstances of their jurisdiction. Most local governments have significant experience executing procurements for a range of project types. Because each municipality will have unique needs and can likely rely on staff with extensive procurement

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[1] This guide uses the terms "local" and "municipal" government interchangeably. In addition to town and city governments, this document also applies to county and village governments. Local school districts may also find this guide useful, though the New York Power Authority provides a separate program to support these entities' solar efforts, called K-Solar (http://www.nypa.gov/k-solar/About_K-Solar.html).

[2] Visit http://ny-sun.ny.gov/ for information on the NY-Sun initiative and solar programs and resources in New York State..

experience, this guide and the accompanying sample documents are templates that can be adapted to best meet the individual needs and existing processes of local governments in New York. Table 1 summarizes the main steps that are recommended to municipalities during a solar procurement process.

Table 1. Summary of the Municipal Procurement Process

Procurement Step	Municipal Actions
Collect Policy Background	Develop an understanding of incentives, third-party ownership, and net metering regulations for solar in New York State.
Assemble Procurement Team	Create a working group, develop communication strategies to external stakeholders, and consult outside organizations with approval authorities.
Set Goals	Establish goals that the municipality hopes to accomplish through solar procurement.
Collect Data	Compile municipal energy use from the past several years to determine annual municipal electric consumption.
Identify the Site	Screen municipal properties for solar suitability and identify one or several to be targeted for development.
Size the System	Determine what size system is appropriate to develop based on energy needs, available space, and municipal goals.
Write a Request for Proposals	Key Information to include: • Brief summary of project goals. • Description of site, including location, available space, aerial photography, site map, and other relevant information described in Sample RFP. • Information regarding annual energy consumption at project site and among all municipal utility accounts in general. • Project Developer References, Qualifications and information on project financing • Evaluation criteria and weights. • Template for developer to use in providing price proposal. • Modifications to Sample Power Purchase Agreement.
Evaluate Proposals	Suggested criteria include: • Developer Experience and Project Team • Project Approach • Price Proposal • Financial Resources
Negotiate Contractual Documents	Municipalities must negotiate the following agreements: • Power Purchase Agreement • Developer Site Agreement • Landowner Site Agreement (for projects on privately-owned sites)
Address Special Areas of Concern for Local Governments	Municipalities should ensure that they: • Are adhering an appropriate procurement pathway. • Understand Remote Net Energy Metering regulations in New York State. • Have compared the price of solar to their current variable energy costs and determined that solar is a financially viable investment. • Understand relevant permitting, zoning, and interconnection processes related to the project. • Have determined how to permit the project under the New York State Environmental Quality Review Act (SEQRA). • Understand the additional considerations required for landfill and brownfield projects.

2 New York Solar Market and Policy Background

The following sections review some of the key policies and concepts that support local governments in their efforts to develop solar projects in New York.

2.1 Incentives

Various incentives may be available for solar projects in New York State. Municipalities interested in solar should confirm the availability of these incentives and identify any upcoming deadlines that may impact project timelines. The two most important financial incentives for municipalities to be aware of are:

- **The Federal Investment Tax Credit (ITC).** The federal government offers a 30% tax credit for solar electric projects. To qualify, projects must be installed and operational by the end of 2016, after which the tax credit is scheduled to decline to 10% for nonresidential projects (and disappear entirely for residential systems). As local governments are not taxable entities, they cannot claim this incentive directly. However, municipalities can still benefit financially from this tax credit by using third-party ownership structures (see Section 2.3).

- **NYSERDA Megawatt Block Incentives.** Through the NY-Sun initiative, NYSERDA offers direct rebates to solar electric system owners. The incentive level is differentiated by the size and location of the project:
    - **Size –** Separate incentive programs are available for residential solar projects, nonresidential projects smaller than 200 kilowatts (kW)[3], and nonresidential projects larger than 200 kilowatts.
    - **Location –** The State is divided into three regions: (1) Con Edison territory including New York City and Southern Westchester County; (2) Long Island; and (3) Upstate. [4] The incentive level is different for each region of the State.

Incentives are generally offered on a per-watt basis[5] using a declining block structure, where the incentive amount decreases as more participants take advantage of the incentive. For example, incentives for nonresidential installations smaller than 200 kW decline from $0.60 per Watt to $0.15 per Watt as program enrollment increases. In addition, projects larger than 200 kW are eligible for an additional

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[3] The size of solar electric systems is generally discussed in terms of its capacity or power rating, which is measured in watts (or kilowatts or megawatts). The amount of energy that the system produces is measured in terms of watt-hours (or kilowatt-hours or megawatt-hours). It important that municipal officials interested in solar familiarize themselves with these measurements.

[4] The large commercial incentive program combines Long Island and Upstate into a "Rest of State" region.

[5] For the Large Commercial incentive program, the maximum incentive is calculated based on the project size (in kW), but incentives are paid over the first three years of commercial operation based on how actual production (in kWh) compares to estimated generation.

20% incentive for projects located in utility identified strategic locations[6] as well as projects that integrate energy storage or comprehensive energy efficiency.[7] Information on incentive levels, as well as a real-time dashboard showing the current incentives available for projects of different sizes and in different locations, is available at http://ny-sun.ny.gov/For-Installers/Megawatt-Block-Incentive-Structure

2.2 Net Energy Metering

New York State allows utility customers who install on-site solar energy to be billed for the power that they produce and consume using a process called net energy metering (NEM). NEM, or net energy metering, is an accounting mechanism that allows solar electric system owners to use all of their system's energy production to save on their utility bills. For net-metered accounts, utilities track the amount of energy that the customer consumes as well as the amount that the system produces each month, and bills the customer only for the energy that they consume on net. Any excess generation is allowed to carry over as a credit on the next month's bill.

Investor-owned utilities in New York State are required to accept new net metering customers until installed capacity reaches 6% of a utility's 2005 peak demand.[8] Municipal and cooperative utilities are not required to offer NEM, though some may choose to do so voluntarily.

Customers with more than one utility account—which generally includes municipal governments—are able to use the excess electricity produced at a solar site to reduce their electricity bills at other facilities through a related process called remote net energy metering (remote NEM). Municipalities installing solar systems that produce more energy than is consumed on-site will want to take advantage of remote NEM. A detailed explanation of remote NEM rules is provided in Section 4.2.

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[6] Strategic Location Maps are available by utility at http://ny-sun.ny.gov/For-Installers/Forms-Manuals-Tools

[7] NYSERDA offers a $50,000 integration incentive to Participating Contractors that install energy efficiency investments that reduce the energy use per square foot at the electric customer's site by a minimum of 15%. NYSERDA also offers a separate $50,000 PV/Energy Storage integration incentive to Participating Contractors that integrate an energy storage system into a PV Project and provides a minimum of 250 kW of monthly peak demand reduction at the electric customer's site. More information is available at: http://ny-sun.ny.gov/For-Installers/Forms-Manuals-Tools.

[8] Sustainable CUNY provides quarterly updates on utilities' available net metering capacity at: http://www.cuny.edu/about/resources/sustainability/nyssolar/NYSNetMeteringAnalysis.html.

Box 1: Net Energy Metering In Practice

Electric bills for NEM customers consider both how much energy that customer consumed during a monthly billing period as well as how much energy that customer produced from an on-site solar electric system and is illustrated by the following two scenarios:

A customer consumes more electricity than the solar electric system produces: During one month, a net energy metered customer's solar electric system produces 1,000 kWh of electricity and the customer consumes 1,500 kWh of electricity. When the customer receives their utility bill, they will only be billed for the 500 kWh difference, regardless of how much solar energy was actually consumed on-site as opposed to exported to the electricity grid.

A customer's solar electric system produces more electricity than the customer consumes: During one month, a net energy metered customer's solar electric system produces 2,000 kWh of electricity and the customer consumes 1,500 kWh of electricity. When the customer receives their utility bill, they would be billed for zero kWh and would receive a 500 kWh credit on their bill. The credit would carry forward to their next monthly billing cycle and can be applied to any net electricity that the customers consumes that month.

Only the portion of the utility bill that is charged on a per-kWh basis may be offset by net metering credits. Most utility customers also pay a small flat monthly fee as part of their electricity bill, often called a delivery charge, which still must be paid even if the customer consumes no net energy that month.

2.3 Third-Party Solar Ownership and Power Purchase Agreements

Municipalities seeking to develop solar projects may do so either through Direct Ownership, in which the municipality pays for the construction of and owns the solar project, or through Third-Party Ownership. In third-party ownership structures, a solar developer finances the cost of the project and owns the system—even if it is located on municipal property—and the municipality pays the developer for the energy that the system produces on a per kilowatt-hour basis.

A primary advantage to third-party ownership is the ability of the developer to claim the 30% federal tax credit that is available for solar projects, which would be unavailable to municipal governments as non-tax-paying entities if they were to own the system directly. Because developers are able to claim the tax credit if they own the system, the financial package offered through third-party ownership is frequently better than that of direct ownership.

The primary financial benefit of direct ownership is the low-cost capital that municipalities are able to obtain through bonding or other forms of lending. As this is generally lower than the cost of capital that developers would be able to obtain, municipalities may have a financial advantage in owning a system themselves. Usually, however, this advantage is outweighed by the tax benefits of third-party ownership.

Because of the financial benefit of the federal tax credit, this guide assumes that municipalities will pursue third-party owned systems. Generally, municipalities will purchase their energy through a power purchase agreement (PPA), which is the contract between the municipality and the developer that governs the purchase of the electricity that the system produces.[9] Under a PPA, the municipality will pay the developer a set price for the electricity the system produces over the term of the contract (typically 20 years). The third-party developer is responsible for designing, building, operating and maintaining the system, reducing the liability of the municipality for system performance.

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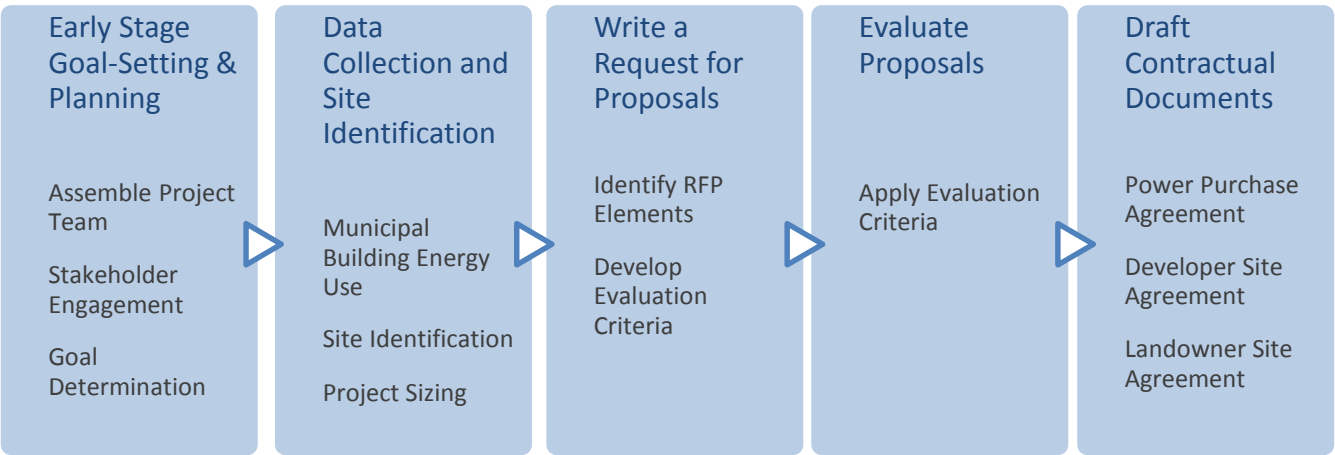
[9] These contracts are sometimes titled as Solar Energy Services Agreements or Net Metering Credit Purchase Agreements, which are very similar to PPAs, and the term PPA is often used as an umbrella term to describe these contracts as well. Municipalities may also choose to enter into Solar Leases rather than PPAs, in which the municipalities pays a flat monthly fee to the developer to lease a system, rather than purchasing the electricity on a per-kWh basis.

3 Solar Electric System Procurement Process

The procurement process outlined in this guide is advisable for several reasons, including a stipulation in New York State law that requires municipalities procure energy contracts through a competitive process that includes a Request for Proposals (RFPs). See Section 4.1 for details on New York Procurement Law. Additionally, in a solar marketplace as active as New York's, competition through an RFP can substantially lower solar power contract costs.[10] A typical solar procurement process will involve numerous steps, illustrated in Figure 1.

Figure 1. Steps to Local Government Solar Procurement



From initial interest to system installation, municipal solar project development can be a lengthy process. The project schedule in Table 2 provides the major steps in the procurement process along with an associated timeline. The timeline of each project will be different and depend on the complexity of the project and the actions of local stakeholders, and so this timeline should be interpreted only as a rough guide.

[10] Project developers may approach local governments and suggest that competitive processes for solar power contracts are not necessary or required under New York law. As explained in Section 4.1 below, NYSERDA's legal opinion is that a competitive process is required under Article 9 of the New York Energy Law to procure PPAs.

Table 2. General Project Development Time Frame

Step	Days from Issuance of RFP
Stakeholder Discussions and Data Collection	Pre-RFP Step
Publication of Request for Proposals	Day 0
Informational Bidder Meeting and Site Visit	Day 14
Bidder Questions due to Municipality	Day 28
Municipality Issues Responses to Bidder Questions	Day 35
RFP Submission Deadline & Opening of Bids	Day 49
Announcement of Selected Bidder	Day 56
Contractual Documents Signed	1-6 months after selection
System Design Completed, NYSERDA Application Submitted	2-6 months after contract
Project Construction Completed	6-18 months after application

The following sections discuss the various steps in the solar procurement process in detail.

3.1 Early Stage Goal-Setting and Planning

Solar procurements require the active participation of several internal government departments. Depending on the size of the jurisdiction, this group could include representatives with expertise and responsibility in accounting and finance, legal, sustainability, property management, environmental protection, construction management, and other areas.

3.1.1 Creating a Working Group

Including all relevant internal local government stakeholders in the early stages of a solar procurement process can ensure that potential project barriers are identified early and that critical municipal departments are fully informed about solar procurement in advance. To effectively coordinate internal stakeholders, local governments may wish to create a working group to support the procurement process that includes representatives from relevant departments. This working group can coordinate procurement process details and also serve as a selection committee for reviewing developer proposals. In addition to managing the procurement process, working group members may wish to arrange frequent project updates with local government leaders and the general public. As the development of a municipal solar project can be expected to take more than a year, local governments should guard against losing momentum due to staff turnover by ensuring that a broad set of internal stakeholders are engaged in the working group and that a detailed record of working group activities is maintained.

3.1.2 Develop Communication Strategies

Local government project proponents should also consider developing strategies for communicating information about proposed solar projects to external stakeholders, particularly if the development involves large open-space tracts, as large projects have raised concerns with adjacent landowners and other stakeholders in some jurisdictions.

