
POWER PURCHASE AGREEMENT

By and Between
ABERDEEN TOWNSHIP
and
[COMPANY]

Dated as of _____, 20__

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the "Agreement"), dated as of _____, 20____, by and between _____, with offices at _____ ("Company"), and the Township of Aberdeen, with offices at 1 Aberdeen Square, Aberdeen, Monmouth County, New Jersey ("Township"), each referenced herein individually as "Party" and collectively as "Parties".

WITNESSETH

WHEREAS, the Township on June 24, 2011 issued a *Request for Proposals for a Developer of Photovoltaic Systems with Respect to Certain Municipal Facilities in the Township of Aberdeen, New Jersey* (the "RFP") in accordance with and pursuant to a competitive contracting process under (i) N.J.S.A. 40A:11-4.1(k) (Local Public Contracts Law), (ii) New Jersey Department of Community Affairs, Division of Local Government Services ("DLGS"), Local Finance Notice 2008-20, dated December 3, 2008, entitled *Contracting for Renewable Energy Services, P.L. 2008, c. 83*; (iii) the protocol for measuring energy savings in PPA agreements, entitled *Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines*, dated February 20, 2009, as approved by an Order of the State of New Jersey, Board of Public Utilities ("BPU"), dated February 27, 2009, in *In the Matter of a Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012: Guidelines for Calculating Energy Savings*, Docket No. EO09020128; and (iv) DLGS Local Finance Notice 2009-10, dated June 12, 2009, entitled *Contracting for Renewable Energy Services: Update on Power Purchase Agreements* ((i) through (iv), as amended and supplemented, are collectively the "State Procurement Laws"); and

WHEREAS, on _____, 20____ the Company submitted a proposal in response to the RFP (the "Company Proposal"); and

WHEREAS, the Township accepted the Company Proposal, and pursuant to Township Resolution No. _____, adopted _____, 20____ entitled *Resolution of the Township of Aberdeen Determining the Successful Respondent and Awarding a Power Purchase Agreement*, the Township procured the services of the Company to, at the Company's cost and expense, design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects at the designated Municipal Facilities [and, at the Company's cost and expense, permit, construct and install the Capital Improvement at the Municipal Complex].

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article 1 Definitions

1.1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below, unless the context requires otherwise:

“Agreement” means this Agreement, [including all Schedules and Exhibits, and to the extent not inconsistent herewith, the RFP and the Company Proposal, as any of them may be amended or supplemented from time to time].

“Amended Agreement” shall have the meaning set forth in Section 2.5(c).

“Applicable Law” means all applicable provisions of any constitution, statute, law, ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation or other official pronouncement enacted, promulgated or issued by any Governmental Authority.

“Business Day” means any day that banks are open for business in the State of New Jersey.

“Capital Improvement Projects” means certain roof replacements that are required for the Aberdeen Municipal Complex, that is, an entire roof replacement for the Municipal Complex, even if certain areas are determined by the Company to be unsuitable for solar placement due to shading or roof equipment. Roof replacement will be required to conform to the specifications set forth in Appendix C and the Company shall provide the Township with a fifteen (15) year warranty for each roof replaced.

“Commencement Date” shall have the meaning set forth in Section 2.1(a).

“Commercial Operation Date” shall have the meaning set forth in Section 3.3(c).

“Commercially Reasonable Efforts” means the efforts that a prudent person desiring to achieve a result would use in similar circumstances to achieve that result as expeditiously as practicable; provided, however, that a person required to use Commercially Reasonable Efforts will not be required to undertake extraordinary or unreasonable measures.

“Company” means _____.

“Company Default” shall have the meaning set forth in Section 10.1.

“Company Indemnified Parties” shall have the meaning set forth in Section 14.2.

“Completion Notice” has the meaning set forth in Section 3.3(b).

“Completion Date” shall mean _____, 20 ____.

“Contract Price” has the meaning set forth in Section 6.1.

“Contract Year” means each twelve-month period during the PPA Delivery Term which shall begin on the Commercial Operation Date and on each one year anniversary thereof. In the event that the Termination Date does not fall on the last day of any such twelve-month period, the final Contract Year shall be a period of less than twelve months beginning on the last annual anniversary of the Commercial Operation Date that occurs within the PPA Delivery Term and ending on the Termination Date.

“Delivery Point” shall have the meaning set forth in Section 5.2.

“Designated Representative” shall have the meaning set forth in Section 4.10.

“Dispute” shall have the meaning set forth in Section 15.8(a).

“Early Termination Date” shall have the meaning set forth in Section 2.5(b).

“Early Termination Purchase Price” means the fee payable by the Township to the Company under the circumstances described in Section 2.5(b) in the amount set forth in Exhibit B.

“Effective Date” means the date first set forth above.

“Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to the Township at each Municipal Facility.

“Environmental Attributes” means any and all fuel, emissions, air quality (including carbon, SOx and NOx) and other environmental characteristics, credits, benefits, reductions, offsets, allowances, certificates, Renewable Energy Credits or certificates, green tags and attributes resulting from the generation of the Renewable Energy Project or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such generation or arising out of any Applicable Law (whether now existing or enacted in the future and including any benefit under the Federal Clean Air Act of 1991), including any such Applicable Law relating to oxides of nitrogen, sulfur or carbon, with particulate matter, and soot or mercury, in each case that are attributable to the Solar Energy produced by the Renewable Energy Project during the Term.

“Environmental Laws” means all Applicable Laws relating to pollution, protection, preservation or restoration of human health, the environment or natural resources, including laws relating to releases or threatened releases of hazardous substances or hazardous waste, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances or

hazardous waste, including, but not limited to, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act, in each case as amended, and their state and local counterparts and all regulations thereunder.

“Expected Output” shall have the meaning set forth in Section 5.3(a).

“Extended Term” shall have the meaning set forth in Section 2.1(b).

“Fair Market Value” shall mean the price at which an asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.

“Force Majeure Event” shall have the meaning set forth in Section 12.1.

“Governmental Authority” means any federal, state or local legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court, tribunal, or other public body, person or entity having jurisdiction over a Party, the Renewable Energy Projects, the Capital Improvement Project, or this Agreement.

“Installation Work” means the acquisition, construction and installation of the any roof repair or replacement and/or System(s) and the start-up, testing and acceptance (but not the operation and maintenance) thereof any System(s), all performed by or for the Company at the Municipal Facility(ies), as described in Section 3.1.

“Initial Term” shall have the meaning set forth in Section 2.1(a).

“Initiating Party” shall have the meaning set forth in Section 15.8(a).

“Licensed Area” shall have the meaning set forth in Section 3.1(a).

“Liens” shall have the meaning set forth in Section 7.1(d).

“Township Default” shall have the meaning set forth in Section 10.3.

“Municipal Facilities” means the following buildings, structures and lands, which will be the sites of the Renewable Energy Projects, as set forth in the Conceptual Site Plans and Street Maps in Appendix B to the RFP:

Aberdeen Municipal Complex
Noble Place Pump Station
Riverdale Drive Pump Station
Greenwood Avenue Pump Station
Public Works Complex – Lenox Road

“Township Indemnified Parties” shall have the meaning set forth in Section 14.1.

“Lost Savings” shall have the meaning set forth in Section 5.3(c).

“Maintenance Outage” shall have the meaning set forth in Section 4.5.

“Meter” shall have the meaning set forth in Section 4.6.

“Minimum Guaranteed Output” shall have the meaning set forth in Section 5.3(b).

“Party” means each party hereto, including the Company, and the Township.

“Permit” means any license, approval, order, permit or similar document or action issued or taken by any Governmental Authority.

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Planned Outage” means the planned removal of a Renewable Energy Project from service that is scheduled in accordance with Section 4.4.

“PPA Delivery Term” shall have the meaning set forth in Section 2.1(a).

“PPA Price” shall have the meaning set forth in Exhibit B, after giving effect to any and all adjustments contemplated thereby.

“Products” means the Solar Energy produced by the Renewable Energy Project during the PPA Delivery Term.

“Project Development Costs” shall have the meaning set forth in Exhibit B, after giving effect to any and all adjustments contemplated thereby.

“Prudent Industry Practice” means any of the practices, methods, standards and acts (including practices, methods, standards and acts engaged in or adopted by a significant portion of the electric power generation industry in the United States during the applicable period) which, in the exercise of reasonable judgment in light of the facts known at the time, could be expected to accomplish the desired result consistent with reliability, economy, safety, and expedition. Prudent Industry Practice is not intended to be limited to any particular set of optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to include practices, methods, or acts generally accepted in the United States, having due regard for, among other things, manufacturers’ recommendations and warranties, contractual obligations, Applicable Law and requirements or guidance of Governmental Authorities and the North American Electric Reliability Council.

“Purchase Price” shall have the meaning set forth in Section 2.4(c).

“Rejection Notice” has the meaning set forth in Section 3.3(b).

“Removal” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” means all renewable energy credits, offsets, or other benefits allocated, assigned or otherwise awarded or certified to Company, or a Renewable Energy Project by any Governmental Authority, program administrator or other certification board or other Person generally recognized in the generation industry in connection with the Renewable Energy Project that are, in each case, attributable to the Solar Energy produced by the Renewable Energy Project during the Term. Renewable Energy Credit as used herein shall specifically include Solar Renewable Energy Certificates.

“Renewable Energy Project” means the solar electric generating facilities that will be located at or on the Municipal Facilities.

“REP Acceptance Certificate” shall have the meaning in Section 3.3(c).

“Solar Energy” means electric energy produced by the System measured in kilowatt-hours (KWh).

“Specified Rate” means for each calendar month, the lower of (1) the highest “prime rate” as published in The Wall Street Journal under the heading “Money Rates” on the first day of such month that such rates are published, plus 1% per annum and (2) the maximum rate allowed by Applicable Law.

“System” means the equipment comprising the Renewable Energy Projects at the Municipal Facilities, which shall include the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, wiring devices and wiring as may be more specifically described in Exhibit A.

“System Acceptance Testing” has the meaning set forth in Section 3.3(a).

“System Operations” means the operation, maintenance and repair of the System by or for the Company during the Term, as more particularly defined in Section 4.1.

“System Requirements” has the meaning set forth in Section 3.3(b).

“Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state, local, foreign or other income, profits, unitary, business, franchise, capital stock, real property, personal property, intangible, withholding, FICA, unemployment compensation, disability, transfer, sales (including pursuant to N.J.S.A. 54:32B-1 et seq., and particularly N.J.S.A. 54:32B-9(c)(3)), use, excise and other taxes, assessments, charges, duties, fees, or levies of

any kind whatsoever (whether or not requiring the filing of returns) and all deficiency assessments, additions to tax, penalties and interest.

“Temporary Shutdown” has the meaning in Section 4.5(b).

“Termination Date” has the meaning set forth in Section 2.1(a).

“Test Energy” has the meaning set forth in Section 3.3(a).

“Total Project Costs” has the meaning set forth in Section 3.1(c).

1.2. Interpretation. The headings utilized in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to “Articles,” “Sections,” or “Exhibits” refer to the corresponding Articles, Sections, or Exhibits of or to this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. Unless otherwise stated, any reference in this Agreement to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any successor to its functions and capacities.

Article 2 Term and Conditions Precedent

2.1. Term.

(a) Initial Term. This Agreement shall be effective upon the Effective Date. As to the Municipal Facilities, this Agreement shall remain in effect with respect to the Company, and the Township until the fifteenth (15th) anniversary of the Commercial Operation Date of the Systems to be placed in commercial operation at the Municipal Facilities (which shall be the “Commencement Date,” subject to earlier termination pursuant to Sections 2.2, 2.5, 10.2, 10.4 and 12.3 (such period to be referred to as the “Initial Term” and such date of termination to be referred to as the “Termination Date”). The period from the Commencement Date until the Termination Date is referred to as the “PPA Delivery Term.”

(b) Township Request to Extend Agreement. The Township may, no later than _____, 20____, notify the Company in writing that it wishes to extend this Agreement. Within forty-five (45) days of receipt of such notice, the Company shall provide to the Township, in writing, the terms and conditions, if any are different, upon which it is prepared to extend this Agreement, and shall state the proposed termination date of the extended term (the “Extended Term”). Within sixty (60) days of receipt of said notice, the Township shall notify the Company, in writing, whether it is willing to extend this Agreement, as proposed by the Company, for the Extended Term. If the Township agrees to extend this Agreement upon mutually agreeable terms, this Agreement shall remain in full force and effect, subject to amendments agreed to by the

Parties, for the Extended Term. The Parties understand and agree that any extension of this Agreement shall in all events be subject to first complying with Applicable Laws (including State Procurement Laws).

2.2. Conditions Precedent.

(a) Company's Condition Precedent. Company may terminate this Agreement effective upon written notice to the Township, and no Party will have any further obligation to any other Party hereunder, except as provided in Section 2.4, if: (i) any Permit necessary for the ownership, development, and construction of the Renewable Energy Projects at the Municipal Facilities has not been issued by _____; (ii) the Systems have not been approved for interconnected operation by the Electric Utility.

(b) Township's Conditions Precedent. The Township may terminate this Agreement effective upon written notice to the Company, and no Party will have any further obligation to the other Parties, except as provided in Section 2.4, if: (i) the Company has not, within one hundred twenty (120) days after the Effective Date, received all Permits necessary for the construction of the Renewable Energy Projects and/or the Capital Improvement Project; or (ii) if the Commercial Operation Date for the Renewable Energy Projects has not occurred by the Completion Date;

(c) Waiver of Conditions Precedent. In the event any of the foregoing conditions to the obligations of a Party shall fail to be satisfied, such Party may, in its sole discretion, elect by written notice to the other Party to perform its obligations under this Agreement despite such failure, in which event such Party will be deemed to have waived such condition and any claim for damages, losses or other relief arising from or in connection with such failure, unless otherwise agreed in writing executed by the Parties.

2.3. Effect of Termination. Except to the extent expressly provided in this Agreement, the expiration or termination of this Agreement shall not relieve any Party of any liability accrued or arising from conduct or activities prior to the effective date of the expiration or termination, and such expiration or termination shall not affect the continued operation or enforcement of any provision of this Agreement which by its express terms is to survive any expiration or termination.

2.4. Disposition of the Systems Upon Termination.

(a) Removal of the Systems at Termination. Upon the expiration or earlier termination of this Agreement, the Company shall, at the Company's expense, (i) remove all of its tangible property comprising the Systems from such Township property ("Removal"), and (ii) restore the Municipal Facilities and all affected electrical lines and meters to their pre-installation condition, normal wear and tear excepted, and shall leave the Municipal Facilities in neat and clean order ("Restoration"). The Removal and

Restoration shall occur on mutually convenient dates, which shall be not later than sixty (60) days after Termination. If the Company fails to effect the Removal by such agreed upon date, the Township shall have the right, at its option and at the Company's cost and expense, to perform Removal and Restoration. The Township may transfer the subject Systems to a public warehouse or other storage facility at the Company's cost.

(b) Abandonment of the Systems at Expiration. The Company may request permission from the Township to abandon the Systems, in place, at the Municipal Facilities upon the expiration or earlier termination of this Agreement with respect to such Municipal Facilities. The Township shall be entitled to withhold or grant such permission, which may be subject to conditions imposed by the Township, in its sole discretion. In the event the Township grants said permission, the Company shall assign to the Township any then existing warranties with respect to the Systems and the Capital Improvement Project, and deliver possession and title to the Systems to the Township free and clear of all liens and encumbrances. In the event that permission is granted, in writing, by the Township, and the Company complies with all conditions imposed by the Township, the Company may abandon such Systems in place. Upon the Township's acceptance of possession and title in connection therewith, the Company shall have no remaining obligations with respect to the Systems (other than obligations incurred through such date), it shall have no obligation to remove such Systems from the Municipal Facilities (as required by Section 2.4(a)) and it shall provide no personal warranties with respect to the condition or operation of such Systems.