3.1.3 Early Consultations with Approving Organizations

Local governments should also consult outside governmental and nongovernmental organizations whose approval is required for a project to move forward. These organizations include representatives at their local distribution utility regarding interconnection to the utility electric grid and groups with SEQRA responsibility locally (which may be within or external to a local government). Additionally, municipalities pursuing projects on closed landfills or brownfield sites should consult regional contacts at the New York Department of Environmental Conservation to understand requirements for modifying post-closure landfill plans (see Section 4.6). Projects located in the New York City watershed may need to consult the New York City Department of Environmental Protection. Municipalities should consult with these organizations early in the development process so that they understand the requirements and potential obstacles involved in obtaining the necessary approvals. Suggested stakeholders are summarized in Table 3.

Table 3. Suggested Stakeholders to Consult in the Solar Electric Procurement Process

Local Government Stakeholders	Consultations of Note
Elected Leaders	Utility interconnection staff
Legal counsel	Local SEQRA authority
Treasurer or financial staff	NY DEC (if landfill or brownfield)
Planning and Zoning staff	
Facilities Management staff	
Sustainability coordinator	

3.1.4 Establish Project Goals

Once assembled, the procurement team should develop a preliminary list of project goals and key outcomes, which could include:

- Providing energy savings to the town, and building a system that would maximize those savings.
- Requiring minimal effort and risk on the part of the municipality and building a small, simple system, potentially with the goal of building larger should the initial project be successful.
- Providing an example to town residents, and prioritizing installations on significant buildings, such as a town hall, over financial savings.
- Providing educational benefits to residents, and installing system on public schools (when under municipal control) or other buildings where generation data can be presented publicly and woven into curriculum.
- Providing a positive use to a capped landfill, brownfield, or other site where environmental or other attributes make alternate land uses difficult.

Municipalities should also consider how solar fits in to their other energy goals, and specifically how solar might complement efforts to improve the efficiency of municipal buildings. Municipalities may find that energy efficiency improvements are more cost-effective means of delivering energy bill savings to their local government. Also, if local governments build large solar electric systems that will provide all or nearly all of their energy needs, they may limit their ability to pursue future energy efficiency improvements, as they will have committed to the long-term use of the electricity that their system provides. Municipalities are encouraged to think about solar energy as part of a broader energy plan, which includes opportunities for both distributed energy generation as well as savings from energy efficiency.

Once preliminary project goals have been developed and internal government stakeholders have been briefed, the procurement team can move forward with estimating the potential scope of a solar electric project.

3.2 Data Collection and Site Identification

The next step in the procurement process is to assemble the required data, evaluate the suitability of a potential solar installation site (or sites), and estimate the potential system energy production.

3.2.1 Municipal Building Energy Use

Municipalities should compile their electric bills from the past several years (preferably, at least three years) to determine the amount of electricity, in kilowatt-hours, that the town government consumes annually. Reviewing average electricity consumption over several years is preferable as this data is less likely to be skewed by unusually warm summers or cold winters in a given year. This data provides a benchmark for municipalities to judge what percentage of a municipal government's energy needs could be satisfied by a solar project of a given size. Information about building-level energy consumption will also allow local governments to match solar electric system sizes to the needs of individual buildings.[11]

While gathering energy use information, municipalities should also identify the utility tariffs that their various facilities are metered under for use in determining how to allocate net metering credits (see Section 4.2 for more context on why this is important).

3.2.2 Site Identification and System Sizing

Municipalities interested in solar development that do not have a solar site already in mind may want to conduct a comprehensive screen of government-owned properties. As a preliminary step in determining potential locations for solar projects, municipalities should consider identifying:

- Properties with southern exposure (as solar panels are oriented to the south to maximize solar production).
- Rooftop space on municipal buildings.
- Municipally or privately owned capped landfills, brownfields, or other sites that are unlikely to be developed for environmental or other reasons.
- Large parking lots or parking garages (as parking canopies are an increasingly popular option for solar installations and provide the additional benefit of providing shading for parked cars);
- Other underutilized open spaces.

Also, municipalities should screen out sites that are:

- Significantly shaded by trees or nearby buildings, particularly to the south.
- Located far from the electric grid.

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[11] If local governments have not previously done so, they may wish to assemble their energy use data in ENERGY STAR Portfolio Manager, a free online tool provided by the U.S. Environmental Protection Agency that allows users to easily work with building-level energy data and identify properties that may be operating less efficiently. More information about Portfolio Manager may be found at http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager

These situations would negatively impact the cost-effectiveness of a solar project. Municipalities should identify a short list of potentially viable sites and the general size of a solar electric system that could be located at each.

While developing solar on publicly owned land may be more financially advantageous, New York State net metering laws allow local governments to develop solar electric systems on land they do not own as long as a lease agreement between the landowner and local government is in place (and municipalities may enter into lease agreements specifically for the purpose of developing solar).

Local governments may make use of a number of free online tools to help understand how large of a system could be developed on a particular plot of land and to identify potential obstructions that may make solar development difficult. One is the PVWatts tool[12] developed by the National Renewable Energy Laboratory (NREL), which allows property owners to use satellite imagery to draw the outline of a potential solar electric system and estimate the system's size and annual energy production. Figure 2 shows a screenshot of a solar system design developed using PV Watts. The City University of New York's NYC Solar Map[13] allows for similar analysis and was developed specifically for New York. (The current tool allows projects within New York City to be mapped, and a version that covers all of New York State is in development). NYSERDA's Clean Power Estimator[14] can also be useful in providing a rough estimate of the economics of a particular project.

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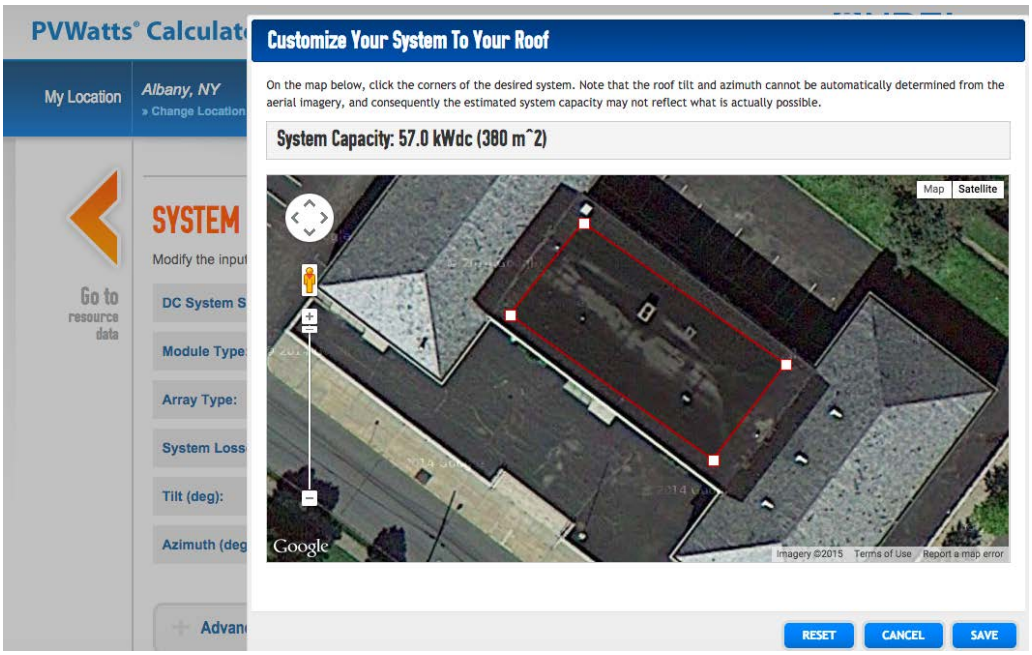
[12] Available at http://pvwatts.nrel.org

[13] Available at http://nycsolarmap.com/

[14] Available at http://ny-sun.ny.gov/Get-Solar/Clean-Power-Estimator

Figure 2. Site Screening Using PVWatts



The following sections describe specific criteria to consider in evaluating whether a given site is a good candidate for solar.

3.2.2.1 Rooftop Solar Site Considerations and System Sizing

In their initial screen of potential rooftop locations for solar development, municipalities should evaluate the following site conditions:

- **Roof Condition and Age –** The building should have a roof that could be expected to last longer than the life of any power purchase contract (typically around 20 years). Many solar installers will work with the original roofing manufacturer to ensure warranties are not voided as part of any roof-mounted solar electric system. If a roof must be replaced during the system's lifetime, the system must be temporarily removed and replaced after the roof replacement is completed, adding to the expense of the project.
- **Roof Carrying Capacity –** Roofs suitable for solar will need to be able to safely support the additional weight of a solar electric system. Many systems installed on flat roofs are not directly attached and are secured through a weighted ballast system, which can add up to 6 pounds per square foot to a roof's load. Although a full engineering analysis of the carrying capacity of a roof is typically not required to bid out a solar project as developers will typically do it during the system design phase, local governments may wish to have an engineering analysis completed for any buildings with suspected structural concerns before advertising an RFP.

- **Solar Access –** The roof should have a clear, unobstructed view of the southern sky. For building with pitched roofs, roof planes that face between southwest and southeast are ideal. For flat roofs, surfaces with no significant rooftop obstructions, such as HVAC equipment, are preferable. Surrounding obstructions such as trees and other buildings that might shade a potential solar system should be identified. Additionally, future building plans or vegetation growth in surrounding land parcels that could potentially shade a solar electric system should be considered.

In addition to PVWatts and the other tools previously described, local governments can get a rough sense of the potential size of a rooftop solar system from the amount of rooftop space available. **As a general rule of thumb, a rooftop system will require roughly 100 square feet of area per kilowatt of system capacity**.

3.2.2.2 Ground-Mounted Solar Site Considerations and System Sizing

Ground-mounted solar electric systems are typically larger than rooftop systems, and siting solar on open land can avoid the space constraints sometimes seen with rooftop units. Ground-mounted systems have their own sets of considerations, including:

- **Accessibility –** When siting a solar system on previously undeveloped land, municipalities must ensure that the parcel is accessible both to construction crews and for utility interconnections. Therefore, the site must be accessible via graded roads, and be close to utility transmission lines.
- **Slope and Drainage –** Generally, the best sites for ground-mounted solar are flat. Sloped land can add complexity – and cost – to a project, though projects on slightly sloped land may still be financially viable. Sites prone to ponding or that have shallow bedrock may be unsuitable for solar development.
- **Land Use and Zoning –** Frequently, ground mounted systems constitute the primary use of the land parcel on which they are located. Municipalities must determine whether their zoning code allows for such a designation (see Section 4.4). In the case of landfills, brownfields, and other environmentally sensitive sites, municipalities must comply with SEQRA to ensure that the proposed location is suitable for solar (see Section 4.5).

Local governments can also use rough rules of thumb to understand how large of a ground-mounted system they could develop on a given parcel. In general, ground-mounted solar requires around 6 acres of open area per megawatt of system capacity.

3.2.2.3 Sizing a Solar Procurement to Municipal Power Needs

Based on the jurisdiction's goals, its annual electric consumption, and its available land for solar, local governments should determine what size system to build, and how much of the municipality's energy usage will be offset by solar.

In general, a solar electric project in New York State can be expected to produce between 1,200 and 1,275 kWh per kW-DC, depending on the location. PVWatts, the NYC Solar Map, and the NYSERDA Clean Power Estimator can all provide more specific energy production estimates based on a given project's location.

As a rough rule of thumb, dividing a municipality's annual energy use (in kW) by 1,250 (a typical kWh production per kW per year in New York State) will yield the system capacity of a solar electric system (in kW) that would generate enough electricity to entirely offset its energy needs. This number provides an upper limit on the size system that a municipality would want to develop. But because municipalities are typically required to purchase all of the output of the solar project, they should be wary of building solar projects that are sized to meet 100% of their energy use. If municipal energy consumption were to decline, either due to energy efficiency improvements, facilities closures, or other changes, the municipality would still be required to purchase the full amount of power under a power purchase agreement. Because of this concern, local governments may wish to adopt a portfolio approach to energy procurement that balances solar power purchases with other sources including utility-provided power and energy conservation measures.

3.3 Writing a Request for Proposals

Municipal jurisdictions are required by New York law to conduct a competitive process to select a solar installer.[15] Competitive processes also ensure local governments are able to receive the best available pricing, maximizing any solar electric system benefits to the municipality. As many third-party solar ownership arrangements require no upfront cost on the part of customers, local governments may feel that choosing a solar developer through a noncompetitive award process is appropriate, but this approach can result in local governments signing above-market power purchase agreements which erode energy cost savings.

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[15] There are, however, ways to avoid drafting an RFP for each individual project, as discussed in Section 4.1 on NY Procurement Law.

New York has many highly qualified solar developers that can offer local governments competitive power purchase agreements. Projects applying for rebates through the NYSERDA Megawatt Block incentive program must use a contractor that NYSERDA has approved to participate in the program. NYSERDA provides lists of participating contractors, who must meet certain requirements related to training and prior experience, by county on the NY-Sun website.[16]

Issuing an RFP through a public procurement process creates a fair and open process under which solar developers can offer their services. Most local governments are well versed at developing construction project RFPs and it is recommended that each local government should tailor its solar procurement strategy to align with typical approval processes.

Procurement requirements will differ depending on whether the local government intends to directly own their solar electric system or whether it will be developed under a third-party ownership model. The following section provides key elements local governments should consider including in all solar RFPs as well as a list of RFP elements that are important parameters under either third-party ownership or direct ownership models.

3.3.1 Common Elements in Solar RFPs

To ensure that bidders are able to provide accurate bid pricing, RFPs should include as much information as possible about the site. A sample RFP including suggested language for these and other RFP elements is provided in Appendix B.

Information should include at least the following components:

- Current use of site (i.e., school, municipal building, closed landfill, etc.).
- Identification of specific potential panel installation sites, including available square footage or acreage.
- Site conditions.
- Nearest utility interconnection point and/or location of main utility panel in building.
- Roof age and warranty information.
- Potential site access restrictions during construction.
- Potential location for system equipment such as inverters.
- Site environmental or zoning restrictions.
- Building structural drawings (if available).

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[16] Participating contractors for the residential and small commercial incentive programs are available at http://ny-sun.ny.gov/Get-Solar/Find-A-Solar-Electric-Installer. Contractors for the large commercial incentive program are available at http://ny-sun.ny.gov/Get-Solar/Find-a-Large-Solar-Electric-Installer.

3.3.1.1 Energy Consumption

In addition to information about the specific potential solar site, RFPs should include information about building energy loads. Local governments should provide multiple years of building energy consumption data to allow potential bidders to accurately size the solar electric system to the building load. If a local government intends to develop a system and remotely net meter excess credits generated at a site, then information about other electricity loads for the municipality should be provided.

3.3.1.2 Project Developer References, Qualifications, and Financing

RFPs should also request that project developers provide sufficient information about previous work completed by the company. This information should include, at minimum, references from five prior projects that are similar to that project described in the RFP. In addition to previous project references, local governments should request resumes and qualifications for individuals that will be working on the project as well as a description of the project management structure. Contractors should also be asked to verify that they are listed at Participating Contractors by NYSERDA.[17]

Contractors should also be asked to demonstrate that they have adequate financing capacity in place to construct the solar installation, and for technical specifications regarding system components and design as well as detailed plans for constructing, monitoring, evaluating, and decommissioning the solar installation.

3.3.2 Develop Evaluation Criteria

The RFP document published by the municipality should specify a clear set of criteria on which proposals will be evaluated, and the weights attributed to each criteria. In the template RFP in Appendix B, the following evaluation criteria are provided. Municipalities may use these criteria as a guide in developing their RFPs and evaluation processes, but are encouraged to custom-tailor their evaluation processes to suit their own needs and goals. Municipalities may choose to weight these criteria however they wish, as different criteria may matter differently among local governments.

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[17] NYSERDA has contractor certification processes in place to approve contractors to participate in its incentive programs. There are separate eligibility criteria contractors installing projects smaller and larger than 200 kW. Eligibility rules are available at http://ny-sun.ny.gov/For-Installers/Eligibility-and-Training.

Suggested evaluation criteria include:

- **Developer Experience and Project Team,** including previous work, staff qualifications, and references.
- **Project Approach,** including system design, proposed schedule, construction, financing, measurement and verification, operations and maintenance, and decommissioning plans.
- **Price Proposal,** based on offered PPA and lease rates over the life of the system.
- **Financial Resources,** referring to the developer's demonstrated ability to finance the construction of the solar installation.
- **Optional Adders,** such as educational tie-ins, the use of local materials, or similar criteria, if desired.

3.4 Evaluate Proposals

Using the evaluation criteria listed in the RFP, municipalities should then assess each developer proposal. It is recommended that local governments include the weights that will be applied to each criteria in the evaluation process as part of the RFP.

It is recommended that municipalities ask all respondents to provide price proposals in the same format (the attached sample RFP includes such a request). To assist in the comparison of the price portion of proposals, Microsoft Excel-based bid evaluation tool is provided as a part of this toolkit. The price proposals that different developers provide may be entered into the evaluation tool, which calculates a series of simple metrics which can be used to provide an apples-to-apples comparison of the proposals. The reported metrics include:

- The **Levelized Cost of Energy**, which is the undiscounted average price of energy to be paid by municipalities over the life of the contract. This metric allows governments to compare the price-per-kWh of bids to each other and to the rate that they currently pay of energy from their utility.
- The **Net Present Value of 20-Year Energy Costs**, which calculates the total cost of the proposed contract to the municipality (assuming a 20-year contract term) in Net Present Value terms. This metric allows municipalities to compare the magnitude of different contract proposals in financial terms, particularly if developers propose different project sizes.
- The **Per-kWh Net Present Value of 20-Year Energy Costs**, which divides the total NPV by the estimated first-year kWh produced by the system. This metric allows municipalities to directly compare the NPV cost of project proposals of different sizes.

The price evaluation tool is provided as part of this toolkit on the PVTN website at https://training.ny-sun.ny.gov/

3.5 Draft Contractual Documents

After selecting a developer, the jurisdiction must negotiate two (or potentially three) contractual documents:

- The Power Purchase Agreement (PPA): an agreement to purchase the power produced by the system that the developer installs.
- An agreement to grant land rights to the site where the system will be built to the developer.
- An agreement to lease the land of a private party for solar development in instances where the project location is not municipally-owned (this only applies to projects that are not located on existing municipal property).

The three major contractual agreements are detailed below.

3.5.1 Power Purchase Agreement

As previously noted, municipal solar projects will typically involve a Power Purchase Agreement. A PPA is a long-term contract, most frequently lasting 20 years, through which a customer purchases the power that is produced from a third-party-owned solar installation.

PPAs have one of three typical pricing structures:

- **Fixed price –** the developer offers a single power price throughout the length of the contract
- **Escalating price –** the power price increases by a certain percentage annually, meaning that power purchased at the beginning of a contract will be less expensive than power purchased during later contract years, which mirrors expected rate increases in the price of utility electricity over time.
- **Discount-to-retail –** the power price is discounted by a fixed percentage based on the rates that local governments would have otherwise paid their utility for power.

Municipalities may prefer one contract structure over the others depending on their overall project goals and appetite for risk.

PPAs are negotiated contracts and vary greatly across cases. While the general terms of the PPA will be known from the RFP and the selected developer's proposal, the two parties may negotiate any number of conditions as part of the contracting process. Although each contract is different, it is impossible to compile an exhaustive list of the contractual issues of importance. Several common points of concern that municipalities should be aware of during the negotiation process are:

- **Measuring electricity output at the point of interconnection –** For standalone systems, municipalities should ensure that the contract specifies that kilowatt-hours will be measured at the point of interconnection to the utility grid and will be audited periodically and trued up to utility meter measurements. Some energy will be lost between when it is generated and when it is transmitted to the point of interconnection, and municipalities should not pay for more electricity than they are credited for by their utility.
- **Guaranteed annual production level –** Municipalities should ask developers for a forecast of annual production in kilowatt-hours (annual production estimates will decline slightly over time, as solar panels have a degradation rate of roughly 0.5% per year). Municipalities may choose to negotiate a guaranteed production level (typically, 80%-90% of estimated production), with provisions that the developer will pay a penalty should production fall below those levels.
- **Change of law –** Contracts should include provisions as to what will happen should state or federal laws change and negatively impact the economics of the project. It is recommended that the parties share the risk of changes in law equally, and that any such change trigger a period of re-negotiation and, if necessary, arbitration to determine how to restructure their agreement in light of the new financial situation.
- **Project decommissioning –** Project decommissioning at the end of the contract term should be the responsibility of the developer (though many contracts give municipalities the option to purchase the system at the end of the contract term). Municipalities may wish to negotiate a requirement for the developer to establish a decommissioning bond to provide funding for decommissioning should the developer no longer be in business at the end of the contract.

One step that municipalities can take to protect their interests is to use a model contract as the starting point for negotiations, rather than starting from the standard contract of their selected developer. By starting from a document that the municipality is comfortable with, the municipality may ensure that all of its contractual "must haves" are included in the document from the beginning. It is recommended that municipalities include a draft PPA as an appendix to their RFP. In the RFP, the municipality should indicate that they will use this as the starting point for contract negotiations with the developer, and they should solicit initial feedback from developers as part of the bidding process.

One sample PPA that municipalities may adapt to serve as such a draft is attached in Appendix C. It contains many of the terms and conditions that typically arise in the course of contract negotiation, and is based on a number of previously negotiated PPAs. It is intended to be used as a starting point that protects the interests of the municipality and provides a fair deal to developers. It is the responsibility of the contracting jurisdiction to negotiate its own final contract and local governments should hire legal counsel with solar PPA negotiation experience to protect their interests in contract negotiations.

Municipal solar projects are long-term, often multimillion dollar contracts, and municipalities should invest considerable time and effort in negotiating a contract with their selected developer, as a poorly drafted PPA can leave either party open to substantial risk and liability.

As an additional resource for municipalities to use in negotiating power contracts, the NYSERDA PV Trainers Network curates a database of the general terms of prior municipal solar PPAs in New York State, including project size, location, ownership and site agreement type, and price details. This database, which will be expanded over time as more PPAs become approved, is provided as part of this toolkit on the PVTN website at https://training.ny-sun.ny.gov/

3.5.2 Developer Site Agreement

Municipalities must consider what sort of site agreement to pursue with the developer at the host site. Municipalities may negotiate a site agreement with solar developers in several ways:

- **Site lease –** a possessory and often exclusive interest in land. Leases are generally preferred by developers in the case of ground-mounted systems, as they allow for minimal interference in maintenance.
- **Site easement –** a non-possessory interest in land. Easements are often preferable for roof-mounted systems, where a lease would make it difficult to allocate responsibilities and risks and to separate the solar generation from other uses of the site.
- **Site license –** a non-assignable and revocable right for the developer to use municipal land to build and operate a solar project. Site licenses may be desirable in cases where both parties desire the developer to have minimal responsibility for the site, but may present difficulties for developers in securing financing.

A jurisdiction should consult its set of internal stakeholders to determine what kind of site agreement would be appropriate in the case of its proposed project.

3.5.3 Landowner Site Agreement

If the site where the project is to be developed is not owned by the municipality, the municipality may still develop a solar project at a third-party-owned site and claim the power that it generates but must enter into a lease agreement with the landowner and establish a utility account at the site in the municipality's name. New York's remote NEM regulations require that a single entity own or lease property at all sites between which excess credits are transferred. The exact terms of the site lease with a landowner will vary greatly, and depend in large part on local circumstances and the identity of the landowner.

4 Special Areas of Concern for Local Governments

4.1 New York Procurement Law

Article 9 of the NYS Energy Law allows municipalities to enter into long term agreements to purchase power, and comes with several requirements related to the procurement process. Notably:

- Contracts for power purchases much be procured through a competitive process, such as an RFP.
- Energy contracts must be structured to provide financial savings to the municipality compared to their energy costs absent such a contract.
- Article 9 provides specific language rendering any agreement subject to the appropriation of funds by municipal supervisors, which must be included in the contract.

New York municipalities may comply with Article 9 by soliciting developers through an RFP, by carefully assessing the energy and cost savings and financial impacts of the proposed system, and by ensuring that their contract requires the statutorily required language.[18]

Note: The procurement pathways discussion is provided for general informational purposes only, and municipalities should consult legal counsel to ensure that they are satisfying the requirements of New York State procurement law. It is the responsibility of the local government to ensure that it is using an appropriate procurement process to contract with a solar developer.

4.2 Remote Net Energy Metering Regulations

In many cases, solar projects developed by local governments will produce more energy than is consumed at the host site. In New York, the excess generation from a solar project can be allocated to offset generation at other locations (called "satellite sites") owned by the same utility customer through a mechanism called Remote NEM.

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[18] The specific language that must be included in New York PPAs per Article 9 of the NYS Energy Law is: "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." In the provided sample PPA, this language is included as a recital statement in the Background section of the contract.

New York utilities provide an application for customers to indicate the satellite accounts to which the excess generation (the amount of solar electricity produced less the amount consumed at the host site) will be allocated, and the percentage of the excess generation that should be credited to each. To qualify for Remote NEM, all utility accounts must be:

- Managed under the same name.
- On premises owned or leased by the account holder.[19]
- Located within the same utility load zone.[20]

Only projects under 2 MW are eligible for Remote NEM, and system owners are prohibited from dividing larger installations into multiple smaller projects under 2 MW to comply with the limit. To be considered separate projects for the purposes of the 2 MW cap, projects must be located on separately deeded parcels, be interconnected to the utility electric grid individually, and be operated independently.

The accounting method for Remote NEM credits was adjusted in 2015 so that most projects will receive a volumetric, rather than monetary, credit on their bill. This change negatively impacts the financial outlook of some projects. As detailed in Box 2, municipalities can maximize the financial returns of a project by allocating excess credits to satellite sites that are not demand metered by the local utility.

Box 2: Volumetric Credits and Demand Metering

A municipal government will generally be responsible for many utility accounts, and it is likely that these accounts will be billed by the utility under different tariffs. Some properties will be **demand metered**, meaning they are charged both a per-kWh rate for the energy they consume and a per-kW rate based on the highest amount of energy that they consume at any one time during that billing period. Other properties will be **non-demand metered**, meaning that they are charged only a per-kWh rate. Per-kWh rates are higher in non-demand metered tariffs than in demand metered tariffs because they are the only charge made by the utility for energy consumed other than minor flat monthly fees.

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[19] Note that this means that excess credits cannot be allocated to a separate local jurisdiction (such as from a town government to a school district or village government).

[20] A map of utility load zones in New York is available at: http://www.nyiso.com/public/webdocs/markets_operations/market_data/zone_maps_graphs/nyca_zonemaps.pdf

Prior to June 2015, Remote NEM credits in New York were accounted for on a monetary basis, meaning that any excess kilowatt-hours that were produced at a host site would be credited to bills at satellite sites based on the monetary value of a kilowatt-hour on the host site's tariff. This accounting methodology meant that excess net metering credits that were generated by systems at non-demand metered sites and credited to satellite accounts at demand metered sites would be valued at a higher rate than the normal per-kWh price of energy at those satellite sites.

Starting on June 1, 2015, the New York Public Service Commission adjusted the Remote NEM accounting methodology to be volumetric rather than monetary for systems hosted at non-demand metered sites. With volumetric crediting, excess credits are applied to satellite accounts on a kWh basis rather than a monetary basis, and are valued at the per-kWh rate of that satellite account. Remote net metering credits generated by projects at demand metered host sites continue to be allocated monetarily.

The impact of this regulatory change is that projects that use demand metered satellite accounts (most municipal facilities are likely to be demand metered) can no longer benefit from the higher value credits generated at non-demand metered host sites. NYSERDA and NY DPS staff estimate that the value of a credit generated at a non-demand metered site and consumed at a demand metered site can decrease by between one and seven cents per kilowatt-hour when credited volumetrically rather than monetarily, depending on utility service area.[21] For a Remote NEM customer allocating excess kWh credits to satellite accounts, it will be more valuable to allocate credits to non-demand metered accounts first, as the per-kWh price granted to the credit is higher at those sites. However, it is expected that the majority of municipal facilities will be demand metered.

To correct for the project finance disadvantage created by the shift to volumetric crediting for some projects, the NYSERDA incentives released in May 2015 for large (over 200 kW) commercial systems provide higher incentives for projects that are credited volumetrically than for those credited monetarily. The specific financial outlook for a project—and the degree of difference made by the shift to volumetric crediting—will vary depending on a number of factors, including the availability to reduce demand charges at the host site through solar generation, the availability of non-demand metered sites to provide excess credits to, and the cost and expected generation of the system.

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[21] NY-Sun Stakeholder Meeting Slides, April 7, 2015. http://ny-sun.ny.gov/About/Stakeholder-Meetings

4.3 Power Purchasing Context

The economics of solar projects depend in large part on the price that municipalities would pay for electricity in the absence of a solar installation. Certain municipalities in New York State have secured low electricity costs. Many municipal utilities in the state, for example, are able to purchase low-cost power from the New York Power Authority. Other local governments have formed buying groups that are able to secure below-cost power from private energy retailers. Compared to those that purchase electricity through standard utility tariffs, these municipalities may pay substantially less for electricity on a per-kWh basis, meaning that the cost savings afforded by solar energy are smaller for these municipalities.

In investigating the potential for municipal solar power, local governments should consider their power purchasing context, and whether solar provides enough of a discount under the price that they would otherwise pay for electricity to make a project financially viable.

4.4 Permitting, Interconnection, and Zoning

Jurisdictions should be conscious of permitting, interconnection, and zoning processes or requirements that may impact the development of solar projects.

Municipal permitting processes for solar projects are occasionally unclear. To support local governments in developing streamlined and appropriate permitting processes, New York State's NY-Sun initiative has developed and encouraged municipalities to adopt the **New York State Unified Solar Permit**.[22]

Interconnection—the process of connecting a solar system or other source of electric generation to the utility electric grid—is also a potentially time-intensive process for solar projects. New York State has developed a set of standardized interconnection requirements that have been adopted by all investor-owned utilities in the State. These requirements provide a standard interconnection process for projects smaller than 2 MW, and an expedited process for projects smaller than 25 kW. Jurisdictions should familiarize themselves with these interconnection procedures early in the procurement process. Jurisdictions should also consider interconnection feasibility in the site selection process by ensuring that a point of interconnection is available close to the proposed project site and that the distribution infrastructure can support the proposed solar electric project. Contact the local utility for guidance on determining interconnection feasibility for a potential solar electric site.