(c) Township Purchase Option. The Company grants to the Township the option to purchase all of the Company's right, title and interests (which shall include any purchase option the Company may have) in and to the Systems at such Township Municipal Facilities upon the expiration of the Initial Term, or any Extended Term, as the case may be. The purchase price shall be the Fair Market Value of such Systems at such time (the "Purchase Price"). No later than one hundred twenty (120) days prior to a scheduled Termination Date, the Township shall notify the Company, in writing, of its intent to exercise its purchase option. Unless the Township and the Company shall otherwise agree upon the amount of the Purchase Price, such Purchase Price shall be determined by an appraisal by an appraiser mutually acceptable to the Township and the Company, the cost of which appraisal shall be shared equally by the Township and the Company. The Township shall then have a period of thirty (30) days after receipt of such appraisal to exercise the purchase option. In the event the Township confirms its exercise of the purchase option, the closing of the purchase and sale of the Systems shall take place on a date mutually acceptable to the Township and the Company, which date shall not be later than the scheduled Termination Date. At the closing; (i) the Township shall pay to the Company the Purchase Price, and (ii) the Company shall execute and deliver any and all documents necessary to (A) cause all of the Company's right, title and interests in and to the subject Systems to pass to the Township, free and clear of any liens and encumbrances and (B) assign all warranties for the subject Systems to the Township, provided, however, that the Company shall have no obligation to provide any personal warranties with respect to the condition or continued operation of the Systems.

2.5. Early Termination; Substitution.

(a) Prior to Commercial Operation Date. The Township may terminate this Agreement, with respect to any or all Municipal Facilities, prior to the Commercial Operation Date of the Systems at such Municipal Facilities for any reason, provided the Township is not otherwise in default under this Agreement. In such event, the Township shall be responsible for paying all of the Company's direct costs and expenses with respect to such Municipal Facilities incurred subsequent to execution of this Agreement and prior to such termination.

(b) After Commercial Operation Date. The Township shall have the option to terminate this Agreement, with respect to any or all Municipal Facilities, at any time after the Commercial Operation Date for any reason upon thirty (30) days' written notice to the Company (the "Early Termination Date"). Upon such termination, the Township shall pay [an amount equal to the Fair Market Value of the Systems plus such additional amount, if any, as may be necessary to compensate the Company for losses of any nature and kind sustained or to be sustained by reason of the early termination of this Agreement insofar as it relates to the subject Municipal Facilities (collectively, the "Fair Market Value")] [the Early Termination Purchase Price set forth on Exhibit B]. Upon the Township's payment to the Company of the [Fair Market Value] [Early Termination Purchase Price] pursuant to this Section 2.5(b), all of the Company's right, title and interests in and to, and warranties for, the subject Systems shall pass to the Township, free and clear of any liens and encumbrances, and this Agreement shall terminate automatically insofar as it applies to the subject Municipal Facilities. Upon the Township's payment to the Company of the [Fair Market Value] [Early Termination Purchase Price] pursuant to this Section 2.5 with respect to all of such Township's Municipal Facilities, this Agreement shall terminate automatically.

(c) Substitution. At any time during the Initial Term, provided the Township is not otherwise in default under this Agreement, the Township shall have the right to designate one or more alternate municipal facilities (the "Substituted Facilities") upon which to install the Systems, which shall be subject to the approval of the Company, which shall not be unreasonably withheld, delayed or conditioned. The Township shall request the Company to provide a detailed estimate of any additional costs necessary to locate, or relocate, the System to such Substituted Facilities, which costs shall be the responsibility of the Township. Such Substitute Facilities shall, to the extent practicable, be of a similar (or more advantageous to the Parties) size, scope and economic impact as the Systems being replaced. The Township shall provide at least thirty (30) days written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, the Township, and the Company shall, if necessary, prepare and execute such amendments to this Agreement, and any other agreements that may be required in connection therewith (the "Amended Agreement"), which shall remain in effect for the remainder of the term of the original Agreement, and the Amended Agreement shall be deemed to be a continuation of the original Agreement without termination.

2.6. Right of Setoff. In the event that any sums are due and payable by the Township to the Company, pursuant to a purchase option, early termination or otherwise, the Township shall have a right of setoff pursuant to which such amounts shall first be applied to satisfy any obligations of the Company to the Township hereunder or under any other agreements between the Company and the Township. Any amounts in excess thereof shall be paid to the Company as provided herein.

Article 3 **System and Roof Construction; Installation; Testing**

3.1. Installation Work.

(a) Access to Premises, Grant of License. The Township hereby grants to Company a license coterminous with the Initial Term, containing all the rights necessary for Company to use and occupy portions of the Municipal Facilities for the installation, construction of any roof repair or replacement, operation and maintenance of the Systems pursuant to the terms of this Agreement, including ingress and egress rights to the Municipal Facilities for the Company and its employees, contractors and subcontractors, and access to electrical panels and conduits to interconnect or disconnect the Systems with the Municipal Facilities' electrical wiring.

(i) The Township hereby covenants that (x) Company shall have access to the Municipal Facilities and Systems during the Initial Term of this Agreement and for so long as needed after Termination to remove the Systems pursuant to the applicable provisions herein, and (y) the Township shall not interfere or handle any Company equipment or the Systems, except in the case of emergency, without written authorization from Company; provided, however, that Township shall at all times have access to and the right to observe the installation of, or removal of, the Systems.

(b) Compliance with Applicable Laws. The Company shall comply with all Applicable Laws in connection with the installation, operation and maintenance of the Systems [and in connection with installation of the Capital Improvement Project] including without limitation, State Procurement Laws, "Buy American" statutes and regulations, including N.J.S.A. 40A:11-18, laws against discrimination, including N.J.S.A. 10:5-31 et seq., and the Americans with Disabilities Act.

(c) Total Project Costs. The Company represents and warrants that the Total Project Costs, which shall include the Project Development Costs, the Renewable Energy Projects Costs [and the Capital Improvement Project Costs] shall be as set forth on Exhibit B hereto (which amounts shall be determined after giving effect to any and all adjustments contemplated thereby).

(d) Roof Work. All roof work (including repairs and replacements) must be completed in accordance with the requirements and specifications set forth in Appendix C to the RFP, which is incorporated by reference herein as if set forth at

length. All roofing repairs or replacements shall be owned by the Township and any and all warranties associated with such work shall be immediately transferred to the Township upon receipt of same by Company.

(e) Construction Performance Bond. Before starting work on any roof repair or replacement and/or Systems installation, the Company shall have provided the Township, and shall maintain in full force and effect, a Construction Performance Bond in such amount, at such time, and in such form as required by the RFP. The Company shall also include in every subcontract a provision requiring the subcontractor to have a construction performance bond filed with the Township before starting work, and shall verify that the subcontractor has filed a bond before permitting the subcontractor to start work.

3.2. Permits. The Township agrees to assist Company in obtaining any and all necessary approvals and Permits for the Installation Work.

3.3. System Acceptance Testing.

(a) The Company shall conduct testing of the Systems ("System Acceptance Testing") at the Municipal Facilities. The Company will coordinate with the Township the production and delivery of Solar Energy during such testing (such Solar Energy to be referred to as "Test Energy"). The Township will cooperate with the Company to facilitate the Company's testing of the Systems at the Municipal Facilities. The Company will use Commercially Reasonable Efforts to schedule testing at times acceptable to the Township. The Township shall not be required to pay for Test Energy.

(b) If the results of such System Acceptance Testing at the Municipal Facilities demonstrate that such Systems are capable of delivering the Solar Energy, in an amount equal to or greater than ninety percent (90%) of the Expected Output as set forth in the final Plans and Specifications for the Systems, for four (4) continuous hours using such instruments and meters as have been installed for such purposes (the "System Requirements") and, if applicable, the Systems have been approved for interconnected operation by the local Electric Utility, then the Company shall send a written notice to that effect to the Township (a "Completion Notice"), accompanied by a copy of the results of the System Acceptance Testing. The Township shall have ten (10) Business Days after its receipt of the Completion Notice to review the System Acceptance Testing results to determine that the statements set forth therein are true, accurate and complete. If the Township determines in good faith that the Completion Notice is inaccurate in any material respect or that the Systems or any of them fail to meet the System Requirements, the Township shall provide the Company with a detailed notice of such material inaccuracy or failure within such ten (10) Business Day period (a "Rejection Notice"). The Company shall promptly remedy at the Company's cost the relevant specified failure and conduct new System Acceptance Testing until the System Acceptance Testing indicates that all of the Systems meet the System Requirements. In each such case, the Company shall send a new Completion Notice to

the Township with a copy of the results of the new System Acceptance Testing as provided above.

(c) Absent a timely Rejection Notice from the Township pursuant to Section 3.3(b), and provided that the Company has obtained, pursuant to final orders, all Permits required for the operation of such Systems and such Permits are effective and there are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that could reasonably be expected to materially and adversely affect the ability of such Systems to operate, produce Solar Energy, and deliver the Products, the Township shall deliver the "REP Acceptance Certificate" in the form attached hereto as Exhibit D (the date of such certificates being the "Commercial Operation Date"). The Company shall cause the Commercial Operation Date to occur no later than the Completion Date.

3.4 No Solar Access Easement. The Parties expressly understand and agree that the Township shall be not be obligated to provide any solar access easements or to otherwise prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the Systems at any of the Municipal Facilities. The Company accepts any and all risks associated with any overshadowing of the Systems at the Municipal Facilities and consequent reduction in System electricity production, except that the Township agrees that it will not do or suffer to be done on its own property anything that causes material overshadowing.

Article 4

System Operations and Maintenance

4.1. Operation and Maintenance. The Company will operate and maintain the Systems, or cause the Systems to be operated and maintained, including capital repairs and replacements, by or for the Company at the Company's sole cost and expense in a commercially reasonable manner, in accordance with Prudent Industry Practices, throughout the term of this Agreement. "System Operations" means all actions, including monitoring and maintaining the Systems and delivering Solar Energy, for the Company to fulfill its obligations hereunder.

4.2. Initial Operations. The Company shall use Commercially Reasonable Efforts in accordance with Prudent Industry Practice to cause the Commercial Operation Date of the Systems to occur on or before the Completion Date.

4.3. Permits and Compliance with Law.

(a) The Company shall obtain and maintain in full force and effect all applicable Permits that are necessary for any Installation Work as well as the ownership, operation and maintenance of the Systems and the generation and delivery of Solar Energy, except to the extent that failure to do so would not materially adversely affect the operation of the Renewable Energy Projects or generation and delivery of Solar Energy. The Township shall cooperate with the Company's efforts to obtain all

such Permits for Installation Work and System Operations including the delivery of Solar Energy.

(b) The Company shall, at all times during the Initial Term, comply with all Applicable Law related to roof repair and/or replacement, operation and maintenance of the Systems and the Company's performance of its obligations under this Agreement, including all applicable Environmental Laws in effect at any time during the Initial Term.

4.4. Planned Outages. The Company shall, prior to the commencement of each Contract Year, prepare and deliver to the Township a schedule of Planned Outages for the Systems that conforms to Prudent Industry Practice. In the event that the Township reasonably objects to Company's Planned Outage schedule with respect to any System or Systems, the Township shall notify Company as soon as practicable and the Parties shall use Commercially Reasonable Efforts to agree upon a revised Planned Outage schedule for the Systems.

4.5. Maintenance Outages; Temporary Shutdown.

(a) If the Company determines, in its reasonable discretion and consistent with Prudent Industry Practice, that all or a portion of the Systems must be removed temporarily from service for maintenance purposes (a "Maintenance Outage"), the Company will communicate to the Township of the commencement date and expected duration of any such Maintenance Outage as far in advance of the commencement of the Maintenance Outage as practicable. In the event the Township reasonably objects to the schedule for the Company's Maintenance Outage, the Township shall notify the Company as soon as practicable and the Parties shall use Commercially Reasonable Efforts to agree upon a mutually acceptable schedule for the Maintenance Outage.

(b) If the Township determines, in its sole discretion, that all or a portion of the Systems must be removed temporarily from service, for reasons other than a "Force Majeure" or the action or inaction of the Company, for more than a total of ten (10) days in any Contract Year (a "Temporary Shutdown"), the Township will communicate to the Company the commencement date and expected duration of any such Temporary Shutdown as far in advance of the commencement of the Temporary Shutdown as practicable. In such event, the Township shall pay to the Company an amount equal to the sum of the following: (i) the Company's reasonable cost to remove and re-install or shutdown and re-initiate the System or portion of the System; (ii) the cost, if any, of lost Solar Energy production during the period of Temporary Shutdown in excess of the ten (10) days in any Contract Year at the PPA Price then in effect; and (iii) an amount attributable to any lost solar renewable energy credits, if any, calculated at the Company's actual out-of-pocket loss in excess of the ten (10) days. The Township may, at its option, elect to pay the Company such amounts in a lump sum payment or in equal monthly payments, including interest at the Specified Rate on the unpaid balance, over not more than a twelve (12) month period.

4.6. Records; Metering; Audit Rights.

(a) Records. The Company shall maintain all records with respect to its activities hereunder, including, but not limited to, with respect to the Systems, records related to delivery of Solar Energy, metering, invoicing and payments to and by the Company. Such records shall contain all entries reflecting the business operations of the Company under this Agreement.

(b) Metering. The output of the Renewable Energy Projects will be measured by revenue grade production meters in addition to load metering, inverter monitoring, and sub-combiner monitoring meters ("Meters") which shall be installed by the Company in accordance with Prudent Industry Practice. Company shall conduct tests of the Meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. In addition, the Township, or their authorized agent, shall have the right, at their expense, (i) once per calendar year upon reasonable notice, to audit the Company's records, and (ii) at any time, to test the Meters and verify Meter readings and calibrations. If such audit or testing indicates that such equipment or records are in error by more than two percent (2%), then the Company shall reimburse the Township, as the case may be, for its reasonable out-of-pocket expenses in performing such audit and/or testing and promptly repair or replace any such equipment. Company shall promptly repair all Meter failures or defects. Should a Meter ever be deemed to reflect inaccuracies in measurement, the Company shall make corresponding adjustments to the records of the amount of electrical energy being provided by the Renewable Energy Projects delivered based on the period between the date of the discovery of the inaccuracy and the last testing date of the Meter. Should the Meter ever become non operational, but Electricity is still being provided by Company to Township hereunder, then the Parties hereto shall endeavor in good faith to address the Meter failure based upon, among other things, historical and cyclical consumption. To the extent that the Parties hereto are unable to adjust the inaccuracy, then they shall appoint their respective engineers or an independent meter consultant who, along with a third party independent engineer chosen by the Parties' engineers, shall review, examine, mediate and arbitrate the Meter adjustment. The decision of the engineers shall be final, and shall be reduced to the form of an invoice adjustment to be delivered by Company to the Township. Notwithstanding the existence of any inaccuracy, or the allegation or belief of the existence of an erroneous Meter reading, the Township shall at all times pay all invoices in accordance with those time periods set forth herein, with the understanding that adjustments shall be reflected on subsequent invoices, except in the event that the current invoice varies by thirty percent (30%) or greater compared with historic like month data. The Township, at its expense, shall be entitled to metering data from the Meters at any time.

(c) [Intentionally Omitted]

4.7. Reports; Documentation. Each of the Parties will provide to the other Party all information that such other Party shall reasonably request in connection with the performance of this Agreement, including all relevant technical information required for the purchase and sale and delivery and acceptance of Products, including Solar

Energy. Without limiting the foregoing, the Company shall provide to the Township: (i) two copies of each operation, maintenance, and/or parts manual for the System, including updates; (ii) two copies of any manuals that describe scheduled maintenance requirements, troubleshooting, and safety precautions specific to the supplied equipment, operations in emergency conditions and any other pertinent information for Township personnel; and (iii) two (2) sets of as-built drawings of the System. The Company shall provide to the Township any training reasonably required for Township staff with respect to the monitoring, operation and maintenance of the Systems.