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[22] More information is available at http://ny-sun.ny.gov/For-Local-Government/Local-Government

Finally, municipal zoning codes may also be a stumbling block for solar projects. Jurisdictions should consult the department responsible for zoning and ensure that solar is permitted as a primary or accessory land use as required by the proposed project, and that restrictions on height, impermeable surfaces, setbacks, or other topics do not infringe on the ability to develop this or other local solar projects.

4.5 Environmental Review

Under New York SEQRA, local land use boards are sometimes responsible for conducting an environmental analysis before they approve a project, including projects that propose solar energy systems. This applies to solar projects where the PV panels have a total surface area exceeding 4,000 square feet. Jurisdictions seeking to develop solar projects should consult with the department responsible for environmental review in the initial stakeholder engagement process to understand how solar projects will be considered in the SEQRA review process. These internal stakeholders should also be consulted in the site selection process to identify and avoid any potential issues arising from SEQRA review of solar projects at particular sites.

4.6 Considerations for Siting Projects on Landfills

For many municipalities, closed landfills are attractive areas to site solar projects because of the limited number of alternative uses for these sites. Developing solar on these sites requires special consideration.

Under 6 N.Y.C.R.R. Part 360, landfill owners must submit landfill closure plans and adhere to a Post-Closure Monitoring and Maintenance Operations Manual when ceasing landfill operations. A landfill closure report will specify the range of post-closure activities to be conducted on the site. To develop solar on a landfill, a municipality and its contractor must submit a modification to the post-closure plan to the New York State Department of Environmental Conservation (NYSDEC). NYSDEC's regional offices offer pre-application consultations to municipalities, who are encouraged to contact NYSDEC early in the project planning process to understand the special requirements of developing solar on landfill sites.[23]

In preparing construction plans and a site diagram for a landfill project, solar developers must take care that they do not interfere with post-closure operations at the landfill, and that construction does not compromise the landfill's protective covering. In the Request for Proposals, municipalities should spell out special requirements for solar development on landfills and their expectations from developers.

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[23] A map of NYSDEC regional offices and their contact information is available at http://www.dec.ny.gov/about/50230.html.

As part of Re-Powering America's Land Initiative, the U.S. Environmental Protection Agency's Region 2 office in New York City provides limited technical assistance to municipalities seeking to develop solar projects on landfills, brownfields, or other contaminated sites. EPA staff will conduct solar electric screening reports for solar at these sites for use as a screening tool to provide municipalities with information about whether solar is a viable resource at their landfill. Municipalities may choose to provide these reports to developers as part of the RFP package. Through this initiative, EPA has also developed a set of resources for municipalities interested in pursuing solar on landfills, which is available at http://www.epa.gov/renewableenergyland

5 Case Studies in Municipal Procurement

Two case studies provide examples of New York municipalities that have completed or in the process of conducting solar procurements.

5.1 Clarkstown: New York's First Utility-Scale Landfill Solar Project

Clarkstown (population 84,187) is a town on the eastern border of Rockland County west of the Hudson River. The town council first proposed the idea for a large solar array on a capped landfill in 2009, which would be the first of its kind in New York. The 2.3-MW landfill solar array was developed by OnForce Solar and has been operational since December 2014. Installed on 13 acres of the town's 100-acre landfill, the solar electric system is projected to save taxpayers $4.6 million over the next 30 years. The solar array provides approximately 10% of the town's overall electric usage.

Figure 3. Aerial View of the Clarkstown Solar Array

Source: H2M

5.1.1 Project Development Details

Clarkstown retained H2M, an engineering firm and project developer, to conduct a solar feasibility study that outlined a number of factors related to the project, including obstacles, estimated cost savings, regulatory concerns, approvals required, and utility issues. The town then released an RFP to solar developers. From four responses, Clarkstown selected a preferred developer. The town negotiated a 20-year PPA with the developer, setting an initial price of $0.083/kWh with an annual escalator of three percent. At the end of the contract term, the town will have the option of continuing with the existing PPA, renegotiating the PPA, or purchasing the system from the developer.

The project had a lengthy project development cycle, taking three years from municipal commitment to final operation. The system is net metered, and the town uses Remote NEM to allocate excess credits to satellite accounts.

5.1.2 Challenges

Clarkstown encountered numerous difficulties in the development of the solar array. One major difficulty was the location of the project on a landfill, which required special care to ensure that installing the solar array would not compromise the membrane cap. Additionally, the municipality had to coordinate a broad set of stakeholders and secure approvals from various public and private entities, including Orange and Rockland Utilities, NYSDEC, Rockland County Solid Waste Management Authority, Rockland County Trade Unions, NYSERDA, and the New York Power Authority. Third, developing and negotiating a PPA was a major challenge for town officials, as the town did not have experience with these types of contracts.

5.1.3 Lessons Learned

Clarkstown's experience offers several lessons for additional municipalities interested in pursuing solar projects:

- Consulting the local utility company early in the process was critical to the project's success.
- Holding meetings and maintaining good lines of communication among all parties and stakeholders was also extremely important in the development of the project.
- Town officials noted that enlisting additional outside specialists would have been useful to the project's development. In particular, the support of outside legal counsel could have aided the development and negotiation of the PPA, and the support of a utility specialist would have eased the overall project development process.

5.2 Huntington: Demonstrating the Benefits of Solar to the Community

Huntington (population 203,364), a town located in the western part of Suffolk County on Long Island, has long been committed to sustainability and participates in the U.S. Department of Energy Rooftop Solar Challenge II program. In March 2011, Huntington completed the installation of a 28-KW solar electric system on Town Hall, an 111,000-square-foot building with over 30 offices. The solar electric system was comprised of two separate 14-kW rooftop solar arrays, one south-facing and one west-facing. The project was undertaken through the Energy Efficiency and Conservation Block Grant (EECBG) program.

In 2011, production from the system decreased the town's energy consumption by 30,000 kWh and its peak demand by over 185 kW. The town's total energy costs were reduced by more than $23,000 compared to costs prior to installation, a savings of 12%.

Figure 4. Huntington Town Hall

Source:Town of Huntington

5.2.1 Project Development Details

The town procured the project through an RFP and received technical assistance from the U.S. Department of Energy to ensure the project complied with EECBG, Davis-Bacon, and Buy America guidelines. Prior to installation, the town contracted for roof repairs through a separate procurement process. All construction was managed through the town's Department of Engineering Services.

The solar system includes an educational kiosk, located in the town hall lobby, which reports real-time energy generation as well as total cost and energy savings provided by the system to date. The project has received positive feedback from residents who visit the educational kiosk and is viewed as a great resource for residents to learn about solar.

5.2.2 Challenges

The procurement process took longer than the town expected, as Huntington was obligated to follow specific procurement requirements and purchasing procedures required both by New York law as well as federal law regarding the use of federal grant funds.

5.2.3 Lessons Learned

The town noteed that the close coordination between the U.S. Department of Energy, the Town Department of Engineering Services, the Town Department of General Services, and the Town Chief Sustainability Officer ensured that the project was a top priority and made steady progress.

The town believes that it will be easier to implement additional solar electric projects in the future as a result of this project, both because of steadily falling solar electric prices and because of the town's ability to use their experience to streamline the design and procurement process in the future.

Appendix A: NY-Sun PV Trainers Network Technical Assistance Offerings

NYSERDA's NY-Sun PV Trainers Network (PVTN) offers technical assistance to local governments throughout New York State in implementing a range of solar programs and policies. These services are funded by NYSERDA and are free to local governments.

A.1 Procurement Services

For municipalities seeking to develop municipal solar projects, the PV Trainers Network's team of solar experts can support local governments as they:

- Determine what kind of project is right for their community.
- Collect municipal energy use data and identify potential sites for solar.
- Develop a Request for Proposals based on the attached sample RFP.
- Evaluate developer proposals.
- Negotiate a Power Purchase Agreement with the selected developer, using the attached sample PPA as a guide.

Note: PVTN does not offer legal services. Local governments are responsible for obtaining their own legal counsel to support their procurement efforts.

A.2 Other Services

In addition to solar procurement, the PVTN team has expertise on a range of solar issues that affect local governments, and provides free technical assistance on a number of issues, including but not limited to:

- Completing a solar policy audit.
- Integrating solar into a jurisdiction's comprehensive plan.
- Updating zoning and land use codes to incorporate solar.
- Streamlining solar permitting processes and adopting the New York State Unified Solar Permit.
- Engaging local lending institutions.

A.3 How to Request Technical Assistance

Municipalities may request help from the PVTN through the PVTN Ask-the-Expert Portal. Requests for technical assistance can be as small as a simple question or as large as a request for ongoing support with a large project. The portal is https://training.ny-sun.ny.gov/technical-assistance/ask-the-expert

Municipalities can also consult the PVTN resource library, which contains a number of recorded webinars and podcasts, reports and factsheets, and links to other resources around the web. The PVTN Resources page is https://training.ny-sun.ny.gov/resources.

Finally, PVTN regularly conducts a series of trainings across the State on various solar policy and technical issues. To learn about the different trainings and workshops offered by the network, to see when the next training is scheduled in your area, or to sign up to host a training, visit the PV Trainers Network website (https://training.ny-sun.ny.gov/).

Appendix B: A Sample RFP

These guidelines and sample documents are for educational purposes only. The concepts and standard provisions presented here are provided as a reference document only. Nothing in the sample documents, guidelines, or any other supplemental materials, constitute legal, tax, financial or accounting advice and shall not be regarded or construed as such. Anyone using these documents must seek and consult their own attorney and business and tax advisors regarding any of the matters contained in these materials. The rules and regulations governing any specific jurisdiction may include requirements and/or preclusions not reflected in these documents

SAMPLE REQUEST FOR PROPOSALS
PROCUREMENT OF ELECTRIC POWER FROM SOLAR PHOTOVOLTAIC SYSTEM(S)
<JURISDICTION NAME>
<JURISDICTION ADDRESS>
<DATE>

1. PROJECT OVERVIEW

1.1. Project Goals and Background

Provide brief description of jurisdictions goals in procurement and background on project.

1.2. Project Description

Describe the desired project. Include the total MW being sought under this procurement. If applicable, note that jurisdiction and the selected respondent will negotiate a PPA (sample provisions provided in Attachment 6) and a Site Lease. Note whether the Site Lease may be negotiated with a third party property owner rather than the jurisdiction.

1.3. Site description

Provide brief information regarding the site, such as:

1. *Address*
2. *Roof or ground site*
3. *Special circumstances, such as a landfill or brownfield locations*
4. *Zoning status if applicable*
5. *Site ownership*
6. *Available square footage/acreage*

Note that further information is provided in attached documents regarding the site (Attachment 1) and the jurisdiction's energy use (Attachment 2).

If the site is unknown or the project encompasses multiple sites, providing one set of "typical" site conditions can reduce the complexity for the bidders.

2. CONTRACT TERMS AND REQUIREMENTS

The response must demonstrate the respondent's willingness and ability to comply with the following expected contract requirements.

2.1. Surety Bond

The selected bidder will be required to provide <jurisdiction name> with 100% payment and performance bonds from a surety company licensed to do business in the State of New York and whose name appears on United States Treasury Department Circular 570.

2.2. Insurance

The selected bidder(s) shall be required to list <jurisdiction name> as an additional insured. Minimum required insurance coverage includes: *(NOTE: Jurisdictions are responsible for identifying limits to conform to their standard procurement practices.)*

(a) Commercial general liability insurance in limit not less than $_____ per occurrence, $_____ per occurrence for personal injury liability, $_____ general aggregate (applied per job) and $_____ products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.

(b) Minimum additional $_____ umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.

(c) Professional liability insurance covering errors and omissions, $_____each occurrence and $_____ aggregate limit.

(d) Commercial automobile liability with a combined single limit of $_____ with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least $_____ property damage per accident with an endorsement that the policy covers business related use with an additional $_____ personal umbrella policy.

(e) Worker's Compensation coverage as required by New York State Workers' Compensation Law § 57, or proof of respondent not being required to secure same.

(f) Disability Benefits Insurance if/as required by New York State Workers' Compensation Law § 220, or proof of respondent not being required to secure same.

2.3. Subcontracting

Except to the extent contemplated in the response and permitted in the contract, the contract will prohibit assignment or subcontracting without <jurisdiction name> express prior approval.

2.4. Indemnification

The contract will require that the contractor hold harmless and indemnify the <jurisdiction name> and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from the contractor's work or any subcontractor's work under the contract.

2.5. Compliance with Laws

The contract will require compliance with all federal, state and municipal laws, ordinances, rules and/or regulations, including labor laws and laws against employment discrimination.

2.6. Wage and Labor Provisions

Indicate if this procurement is subject to prevailing wage provision. More information on the requirements for prevailing wage can be obtained from the Department of Labor. Indicate if this procurement requires or has preference for a Minority and Women Business Enterprise utilization component. Require that respondents acknowledge the prevailing wage and/or MWBE requirements in their proposals.

2.7. Governing Law, Venue

All contracts entered into by <jurisdiction name> shall be governed by the Laws of the State of New York, without effect to its conflict of laws provisions. Any disputes shall be resolved within the venue of the State of New York.

2.8. Respondent Due Diligence

Information provided in the RFP is for general information purposes only. It is the Respondent's responsibility to conduct due diligence on the Site. Submission of a response shall be conclusive evidence that the respondent has examined the Premises and is familiar with all the conditions of this procurement.

2.9. Pre-Contractual Expenses

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 <jurisdiction name> for the expenses of preparation. <jurisdiction name> shall not be liable for any expenses incurred by the Proposer prior to the date of award and commencement of contract services.

2.10. Special Requirements for Landfill and Brownfield Sites

(Optional for brownfields & landfill sites, provide special requirements such as preparing Change in End Use Report and obtaining NYS Department of Environmental Conservation approval for landfills.)

2.11. Construction time limitations

(Optional if location on a school building or other building sensitive to time of construction)

The installation of the system cannot be conducted while school is in session. As such, construction occurring <prior/after> <date> must take place after <time> on school days. Work may be conducted on weekends and school holidays, subject to the availability of facilities personnel.

2.12. SEQRA Review

The project will be subject to State Environmental Quality Review Act (SEQRA) review, conducted by <identify relevant local authority>. The selected respondent will be responsible for preparing SEQRA-related documents and required permit applications. The Developer will be the sole party responsible for all Project SEQRA and permitting costs and shall reimburse <jurisdiction> for all costs associated with Project-related SEQRA actions, documents and determinations as described above, as well as Project-related approvals and permitting.

2.13. Net Metering

This project will utilize <remote> net energy metering. The selected respondent will be responsible for meeting all net metering requirements, including interconnection with the local distribution grid. Respondents should be aware that by pursuing interconnection with the utility, utility fees and/or costs to upgrade portions of the local utility infrastructure may be incurred.

2.14. NYSERDA Incentives

It is expected that respondents are familiar with NYSERDA Incentives for Solar Photovoltaic installations. If NYSERDA incentives are included in the calculation of the bid price, bidders are required to understand the NY Sun program requirements and must agree to construct the system in accordance with NY Sun program requirements (e.g. energy efficiency audit, data acquisition requirements).