4.8. Qualified Personnel. The Company will employ or contract with qualified personnel for the purpose of operating and maintaining the Systems.

4.9. Inspection. The Company shall have the right to inspect the Meters and the Township shall have the right to inspect the Systems, upon reasonable prior notice to the other Party, during normal business hours and subject to the safety rules and regulations of the respective Party.

4.10. Designated Representatives. Each Party shall name a designated representative (the "Designated Representative"), who shall have authority to act for its principal in all technical, real-time or routine matters relating to operation of the Systems and performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that the Designated Representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement.

4.11. Malfunctions and Emergencies.

(a) The Township and the Company each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of any Systems or of their discovery of an interruption in the supply of any Solar Energy. The Company and the Township shall establish procedures such that each Party may provide notice of such conditions requiring the Company's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

(b) The Township and the Company shall notify the other immediately upon the discovery of an emergency condition in any System. If an emergency condition exists, the Company shall promptly dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner.

Article 5

Delivery and Purchase of Solar Energy

5.1. Purchase Requirement.

(a) Solar Energy. The Company will deliver and sell to the Township and the Township will purchase and receive from the Company all of the Solar Energy produced by the Systems at the Municipal Facilities, as measured at the Meter at the Delivery Point, during the Term of this Agreement. No party shall claim that by this Agreement, the Company is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. The Company shall not claim to be providing electric utility services to the Township and shall not interfere with the Township's ability to select an electric utility.

(b) Retained Rights. The Company retains all rights of ownership with respect to the system and all products or benefits not expressly sold to the Township hereunder. Specifically, and without limitation, the Company retains the rights to all Renewable Energy Credits and other Environmental Attributes associated with the operation or ownership of the Renewable Energy Projects.

5.2. Delivery Point. The points of delivery (the "Delivery Point") of the Solar Energy are set forth on Exhibit A attached hereto.

(a) Title. Unless otherwise agreed, title to and risk of loss of Solar Energy shall pass from the Company to the Township at the Delivery Point at each Municipal Facility.

(b) Responsibility. The Company shall be responsible for delivery of Solar Energy to the Delivery Point and, as between the Parties, shall be responsible for all costs, liabilities, taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of Solar Energy to the Delivery Point.

(c) Solar Energy. Solar Energy supplied under this Agreement will be supplied as alternating current electricity, expressed in kilowatt hours.

5.3. Expected Output; Minimum Guaranteed Output.

(a) The plans and specifications for the Systems shall provide for Solar Energy output in an amount not less than that specified in Exhibit C hereto (the "Expected Output"), unless the Township agrees in writing to a different output.

(b) The Company hereby guarantees that the Solar Energy output of the Systems cumulatively through the 5th, 10th, and 15th Contract Years shall be within ten percent (10%) of the output (calculated using the _____ program with initial system sizes rated at STC methodology employed by the Company in the Company Proposal as described in **Exhibit C** attached hereto) as set forth in the final Plans and Specifications for the Renewable Energy Projects (the "Minimum Guaranteed Output").

(c) If the Company fails to meet the cumulative Minimum Guaranteed Output requirement with respect to the Systems for at the end of the fifth (5th), tenth

(10th) or fifteenth (15th) Contract Year, other than as a result of the Township's failure to perform its obligations hereunder, the Company shall pay the Township an amount equal to the Township's "Lost Savings". The formula for calculating Lost Savings for each Contract Year is as follows:

$$\text{Lost Savings} = (\text{MGO} - \text{AE}) \times \text{RV}$$

MGO = Minimum Guaranteed Output, as measured in total kWh, for System for the Contract Year.

AE = Actual Electricity, as measured in total kWh, delivered by the System for the Contract Year.

$$\text{RV} = (\text{ATP} - \text{PPA Price})$$

ATP = Average tariff price, measured in \$/kWh, for the Contract Year paid by the Township with respect to the subject Municipal Facility. This price is determined by dividing the total cost for delivered electricity paid to the electric utility during the Contract Year by the total amount of delivered electricity by the electric utility during that Contract Year.

PPA Price = the PPA Price in effect for the Contract Year, measured in \$/kWh. If more than one PPA Price is in effect with respect to a System for the Contract Year, the average of the PPA Prices in effect for each month of the Contract Year shall be used.

If the rate variance ("RV") is zero or less, then no Lost Savings payment is due to the Township.

Such payment shall occur no later than sixty (60) days after the end of such fifth (5th), tenth (10th) or fifteenth (15th) Contract Year, as the case may be. In the event such payment is not made by the Company within such sixty (60) day period, the Township shall be entitled to setoff such amount against amounts that may be or become payable by the Township to the Company. To the extent that the Renewable Energy Projects' output shall fall below the Minimum Guaranteed Output at the end of one of the 5 Contract Year periods, and Company reimburses the Township as provided herein, the amount of the shortfall in kWh upon which the reimbursement payment is based shall be deducted from the cumulative Minimum Guaranteed Output amount at the end of each subsequent 5 Contract Year period.

5.4. Environmental Attributes. Except as otherwise expressly agreed by the Parties, the Township's purchase of Solar Energy does not include marketable Environmental Attributes, which shall be retained by the Company.

5.5. Title to System. Except as may be expressly provided by any financing arrangements for the Renewable Energy Projects, throughout the duration of this Agreement, (i) the Company shall be the legal and beneficial owner of the Systems at

all times, including the right to any energy tax credits available under federal or state law, and (ii) the Systems shall remain the personal property of Company and shall not attach to or be deemed a part of or fixture to the Municipal Facilities.

Article 6 Price and Payment

6.1. Consideration.

(a) Contract Price. Subject to Section 6.5 hereof, the Township shall pay to the Company a monthly payment for the Solar Energy produced by the Systems during each year of the Term equal to the amount of (x) Solar Energy produced by the Systems for the calendar month multiplied by (y) the PPA Price in effect for such calendar month (the "Contract Price"). Except as may be expressly provided in this Agreement, no other fees or charges shall be due from the Township to the Company for the Solar Energy, Installation Work or the Systems Operations.

6.2. Invoice. On or before the tenth (10th) day of each calendar month following a calendar month in which Solar Energy was delivered, the Company shall provide the Township with an invoice setting forth for each Municipal Facility, at a minimum, the beginning and ending Meter readings, the quantity of Solar Energy delivered, the amount of the Contract Price due and state, if applicable, the date and amount of payment with respect to the prior calendar month. Such invoice shall include such additional information as may be reasonably requested by the Township.

6.3. Payment. All undisputed amounts payable hereunder shall be paid within thirty (30) days after the invoice date, subject to the Township's usual processing and payment schedule. If the last calendar day for a payment due under this Agreement is not a Business Day, then such payment shall be due not later than the next Business Day following that calendar day.

6.4. Method of Payment. The Township shall make all payments under this Agreement by check or electronic funds transfer in immediately available funds to the account designated by the Company. All payments which are not paid when due shall bear interest accruing from the date becoming past due until paid in full equal to the lesser of the Specified Rate, as in effect from time to time.

6.5. Payment Disputes. If a Dispute arises with respect to any invoice submitted or any payment owed by one Party to the other hereunder, the Parties shall attempt to resolve such Dispute amicably. If the Parties cannot resolve the Dispute within thirty (30) days, either Party may submit the Dispute to arbitration in accordance with Section 15.8(b), provided, that, during the time a Dispute is pending the disputing Party shall not be deemed in default under this Agreement and the Parties may not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder.

Article 7 General Covenants

7.1. Company's Covenants. As a material inducement to the Township's execution and delivery of this Agreement, the Company covenants and agrees to the following:

(a) System Condition. The Company shall take all actions reasonably necessary to ensure that the Systems are capable of providing Solar Energy at the Minimum Guaranteed Output.