3. RFP PROCESS AND SUBMISSION INFORMATION

3.1. Submission Deadline and Instructions

Proposals from respondents, as required in accordance with all terms and specifications contained herein, will be received until <proposal deadline time and date> and are to be sent to:

<Jurisdiction Point of Contact and Contact Information>

(Modify the below to reflect jurisdiction's standard procurement practices)

Responses must be submitted in a sealed outer package. Within each envelope or package, the respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the response on behalf of the respondent.

Within a sealed envelope within the outer package, respondent shall enclose one (1) original and seven (7) hard copies and one (1) single-file electronic version (in Adobe Acrobat (pdf) format and on a CD-ROM or thumb drive) of the proposal. The sealed envelope shall be marked with the respondent's ***company name***, and plainly marked in the lower left hand corner:

"Response to Solar Energy RFP"

All proposals should be written in ink or typed. If there is any correction with whiteout, the person signing the proposal must initial the correction.

A respondent filing a proposal thereby certifies that (1) no officer, agent, or employee of the <jurisdiction name> has a pecuniary interest in the proposal; (2) the proposal is made in good faith without fraud, collusion, or connection of any kind with any other prospective respondent for the same RFP, and (3) the prospective respondent is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

The right is reserved, as the interest of the Issuer may require, to reject any or all proposals, to waive any technical defect or informality in proposals received, and to accept or reject any proposal or portion thereof.

3.2. Timeline

Request for Proposals Issued	<date>
<Mandatory/Optional> Informational Meeting and Site Visit	<date>
Inquiries Due to the Awarding Authority	<date>
Responses to Inquiries/Addenda Issued by the Awarding Authority	<date>
RFP Submission Deadline	<date>
Public Opening of Bids	<date>
Anticipated Selection of Selected Respondent	<date>
Final Contract Approval by Awarding Authority	<date>

3.3. Informational Meeting and Site Visit

A <mandatory/optional> informational meeting and site visit will be held for prospective respondents at <date, time, and location>. *(Optional: Only prospective respondents attending the Mandatory Pre-Submission Conference will be permitted to submit responses.)* Respondents interested in attending must confirm attendance by contacting <point of contact and contact information>.

3.4. Inquiries

All questions and inquiries regarding this RFP must be submitted via email to <contact email> no later than <inquiry deadline>.

Inquiries will not be answered directly. The Awarding Authority will issue an addendum to address the written questions submitted by the aforementioned deadline. Any addenda will be posted (by email/online at <website>). *(If answered by email: It is the responsibility of the Respondent to contact <contact email> by email prior to the submittal deadline to ensure that the Respondent has received all addenda issued by the Awarding Authority.)*

3.5. Amendments and/or Cancellation of this RFP

If this RFP requires an amendment, written notice of the amendment will be given to all prospective respondents that have attended the informational meeting or contacted <contact email>. The Awarding Authority reserves the right to modify, amend or cancel this RFP if the Awarding Authority determines, that it is in the best interest of the Awarding Authority to do so.

3.6. Withdrawal and Modification

Any respondent may withdraw or modify its response by written request at any time prior to the RFP submission deadline. Telephone responses, amendments or withdrawals will not be accepted.

After the RFP submission deadline, a respondent may withdraw, but may not modify, its response except in a manner that is not prejudicial to the interest of the Awarding Authority or to fair competition. Negligence on the part of the respondent in preparing the response confers no rights for the modification of the response after it has been opened.

3.7. Proposals as Public Records

All materials submitted in response to this RFP become the property of the <jurisdiction name> and become public records after the award of contract, except for information not subject to disclosure pursuant to New York State Public Officers Law, Article 6 ("FOIL").

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed (except as may be required under FOIL, other state and federal laws or which may be required by judicial decree). FOIL provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of the Proposer. This exception would be effective both during and after the evaluation process. Should the Proposer's Proposal contain any such trade secrets or other confidential or proprietary information, a request to exempt such information from disclosure must be submitted with the Proposal. Such request must be in writing, must state the reasons why the information should be exempt from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a Proposal from disclosure have generally not been found to be meritorious and are discouraged. Limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of the Proposer.

3.8. Opening of Bids

At the time and place fixed for the opening of bids, the Awarding Authority will open and publicly read aloud every bid that was received within the time set for receiving bids. Bidders and other persons properly interested may be present, in person or by representative.

4. PROPOSAL REQUIREMENTS

Submitted proposals should include:

4.1. Bidder Information Form

Each proposal should include a signed and completed Bidder Information Form, found in Attachment 3.

4.2. Transmittal Letter

Each proposer's response should include a transmittal letter signed by a party authorized to make a formal bid on behalf of the proposer. The letter shall clearly indicate that the proposer has carefully read all the provisions in the RFP and should include a brief overview of the respondent's proposal. Transmittal letters should also acknowledge receipt and understanding of any Addenda associated with the project.

4.3. Company Overview

Provide a document providing the following company information

(a) Year founded and number of continuous years in business.

(b) Ownership status (publicly or privately held).

(c) Corporate Office location.

(d) Local Office location.

(e) Number of employees in local branch office at time of submittal (full time employees, excluding contractors).

(f) A description of any ongoing or previous litigation your firm has been involved in and a statement that the respondent is not debarred, suspended or otherwise prohibited from practice by any federal, state, or local agency.

(g) Your firm's Experience Modification Rate (EMR) for each of the past three years, as well as your firm's OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past three years.

(h) A list of state-specific contracting licenses held, including classification and number.

(i) Evidence of certification and participation in NYSERDA NY-Sun Incentive Program for less than 200 kW and greater than 200 kW programs.

(j) Federal Tax Identification Number.

4.4. Project Team

Provide information about the key personnel to be assigned to this project, including:

(a) Full contact information for the project manager.

(b) An organization chart including all key personnel.

(c) For all key personnel (including subcontractors), professional experience, certifications, project role, and office location.

(d) Resumes of key personnel, provided in an appendix to the proposal.

(e) Evidence of NABCEP, Professional Engineer (P.E.), or Master Electrician certification where applicable, provided in an appendix to the proposal.

4.5. Qualifications and References

Describe previous solar installation experience, drawing particularly attention to projects done on behalf of municipalities and other governmental entities (and any projects reflecting project-specific attributes, such as landfill or brownfield projects, projects of a given size, etc.)

In addition to this description, provide references for at least five completed and currently operating non-residential grid-connected PV systems, including:

(a) System size (kW DC)

(b) Host Customer and/or Owner contract information (name, email, address, phone).

(c) Location and Utility Company name.

(d) Date completed.

(e) Any other relevant installation-specific information.

4.6. Project Plans

Provide a detailed plan of the proposed project. Project plans must include the following:

(a) Proposed Project Timeline

Following are key milestones for the Project. Expected dates for their completion should be provided in the response to this solicitation.

Milestone	**Milestone Date (to be provided by respondent)**
Interconnection Application submitted	
Completion of System Design	
Permitting	
Secure System Equipment and Assets	
Commence Construction	
Substantial Completion	
Interconnection	
Final Completion	

(b) Typical System Design and Components

System Design and Components are not binding at the proposal stage, but this information will be used to evaluate respondent price proposals.

Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at a minimum, modules, inverters and mounting system). Respondents are encouraged to provide specification sheets for any proposed technologies as an appendix.

Design: Include Preliminary Drawings for the proposed PV system that include (at a minimum):

- System size (in kW DC and kW AC)
- Location of modules (including tilt)
- Location of inverters
- Any other site-specific information that will aid in overall evaluation.

Warranty: Describe any warranties associated with the installation, including full system coverage and/or warranties associated with individual components, including warranties from the Proposer and manufacturers.

(c) Expected System Generation

Provide expected annual system generation in kilowatt-hours.

(d) Permitting Plan

Respondents must demonstrate a firm understanding of SEQRA and other approvals and permits required to successfully execute the Project. Proposals should include a plan for acquiring SEQRA approval and other necessary permits. The selected respondent will be responsible for all necessary environmental testing, permitting and compliance. To the extent possible, Respondents should identify the regulatory and permit conditions relevant to their proposals, potential conflicts between the project and existing permit conditions, and variances that might be required.

(e) Construction Plan

Provide a detailed narrative description of the approach taken in installing the proposed project, including how the respondent will work with subcontractors, municipal agencies, and other relevant stakeholders. Detail how the respondent will approach *(highlight any special considerations for this project, such as multiple project phases or sites, sites at landfills or brownfields, or sites at schools, or other issues requiring particular attention). (If site is a landfill: Include a Change in End Use report that demonstrates compliance with state regulatory requirements, including 6 N.Y.C.R.R. Part 360-2.15(k)(9).)*

(f) Financing Plan

Provide a description of how the respondent will finance the proposed project. Identify any financial partners that will be involved in the project, and note whether there will be a guarantor standing behind any specific financial obligations, including security on project milestones. Describe in this Plan all available tax credits, incentives, environmental attributes, and subsidies that will be used to finance the project, and how these will be utilized in the financing of the project.

(g) Measurement and Verification Plan

Indicate if and how the respondent will provide system performance monitoring via a data acquisition system (DAS). Provide a detailed description of the DAS system and the end-user interface. *(Optional: The proposed system should also include a public system performance display that will be located in <location>.)*

(h) Operations and Maintenance Plan

The selected respondent will provide Operation & Maintenance (O&M) services for the full term of the Agreement. Please describe the proposed O&M procedures for the system, detailing duties performed and if the contract will be maintained with the Proposer or a third-party provider. Please briefly describe the respondent's experience providing such services for similar installations and name the key personnel in charge of handling O&M services.

(i) Decommissioning Plan

The selected respondent will provide information regarding the proposed approach to system decommissioning. This Decommissioning Plan should include a description of respondent's approach to providing financial assurance that funding will be available to decommission the system at the end of the contract term.

(j) Curriculum Tie-In

(Optional: Proposals should include a web interface that allows students, residents, and the general public to see the current production at each of the installations and the production over time. Additional consideration will be given to proposals that include a curriculum tie-in to the schools. Respondents are encouraged to think creatively and propose curriculum tie-ins that do not add significantly to project cost.)

4.7. Pricing Proposal

Price proposals should be provided using the form contained in Attachment 5 of this RFP. This price proposal must be provided in a separate sealed envelope marked "Price Proposal". Price proposals shall be valid for a minimum of 120 days.

4.8. Insurance Requirements

Please provide evidence that the firm meets the minimum insurance requirements listed in section 2.2 above.

4.9. Power Purchase Agreement Contract Required Provisions

(Optional: If desired, the municipality may include a model Power Purchase Agreement as part of this RFP and request comment from respondents. Jurisdictions should consider carefully the advantages and disadvantages of negotiating a Power Purchase Agreement based upon the municipality's standard contract versus the bidders standard contract. Factors such as the legal review required by both parties, or the ability of the Proposer to securitize the contract could impact the price proposal. A set of standard provisions has been developed to assist in identifying desired components in a power purchase contract (See Attachment 6).)

5. EVALUATION PROCESS

5.1. Overview of Evaluation Process

The Issuer will utilize an evaluation system to rank the qualified respondents. It is the responsibility of each respondent to provide information, evidence or exhibits that clearly demonstrate the respondent's ability to satisfactorily respond to project requirements and the factors listed in this RFP. The evaluation process may include verification of references, confirmation of financial information and may include examination of other information as the <jurisdiction> deems appropriate. The <jurisdiction> <will/may as it deems necessary> conduct interviews to evaluate the respondents. The <jurisdiction> may require public presentations by respondents. The <jurisdiction> reserves the right to request or obtain additional information about any and all responses.

Each responsive response from a qualified respondent will be evaluated and ranked solely according to the criteria set forth in this RFP. The <jurisdiction> will enter into negotiation with the respondent whose proposal yields the highest score. If the <jurisdiction> and the most competitive qualified respondent are unable, within sixty (60) days following the <jurisdiction>'s notice of commencement of negotiations with a respondent (or such longer period of time as the <jurisdiction> may deem appropriate), to negotiate a satisfactory contract the <jurisdiction> determines to be fair, and reasonable, the <jurisdiction> shall continue negotiations with the next most competitive respondent.

The <jurisdiction> may cancel this procurement when it determines that cancellation serves the best interests of the public. The <jurisdiction> may reject, in whole or in part, any and all planned or proposed project measures, when it determines that rejection serves the best interests of the public.

5.2. Evaluation Criteria

At a minimum, respondents shall meet the following requirements:

1. Timely submission of response and <attendance at mandatory pre-bid meeting>
2. Submission of all required elements found in Section 4 of this RFP
3. Certification of Non-Collusion (Attachment 4)
4. Certification that the respondent, if ultimately awarded a contract, will guarantee completion of all work required within due dates or the time periods needed.
5. Evidence of appropriate insurance

The qualified proposers providing completed responses will be evaluated based on the following points system:

Criteria	Points
Developer Experience & Project Team	XX
Project Approach	XX
Price Proposal	XX
Financial Resources	XX
(Optional: NYS Labor and Materials / Curriculum Tie-In / Other Adder)	XX

(a) Developer Experience and Project Team

Proposals must clearly demonstrate the capability, academic background, training, certifications, including evidence of certification and participation in NYSERDA NY-Sun Incentive Program for projects <less than / greater than > 200 kW and experience of the proposed personnel (not just of the respondent). If sub-contractors will be employed, similar information must be provided and the portions to be sub-contracted must be identified. Five references will be contacted for each proposer to determine the quality of past projects.

(b) Project Approach

The response shall include an explanation of how the respondent will approach the various tasks, including scheduling, methods and sources. A preliminary system design should also be provided. Responses will be evaluated on the adequacy of their proposed system design, project schedule, and construction, financing, measurement and verification, operations and maintenance, and decommissioning plans.

(c) Price Proposal

Price proposals will be evaluated on a net present value basis using standard discount rates and reasonable electricity price escalation rates.

(d) Financial Resources

The ability to finance the construction of the PV system is critical to the proposer's ability to complete the project. Proposers should provide in their responses a clear discussion of how they intend to finance the system and what financing partners will be involved in the project.

(e) Optional Adders

(Optional: Describe attributes desired in optional adders)

ATTACHMENT 1: SITE DESCRIPTION

(Provide relevant information on the site, including:

1. *Text description of the site*
2. *Available square footage / acreage for solar*
3. *Distance to utility interconnection*
4. *Any feasibility assessment done to date, including information on roof, shading, environmental analysis, etc.*
5. *Aerial photos*
6. *Site map*
7. *Zoning description*

If the site is a landfill, provide additional information, such as NYSDEC Requirements for Closure and Post Closure Care, site's Final Closure Plan, and the Post-Closure Monitoring and Maintenance Operations Manual)

ATTACHMENT 2: JURISDICTION ENERGY USE

(Provide electricity consumption data for jurisdiction-owned properties for a minimum of three years. To provide the most useful information, for each property, list the annual kilowatt-hour consumption as well as the tariff that the site is charged under. Indicate if any substantial energy efficiency improvements have occurred during this time frame or are planned for the future.)

ATTACHMENT 3: BIDDER INFORMATION FORM

TO: XXXXXX

The undersigned has read the Request for Proposal (RFP) and has carefully examined all specifications/evaluation criteria therein. The undersigned certifies that he/she has visited the site and that there are no known obstacles to prevent the execution of an agreement with <jurisdiction>. The undersigned acknowledges that <jurisdiction> may reject all proposals, or waive portions of the RFP for all proposals, if it deems it in the best interests of the public.

Signature: _____

Name: _____

Title: _____

Respondent Information

Name of Respondent: _____

Address: _____

Name of Primary Contact: _____

Title of Primary Contact: _____

Primary Contact Phone Number: _____

Primary Contact Fax Number: _____

Primary Contact Email Address: _____

Signature:_____

ATTACHMENT 4: CERTIFICATE OF NON-COLLUSION

The undersigned certifies, under penalties of perjury, that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

_____
(Signature)

_____
(Name of person signing proposal)

_____
(Name of business)

ATTACHMENT 5: PRICING PROPOSAL TEMPLATE

Solar Power Purchase Provisions:

Estimated Annual Electric Output	_____kWh/year
Guaranteed Annual Electric Output	_____kWh/year
Annual System Degradation Factor	_____% per year
Electricity Price	$_____ per kWh during the first Contract Year of the Term
Electric Price Increase Factor	_____% per year
Annual Lease Payment	_____$/year

ATTACHMENT 6: SAMPLE PROVISIONS FOR A POWER PURCHASE AGREEMENT

Appendix C: A Sample PPA

These guidelines and sample documents are for educational purposes only. The concepts and standard provisions presented here are provided as a reference document only. Nothing in the sample documents, guidelines, or any other supplemental materials, constitute legal, tax, financial or accounting advice and shall not be regarded or construed as such. Anyone using these documents must seek and consult their own attorney and business and tax advisors regarding any of the matters contained in these materials.

SAMPLE CLAUSES; SOLAR ENERGY SERVICES AGREEMENT

SOLAR POWER SERVICES AGREEMENT

THIS SOLAR ENERGY SERVICES AGREEMENT (this "Agreement") is made effective as of [**DATE**] (the "Effective Date"), between [**PROVIDER],** a **[STATE]** corporation ("Provider"), and the **[LOCAL JURISDICTION],** a municipal corporation and political subdivision of the State of New York ("Customer"). Provider and Customer are sometimes referred to individually as a Party and collectively as the Parties.

BACKGROUND

WHEREAS, Provider **[HAS EASEMENT ON / LEASES / HAS SITE LICENSE FOR]** the Premises located in **[NAME OF LOCAL JURISDICTION FOR SYSTEM]** (see Schedule 1 attached hereto) pursuant to that certain **[EASEMENT AGREEMENT]** between Provider and Customer bearing the same date as this Agreement, which will host a solar photovoltaic system for the production of electricity and corresponding Net Metering Credits, and will, at its sole cost, install, maintain, own, replace, repair, and operate that system at the Premises; and

WHEREAS, Provider has offered to sell Solar Services (as hereafter defined) produced by the solar photovoltaic system to Customer as provided in and subject to the provisions of this Agreement, and Customer is willing to purchase the Solar Services as provided in and subject to the provisions of this Agreement.

WHEREAS, 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.

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

ARTICLE I.
DEFINITIONS

1.01 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Affiliate" means, with respect to any Person, any other Person directly controlling, controlled by or under common control with such first Person.

"Agreement" means this Solar Energy Services Agreement, including the Schedules and Exhibits attached hereto.

"Applicable Law" means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, Governmental Approvals, the Net Metering Rules, and any and all approvals, consents or requirements of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Bankrupt" means that a Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized by Applicable Law to be closed for business.

"Commercial Operations," with respect to a System, means that the System is ready for regular, daily operation, has been interconnected to the Local Distribution Company, has been accepted by the Local Distribution Company (to the extent required), and is capable of producing Electricity at full or substantially full capacity, has been installed in accordance with Applicable Law, and qualifies as a Net Metering Facility under the Net Metering Rules.

"Commercial Operations Date" means the date on which any System is ready for commercial operation after required testing.

"Construction Commencement Date" is the date on which all Governmental Approvals for construction shall have been obtained by Provider, and substantial and continuous construction activities for the installation of the System shall have commenced at the Premises.

"Contract Year" means each consecutive 365-day period commencing on the Commercial Operations Date.

"Early Termination Fee" means the fee payable by Customer to Provider under the circumstances described in Section 8.02.

"Environmental Attributes" means all products of the System other than electricity and Net Metering Credits corresponding thereto, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e® products, but not including grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of, or required to be issued by or on behalf of, any applicable Governmental Authority or Local Distribution Utility.

"Governmental Authority" means any federal, state, regional, county, town, village, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, and any governmental or quasi-governmental entity or independent system operation or regional transmission operator, including, without limitation.

"Governmental Charges" means all applicable federal, state and local taxes (including, without limitation, real and personal property taxes, sales, use, gross receipts or similar taxes), governmental charges, costs, expenses, charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed, assessed, and/or authorized by a Governmental Authority, the Local Distribution Utility or other similar entity, on or with respect to the System, Property, Solar Services, Net Metering Credits, this Agreement and/or the [LEASE/EASEMENT/LICENSE].

"Guaranteed Annual Solar Services Output" means the minimum amount of electricity that is guaranteed by the Provider to be generated by the System in a Contract Year as shown in Schedule 4.

"Independent Appraiser" means an individual, mutually acceptable to the Parties (or, in the event they cannot agree, selected by the two appraisers identified by the Parties in accordance with Article XIII) who is a member of an accounting firm qualified by education, certification, experience and training to determine the Fair Market Value of solar photovoltaic facilities reasonably similar in size and operational characteristics of the System. Except as may be otherwise agreed in writing by the Parties, the Independent Appraiser shall not be (or within seven years before his or her appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to any Party or their respective Affiliates.

"Lease" means that certain Lease Agreement, to be entered into concurrently with this Agreement, between the Customer and Provider.

"Lender" means any third-party entity providing financing to Provider with respect to the System. It shall not mean Provider's trade creditors.

"Local Distribution Company" means the local electric distribution company providing interconnection and net metering services for the System.

"Meter" means the utility grade meter with net metering capabilities installed by the Local Distribution Company for the System pursuant to that utility's tariff(s) that is used by the Local Distribution Company to measure the Solar Services delivered to the Local Distribution Company from the System.

"Net Metering" shall have the meaning set forth in N.Y.S Public Service Law § 66-j: NY Code - Section 66-J each as amended and extended periodically.

"Net Metering Rules" means the rules promulgated by the New York State Department of Public Service each as amended and extended periodically.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm or other entity, or a Governmental Authority.

"Premises" has the meaning set forth in the [LEASE, EASEMENT, SITE LICENSE].

"Production Shortfall" means the amount, expressed in kWh, by which the actual amount of Solar Services generated by the System in any Contract Year is less that the Guaranteed Annual Solar Services Output, as set forth in Section 2.02.

"Property" has the meaning set forth in the [LEASE/EASEMENT/SITE LICENSE], and includes the Premises.

"Rebates" shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems but does not include grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

"Site Electrical System" means Customer's existing building electrical systems that are owned or leased, operated, maintained and controlled by Customer, and which systems are interconnected with the Local Distribution Company.

"Site Plan" means, for each System, a plan depicting the locations, within and upon the Premises, of System components, including interconnection arrangements and access points, as revised by final as-built drawing(s) and subsequent revisions depicting any System alterations, and incorporated in Schedule 2 hereto.

"Solar Services" means the supply of on-site net electrical output in kWh (AC) generated by the System and delivered from the System to Customer, as measured by the Meter, and for which Customer receives a Net Metering Credit for each kWh of output.

"Stated Rate" means a rate per annum equal to the lesser of (a) six percent (6%) or (b) the maximum rate allowed by Applicable Law.

"System" means the single photovoltaic solar renewable energy facility installed by Provider on a single parcel of land at the Premises and, unless otherwise permitted by the Local Distribution Company and the Net Metering Rules, interconnected to the Local Distribution Company at a single interconnection point via a single Meter, which facility shall include but not necessarily be limited to an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Distribution Company, as more specifically described in Schedule 2.

ARTICLE II.
DELIVERY OF SOLAR SERVICES; GUARANTEES

2.01 Purchase Requirement. Customer agrees to purchase one hundred percent (100%) of the Solar Services during the Term. The payment for Solar Services is calculated in accordance with Section 3.01. The purchase of Solar Services hereunder does not include Environmental Attributes or any other attributes of ownership of the System, title to which shall rest solely with Provider, but shall include all Net Metering Credits. Provider agrees that it shall deliver the Solar Services to the Meter free of all claims, security interests or encumbrances of any kind.

2.02 Guaranteed Annual Solar Services Output.

(a) Provider guarantees that the System will produce the Guaranteed Annual Solar Services Output in each Contract Year, as shown in Schedule 4.

(b) In the event that a Production Shortfall exists during any Contract Year, Provider shall pay to Customer, within thirty (30) days of the end of such year, the difference between the average Net Metering Credit value during the applicable Contract Year and the kWh Rate multiplied by the Production Shortfall.

ARTICLE III.
PRICE AND PAYMENT

3.01 Consideration. Customer shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services delivered to Customer. For any billing period, the Solar Services Payment shall equal the product of the Solar Services for that period *multiplied by* the relevant kWh Rate as specified in Schedule 3. Provider shall invoice Customer on a monthly basis. The first invoice shall include any production that occurred prior to the initial invoice date, including any test energy as provided in Section 4.02 below, provided Customer receives Net Metering Credits from the Local Distribution Company for such production. The last invoice shall include production only through the date on which the Agreement expires or is earlier terminated. Customer shall pay any Solar Services Payment invoiced within thirty (30) days of receipt thereof, subject to the other provisions of this Agreement.

3.02 Method of Payment. Customer shall make all payments under this Agreement either by electronic funds transfer to the account designated by Provider, or by check. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at the Stated Rate, subject to the other provisions of this Agreement.

3.03 Payment Disputes. If a Dispute arises with respect to any invoice, such Dispute shall be resolved pursuant to Article IX hereto; *provided that,* during the time a Dispute is pending, the disputing Party shall not be deemed in default under this Agreement for any failure to pay any disputed amounts, and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. A Party may withhold amounts disputed in good faith.

3.04 Change in Law. If there is any change in Applicable Law subsequent to the Effective Date that results in a material and adverse change in Provider's ability to provide, or Customer's ability to receive or use, Net Metering Credits, or results in the disqualification of the System as a Net Metering Facility under the Net Metering Rules, Customer or Provider, as the case may be, shall submit to the other Party a written notice indicating (i) the change in Applicable Law, and (ii) the manner in which such change has resulted in the effect aforesaid. The Parties shall thereupon promptly (within ten calendar days) commence informal, good faith negotiations to try to amend this Agreement to address such effect to the reasonable satisfaction of the Parties. If the Parties are unable, in their reasonable discretion, to agree to an amendment within 45 calendar days of the date of a Party's receipt of written notice hereunder, then either Party may terminate this Agreement without penalty for such termination, provided, however, that the Parties shall remain subject to any liabilities and obligations under this Agreement that had arisen prior to the date of termination, or from a provision of this Agreement that expressly survives termination, provided further that during the aforesaid 45-day negotiation period, Customer shall not be required to make Solar Services Payments if Customer is not receiving Solar Services and Net Metering Credits.

ARTICLE IV.
CONSTRUCTION AND OPERATION

4.01 Development and Commercial Operations Date/Deadline.

(a) Design and Construction. Provider will, at its sole cost and expense, cause the System to be designed, engineered, permitted, procured, installed, constructed, tested, and commissioned pursuant to good and prudent industry practice, and in a good and workmanlike manner, in accordance with Applicable Law, Governmental Approvals and the applicable requirements of any Governmental Authority, and shall be responsible, as the Interconnection Customer for the System, for all costs and expenses associated with and arising from interconnection of the System to the Local Distribution Company's electric distribution system ("Development"). Provider shall be solely responsible for the Development of the System.

(i) Subcontractors. Without limiting Provider's liability or obligations under this Agreement, Provider may engage subcontractors to meet any obligation under this Agreement. Any subcontractors engaged by System Owner to perform any portion of the obligations described in Section 4.01 shall have all licenses and registrations required to perform the services to be performed by such subcontractor, and any such subcontractor must maintain insurance as required pursuant to Article X. Upon request, Provider shall provide Customer with evidence that any such subcontractor has obtained insurance as required pursuant to Article X.

(b) Commercial Operations Date. Within seven calendar days of the System achieving Commercial Operations, Provider shall certify to the Customer in writing the date on which the System achieved Commercial Operations. Provided such certification is correct, the date so certified shall be deemed the "Commercial Operations Date."

(c) Commercial Operations Deadline. Subject to Section [SECTION NUMBER] of the [LEASE/LICENSE/EASEMENT], Provider shall cause the System to achieve Commercial Operations no later than [DATE] (the "Commercial Operations Deadline").

4.02 Testing. Provider shall conduct such testing of the System as may be required by the Local Distribution Company and Applicable Law. Provider shall notify Customer of the results of any such testing. Customer will purchase all test

energy under the provisions of this Agreement whether such test energy is produced before or after the Commercial Operations Date, provided Customer receives Net Metering Credits corresponding to such energy.

4.03 Operations. The System shall be owned, operated, maintained, repaired, replaced, and, at the expiration or earlier termination of the Agreement or [LEASE/EASEMENT/LICENSE] unless Customer has exercised the Purchase Option, removed by or for Provider at its sole cost and expense with reasonable diligence and in a commercially reasonable manner, and in accordance with its Interconnection Services Agreement with the Local Distribution Company, Applicable Law, Governmental Approvals, the applicable requirements of any Governmental Authority, and good and prudent industry practices.

4.04 Metering. Pursuant to the Local Distribution Company's interconnection and net metering tariff(s), Provider, as Interconnection Customer, shall request the Local Distribution Company to furnish and maintain the Meter on the Premises for the measurement of Solar Services generated by the System on a continuous basis. To the extent permitted by the Local Distribution Company under said tariff, Provider shall test the Meter, or request that the Local Distribution Company test the Meter, in compliance with the manufacturer's recommendations, which shall not be less than once per calendar year. In addition, once per calendar year, Customer shall have the right to audit all such Meter data upon reasonable notice, and any such audit shall be at Customer's sole cost; and Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations. If testing of the Meter pursuant to the foregoing indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace, or request the Local Distribution Company to repair or replace, the Meter, all at no cost or expense to Customer. Provider shall make a corresponding adjustment to the records of the amount of Solar Services based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if the actual period cannot be so determined and the Local Distribution Company has not made an independent determination, then an estimated period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering or (ii) the date the Meter was placed into service; *provided, however,* that such estimated period shall in no case exceed one (1) year.

4.05 Monitoring System. Provider shall install a performance monitoring system. Such system shall at minimum meet the requirements for reporting actual

production of electricity to the Local Distribution Company and any appropriate state or regional agency. Such system shall include at minimum a state-of-the-art remote data acquisition system (DAS) designed to gather and record system parameters as well as weather related parameters including power, sunlight, wind speed and air temperature from a local area weather station. The monitoring system shall also include data logging and historical data collection capabilities to ensure Customer can observe system performance over time. [OPTIONAL: Provider shall also provide and install a data monitoring LED display at a location of Customer's choosing. Such display shall be web-enabled to demonstrate near real-time performance, and a link may be included on Customer's website.]

4.06 Outages. Provider shall be entitled to suspend delivery of electricity to the Meter for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; *provided that* Provider shall use commercially reasonable efforts to minimize any interruption in service to Customer, shall comply with all requirements of the Local Distribution Company in connection with any suspension, and shall be responsible for any Production Shortfall.

4.07 Connection Responsibilities. Provider shall, with the assistance of System Owner, obtain any Interconnection and Net Metering Agreements, approve studies related thereto, and execute Interconnection and Net Metering Agreements as needed to deliver Net Metering Credits to the Customer's electric accounts. Provider is responsible for the interconnection of the System to the Site Electrical System. Provider is System Owner is responsible for the interconnection of the System to the Site Electrical System and is solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Host Customer shall at all times own and be responsible for the operation and maintenance of the Site Electrical System at and from the Meter. Provider hereby agrees, notwithstanding anything to the contrary herein, to pay and indemnify Customer for and from any and all costs, damages, and expenses incurred by Customer, or imposed upon Customer by the Local Distribution Company, under any agreement between Customer, and the Local Distribution Company, including, but not limited to, charges and costs for any electricity consumed by the System or the Premises. Customer shall have the right, but not the obligation, to access the System and Meter during business hours upon reasonable advance notice to Provider for the purpose of verifying Provider's compliance with this Agreement and the Interconnection Services Agreement executed by Provider and the Local Distribution Company, provided that any exercise or failure to exercise

such right shall not relieve Provider of its obligations hereunder, nor operate as a waiver of any right, remedy, claim or defense of Customer under this Agreement or at law or in equity.

4.08 Provider represents, warrants and agrees that it has, as of the Effective Date, applied to the Local Distribution Company for interconnection of the System, and that it will, as soon as reasonably possible apply, on behalf of Customer for Net Metering eligibility. Provider shall reasonably cooperate with Provider in those efforts.

ARTICLE V.
TITLE TO SYSTEM

5.01 Title to System. Provider shall retain title to and be the legal and beneficial owner of the System at all times. Absent further written election by Provider, the System shall (i) remain the personal property of Provider and shall not attach to or be deemed a part of, or fixture to, the Premises, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Customer warrants and represents that it shall not lien the System. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its title to and rights in the System. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code, as amended, and the provisions of this Agreement shall be construed consistently with the intention of the Parties. As between the Parties, Provider shall retain the exclusive right to take or sell all System products, including capacity and all Environmental Attributes, except for the Solar Services purchased by Customer hereunder, including all Net Metering Credits corresponding to such Solar Services. Notwithstanding the foregoing, neither Party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NY-Sun Initiative, or any successor, to any party or system outside of New York State.

5.02 Ownership of Rebates; Customer Rebate Assistance. All Rebates available in connection with the System are owned by Provider. Customer shall reasonably cooperate with Provider, at Provider's sole cost and expense, in obtaining all Rebates currently available or subsequently made available in connection with the System.

5.03 Risk of Loss; Exclusive Control. As between the Parties, Provider will at all times be deemed to be in exclusive control of the Solar Services and shall bear the risk of loss of the Solar Services until delivery of that production to the Meter, as measured by the Meter. Risk of loss of and title to the Solar Services measured by the Meter will transfer from Provider to Customer at the Meter, provided Customer received Net Metering Credits corresponding to the Solar Services.

5.04 Governmental Charges. Notwithstanding anything to the contrary in this Agreement, Provider is solely responsible for any and all Governmental Charges. Both Parties shall, subject to Applicable Law and the other provisions of this Agreement, use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges.

ARTICLE VI.
TERM OF AGREEMENT

6.01 Term. Subject to [LOCAL GOVERNMENT BODY APPROVAL], without which approval and execution this Agreement shall not be valid notwithstanding anything to the contrary herein, the initial term of this Agreement shall commence on the Effective Date and shall continue for a period ending on the first December 31 following the twentieth (20th) anniversary of the Commercial Operations Date of the System (the "Initial Term," together with any "Renewal Term," referred to as the "Term"), unless terminated earlier pursuant to this Agreement. The Agreement may be extended upon mutual agreement for up to an additional five years (the "Renewal Term").

6.02 Early Termination by Provider. In the event that any of the following events or circumstances occur after the Effective Date but prior to the Construction Commencement Date, which events or circumstances Provider shall demonstrate to Customer's reasonable satisfaction, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other Party for such termination, except for any liability of Provider arising prior to the date of such termination.

(a) There exist environmental conditions at the Premises that were not known and not reasonably knowable by Provider as of the Effective Date, which will materially increase the cost of constructing the System or will materially and adversely affect the electricity production from the System.

(b) There is a material, adverse change in the Environmental Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that will materially and adversely affect the economics of the installation for Provider and its investors, including any Lender.

(c) Provider is unable, after having expended good faith diligent efforts to do so, to obtain financing for the System on reasonable terms and conditions.

(d) Provider, despite its best and diligent efforts, and through no fault of its own, has not received all required Governmental Approvals.

6.03 Early Termination by Customer. Subject to Section [SECTION NUMBER] of the [LEASE/EASEMENT/LICENSE], Customer may terminate this Agreement without penalty or any liability to the Provider as specified below:

(a) upon 30 days notice to Provider in the event that an application for interconnection for the System has not been filed with the Local Distribution Company within 10 days of the Effective Date, and the Interconnection Services Agreement has not been executed by Provider and Local Distribution Company by [DATE];

(b) upon 30 days notice to Provider, in the event that Provider has not reasonably demonstrated to Customer, within 365 days of the Effective Date (the "Financing Date"), that Provider has obtained financing sufficient to purchase, construct, commission, own and operate the System. The Parties agree that Customer's receipt, within the aforesaid time period, of evidence of a term sheet and commitment letter signed by a Lender shall constitute evidence that Provider has obtained such financing for all purposes under this Agreement, and that, after said receipt, Provider shall not be eligible to terminate the Agreement under Section 6.02(c);

(c) upon 30 days notice in the event the System does not qualify or is not qualified as a Net Metering Facility, as defined in the Net Metering Rules, as of the Commercial Operations Date, unless such qualification is obtained within such 30-day notice period;

(d) upon 30 days notice in the event a Provider Default, defined in paragraph 8.01(a), has occurred;

(e) upon 30 days notice in the event Provider has failed to achieve the Construction Commencement Date within 365 days of the Effective Date and/or the Commercial Operations Date by [DATE];

(f) upon 30 days notice in the event the System has not been granted eligibility for Net Metering by [DATE], or Provider fails to maintain such eligibility unless Provider cures the latter failure within said 30-day notice period; and

(g) upon 30 days notice in the event Provider has not furnished to Customer written confirmation from the Local Distribution Company within 90 days of the Effective Date that Net Metering Credits will be calculated based on the Local Distribution Company's [MOST FAVORABLE APPLICABLE] rate.

6.04 Removal of System at Expiration. Unless Customer has exercised the Purchase Option, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises and restore the condition of the Property to its original condition upon the expiration or earlier termination of the Agreement in accordance with and as set forth in the [LEASE/EASEMENT/LICENSE].

ARTICLE VII.
REPRESENTATIONS AND WARRANTIES

7.01 Each Party represents and warrants to the other as of the Effective Date:

(a) Organization; Existence; Good Standing. Such Party is duly organized, validly existing and in good standing in the jurisdiction of its organization. Such Party has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and such Party has taken all requisite corporate, body politic or other action to approve the execution, delivery and performance of this Agreement, subject, as to the [LOCAL GOVERNMENT APPROVAL BODY] authorization.

(b) Binding Obligation. This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to creditors' rights generally.

(c) No Litigation. There is no litigation, action, proceeding or investigation pending or, to such Party's knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would materially affect its ability to carry out the transactions contemplated herein.

ARTICLE VIII.
DEFAULT AND FORCE MAJEURE

8.01 Provider Defaults.

(a) Provider Default Defined. The following events shall be defaults of this Agreement by Provider ("Provider Defaults"):

(i) If Provider breaches any material term of this Agreement (excluding the failures set forth in sub-sections (a)(ii)-(a)(v) of this Section 8.01), and (i) if such breach can be cured within thirty (30) days after Customer's notice of such breach and Provider fails to cure within such 30-day period, or if such breach cannot reasonably be cured within such 30-day period despite Provider's prompt commencement and diligent pursuit of a cure, if (ii) Provider fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than 30 days is needed, provided that no cure period shall exceed 120 days;

(ii) Provider becomes Bankrupt;

(iii) Provider fails to make payment for any Production Shortfall under Section 2.02(b), unless such failure is cured within 30 days from Provider's receipt of notice of termination; provided, however, that if any such failure occurs three or more times in any 365 day period, even if such failure is cured as aforesaid, such occurrence shall constitute a Provider Default;

(iv) Provider sells or conveys the System to a tax exempt entity; or

(v) Provider commits an Event of Default under and as defined in the [LEASE/LICENSE/EASEMENT].

(b) Customer's Remedies. If a Provider Default described in Section 8.01(a) has occurred and is continuing, Customer may terminate this Agreement immediately upon such default, unless the default is one for which a cure period is provided in Section 8.0l(a), in which event Customer may terminate immediately upon the expiration of the respective cure periods set forth in such provisions, and in either event Customer may, notwithstanding anything to the contrary in this Agreement or the Lease, (i) exercise any and all rights and remedies it may have at law or equity or under this Agreement, including without limitation its right to exercise the Purchase Option, or at Customer's sole election and in its sole discretion, (ii) unless Customer has exercised the Purchase Option, require that Provider remove the System from the Premises and restore the Property to its original condition in accordance with the Lease, and regardless of whether Customer has exercised the Purchase Option, require that Provider pay to Customer, not as a penalty but as liquidated damages, the Parties acknowledging that Customer's damages in the event of a Provider Default being difficult to determine, an amount calculated as follows: Take the sum of the Estimated Annual Output in kWhs for all the remaining Contract Years (shown in Schedule 4), and multiply that sum by the difference between the kWh Rate applicable at the time of termination and average value of a Net Metering Credit over the 24 months preceding termination.

8.02 Customer Defaults.

(a) Customer Default Defined. The following events shall be defaults with respect to Customer (each, a "Customer Default"):

(i) Customer fails to pay Provider any undisputed amount due Provider under this Agreement within ten (10) Business Days from receipt of written notice from Provider stating the existence (and the amount) of such past due amount;

(ii) Customer breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Customer fails to so cure, or (B) Customer fails to commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than 30 days is needed;

(iii) Customer becomes Bankrupt; or

(iv) Customer commits a Event of Default under and as defined in the [LEASE/LICENSE/EASEMENT].

(b) Provider's Remedies. If a Customer Default described in Section 8.02(a) has occurred and is continuing, Provider may, subject to Section 9.01, terminate this Agreement immediately upon the expiration of the respective cure periods set forth in such provisions and Provider shall be entitled to receive from Customer, as liquidated damages, and as Provider's sole and exclusive remedy for such default notwithstanding anything to the contrary in this Agreement or the [LEASE/LICENSE/EASEMENT]the Early Termination Fee as set forth in Schedule 5. Notwithstanding the foregoing and anything to the contrary in this Agreement or the [LEASE/LICENSE/EASEMENT], no Early Termination Fee shall be due or payable for any Customer Default occurring before the Commercial Operations Date, for which default, if any, Provider shall be entitled to pursue such remedies as are available at law or in equity. [OPTIONAL ALTERNATIVE: Rather than setting damages equal to an Early Termination Fee, parties may agree that provider is entitled to damages available at law and equity.]

8.03 Force Majeure. A "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party was unable to overcome such act or event with the exercise of due diligence. Notwithstanding any other term hereof, no payment obligation of Customer under this Agreement may be excused or delayed as the result of a Force Majeure Event, unless as a result of such event or Provider's efforts (or lack thereof) to overcome such an event, Customer does not receive Solar Services and Net Metering Credits, in which event Customer shall not be required to pay for Solar Services not received, or for Solar Services for which corresponding Net Metering Credits have not been received, by Customer. A Party claiming a Force Majeure Event shall not be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable

to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. A Force Majeure event shall not include ordinary or reasonably foreseeable fluctuations in insolation/sunlight or be based on the economic hardship of either Party. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be entitled to terminate the Agreement upon ten (10) days' prior written notice. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider's obligation to remove the System and restore the Premises in accordance with the [LEASE/LICENSE/EASEMENT], and any such liabilities that have accrued or arise from events occurring prior to such termination).

8.04 LIMITATION ON LIABILITY. NOTWITHSTANDING ANY OTHER TERM HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT EXCLUDING CLAIMS OF INDEMNIFICATION FOR CLAIMS OF THIRD PARTIES, INCLUDING THE LOCAL DISTRIBUTION COMPANY. THE LOSS OF ANY SAVINGS IN CUSTOMER'S ELECTRICITY COSTS FROM NET METERING CREDITS CORRESPONDING TO THE SOLAR SERVICES SHALL NOT BE DEEMED A DAMAGE OF THE KIND LIMITED UNDER THIS SECTION.

ARTICLE IX.
INSURANCE, CASUALTY AND CONDEMNATION

9.01 Provider shall maintain, throughout the Term of this Agreement, all insurance required by the Local Distribution Company for or in connection with the System, and, if not included in such insurance, the insurance required in the [LEASE/LICENSE/EASEMENT].

ARTICLE X.
ASSIGNMENT

10.01 Generally. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Customer and their respective successors and permitted assigns. Any purported assignment in violation of this Article XI shall be null and void *ab initio.*

10.02 Assignment by Customer. Customer shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that without Provider's prior written consent, Customer may sell Net Metering Credits corresponding to the Solar Services to another entity as may be allowed by law, provided that Customer shall be responsible to pay for such Solar Services in accordance with this Agreement notwithstanding any such sale.

10.03 Assignment by Provider.

(a) Provider may, with advance written notice to Customer, collaterally assign or pledge its interests hereunder and/or in the System or any monies due under this Agreement, with any such assignee/pledgee having all rights typical of a secured lender subject to the terms of this Agreement.

(b) Notwithstanding subparagraph (c) below, the parties agree and acknowledge that, immediately following execution of this Agreement, Provider shall assign all of its rights and obligations hereunder and under the [LEASE/LICENSE/EASEMENT] to [XYZ, LLC], a [STATE] limited liability company and affiliate of Provider, and such assignee shall assume all of Provider's obligations hereunder and under the [LEASE/LICENSE/EASEMENT] in writing. Upon the execution of such assignment and assumption by Provider and [XYZ, LLC], subject to the last sentence of this subparagraph, Provider shall be released from all of its obligations hereunder and under the Lease and shall have no liability hereunder or thereunder. Provider hereby represents and warrants that [XYZ, LLC] has the experience and financial capability as set forth in clauses (x) and (y) in subparagraph (c), below, subject to Provider obtaining sufficient financing to purchase, construct, commission, own and operate the System.

(c) Except as otherwise provided in subparagraph (b), above, Provider may make an Assignment of Provider's rights and obligations hereunder only upon Customer's prior written consent, provided, however, that, other than assignments made for collateral purposes, the Agreement may not be assigned in part, and may not be assigned to any Person who does not also simultaneously take full assignment of the Lease; provided further that, subject to the limitations on assignment set forth herein, Customer shall not unreasonably withhold its consent to an Assignment of Provider's rights and obligations hereunder if Customer has been provided with reasonable proof that the proposed assignee is not a tax-exempt entity and that such assignee: (x) has demonstrable experience in operating and maintaining photovoltaic solar systems comparable to the System; and (y) has the demonstrable financial capability to maintain the System and perform hereunder, provided that such level of experience and financial capability shall not be less than the level of experience and financial capability of Provider-assignor. Other than as set forth in subparagraph (b) above, a direct assignee of Provider's obligations hereunder shall assume in writing, in form and content reasonably satisfactory to Customer, the due performance of all Provider's obligations under this Agreement. In addition, notwithstanding any demonstration made to Customer as set forth in this Section 11.03, by virtue of making an approved assignment hereunder, Provider agrees that it shall be deemed as having represented and warranted to Customer that the assignee has the experience and capability set forth in clauses (x) and (y) above.

10.04 Financing Accommodations. Customer acknowledges that Provider will be financing the acquisition and installation of the System with funding from one or more Lenders or third-party capital providers. Such financings may include the sale or sale/leaseback of one or more of the Systems to tax advantaged entities. In order to facilitate System financings, but subject to the other provisions of this Agreement, Customer will provide such Lenders and capital providers with reasonable consents and confirmations as may be reasonably requested, including the consent for such entities, subject to the terms of the Agreement, to enforce Provider's rights hereunder, cure any Provider Default, Provider shall, within thirty (30) days following receipt of an invoice, reimburse Customer for all reasonable costs and expenses, including Customer's reasonable attorneys' fees, incurred in providing such consents and confirmations to Provider or such Lenders or third-party capital providers.

10.05 [OPTIONAL: If Customer ceases to conduct operations at or vacates the Premises or is prevented from operating the System at the Premises before the expiration of the Term, then upon not fewer than ninety (90) days' prior written notice, Customer shall have the option to provide Provider with a mutually agreeable substitute premises located within the same Local Distribution Company territory as the Premises. In connection with such substitution, this Agreement will be amended to reflect the substitute premises. Customer shall pay all costs associated with relocation of the System, including but not limited to all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the Premises, and installation and testing of the System at the substitute premises and all applicable interconnection fees and expenses. Provider shall remove the System from the vacated Premises before the termination of Customer's ownership, lease or other rights to use such Facility. If Customer is unable to provide such substitute premises and to relocate the System as provided, any early termination will be treated as a default by Customer.]

ARTICLE XI.
INDEMNIFICATION

11.01 Indemnification by Provider. Provider shall fully indemnify, save harmless and defend Customer from and against any and all damages, losses, liabilities, costs, claims, and expenses (including attorneys' fees) incurred by or imposed upon Customer in connection with or arising from any claim by a third party, including the Local Distribution Company, for economic damages, physical damage to or physical destruction of property, or death of or bodily injury to any Person, including, but not limited to, claims arising out of Provider's construction, operation, maintenance, repair, removal and/or ownership of the System.

11.02 Survival of Provisions. The provisions of this Article 12 are in addition to and not in limitation of any other rights and remedies available to Customer, and shall survive the expiration or termination of this Agreement.

ARTICLE XII.
PURCHASE OPTION

12.01 Grant of Purchase Option. For and in consideration of the payments made by Customer under this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Provider hereby grants Customer the right and option to purchase all of Provider's right, title and interest in and to the System (to include, for the purpose of this Article XIII, all such right, title and interest in and to all Environmental Attributes and Rebates accruing on and after the date of purchase by Customer) for its Fair Market Value on the terms set forth in this Agreement (the "Purchase Option").

12.02 Customer Request for Appraisal of Solar Energy Facility Value. Notwithstanding anything to the contrary in this Agreement and the Lease, Customer shall have the right, upon the earlier of (a) one hundred eighty (180) days prior to the end of the Initial Term or any Renewal Term, (b) after the eighth (8th) anniversary of the Commercial Operations Date, or (c) upon the occurrence of an Provider Default, to provide a written notice to Provider requiring a determination of the Purchase Price as set forth below.

12.03 Selection of Independent Appraiser. Within fifteen (15) days of Provider's receipt of a notice provided under Section 13.2, Provider and Customer shall each propose an Independent Appraiser. If Provider and Customer do not agree upon the appointment of an Independent Appraiser within such fifteen (15) day period, then at the end of such fifteen (15) day period, the two proposed Independent Appraisers shall, within ten (10) days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform a valuation of the System. Such selection shall be final and binding on Provider and Customer absent fraud.

12.04 Determination of Purchase Price.

(a) The selected Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Fair Market Value in accordance with Section 13.5.

(b) Upon making its preliminary determination, the selected Independent Appraiser shall provide such preliminary determination to Provider and Customer, together with all supporting documentation that details the calculation of the preliminary determination. Provider and Customer shall each have the right to object to the preliminary determination within twenty (20) days of receiving such preliminary determination, provided that the objecting Party shall provide a written explanation reasonably documenting the reasons for its objection. Within fifteen (15) days after the expiration of such 20- day period, the selected Independent Appraiser shall issue its final determination to Provider and Customer, which shall be set forth in a written opinion delivered to the Parties and shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making its final determination. The Independent Appraiser shall in all events act in good faith to determine Fair Market Value. Except in the case of fraud or manifest error, the final determination of the selected Independent Appraiser shall be final and binding on the Parties.

12.05 Calculation of Purchase Price. The purchase price (the "Purchase Price") payable by Customer for the System shall be equal to the Fair Market Value as determined by the Independent Appraiser in its final determination.

12.06 Costs and Expenses of Independent Appraiser. Provider and Customer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

12.07 Exercise of Purchase Option

(a) Customer shall have ninety (90) days from the date of the Independent Appraiser's final determination to exercise the Purchase Option. Customer must exercise its Purchase Option during such 90-day period by providing written notice to Provider. Once Customer delivers such notice, the exercise of the Purchase Option shall be irrevocable, except due to fraud of Provider or fraud or manifest error of the Independent Appraiser; and unless Customer's legislative body fails to appropriate funds equal to the Purchase Price, or Customer's review of the System and records pertaining thereto furnished by Provider in accordance with 13.7(b) reveals that Provider failed to install, operate, maintain, and repair the System in accordance with this Agreement and the [LEASE/LICENSE/EASEMENT]; and unless the Parties are able to reach agreement on the terms of purchase of the System under Section 13.8.

(b) Promptly following receipt of Customer's notice pursuant to Section 13.2, Provider shall make the System, including records relating to the operations, maintenance, and warranty repairs, available to Customer for its inspection during normal business hours.

12.08 Terms of System Purchase. On the Transfer Date, as such term is defined in Section 13.9, (a) Provider shall surrender and transfer to Customer all of Provider's right, title and interest in and to the System (to include, for the purpose of Article XIII, Provider's right, title and interest to Environmental Attributes and Rebates accruing on and after the Transfer Date); (b) Customer shall pay the Purchase Price, by certified check, bank draft, and/or wire transfer; and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such terms and conditions as are usual and customary for a sale of similar assets, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System to Customer. Provider shall, at its expense, remove any and all liens, security interests, and other encumbrances placed on the System, including without limitation those placed by Provider, an Affiliate, or Lender, and shall assign to Customer all manufacturer or other similar warranties for the System.

12.09 Transfer Date. The closing of any sale of the System (the "Transfer Date") pursuant to this Section 11.9 will occur no later than thirty (30) days following appropriation by Customer's legislative body of funds equal to the Purchase Price, unless extended or shortened by agreement of the Parties.

ARTICLE XIII.

CONFIDENTIALITY AND GOODWILL

13.01 Confidentiality Obligation. Except as Customer may reasonably determine it is required to disclose information in accordance with applicable public records laws and regulations, if either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Customer's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or

plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

13.02 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

13.03 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

13.04 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

ARTICLE XIV.
MISCELLANEOUS

14.01 Additional Documents. Upon the receipt of a written request from a Party, the other Party shall, at the cost and expense of the requesting Party, execute such additional reasonable documents, instruments, estoppels, consents, confirmations and assurances, and take such additional reasonable actions as are reasonably necessary to carry out the terms of this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14.02 Integration; Attachments. This Agreement, together with the Schedules and any Exhibits attached hereto, constitutes the entire agreement and understanding between Provider and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

14.03 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, accepted standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

14.04 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Customer.

14.05 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Provider or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance, or of any other provision in any instance. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

14.06 Cumulative Remedies. Except as set forth herein, any right or remedy of Provider or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. Notwithstanding the foregoing, in the event Customer is required to pay the Early Termination Fee in accordance with Article VIII hereof, such fee shall be Provider's sole and exclusive remedy for any default of Customer under this Agreement and the [LEASE/LICENSE/EASEMENT].

14.07 Survival. The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect, including, but not limited to, Provider's obligation to indemnify Customer under Sections 4.07 and 12.01, and Provider's obligation to pay all Governmental Charges under Section 5.04.

14.08 Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in or removed to any court of the State sitting in [COUNTY] County or the federal district court sitting in the State. By execution and delivery of this Agreement, Provider and Customer accept, generally and unconditionally, the jurisdiction of the aforesaid court. Provider and Customer hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum nonconveniens.* Provider agrees that service of process may be effected upon it by certified mail or federal express, with proof of receipt, at the address provided in Section 14.17 (Notices).

14.09 Severability. Subject to the other terms of this Agreement: Any term, covenant or condition in this Agreement that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Agreement, or of such provision in other jurisdictions. The Parties shall use good faith efforts to negotiate to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

14.10 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

14.11 Relation of the Parties. The relationship between Provider and Customer shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

14.12 Injunctive Relief. The Parties acknowledge that a violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such a violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

14.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

14.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

14.15 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator.

14.16 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed by the Person against whom recourse is sought, or such recourse is otherwise permitted under the terms of this Agreement or law.

14.17 Notices. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

[ADDRESS]

If to Customer:

[ADDRESS]

or at such other address as may be designated in writing to the other Party. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand-delivered, or sent by (a) registered or certified U.S. Mail, postage prepaid, (b) commercial overnight delivery service, or (c) facsimile or email attachment, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand-delivered, or upon confirmation of sending when sent by facsimile or email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail. Customer shall deliver to any Lender, concurrently with delivery thereof to Provider, a copy of each notice of Provider Default given by Customer under Section 8.01 of this Agreement, and no such notice shall be effective absent delivery to the Lender, provided that Customer shall not be required to deliver such a notice to more than one Lender or to more than one address at any given time, and provided further that such Lender is identified in this Agreement or in a writing signed by Provider and delivered to Customer in accordance with this Section 14.17. In the event more than one Lender or more than one address is identified by Provider, Customer shall be in compliance with the preceding sentence of this Section if it delivers a copy of the notice of Provider Default to any one such Lender and at any one such address, unless the notice to Customer identifying a Lender and address expressly states that such Lender and such address supersedes any prior Lender and address identified by Provider, in which event Customer shall deliver said notice to such Lender at such address.

14.18 Additional Qualifications. Notwithstanding anything to the contrary in this Agreement:

(a) Customer shall not be required to execute documents or instruments, or take any actions or omit from taking any actions, subsequent to the execution of the Agreement which will materially or unreasonably increase Customer's risk or obligations under the Agreement, or result in the waiver of any of Customer's rights or remedies under the Agreement or at law or in equity, as reasonably determined by Customer.

(b) Any requirement that Customer cooperate or assist Provider shall not require Customer to interfere with, or influence, the independent executive, regulatory, judicial, licensing, permitting, taxing or legislative functions of any department, board, committee, official, body or commission of Customer in its capacity as a municipality.

(c) The Agreement shall be subject to Applicable Laws.

(d) Nothing herein shall interfere with the duties of the [LOCAL GOVT NAME OF ASSESSOR BOARD] in the calculation, assessment and collection of any taxes.

14.19 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.

14.20 All parties agree to provide the New York State Energy Research and Development Authority (NYSERDA) or its designated representative with reasonable access to the System in order to conduct site inspections or remote monitoring services as per the requirements of NYSERDA incentive programs.

14.21 The Parties agree to collaborate with NYSERDA should they prepare any press release or plan any news conference related to the PV System. NYSERDA is authorized to use PV System photographs in brochures, on its website, and in other print materials.

14.22 The Parties and their respective permitted successors and permitted assigns, shall not agree to nor enter into any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by the System to any party or system outside of New York State.

THE FOREGOING CLAUSES AND PROVISIONS ARE MEANT TO ASSIST IN THE DEVELOPMENT BY THE LEGAL REPRESENTATIVES OF A GIVEN JURISDICTION OF AN APPROPRIATE AGREEMENT FOR SOLAR SERVICES. SPECIFIC REQUIREMENTS AND PROCLUSIONS NOT ADDRESSED IN THIS DOCUMENT MAY APPLY IN ANY JURISDICTION. THIS DOCUMENT IN NOT MEANT AND SHOULD NOT BE USED AS AN ENTIRE AND COMPLETE AGREEMENT WITHOUT THE ADVICE OF COUNSEL.

SCHEDULE 1-DESCRIPTION OF PREMISES

Solar System Premises:	(see [LEASE/LICENSE/EASEMENT] for accurate description of Premises)
Premises is Owned or Controlled by:	[SITE OWNER]

SCHEDULE 2 - SYSTEM

Solar System Size: [SYSTEM SIZE IN KW DC]

Module: [MODULE MANUFACTURER]

Inverter: [INVERTER MANUFACTURER]

Racking System: [RACKING MANUFACTURER AND DESCRIPTION OF RACKING]

SCHEDULE 3- kWh RATE

For each Billing Cycle in which the System delivers electricity to the Local Distribution Company, the price per kWh of Net Metered Production shall be $X.XX/kWh ("kWh Rate"), subject to an escalation of X.X% per annum.

SCHEDULE 4- EXPECTED OUTPUT AND MINIMUM GUARANTEED OUTPUT

The estimated annual output and Guaranteed Annual Solar Services Output with respect to the System shall be in accordance with the following schedule. The Guaranteed Annual Solar Services Output for each Contract Year shall be ninety (90) percent of each Estimated Annual Output for the applicable year based on actual weather and insolation data.

Year	**Estimated Annual Output (kWh) (AC)**	**Guaranteed Annual Solar Services Output (kWh) (AC) (XX%)**
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

SCHEDULE 5. EARLY TERMINATION FEE

The Early Termination Fee with respect to the System under the Agreement shall be as follows:

Early Termination Occurs in Year:	Early Termination Fee ($/Wdc including costs of removal)
1*	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

*Early Termination Fee is not payable prior to the Commercial Operations Date.

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

NYSERDA, a public benefit corporation, offers objective information and analysis, innovative programs, technical expertise, and support to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce reliance on fossil fuels. NYSERDA professionals work to protect the environment and create clean-energy jobs. NYSERDA has been developing partnerships to advance innovative energy solutions in New York State since 1975.

To learn more about NYSERDA's programs and funding opportunities, visit nyserda.ny.gov or follow us on Twitter, Facebook, YouTube, or Instagram.

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State of New York
Andrew M. Cuomo, Governor

New York State Energy Research and Development Authority
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