(b) Permits and Approvals. In connection with the performance of the Installation Work, delivery of Solar Energy and System Operations, the Company shall obtain and maintain and secure all approvals, consents, licenses, permits and inspections from relevant Governmental Authorities, Electric Utility, and the Township, and other agreements and consents required to be obtained and maintained and secured by the Company to enable the Company to perform such work. The Company shall deliver copies of all Permits and approvals obtained to the Township.

(c) Health and Safety. The Company shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, delivery of Solar Energy, and the System Operations that shall comply with all Applicable Laws pertaining to the safety of persons and real and personal property. The Company shall immediately report to the Township any death, lost time, injury or property damage to the Township's property that occurs at any Municipal Facility.

(d) Liens. The Company shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or material man's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Township or any interest therein without the prior written consent of the Township. The Company also shall pay promptly before a fine or penalty may attach to the Township's property any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by the Company or its agents and subcontractors on any Municipal Facility. If the Company breaches its obligations under this Section, it shall immediately notify the Township in writing, shall promptly cause such Lien to be discharged and released of record without cost to the Township, and shall defend and indemnify the Township against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(e) No Infringement. The Systems and the Company's services hereunder, including, but not limited to, Installation Work, delivery of Solar Energy and System Operations, shall not infringe any third party's intellectual property or other proprietary rights.

7.2. Township's Covenants. As a material inducement to the Company's execution and delivery of this Agreement, the Township covenants and agrees as follows:

(a) Notice of Damage. The Township shall promptly notify the Company of any matters of which it is aware pertaining to any damage to or loss of the use of the Systems or that could reasonably be expected to adversely affect the Systems.

(b) Liens. The Township shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the Systems or any interest therein. If the Township breaches its obligations under this Section, it shall immediately notify the Company in writing, shall promptly cause such Lien to be discharged and released of record without cost to the Company.

7.3 Payment by the Company of Township Project Development Costs. The Company shall pay to the Township on the Effective Date hereof, or such later date as shall be acceptable to the Township, in consideration of the services rendered by the Township in connection with developing the Renewable Energy Program and in reimbursement of the costs and expenses incurred and funds advanced by the Township in connection therewith, its Project Development Costs.

Article 8 Representations and Warranties

8.1. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, in the case of the Company, is duly authorized to transact business in New Jersey;

(b) It has the full right, power and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(c) It has taken all requisite corporate or other action to approve the execution, delivery and performance of this Agreement;

(d) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity;

(e) There is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and

(f) Its execution of and performance under this Agreement shall not violate any existing Applicable Law or any agreement to which it is a party.

8.2. Additional Township Representations. In addition to any other representations and warranties contained in this Agreement, the Township represents and warrants as of the Effective Date that:

(a) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive contracting, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under Applicable Law and the Township's ordinances, bylaws or other regulations;

(b) all persons making up the governing body of the Township are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with Applicable Law;

(c) entry into and performance of this Agreement by the Township is for a proper public purpose within the meaning of the Township's organizational documents and Applicable Law;

(d) the term of this Agreement does not extend beyond any applicable limitation imposed by the Township's organizational documents and Applicable Law;

(e) obligations of the Township to make payments hereunder do not constitute any kind of indebtedness of the Township or create any kind of lien on, or security interest in, any property or revenues of the Township which, in either case, is proscribed by any provision of the Township's organizational documents or Applicable Law, or any contractual restriction binding on or affecting it or any of its assets.

8.3. PUHCA. The Company represents and warrants that it is not, and during the term hereof it shall not become, a "public utility company", "electric utility company" or a "holding company", "subsidiary company" or "affiliate" or "associate company" thereof, as such items are defined in the Public Utility Holding Company Act of 1935, as amended.

8.4. Permits and Approvals. The Company reasonably expects to have obtained all Permits necessary for construction and operation of the Renewable Energy Projects at the Municipal Facilities and delivery of Solar Energy by the Completion Date.

8.5. Requisite Standards. The Company represents and warrants that it has the requisite expertise and sufficiently skilled manpower, personnel and resources (including necessary supervision and support services) to perform the Installation Work, perform System Operations and deliver the Solar Energy within the time limits and for the term of and in accordance with the other conditions set forth in this Agreement. The Company shall ensure that its employees have the requisite training and are otherwise able to competently perform Installation Work, System Operations and deliver the Solar Energy. The Company guarantees and warrants that the Installation Work, System Operations and the delivery of Solar Energy pursuant to this Agreement will comply with the terms of Applicable Law.

Article 9 Taxes and Governmental Fees

9.1. The Company. The Company will be responsible for all Taxes imposed or levied relating to the ownership or operation of the Renewable Energy Projects.

9.2. The Township. The Township will be responsible for all Taxes (other than taxes based on overall income or revenues) imposed, if any, upon the sale of Solar Energy from the Renewable Energy Projects (including any applicable sales or use or similar Tax). If the Company is required to collect any Tax from, or remit any Tax on behalf of the Township, the Township will reimburse the Company for such Taxes.

9.3. Tax Reporting. Each of the Parties will be responsible for its own Tax reporting. For purposes of Tax reporting, the Parties will treat the transactions described in this Agreement in a manner consistent with the characterizations of such transactions in this Agreement.

9.4. Exemption. A Party, on notice from the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use Commercially Reasonable Efforts to obtain, and cooperate with the other Party obtaining, any exemption from or reduction of Tax.

9.5. Contests. Should a Party wish to contest a Tax imposed upon it, if necessary for the purpose of contesting such Tax, it shall immediately notify the other Party of the nature of the Tax, the reason for the contest, and specify any action that may be required of the other Party. Each shall cooperate with the other in connection with such contest. The Person bringing the contest shall be responsible for the costs incurred in contesting such assessment.

Article 10 Events of Default

10.1. Company Events of Default. The following events shall be defaults with respect to the Company (each a "Company Default").

(a) The Company: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails, or admits in writing its inability, generally to pay its debts as they become due; (iii) institutes or 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 creditors' rights, or a petition is presented for its winding-up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof; (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vi) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (vii) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii) (inclusive); or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(b) The Company fails to pay the Township any undisputed amount owed under this Agreement within thirty (30) days of receipt of a notice that such payment is past due.

(c) The Company fails to perform any covenant set forth in this Agreement (other than obligations that are otherwise specifically covered in this Section 10.1) and the failure to perform is not cured within thirty (30) days after the Township notifies the Company of the failure. In the event that the failure to perform cannot be cured with reasonable due diligence within the thirty (30) day period, and the Company has commenced and is continuing to attempt to effect a cure, a Company Default shall not be deemed to have occurred until the expiration of such longer period as may be reasonably necessary to complete the cure, but in no event shall such longer period exceed an additional sixty (60) days.

(d) The Systems of any of the them fail to generate at least fifty percent (50%) of the expected output as set forth on Exhibit C, pro rated for any portion of a year that the determination hereby is made, for a continuous period of ninety (90) days or for one-hundred and twenty (120) days in any nine (9) month period, other than as a result of Force Majeure or inclement weather, and the Township notifies the Company of the failure. In the event that the Company has commenced and is continuing to attempt to effect a cure within thirty (30) days of the date of receipt of such notice, a Company Default shall not be deemed to have occurred until the expiration of such

longer period as may be reasonably necessary to complete the cure, but in no event shall such longer period exceed an additional sixty (60) days.

(e) Any representation or warranty made by the Company in this Agreement proves to have been false or misleading in any material respect when made.

10.2. Township's Remedies. If any Company Default has occurred, the Township may exercise one or more of the following remedies:

(a) terminate this Agreement effective immediately in the case of a default under Section 10.1(a) or (b);

(b) terminate this Agreement upon at least fifteen (15) days' notice to the Company in the case of a breach under Sections 10.1(c) or 10.1(d);

(c) terminate this Agreement as a whole upon at least thirty (30) days' notice to the Company in the case of a breach of Section 10.1(e); and

(d) pursue any other remedy it may have at law or in equity.

10.3. Township Defaults. The following events shall be defaults with respect to the Township:

(a) The Township breaches any material term of this Agreement if (i) such breach can be cured within thirty (30) days after the Company's notice of such breach and the Township fails to so cure, or (ii) the Township fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, or;

(b) The Township fails to pay the Company any undisputed amount due the Company under this Agreement within thirty (30) days from receipt of notice from the Company of such past due amount; or

(c) if (i) the Township shall be adjudicated bankrupt or become subject to an order for relief under federal bankruptcy law, (ii) the Township shall institute a proceeding seeking an order for relief under federal bankruptcy law or seeking to be adjudicated a bankrupt or insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or all of its debts under New Jersey bankruptcy or insolvency law, (iii) with the consent of the Township, there shall be appointed a receiver, liquidator or similar official for the Township under federal bankruptcy law or under New Jersey bankruptcy or insolvency law, or (iv) without the application, approval or consent of the Township, a receiver, trustee, liquidator or similar official shall be appointed for the Township under federal bankruptcy law or under New Jersey bankruptcy or insolvency law or a proceeding described in clause (ii) above shall be instituted against the Township, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.

10.4. Company's Remedies. If the Township Default has occurred and/or is continuing, the Company may exercise one or more of the following remedies:

(a) terminate this Agreement upon at least fifteen (15) days' notice to the Township;

(b) pursue any other remedy it may have at law or in equity or under this Agreement with respect to the Township;

(c) cease the provision of all Solar Energy and remove the Systems from the Municipal Facilities in compliance with the conditions of Section 2.4 herein; and

(d) in case of a Township Default which results in a termination of this Agreement by the Company, in lieu of any other remedy hereunder, the Township shall pay the [Fair Market Value] [Early Termination Purchase Price] to the extent applicable, pursuant to Section 2.5.

10.5. Actions to Prevent Injury. If a Company Default or Township Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that the non-defaulting Party may have, such Party may (but shall not be obligated to) take such action as it deems appropriate to prevent such damage or injury. Such action may include, but is not limited to, disconnection and removing all or a portion of the Systems, in compliance with the conditions of Section 2.4 hereof, or suspending the supply of Solar Energy to the Township.

Article 11 Limitation of Liability; Survival

11.1. Limitation on Liability. Neither Party nor any of its indemnified persons shall be liable to any other Party or its indemnified persons for any special, punitive, exemplary, incidental, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with, this Agreement or in tort.

11.2. Survival. The provisions of this Article 11 shall survive the termination of this Agreement.

Article 12 Force Majeure

12.1. Definition. An act or event is a "Force Majeure Event" 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 has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of commercially reasonable sums).

Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruption and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) action by a Governmental Authority, including a moratorium on any activities related to this Agreement; and (v) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any approval by a Governmental Authority necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such approval by a Governmental Authority is not attributable to the Party in question and that such Party has exercised its Commercially Reasonable Efforts to obtain such approval.

12.2. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is attributable to the occurrence of a Force Majeure Event; provided, that the Party claiming relief under this Article shall (i) immediately notify the other Party in writing of the existence of the Force Majeure Event, (ii) immediately exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) immediately notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If the Company claims relief pursuant to a "Force Majeure Event," the Township shall be excused from making payment to the Company until the Company resumes performing its obligations under this Agreement; provided, however, that the Township shall not be excused from making any payments due for any Solar Energy delivered prior to the Force Majeure Event performance interruption.

12.3. Termination in Consequence of Force Majeure Event. If any Force Majeure Event shall have occurred that has affected the Company's performance of its obligations hereunder and has continued for a period of one hundred twenty (120) consecutive days or one hundred eighty (180) days in the aggregate, then the Township shall be entitled to terminate this Agreement upon thirty (30) days written notice to the Company. If at the end of such thirty (30) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, the Company shall have the Removal and Restoration obligations set forth herein, and thereafter neither Party shall have any further liability to the other hereunder.

Article 13 Insurance

13.1. No Obligation of Township to Insure. The Township is not responsible for, or will it maintain, insurance covering the Systems against any casualty, and the

Company will make no insurance claim of any nature against the Township by reason of any damage to the Company's property in the event of damage or destruction by any cause.

13.2. Required Insurance. The Company shall obtain and maintain in force at all times during the term hereof, as a direct cost of operation, insurance coverage as required by Section 4.5 of the RFP.

Article 14 Indemnity

14.1. The Company's Indemnity. Company agrees that it shall indemnify, defend and hold harmless the Township, their permitted successors and assigns and their respective chairpersons, members, elected officials, directors, officers, employees, agents, attorneys and representatives (collectively, the "Township Indemnified Parties") from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, penalties assessments, suits, actions or proceedings, all reasonable attorneys' fees, and costs of every kind and description imposed on, incurred by or asserted against the Township Indemnified Parties in connection therewith, arising from or out of any acts, omissions or other conduct of the Company, or any of its officers, agents, employees, contractors or subcontractors, in connection with (i) personal injury or death to persons, damage to any property or facilities of any person or entity, (ii) environmental, health or safety matters or conditions (including on-Site or off-Site contamination), (iii) financial responsibility for corrective or remedial action under any Environmental Law or fines or penalties imposed under any Environmental Law, and (iv) any claim by third parties that the Township or the Company has infringed ownership rights in intellectual property. The Company shall not, however, be required to reimburse or indemnify any Township Indemnified Party for any loss or claim to the extent such loss or claim is due to the gross negligence or willful misconduct of any Township Indemnified Party.

14.2 The Township Indemnity.

The Township agrees that it shall indemnify, defend and hold harmless the Company, its permitted successors and assigns and their respective directors, officers, members, shareholders, representatives, agents and employees (collectively, the "Company Indemnified Parties"), to the extent allowed by Applicable Laws, from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings, and all reasonable attorneys' fees, imposed on, incurred by or asserted against the Company Indemnified Parties in connection therewith, arising from or out of any acts, omissions or other conduct of the Township or any of its officers, agents, employees, contractors or subcontractors in connection with (i) personal injury or death to persons, damage to any property or facilities of any person or entity, (ii) environmental, health or safety matters or conditions (including on-Site or off-Site contamination), (iii) financial responsibility for corrective or remedial action under any Environmental Law or fines or penalties imposed under any

Environmental Law, at the Municipal Facilities to the extent arising out of the Township's gross negligence or willful misconduct. The Township shall not, however, be required to reimburse or indemnify any Company Indemnified Party for any loss or claim to the extent such loss or claim is due to the negligence or willful misconduct of any Company Indemnified Party.

Article 15 Miscellaneous

15.1. Notices. All notices, demands, requests and other communications provided for under this Agreement, except for real-time or routine communications between the Designated Representatives concerning Renewable Energy Project operations, will be in writing addressed to the respective Party, as the case may be, at the following addresses. Either Party may change the address to which notices are sent or the designation of its Designated Representative by written notice to the other as required by this Section 15.1. Notice will be deemed to have been given (a) when presented personally, upon receipt, (b) when sent by a nationally recognized overnight courier service, on the date delivered to the addressee, (c) when sent by mail, postage prepaid, registered or certified, return receipt requested, on the date delivered to the addressee or (d) when sent by facsimile transmission, on the date of electronic confirmation of transmission (if sent on a Business Day before 5:00 p.m. Eastern Prevailing Time) or the first Business Day thereafter (if sent at any other time). The names and addresses for the service of notices referred to in this Section 15.1 and the Designated Representatives are:

To Company:

To Township: Holly Reycraft, Township Manager
 Aberdeen Municipal Building
 1 Aberdeen Square
 Aberdeen, New Jersey 07747

with a copy to: Ryan J. Scerbo, Esq.
 DeCotiis, FitzPatrick & Cole, LLP
 Glenpointe Centre West
 500 Frank W. Burr Boulevard
 Teaneck, New Jersey 07666

15.2. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Parties, or to impose any partnership duty, obligation or liability on the Parties. No Party shall act as agent of the

other, have the authority or hold itself out as having the authority to bind the other Party to any contract, obligation or commitment or take any other action on behalf of the other Party, in each case except as expressly set forth in this Agreement.

15.3. Assignment. This Agreement may not be assigned by the Company without the prior written consent of the Township; provided, however, that the Company shall have the right to collaterally assign, in connection with its financing of the Systems, its rights, and/or obligations hereunder, or this Agreement in its entirety, for purposes of securing such financing, on terms which do not diminish the rights or increase the obligations of the Township hereunder and which are otherwise reasonably acceptable to the Township.

15.4. Further Assurances. Each Party hereby undertakes to take or cause to be taken all actions, including the execution of additional instruments or documents, necessary to give full effect to the provisions of this Agreement.

15.5. Third Party Beneficiaries. This Agreement is for the benefit of the Parties hereto and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any third party any remedy, claim, liability, reimbursement, cause of action or other right.

15.6. Governing Law. This Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of the State of New Jersey, without reference to principles of conflicts of laws there under.

15.7. Reserved.

15.8. Dispute Resolution.

(a) Conference. Either Party (the "Initiating Party") may raise a concern regarding interpretation or clarification of this Agreement, or the acceptable performance thereof ("Dispute") by submitting a summary of the issue and its position with respect to said issue in writing to the non-Initiating Party. The non-Initiating Party shall, within thirty (30) days of receipt of the writing from the Initiating Party, respond with a written response of its position on the issue. Either Party may, after the exchange of written positions, send a Notice of Dispute to the other Party requesting a conference of management personnel with authority to resolve the Dispute. Such conference between management personnel designated by each of the Parties shall be held within ten (10) days of delivery of the Notice of Dispute or such other time as mutually agreed to by the Parties. In the event the Parties are unable to resolve the Dispute through the procedures set forth in this Section 15.8(a), either Party shall have the right to pursue the remedies in accordance with the procedures set forth in Section 15.8(b) and (c).

(b) Arbitration. If permitted or required by Applicable Law, any controversy or claim arising out of or relating to this Agreement or the breach thereof, which cannot be resolved pursuant to the procedures described in Section 15.8(a), shall

be resolved by arbitration. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrators shall be final, and a judgment may be entered upon it by any court having jurisdiction. A Party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so. Within fifteen (15) days of the date of receipt of such notice, each Party shall serve upon the other the name of one individual, knowledgeable in matters pertaining to the performance of power purchase agreements and to the subject matter of the dispute, to serve as an arbitrator. If either Party fails to select an arbitrator and notify the other Party of that selection within such fifteen (15) day period the other Party may request the American Arbitration Association to select the arbitrator. The two arbitrators so selected shall select a third arbitrator within fifteen (15) days after the selection of the two arbitrators or, if the two arbitrators cannot agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing, and shall be conducted in Monmouth County, New Jersey, unless the Parties agree otherwise. Discovery shall be made available in accordance with the procedures set forth in the Federal Rules of Civil Procedure, but to a degree limited by the arbitrators as they deem appropriate to render the proceedings economical, efficient, expeditious and fair. Interest at the Specified Rate shall be added to any monetary award for sums found to have been due under this Agreement. Each Party shall bear its own costs of the arbitration and the Parties shall equally divide the fees and costs of the three arbitrators.

(c) Legal Proceedings. If arbitration, as set forth in Section 15.8(b) hereof, is not permitted by Applicable Law, any controversy or claim arising out of or relating to this Agreement or the breach thereof, which cannot be resolved pursuant to the procedures described in Section 15.8(a), shall be brought by an action, suit, or proceeding in the Superior Court of the State of New Jersey, in Monmouth County. Each Party waives any objection which it or they may have at any time to the laying of venue of any action, suit or proceeding in any such court and consents to service of process, waives any claim that any such action, suit, or proceeding has been brought in an inconvenient forum and waives the right to object that such court does not have jurisdiction over the Parties. In order to expedite resolution of any actions, suits, or proceedings that arise under this Agreement, each of the Parties irrevocably waives the right to trial by jury in any such actions, suit, or proceeding of any kind or nature in any court to which it may be a Party.

(d) During the pendency of any Dispute, the Parties will continue to perform the obligations imposed upon them under this Agreement to the fullest extent possible, without prejudice to their respective positions in the Dispute.

15.9. Entire Agreement. This Agreement, the RFP and Appendices, the Exhibits and Schedules hereto, constitute the entire agreement and understanding between the Company and the Township with respect to the subject matter hereof and supersedes all other prior oral and/or written agreements relating to the subject matter hereof, which are of no further force or effect. The RFP and Appendices, and the Exhibits and

Schedules referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of the RFP, any RFP Appendix, or any Exhibit or Schedule hereto, the provisions of this Agreement shall prevail, and such RFP, Appendix, Exhibit or Schedule shall be corrected accordingly. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

15.10. Amendment. No amendment, modification, waiver, change or addition hereto shall be effective or binding on any of the Parties hereto unless the same is in writing and signed by each of the Parties hereto.

15.11. Waivers. Any waiver, express or implied, by any Party of any right or of any failure to perform or breach of this Agreement by any other Party shall not constitute or be deemed as a waiver of any other right or of any other failure to perform or breach of this Agreement by such other Party, whether of a similar or dissimilar nature.

15.12. Severability. In the event of the invalidity or unenforceability of any provision of this Agreement, the validity or enforceability of the other provisions hereof shall not be affected and the Parties shall substitute for such invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intended effect of the invalid or unenforceable provision.

15.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

15.14. Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Parties, and if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Parties, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

15.15. Attorneys' Fees. If any legal action arbitration, or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, except as expressly excluded in this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, expenses expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

IN WITNESS WHEREOF, the parties have caused this Power Purchase Agreement to be executed and delivered by their duly authorized officers or agents, all as of the day and year first above written.

COMPANY

By:

THE TOWNSHIP OF ABERDEEN, NEW JERSEY

By:

EXHIBIT A

MUNICIPAL FACILITIES; SYSTEMS; DELIVERY POINTS

EXHIBIT B

COMPANY'S PPA PRICE PROPOSAL (RFP Form D-1)

EXHIBIT C

EXPECTED OUTPUT AND MINIMUM GUARANTEED OUTPUT

The Expected Output and Minimum Guaranteed Output of Solar Energy, measured in kWh (ac), at each Municipal Facility for each year of the Initial Term of the Agreement shall be as set forth below.

* - The Year 1 Minimum Guaranteed Output at each Municipal Facility shall be reduced by _____% per year, effective on each anniversary of the Commercial Operation Date for the Systems at each Municipal Facility.

EXHIBIT D

FORM OF REP ACCEPTANCE CERTIFICATE

I, the undersigned _____, a duly authorized officer of _____ (the "Company"), pursuant to the terms of that certain "Power Purchase Agreement", dated as of _____, 20__ (the "PPA"), by and among the Company and the Township of Aberdeen, New Jersey (the "Township") (capitalized terms not defined in this Certificate shall have the respective meanings ascribed to such terms in the PPA), **DO HEREBY CERTIFY** as follows:

1. On _____, 201__, the System located at [Municipal Facility(s)] has been designed, acquired, constructed and installed in conformance with the plans and specifications. System Acceptance Testing for the System(s) was completed on _____, 20___. The Company has delivered to the Township a Completion Notice on _____, 20__ with respect to the System(s), which has not been the subject of a Rejection Notice by the Township.

2. This Certificate, when fully executed below, shall constitute the Company's and the Township's acceptance of the subject System(s) for all purposes of PPA. The Commercial Operation Date with respect to the System(s) shall be _____, 20_____.

3. This REP Acceptance Certificate may be executed, acknowledged and accepted in any number of counterparts, each of which may be executed by one or more of the respective parties, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

By: _____

ACKNOWLEDGED and ACCEPTED by the Township, this ___ day of _____, 20_____.

By: _____
Name:
Title: