

# Municipal Solar Procurement Toolkit

Information for local governments looking to lease existing underutilized land for solar development.



NEW  
YORK  
STATE

NYSERDA  
NY-Sun

# Overview

Included in this toolkit are step-by-step instructions on how municipalities can lease underutilized land, such as landfills and brownfields, for solar development. In addition, we provide a Request for Proposals (RFP) template, Lease Agreement template, and a Model Law for Charter Counties subject to New York County Law § 215. These resources previously mentioned are materials often used by local governments when in the solar development process and are included for an advisory purpose.

## Intended Use

Municipalities are encouraged to review and consider modifying this toolkit, specifically the template RFP and Lease Agreement, to ensure it addresses all the needs of the municipality by deleting, modifying, or adding any other sections or provisions that would be necessary in the leasing jurisdiction.

Depending on the type of land the municipality plans on leasing, there are specific requirements within the template RFP and Lease Agreement that will need to be updated. The template RFP and Lease Agreement provide specific requirements for landfills and brownfields that will need to be adjusted for the project. All language that may need to be modified by the municipality is highlighted grey.

The Templates in this Toolkit are not intended for use exactly as written. This Toolkit is intended to be advisory only, and users should not rely upon it as legal advice. A municipality is not required to utilize these templates exactly as written. Municipal officials are urged to seek legal advice from their attorneys before issuing an RFP or signing a Lease Agreement.

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## 1. Planning and Early Stage Goal-Setting

Leasing land for solar development requires the active participation of multiple government departments. All relevant local government stakeholders should be included at the beginning of the process, to ensure that all potential project barriers are identified early and that critical municipal departments are fully informed about the project in advance. Relevant local government stakeholders may include elected leaders, legal counsel, planning and zoning staff, sustainability coordinator, or local State Environmental Quality Review (SEQR) authority. Frequently, the municipal authority or executive authorizes the creation of an advisory committee to investigate the feasibility of a solar project. This committee should be responsible for coordinating the process details and serving as a review committee for selecting the solar developer. In addition to managing the solar land lease process, committee members may wish to arrange project updates with local government leaders and the public. Local government project proponents should also consider developing strategies for communicating information about proposed solar projects to external stakeholders, particularly if the project involves developing large tracts of open space, as large projects have raised concerns among adjacent landowners and other stakeholders in some jurisdictions. External stakeholders may include the community members, utility representatives, or NYS Department of Environmental Conservation (if a landfill or brownfield, or near a wetland).

It is a necessary step to get support from your community members. Pursuant to state law, for example New York Town Law § 64, municipal land leases or solar procurements may be subject to permissive referendums. A permissive referendum is a legal mechanism available for a community to vote on a decision directly, rather than having the issued decided solely by governing board. In addition, certain actions of the governing board that raise or expend money can be subject to a permissive referendum. If an action is determined to be subject to permissive referendum, such act shall be subject to a referendum on petition, unless the proposition has been adopted at an election.

As an example, Town Law Article § 7 lays out the process for town referendums:

- Within ten days after the adoption by the town board, the town clerk shall post and publish a notice which shall set forth the date of the adoption of the act and contain an abstract of such act concisely stating the purpose and effect thereof.
  - The notice shall specify that the resolution that was adopted is subject to a permissive referendum.
- The resolution cannot take effect until thirty (30) days after its adoption.
  - If within 30 days of the adoption, there is a petition filed and signed by the electors of the town protesting against such act and requesting that it be submitted to the electors of the town for approval or disapproval, then this resolution needs to go to a public vote.
- If the petition is filed between 60-75 days prior to a biennial town election, a proposition for the approval of the resolution can be submitted at the election.
- If the petition is filed at any other time, the proposition for the approval of the resolution shall be submitted at a special town election to be held between 60-75 days after filling the petition.

County Consideration: If a project is located on county-owned land, New York County Law § 215 may limit the term of the land lease to five (5) years. As part of this Toolkit, there is a model law that can allow for Charter Counties to lease land longer than 5 years for specific projects. The model law cites the appropriate laws to extend the land lease and includes fields for jurisdictions to fill in. Jurisdictions should work closely with their local legal counsel to determine local land lease requirements.

## 1.1 Establish Project Goals

The advisory committee, once assembled, should consider the goals and the desired outcomes of a solar project, and develop a preliminary list of project goals and key outcomes, which could include:

- Providing **revenue to the town by leasing public land, such as landfills or brownfields**, to a private developer to construct a community solar project, which the town may or may not participate in, but will provide greater access to clean power to community members.<sup>27</sup>
- Providing a **positive use of a capped landfill, brownfield, or other sites** where environmental or other attributes make alternate land uses difficult.
- Providing **greater access to solar power** for residents, businesses, institutions, and organizations through a community solar project.

# 2. Site Identification & Considerations

For many municipalities, closed landfills or brownfields 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.<sup>26</sup> If a solar project is being considered for county owned land, County Law § 215 may limit the term of county-owned land leases to a five-years. If municipalities are considering county land, they should contact their legal counsel and County government.

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## 2.1 Considerations for solar on landfills

- 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.
- To develop solar on a landfill, a contractor must submit a modification to the post-closure plan to the New York State Department of Environmental Conservation (NYSDEC). These plans will have to take into consideration existing infrastructure, such as gas collection systems and leachate control systems.
- 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.

## 2.2 Considerations for solar on brownfields

- For a proposed brownfield solar site with an Institutional Control (IC) on the property, the Developer will be required to notify the NYSDEC's Division of Environmental Remediation of the site's change of use and to submit details to assess whether the remedy will remain effective or what new Engineering Control and Institutional Control (EC/IC), monitoring activities, and periodic reviews may be necessary. A site-specific inquiry needs to be undertaken in this regard, and the DEC regional office should be engaged early on to discuss next steps.
- Any submissions relative to new and/or revised EC/ICs will likely require modification of the Site Management Plan (SMP) that directs the process for certain site activities and may require additional work to be undertaken pursuant to DEC approval, depending on the scope of proposed site activities.
- SMPs are filed against the deed of the brownfield property via an Environmental Easement, and a copy of the SMP would either be accessible via the DEC or by retrieving the copy included in the County real property records. Of note, the DEC utilizes a form SMP as the starting point for plan development, which is revised based on site-specific information. A copy of the form is available on DEC's website.
- Note that brownfield sites without existing IC equipment should notify the change of use but may not have to submit any additional plan documentation.

# 3. RFP Process & Contractual Documents

Competitive processes create a fair and open procedure under which solar developers can offer their services. They also ensure that local governments receive the best available pricing, thereby maximizing financial benefits to the municipality. The Toolkit provides a template Request for Proposals (RFP) for municipalities to utilize. The template provides suggested language that can be adjusted to reflect the goals and context of a municipality's procurement. Example evaluation criteria are provided in the template RFP. Municipalities may use these evaluation criteria as a guide but are encouraged to tailor their evaluation processes to meet their own needs and goals. To facilitate comparison of proposals, it is recommended that municipalities ask all respondents to provide price proposals in the same format (the attached sample RFP includes such a request).

One step that municipalities can take to protect their interests is to use a model lease agreement, as provided in the Toolkit. By using a document that the municipality is comfortable with, the municipality may ensure that all its contractual "must haves" are brought up early in the contract negotiations and included in the final contract. It contains many of the terms and conditions that typically arise during contract negotiation. It is the responsibility of the contracting jurisdiction to negotiate its own final contract and local governments should hire legal counsel with solar lease negotiation experience to protect their interests in contract negotiations.

# 4. Request for Proposal (RFP)

The workable version of this document can be found at [nyseda.ny.gov/SolarGuidebook](https://nyseda.ny.gov/SolarGuidebook), under the Municipal Solar Procurement Toolkit tab.

## REQUEST FOR PROPOSALS Leasing Municipal Land for Solar Development

Municipality Name

Municipality Address

Issue Date

Proposals Due By:

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# 1. Executive Summary

The Municipality seeks proposals from solar energy developers (“Respondents”) to lease land at site address (“the Site”), pursuant to a Lease Agreement, a form of which is included in this RFP, and install, own, operate, and maintain thereon a solar photovoltaic energy system (“Solar Energy System” or “System”).

It is the desire of the Municipality to site a solar energy system for the benefit of the Municipality and the environment. This Request for Proposals is being issued to allow the Municipality to evaluate options and determine the project and financial arrangements that best meet the Municipality’s interest. The Municipality notes that it is not seeking proposals to be an off-taker of a solar energy system. The goal of this RFP is to lease the Site for purposes of siting a Solar Energy System in order to provide a revenue stream to the Municipality in the form of lease payments.

The Municipality will evaluate all proposals and reserves the right to select the proposal that provides the best economic solution. The Municipality has the right to accept any bid even if it does not provide the highest revenue to the Municipality. Proposals will be evaluated against other proposals received. In addition to other rights reserved herein, the Municipality reserves the right to cancel this RFP in its discretion and to the fullest extent permitted by law.

All Proposals prepared in response to this RFP are at the sole expense of the Respondent, and with the express understanding that there will be no claim, whatsoever, for reimbursement from Municipality for the expenses of preparation. Municipality shall not be liable for any expenses incurred by the Respondent in development of this proposal.

## 2. Background

Provide a background on your Municipality and include any demographic information that would be helpful for a developer to understand the character of your community. Provide a brief description of the background of the project site, for example if it is located on a landfill or brownfield. Also provide description of the goals of your Municipality. Below are examples of potential goals and should be updated to match the specific goals of your Municipality.

The Municipality is located in County and is home to # residents and has # households.

Provide any additional background about your Municipality that will be helpful for Respondents to know.

The Municipality wishes to bring this project to our community with the goal of expanding Municipality’s and its residents’ participation in the energy of the future, and benefit from the lower electric prices and local job creation associated with it.

Municipality is interested in leasing municipal land for solar development. Municipality has the following prioritized goals for the project:

1. Increase revenue for the Municipality through a land lease.
2. Reduce energy bill costs for residents through a community solar project.
3. Purposefully utilize otherwise unusable municipal property such as landfills or brownfields.
4. Advance the community’s environmental sustainability and leadership goals.

## 3. Project Scope

### Project Description

Describe the desired project and the amount of land the Municipality is looking to lease to a Developer. Include the responsibilities of the successful Respondent.

The Municipality is interested in leasing all or a portion of the site(s) described in Appendix 1. The lease will be structured initially for a 2-year option to assess the feasibility of the site, following with a 25-year lease when it is determined the site is viable, with up to four additional 5-year optional renewal periods, exercisable at Municipality's sole discretion. The Municipality is willing to consider alternative lease durations and conditions as part of the proposal evaluation process set forth herein. The Municipality will not be an off-taker of the electricity generated at the Site.

The selected Respondent will own the System and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair, vegetation management, and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services. The successful Respondent will be solely responsible for owning, insuring, commissioning, interconnection, metering, and for providing security for the system at all times. The successful Respondent shall be responsible for all project costs including, but not limited to: the furnishing of all materials, services, labor, performance and payment bonds, insurance, and other costs incurred in the preparation of this response and the performance of the contract, signed by an individual authorized to bind the Respondents contractually.

On termination of the lease, the successful Respondent will be responsible for performing, and paying for the removal of all panels, racks, concrete blocks, and conduits, and returning the portion of the property on which the System was installed to its original conditions as mutually agreed upon.

### Site Description

In this section provide any additional unique information about the site.

The potential host site(s) are described in Appendix 1 attached to this RFP.

Before submitting a proposal, each Respondent shall familiarize themselves with the potential host sites as necessary to develop a proposal to undertake the Project in accordance with the terms and conditions of this RFP. The selected Respondent will be responsible for conducting any additional studies it may require, at its own cost and risk, prior to entering the lease agreement and/or in conjunction with the development of the Project. The Municipality intends to lease the municipal land on an "as is" basis.

### Site Work and Maintenance Requirements

The successful Respondent shall be responsible for the design, permitting, construction, and maintenance of all site work, drainage, erosion controls, and landscaping associated with the system and lease area.

The successful Respondent shall be responsible for performing vegetation management within the lease area. Respondents shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

If the project is on a **landfill**, include the below paragraph in your RFP to provide additional information to Respondents of requirements for solar energy projects on landfills.

Landfills are overseen by DEC's Division of Materials Management. As the proposed solar project will alter and impact the landfill cap, the Respondent is required to submit modifications to the Post-Closure Care Manual that is part of the Closure Plan. The requirements are intended to address concerns regarding the protection and maintenance of the Final Cover ("cap") and the protection of the landfill gas systems. The modification submission shall cover aspects including soil, slope, sediment, erosion, vegetation, drainage, etc. The submitted work plan shall contain descriptions of the planned uses and project plans to demonstrate the disturbance will not increase the potential threat to human health or the environment via construction method, equipment placement, and monitoring systems and plans<sup>28</sup>.

If the project is on a **brownfield**, include the below paragraph in your RFP to provide additional information to Respondents of requirements for solar energy projects on brownfields.

Additional DEC requirements apply to solar on brownfield sites and DEC's Division of Environmental Remediation provides the oversight. For a proposed brownfield solar site with an Institutional Control (IC) on the property, the Respondent will be required to notify the Division of the site's change of use and submit a work plan to ensure whether the remedy will remain effective or what new Engineering Control and Institutional Control (EC/IC), monitoring activities, and period reviews may be necessary. The workplan submission modifies the Site Management Plan (SMP) containing pertinent Environmental Easement information. SMPs are filed in the Deed of the brownfield property and accessible via DEC's Brownfield Cleanup Program site or filed as part of the Deed restriction. Note that brownfield sites without existing IC equipment should notify the change of use, but do not have to submit an additional work plan.

The successful Respondent shall be responsible for the installation and maintenance of site specific safety and security requirements or other measures as are required to comply with all necessary permits and approvals.

## Community Engagement

The successful Respondents will play an integral role in public outreach and educational events coordinated for community members. An outreach plan will raise community awareness and provide a platform for education. Creative approaches are encouraged.

If the project is intended to serve as a community solar project, through which local electric customers can purchase electricity from the developer, the Municipality will respect the strategic business decisions of Respondents on how to recruit subscribers of a community solar project. The Municipality requires that a priority process of enrollment be used whereby Municipality residents would have first call on participating as customers in a community solar program. The Municipality also requires that residents of County have a second stage enrollment priority.

Potential support offered by the Municipality as examples of ways the Municipality and other associated organizations would be interested in participating may include:

- Notification of the opportunity on the Municipality and various organizations' websites;
- Use of Municipality and other organizations' staff in conducting community oriented "Solar PV 101" Q&A sessions;
- Support in engaging local media;
- Banners or signage promoting the initiative at town-owned facilities

These are meant as examples of the sorts of informational and recruitment activities in which the Municipality, and perhaps associated organizations, would be interested in participating.

## Local Business Utilization

It is in the best interest of the Respondent to give a preference to subcontracting with local businesses, recruiting from the local labor force, and providing education or other benefits to local students particularly inside Municipality limits. The Municipality also encourages all Respondents to include minority and small business participation, including those owned by women, veterans, and disadvantaged individuals. Respondents should include goals for local employment, including for both the construction and operation periods of the project, providing a brief description of the number and types of jobs expected to be created in the Municipality.

<sup>28</sup> <https://www.dec.ny.gov/regulations/81768.html>

## Award

Based upon the results of the evaluation of the proposals and interview process (if applicable), a recommendation will be developed and submitted for approval by the respective stakeholders within the Municipality.

All Respondents shall review the Lease Agreement in Appendix 4. Should a Respondent question any of the terms and conditions contained in this Lease Agreement, it must submit a written attachment to their proposal specifically identifying its objection, setting forth its reasoning for the objection, and proposing an alternative solution addressing the objection. Respondents must include a brief discussion of the purpose and impact, if any, of each proposed revision. Acceptance of any proposed revision is within the Municipality's sole discretion. In no event will general references to the Respondent's terms and conditions or attempts at complete substitutions be considered. All objections will be reviewed as part of the evaluation process.

If the Municipality and the most qualified Respondent are unable, within 60 days following the Municipality's notice of commencement of negotiations with a Respondent (or such longer period of time as the Municipality may deem appropriate), to negotiate satisfactory Agreements with that Respondent at a price the Municipality determines to be fair, competitive, and reasonable, the Municipality shall negotiate with the next highest-rated Respondent. The Municipality reserves the right to waive any and all informalities and to award the proposal on the basis of the above procedures to the Respondent it deems most qualified or terminate the process at any time without making an award.

## 4. Timeline

EVENT	TARGET DATE
Issuance of Request for Proposal	Day 0
Informational Respondent Meeting and Site Visit	Day 14
Deadline for Submission of Questions	Day 28
Municipality Issues Responses to Respondent Questions	Day 35
RFP Submission Deadline & Opening of Bids	Day 49

## 5. Submission of Questions

The Designated Contact Person during the RFP period is contact name. All communication of any kind regarding this RFP during this period must be made via contact name. All questions and inquiries regarding this RFP must be submitted via email to contact email no later than question deadline. Questions submitted in writing must include the firm name and the name, title, address, telephone number, and email address of the individual submitting the question. Any questions regarding proposal requirements or specifications received after this date and time will not be considered for response.

Questions will not be answered directly. The Awarding Authority will issue an addendum to address the written questions submitted by the deadline. Any addenda will be posted by email/online at website.

## 6. Pre-Bid Meeting

The Municipality will hold a pre-bid meeting for all interested Respondents on date & time at site address. It is recommended that all interested Respondents attend in order to familiarize themselves with existing conditions and project requirements. Respondents interested in attending must confirm attendance by contacting point of contact and contact information.

## 7. Submittal

Responses must be submitted in a sealed package to Municipality's address by date & time and labeled as noted below. Within the package, the Respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the proposal on behalf of the Respondent. The Respondent shall enclose three (3) hard copies and one (1) electronic version in a searchable text format (in Adobe Acrobat (pdf) format and on a flash drive or CD-ROM) of the proposal. The sealed outer package shall be marked with the Respondent's company name, and clearly marked in the lower left- hand corner:

"Response to Leasing Municipal Land for Solar Development"

It is the Respondent's responsibility to see that its proposal is delivered within the time and at the place prescribed. The right is reserved, as the interest of the Municipality 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. If there are any differences between the original hard copy and the electronic copy of the proposal, the material in the electronic copy will prevail.

## 8. Proposal Requirements

These instructions outline the format and content of the proposal and the approach to be used in its development and presentation. Only that information which is essential to an understanding and evaluation of the proposal should be submitted.

### Table of Contents

Proposals shall include a Table of Contents listing the individual sections of the proposal and their corresponding page numbers.

### Section 1 – General Respondent Information

- **Transmittal Letter** - Each Respondent's response should include a transmittal letter signed by a party authorized to make a formal bid on behalf of the Respondent. The letter shall clearly indicate that the Respondent has carefully read all the provisions in the RFP. Transmittal letters should also acknowledge receipt and understanding of any Addenda associated with the project. Include the name, title, address, telephone number, e-mail address and fax number of the individual the Municipality should contact concerning the Respondent's proposal.
- **Executive Summary** - Provide an overview of the proposal (not more than two pages) describing the highlights of the response and summarizing how your firm will meet the needs and goals of the Municipality.
- Executed **Certificate of Non-Collusion** in Appendix 3.

### Section 2 – Experience & Qualification

This section shall discuss the highlights, key features, and distinguishing points of the proposal.

#### • Company Overview

- o Provide a document with the following company information.
  - Year founded and number of continuous years in business
  - Ownership status (public or private company, LLC, LLP, S-Corp, Sole Proprietor)
  - Federal Tax Identification Number
  - Corporate & Local Office location
  - Number of employees in corporate & local office at time of submittal

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

### • Project Team

- o Provide information about the key personnel to be assigned to this project.
  - Project Team organizational chart including all key personnel and their proposed roles
  - Provide resumes, in an appendix, for all key personnel that will be assigned to this project
  - Provide evidence of all relevant licenses held by your firm to do work in New York State, attach list and copies of documents as an appendix

### • References

- o Provide references for at least three completed and currently operating non-residential grid-connected PV systems, with preference towards New York municipalities and landfill or brownfield projects. Include the following information:
  - Location and Utility Company name
  - System size (kW DC)
  - Metering Type (Remote Net Metering, Community Distributed Solar, Onsite)
  - Date completed
  - Host Customer and/or Owner contract information (name, email, address, phone)

### • Project Development Experience

- o Provide the total number of megawatts of solar PV your firm has constructed over the last five (5) years.
- o Provide the total number of megawatts of solar PV your firm has constructed over the last five (5) years in New York.
- o Provide total number of megawatts and projects of solar PV your firm has constructed on landfills and brownfields.
- o Detail the types of customers your firm has worked with in the past (for example, residential, commercial nonprofit, or government).
- o Describe your firm's implementation of PV construction standards and other safety measures.
- o Provide the number of operational PV systems under your firm's management.

### • Project Financing Capability

- o Provide number of PV systems that have been financed by you and/or your financing partner.
- o Provide most recent audited financial statements, annual reports, consolidated financials, and Form 10-K (if any). If available, provide similar materials for parent entities, significant affiliates and collaborators.

## Section 3 – Proposal Narrative

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

### • Project Management Plan

- o Provide a detailed narrative description of the approach for installing the proposed project, including how the Respondent will work with subcontractors, municipal agencies, and other relevant stakeholders. Detail how the Respondent will approach special site considerations such as capped landfills.
- o Provide a detailed description of each task and delivery. Include a project schedule indicating key milestones and durations of various activities.
- o Respondents must demonstrate a firm understanding of permits required to successfully execute the project. 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.

### • Financing Plan

- o Provide a description of how the proposed project will be financed. Identify any potential financial partners that will be involved in the project. Describe in this plan possible sources of funds and revenue streams other than the sale of energy including all available tax credits, incentives, and subsidies that will be used to finance the project.

### • Operations and Maintenance Plan

- o The Respondent will be responsible for Operation & Maintenance (O&M) services for the full term of the Agreement. Describe the proposed O&M procedures for the system, detailing duties performed and if the contract will be maintained with the Respondent or a third-party provider.

### • Decommissioning Plan

- o Provide information regarding the proposed approach to system decommissioning and restoration of the property. 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.
- o The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to measures which may include the following:
  - Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
  - Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
  - Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

### • Local Business Utilization Plan

- o Respondent shall submit a proposed local business utilization plan and must make a good faith effort to hire local business enterprises on the project. The utilization plan must demonstrate how this requirement will be met to the extent possible at this stage in the program.

### • Outreach Plan

- o Respondent will provide a clear plan to best meet the goals and strategies specified in the **Project Scope** section for **Community Engagement**.
- o Provide clear marketing and recruitment strategies from the developer to attract members. Strategies for particular customer segments (e.g. LMI, anchor, commercial, etc.) should be specified, if desired by the Municipality.

## Section 4 – Technical Proposal

All solar energy systems proposed under this RFP must conform to industry best practices. System Design and Components are not binding at the proposal stage, but this information will be used to evaluate Respondent proposals.

- Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at minimum modules, inverters, racking system, and monitoring system) including manufacturer and warranty information. 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):
  - o System size (in kW DC and kW AC)
  - o Location of modules (including tilt)
  - o Location of inverters
  - o Any other site-specific information that will aid in overall evaluation
- Expected System Generation
  - o Provide estimated annual production of the proposed solar project for years 1-25 inclusive of the degradation rate.

## Section 5 – Price Proposal

Price proposals should be provided using the form in Appendix 3 of this RFP. Price proposals shall be valid for a minimum of 180 days.

All price proposals will include a lease payment from the Respondent to the Municipality in the format of a price per acre. The lease will be structured initially for a two-year option to assess the feasibility of the site, followed by a 25-year lease when it is determined the site is viable, with up to four additional 5-year optional renewal periods, exercisable at Municipality's sole discretion, or on the basis of any other alternative lease duration proposal submitted by the respondent.

# 9. Evaluation Criteria

## Overview of Evaluation Process

The Municipality 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 examination of other information as the Municipality deems appropriate. The Municipality will/may as it deems necessary conduct interviews to evaluate the Respondents. The Municipality may require public presentations by Respondents. The Municipality reserves the right to request or obtain additional information about any and all responses. Each response from a qualified Respondent will be evaluated and ranked solely according to the criteria set forth in this RFP.

The Municipality may cancel this RFP at any stage of the process if it determines that cancellation serves the best interests of the public. The Municipality 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.

At a minimum, Respondents shall meet the following requirements:

1. Timely submission of response and attendance at optional/mandatory pre-bid meeting
2. Submission of all required elements found in Section 8 of this RFP
3. Certification of Non-Collusion (Appendix 3)
4. Evidence of appropriate insurance

The qualified Respondents providing completed responses will be evaluated based on the following factors:

**Price Proposal** – The Respondent should clearly identify the financial benefit to the Municipality of the proposed arrangement in the form of either annual lease payments, savings in current electric costs of Municipality operations, or some other monetary benefit to the Municipality.

**Proposal Narrative** – The response shall include an explanation of how the Respondent will approach the various tasks, including scheduling methods, project schedule, construction, financing, measurement and verification, operations and maintenance, and decommissioning plans. The demonstrated ability to obtain financing for the construction of the solar energy system is critical to the Respondent’s ability to complete the project. Respondents 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.

**Developer Experience & Project Team** – The extent of the Respondent’s experience in designing, financing, constructing and operating solar energy facilities. Additional consideration will be given to firms with experience constructing and operating such facilities on municipal and commercial properties most similar to the proposed sites, particularly capped landfills. The relevant experience and quality of project personnel and their commitment to the proposed project in Municipality. The clarity and organization of the proposed scope of work and approach will be included in the assessment of the project team.

**Technical Proposal** – The response will be evaluated on the preliminary system design that is provided and the selected equipment and corresponding warranties. The demonstrated ability of designing a system that will generate the highest production will provide greater benefit to the Municipality and the community members

## Appendix 1: Site Description

Provide the below information for the selected site(s) if known.

1. Facility name and address
2. Planned future use of the property and zoning requirements
3. Any shading, trees, or other potential obstructions
4. Electric utility
5. Distance to utility interconnection
6. Phases available at utility pole (single or three-phase)
7. Description of roof and/or available land
8. Aerial photos, site map, and/or roof plan
9. Any feasibility assessment done to date, including information on roof, shading, environmental analysis, etc.

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.

If the site is a brownfield, provide additional information such as the Site Management Plan.

## Appendix 2: Land Lease Price Proposal Template

PV System Size	_____kW dc	Annual System Degradation Factor	_____%/year
Year 1 Estimated kWh Generation	_____kWh		

The Respondent hereby agrees to pay the Municipality the following amounts to lease up to acreage for the construction and operation of a solar energy system for 25 years.

The following is a summary of assumptions for developing the costs for a base solar system. Respondents are to assume no sales tax on equipment purchased, and no property tax. Interconnection costs can vary widely depending on system size, interconnection voltage, and other interconnection requirements. For the purposes of establishing a base bid, Respondents should assume interconnection cost of \$0.10 per Watt.

Year 1 Lease Payment	\$_____/acre	Annual Lease Escalator	%/year
Year 1 Total Lease Payment	\$_____	Total Payments to Municipality over Contract Length (25 Years)	\$_____

Respondents shall understand that the submitted price proposals must include the scope of work and all deliverables as defined in the Lease Agreement and as specified in this RFP. Respondents shall complete the below table to account for change orders due to unforeseen additional costs such as interconnection upgrades, taxes, etc. Municipality will use a regression model to predict incremental values if needed.

Change Order (\$/acre)	0-\$4,999	\$5,000-\$9,999	\$10,000-\$14,999	\$15,000-\$19,999	\$20,000-\$24,999	>\$25,000
Adjustment to Proposed Lease Payment (\$/acre)						

A Respondent may attach, in substantially the form above, any alternative lease arrangement(s) that the Respondent wishes to include with its proposal.

## Appendix 3: 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)

# Appendix 4: Sample Land Lease Agreement

The workable version of this document can be found at [nyserdera.ny.gov/SolarGuidebook](https://nyserdera.ny.gov/SolarGuidebook), under the **Municipal Solar Procurement Toolkit** tab.

## **SOLAR LEASE AGREEMENT** **COVER SHEET**

This Solar Lease Agreement (consisting of this Cover Sheet, the Terms and Conditions, all Exhibits referenced herein and attached hereto, this “Agreement”) is made and entered into as of the Effective Date and between the parties listed below.

Party A, as Lessee: <b>Developer Name,</b> ("Entity Name")	Party B, as Lessor: <b>Name,</b> a New York municipality (the "Village/Town/City/County")
Contact: Name Title Number	Contact: Name Title Number
<u>Premises Location:</u> Address City, NY Zip	<u>Duration:</u> Date of Agreement: Date ("Effective Date")
<u>Pricing:</u> Development Period Payment: XX per year Term Rent: XX per year Term Rent Adjustment: X % increase per year	<u>Commercial Operation Date:</u> TBD <u>Term:</u> Initial Term: 25 years from the System's Commercial Operation Date, with option to extend the Lease Term for up to four (4) additional and successive period of five (5) years

Town and Developer shall each be referred to in this Agreement individually as a “**Party**” and, together, as “**Parties**”.

### **RECITALS:**

**WHEREAS**, Town owns and occupies the land located at Address in Village/Town/City/County, New York described in Exhibit A attached hereto (the “**Premises**”) and desires to lease a portion of the Premises (the “**Lease Area**”, defined below) to Entity Name;

**WHEREAS**, the Premises is the site of a landfill which is the subject of a closure plan approved by the New York State Department of Environmental Conservation.

**WHEREAS**, the Town desires that Entity Name install the System, to be located at the Premises, and Entity Name is willing to perform the installation of the System; and

**WHEREAS**, Entity Name further desires to lease the Lease Area and the Easements from the Town, and to operate and maintain the System, and provide other services in accordance with the terms and conditions set forth herein.

## AGREEMENT

**NOW, THEREFORE,** in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Each of the following documents shall be deemed part of this Agreement and are incorporated herein by this reference as though set forth herein in their entirety:

- Terms and Conditions
- Exhibit A, Premises Legal Description
- Exhibit B, Lease Area Description & Design Layout
- Exhibit C, Guaranty

2. This Agreement constitutes the entire agreement and understanding between **Entity Name** and the **Town** with respect to the subject matter hereof and supersedes all prior agreements, written or verbal, if any, between them relating to the subject matter hereof, which are hereafter of no further force or effect. The Terms and Conditions and the Exhibits, referred to herein, are integral parts hereof 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 any Exhibit, the provisions of this Agreement shall prevail over the terms of the Exhibit and any Exhibit shall be corrected accordingly if inconsistent with this Agreement.

3. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of the **Town** and **Entity Name**.

4. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without reference to its principles or conflicts of laws.

5. The relationship between **Entity Name** and the **Town** shall not be that of partners, agents, or joint ventures, 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. **Entity Name** and the **Town**, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk. Neither Party has the right to create an obligation for the other Party.

6. This Agreement may be executed by facsimile or scanned signatures transmitted by electronic mail and/or in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same original.

*(Signatures appear on the following page.)*

**IN WITNESS WHEREOF**, the duly authorized officers of the Parties have executed this Solar Lease Agreement as an instrument under seal as of the Effective Date.

[Redacted]

By: [Redacted]

Name: [Redacted]

Title: [Redacted]

[Redacted]

By: [Redacted]

Name: [Redacted]

Title: [Redacted]

**ACKNOWLEDGMENT**

**(Entity Name)**

*Notary Public Statement, Seal, and Signature*

# TERMS AND CONDITIONS

THIS SOLAR LEASE AGREEMENT (“**Agreement**”) is made and entered into as of this Day of Month, Year (the “**Effective Date**”), by and between the **Village/ Town/ City/ County Name**, a municipality of the State of New York (“**Village/ Town/ City/ County**”) and **Entity Name**, a New York limited liability company (“**Entity Short Name**”). **Town** and **Entity Short Name** are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

## ARTICLE 1 - DEFINED TERMS; RULES OF INTERPRETATION

### 1.1 Defined Terms.

Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below.

“**Agreement**” means this Solar Lease Agreement, including the Solar Lease Agreement Cover Sheet, all Exhibits and attachments hereto.

“**Applicable Legal Requirements**” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen.

“**Bankrupt**” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 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 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) causes or is subject to any event with respect to it which, under the Applicable Legal Requirements of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi) inclusive; or (viii) 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 except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“**Casualty Date**” shall have the meaning set forth in § 11.2.

“**Commercial Operation Date**” means the tenth (10th) day after the **Town’s** receipt of a Completion Notice for the System.

“**Completion Notice**” means a notice from the **Entity Name** to the **Town** when the System is generating electric power and has been accepted for continuous commercial service by the LDC.

“**Development Period Payment**” means an annual rent amount of \$XX, paid on a prorated basis for use of the Premises for the number of days from the Effective Date to the Commercial Operation Date.

“**Dispute**” shall have the meaning set forth in §14.1.

“**Easements**” mean the easements granted pursuant to § 2.1, and which area(s) may be later defined by the Parties.

“**Effective Date**” is the date first set forth in the introductory paragraph of this Agreement.

“**Environmental Attributes**” means any offset, credit, benefit, reduction, rebate, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, RECs, Solar RECs, carbon credits, Green-e products, investment tax credits, production tax credits, forward capacity market credits or other credits earned by or in connection with, or otherwise attributable to, the System, or the electricity produced by the System, under or with respect to the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), any state or federal renewable portfolio standard or renewable

energy standard or other portfolio purchase mandate or requirement, including the renewable portfolio standard of the State of New York, the Regional Greenhouse Gas Initiative or any statute or regulation implementing the foregoing, any federal or other applicable act or regulation relating to carbon emissions or a cap or other limitation thereupon or any other state, federal or other Governmental Authority act, law or regulation that provides offsets, credits, benefits, reductions, allowances or incentives of any kind or nature related to electricity generation, generation capacity or emissions (or the lack or avoidance thereof).

**“Equipment Leasing Party”** means, if applicable, any Person to whom **Entity Name** transferred the ownership interest in the System, subject to a leaseback of the System from such Person.

**“Events of Default”** means a **Town** Event of Default or a **Entity Name** Event of Default.

**“Financing Party”** or **“Financing Parties”** means any and all Persons or successors in interest thereof, directly or indirectly, (i) lending money, (ii) extending credit, (iii) investing equity capital or (iv) providing or financing any System or other arrangement including tax equity investments for or in connection with any of the following: (a) the construction, term or permanent financing of the System; (b) working capital or other ordinary business requirements of the System (including the maintenance, repair, replacement or improvement of the System); (c) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the System; or (d) the purchase of the System and the related rights. For avoidance of doubt, “Financing Party” shall include an Equipment Leasing Party, if any, and any Person providing any of the foregoing categories of financing to Equipment Leasing Party with respect to the System.

**“Force Majeure Event”** means an event, occurrence or circumstance, or combination thereof, beyond the reasonable control of a Party which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, and is not the result of the negligence of the Claiming Party, and which by the exercise of reasonable due diligence, the Claiming Party is nonetheless unable to overcome or avoid or cause to be avoided, including, but not limited to: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Premises, the Lease Area, the System or a Party’s obligations hereunder, except as may be caused by the negligence or affirmative act of a Party; (d) explosion, accident or epidemic; (e) failure of a Governmental Authority to issue any permits properly applied for or to take any other action required to be taken by such Governmental Authority; (f) failure of an LDC to issue any permissions properly applied for and diligently pursued in good faith, or to take any other action required to be taken by such LDC; and (g) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; provided, that neither the lack of money nor changes in market conditions shall constitute a Force Majeure Event.

**“Governmental Authority”** means the United States of America, the State of New York, and any political or municipal subdivision thereof (including but not limited to the Town), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

**“Hazardous Materials”** means those substances defined, classified, or otherwise denominated as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant,” “toxic pollutant” or oil in the Applicable Legal Requirements or in any regulations promulgated pursuant to the Applicable Legal Requirements.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by **Town** and reasonably acceptable to **Entity Name**. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due. In no case shall the Interest Rate for this Agreement be less than **XX%** per year.

**“Landfill”** means the landfill on the Premises, including, without limitation, any waste and other materials within such landfill, the landfill cap, the area below such membrane, any fill placed over the membrane and all structures, equipment, fixtures and improvements installed on the Premises by the Town and/or its agents and/or contractors, including without limitation the landfill cap, drainage, and gas venting structures and apparatus referenced in the closure plan with respect to such landfill. To avoid doubt, “Landfill” does not include the System.

**“Landfill Closure Plan”** means the closure plan required by the December 14, 1988 NYS DEC order of consent and approved by the NYS DEC, as same may be amended from time to time with the approval of the NYS DEC.

**“LDC”** means the regulated electric local distribution company that provides electric distribution service to the municipality in which Town is located, which as of the Effective Date is Local Distribution Company/ Local Utility Company.

**“LDC System”** means the electric distribution system operated and maintained by the LDC.

**“Lease Area”** means the portion of the Premises in which the Town grants Entity Name a lease to allow the installation, operation, repair and removal of the System, which area shall include the Easements, and means the real property depicted in the plan attached as Exhibit B until the Lease Area is further defined as follows: Within sixty (60) days of the Commercial Operation Date, Entity Name shall, solely at its’ expense, obtain a survey of the portion of the Premises determined to be the final Lease Area, and that survey or plot plan shall be an amendment to this Agreement as a new Exhibit B, and the Lease Area shall then mean the portion of the Premises defined by the survey. Further, the Lease Area does not consist of any portion of the Landfill but does include any areas impacted by incidental subsurface penetration in installing the System in accordance with the Projects Plans and Applicable Legal Requirements.

**“NYS DEC”** means the New York State Department of Conservation.

**“Entity Name Indemnified Parties”** shall have the meaning set forth in § 13.2.

**“Entity Name’s Maintenance Obligations”** shall have the meaning set forth in § 5.1.1.

**“Entity Name Property”** shall have the meaning set forth in § 2.6.1. “Permitted Repair Period” shall have the meaning set forth in § 11.2.

**“Person”** means any 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 Exhibit A and shall include the Lease Area.

**“System”** means the solar electric generating facility to be installed in the Lease Area, including but not limited to the System Assets, which produces electricity.

**“System Assets”** means each and all of the assets of which the System is comprised, including Entity Name’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the LDC delivery point, protective and associated equipment, improvements, metering devices, fencing and other tangible and intangible assets, including System electricity production and Environmental Attributes, and permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

**“Term”** shall have the meaning set forth in § 3.1 herein.

**“Term Rent”** means, after the Commercial Operation Date, an annual amount equal to \$XX escalating at X% annually. The Town acknowledges that this rent constitutes fair market value rent payable in an arms-length transaction.

**“Termination Date”** means the earlier to occur of (i) the last day of the Term, and (ii) the date of termination of this Agreement as the result of an Event of Default.

## **1.2 Rules of Interpretation.**

Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

## ARTICLE 2 - THE PREMISES

### 2.1 Lease Area.

The Town, for and in consideration of the covenants and agreements on the part of Entity Name contained in this Agreement, does hereby lease to Entity Name, and Entity Name does hereby take from the Town, upon and subject to the conditions hereinafter expressed, the Lease Area for the sole and exclusive use of constructing, operating, maintaining, repairing and removing the System. Entity Name's use of the Lease Area is subject to all Applicable Legal Requirements

### 2.2 Easements.

The Town further grants the following easements ("**Easements**") to Entity Name, during the period commencing on the Effective Date of this Agreement and ending upon the expiration or earlier termination of the Term:

2.2.1 a non-exclusive easement for access to the Lease Area across or through the external portion of the Premises and any surrounding or adjacent area owned or leased by the Town which is necessary in such location and of such dimensions as determined by the LDC and approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed by the Town in its reasonable discretion, to gain access to the System;

2.2.2 a non-exclusive use right of an area on the Premises to be used solely for System construction, repair and removal; and

2.2.3 an easement for the installation, operation and maintenance of electric lines necessary to interconnect the System to the LDC's electric distribution System in such location and of such dimensions as determined by the Town in its reasonable discretion which shall not be unreasonably withheld, conditioned or delayed.

2.2.4 The preliminary location of such Easements are set forth on Exhibit B attached hereto and such Exhibit will be supplemented prior to the start of construction of the System subject to the approval of the Town which shall not be unreasonably withheld.

### 2.3 File Notice of Lease.

Parties agree that this Agreement shall not be recorded, but the Parties shall execute and record a Notice of Lease that shall describe the Lease Area and Easements and shall otherwise be reasonably acceptable to both Parties. Any subsequent amendments of this Agreement, including all easements subsequently entered into in accordance with ARTICLE 3 hereof, shall be reflected by filing with the County an appropriate Notice of Amendment to Lease. All recordation shall be at Entity Name's expense.

### 2.4 Town Representations and Warranties.

The Town represents and warrants that:

2.4.1 It has no knowledge of any violation of the Landfill Closure Plan with respect to Premises and no event or condition has occurred which with the passage of time or giving of notice would constitute such a violation;

2.4.2 It has no knowledge of any violations of Applicable Legal Requirements with respect to the Premises or any event or condition having occurred which with the passage of time or giving of notice would constitute such a violation.

### 2.5 As-Is Lease of the Lease Area and Easements.

2.5.1 Entity Name accepts the Lease Area after a full and complete examination thereof, as well as the title thereto, and knowledge of its present uses and non-uses. Except as expressly provided herein, Entity Name accepts the Lease Area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by the Town or any person purporting to represent the Town and without recourse against the Town, as to the title thereto, the nature, condition or usability thereof or the suitability of the Lease Area for the use or uses to which the Lease Area or the Premises or any part thereof may be put as authorized hereby.

2.5.2 Except as expressly provided herein, the Town shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Lease Area or the Premises.

2.5.3 Notwithstanding anything contained in this ARTICLE 2, neither Entity Name nor any entity which enters into a sublease with Entity Name with respect to all or any portion of the Premises, shall be liable for: (i) the Landfill; (ii) any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date or (iii) any "release" of any Hazardous Materials from the Premises from the Landfill, unless, and to the extent, caused wholly or partly by Entity Name or any of its related entities, contractors, invitees or licensees.

2.5.4 The parties acknowledge that since this Lease Area is a landfill, that Town is required by law to monitor and/or maintain the Lease Area. Thus, so far as between the Parties, Entity Name shall, at its sole cost and expense, maintain and operate the System which shall not penetrate the cap of the landfill. Town shall continue to maintain and operate the landfill. Entity shall maintain the ground cover, including regular mowing of vegetation consistent with the operation requirements of a photovoltaic system. Jurisdiction shall have the right to enter on the premise to maintain and monitor the cap as needed, provided that they provide reasonable notice of their entrance.

## **2.6 Ownership of the System.**

2.6.1 **Title to System.** Subject to the rights provided to the Town pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Entity Name and all Entity Name property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Entity Name ("Entity Name Property"). In no event shall any Entity Name Property be deemed a fixture, nor shall the Town, nor anyone claiming by, through or under the Town (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Entity Name Property at any time except as otherwise provided herein. Except as provided otherwise herein, the Town shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Entity Name installed on the Premises, and Entity Name may remove all or any portion of the System or any System Assets at any time and from time to time as further provided in and subject to, this Agreement. Without limiting the generality of the foregoing, Town hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof, but such waiver shall not extend to claims by the Town in the System Assets based upon a default by Entity Name hereunder.

2.6.2 **Security Interests in System.** The Town acknowledges and agrees that Entity Name may grant or cause to be granted to a lender a security interest in the System and in Entity Name's rights to payment under the Agreement, and Town expressly disclaims and waives any rights in the System at law or in equity pursuant to this Agreement. Any security interest shall be subordinate to the interest of the Town in the Premises and subject to the terms and conditions of this Agreement; provided however the Town shall execute, or use best efforts to cause any holder of an interest in the Premises senior to that of Entity Name to execute, a form of a non-disturbance agreement reasonably acceptable to the Financing Party and the Town or such other holder.

## **2.7 No Expenditures.**

Entity Name and the Town acknowledge and agree that the Town shall not be required, except as expressly provided herein, to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, construction, operation, maintenance, repair, or removal of the System

## **2.8 No Additional Use.**

Except with the prior express written consent of the Town, Entity Name shall not use the Lease Area for any use other than the installation, operation, maintenance, repair and removal of the System.

## ARTICLE 3 – TERM

### 3.1 Term.

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall remain in effect until the twenty fifth (25th) anniversary of the Commercial Operation Date.

### 3.2 Termination.

If Lessee delivers the Exercise Notice prior to the Commercial Operation Date, then Lessee shall have the option, in its sole discretion, to terminate the Agreement at any time before the Commercial Operation Date.

### 3.3 Late Payment.

If any payment is not paid when due under this Agreement, it shall earn interest at the rate of the lesser of (i) XX (XX%) per month (and pro-rated for a partial month) and (ii) the maximum amount allowed by law from the time when the payment was due until the time it is paid.

## ARTICLE 4 – RENT

### 4.1 The Development Period Payment.

Entity Name shall pay the Development Period Payment. The Development Period Payment, prorated for the number of days from the Effective Date to the Commercial Operation Date, shall be due on the Commercial Operation Date. Following the Commercial Operation Date, the Development Period Payment shall cease.

### 4.2 The Term Rent.

Entity Name shall pay the Term Rent. The payment of the Term Rent shall be payable in advance and due annually no later than XX (XX) days following the annual anniversary of the Commercial Operation Date.

### 4.3 Term Rent Adjustment.

The Term Rent shall increase by an amount of XX% per year starting on the first (1st) anniversary of the Commercial Operation Date.

## ARTICLE 5 – DUTIES OF PARTIES

### 5.1 Maintenance; Repairs; Non Interference.

5.1.1 Entity Name shall, at its sole cost and expense, (i) take good care of the System, conduct all required maintenance of the System and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the System in safe, first class order, repair and condition, free and clear of any hazards or dangerous conditions and (ii) mow the grass and otherwise maintain all vegetation and otherwise comply with all standards and conditions required under the Legal Obligations, applicable to the operation and maintenance of the System including without limitation standards recommended by the NYS DEC (the “**Entity Name Maintenance Obligations**”)

5.1.2 Except as expressly provided in § 5.1.1 or elsewhere in this Lease, the Town will continue to have responsibility for all obligations with respect to the Landfill, including maintaining the Landfill and making all repairs and replacements to the Landfill, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, except to the extent of any required as a result of any act, or failure to act, by Entity Name or any of its related entities, contractors, invitees or licensees, and except any required in connection with Entity Name’s activities pursuant to and in accordance with this Agreement.

5.1.3 Nothing in this Agreement shall limit the Town’s ability and obligation to maintain the Premises in a reasonable manner consistent with the Town’s current and past practices and the terms of this Agreement.

5.1.4 To the extent required to comply with Applicable Legal Requirements, the Town may construct, reconstruct, modify or make alterations to the Premises; provided, however, that in no event shall such activities shade the System or otherwise materially interfere with the operation of the System or Entity Name's rights hereunder. Any such material interference with the operation of the System or Entity Name's rights hereunder which is caused by a Town Event of Default shall be governed by ARTICLE 10.

5.1.5 Entity Name shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. The Town shall have no duty or liability to Entity Name with respect to the maintenance, repair, upgrade, or replacement of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by the Town or any third party. In the event that Entity Name desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by the Town, Entity Name may do so at Entity Name's expense subject to the prior written approval of the Town, which shall not be unreasonably withheld.

5.1.6 Extension Option. Entity Name shall have the option to extend the Lease Term for up to four (4) additional and successive period of five (5) years beginning on the day following the Expiration Date of the then-current Lease Term, by giving notice (the "Extension Exercise Notice") to Town no less than ninety (90) days prior to the then-current Expiration Date, and without the requirement of any further action on the part of either Town or Entity Name.

## **5.2 Compliance with Laws; Professional Standards.**

5.2.1 Entity Name, at Entity Name's expense, shall diligently and fully comply with all Applicable Legal Requirements governing its use and occupancy of the Lease Area and the construction, maintenance, repair, and removal of the System. In addition, Entity Name shall ensure that the System is operated and maintained in a professional manner by appropriately trained and qualified individuals.

5.2.2 The Town, at the Town's expense, shall diligently and fully comply with all Applicable Legal Requirements governing the Landfill, including the closure of the Landfill and the maintenance, repair and upkeep of the Landfill, except to the extent of conditions caused wholly or partly by any act, or failure to act, by Entity Name of any of its related entities, contractors, invitees, or licensees. In addition, the Town shall ensure that such obligations are performed in a professional manner by appropriately trained and qualified individuals.

# **ARTICLE 6 – CONSTRUCTION AND OPERATION OF PERMITTED USE**

## **6.1 General Description.**

Except as otherwise specified herein, the System shall conform to Exhibit B of this Agreement. Any material modification or deviation from the design as depicted in Exhibit B shall require the subsequent consent of the Town, which consent will not be unreasonably withheld, conditioned or delayed.

## **6.2 Governmental Approval.**

Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Entity Name will obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Entity Name's use of the Lease Area for the System from any Governmental Authority having jurisdiction. Entity Name will promptly inform the Town of all significant developments relating to the issuance of such approvals or permits. The Town will reasonably cooperate with Entity Name in procuring such approvals, except as expressly set forth herein this Agreement does not impose an affirmative obligation on the Town to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the Town's regulatory authority). If any changes in such plans and/or specifications are required by any Governmental Authority, then Entity Name shall submit such changes, if any, to the Town for its approval, and such approval shall not be unreasonably conditioned, withheld or delayed. Entity Name will be required to keep any such approvals current and in full effect during the Term.

### **6.3 Completion Requirements.**

Entity Name may perform construction at the Premises between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise limited by local ordinance and shall do so in reasonable coordination with the Town and in a manner which limits inconvenience to and interference with the Town and the Town's invitees' and employees' use of the Premises to the extent commercially practical. Entity Name shall grant the Town and its authorized representative's access to and the right, but not the obligation, to observe installation and any significant repairs to or replacement of the System at all times provided that neither the Town nor its authorized representatives shall interfere with the installation or repair work or use or move any Entity Name equipment or the System without written authorization from Entity Name.

### **6.4 Access to and Use of the Premises.**

Entity Name and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the Lease Area for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, and to any documents, materials and records of the Town relating to the Premises that Entity Name reasonably requests in conjunction with these activities. During any such activities, Entity Name, and its sub-contractors, agents, consultants and representatives shall comply with the Town's reasonable safety and security procedures (as may be promulgated from time to time), and Entity Name and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with the Town's other activities.

Through the Option Term and Lease Term and through the Removal Date, Entity Name shall have the rights to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in the Agreement, including, without limiting the generality of the foregoing, the right (i) to design, construct, install, and operate the System, (ii) to maintain, clean, repair, replace, add to, remove or modify the System or any part thereof as determined to be necessary by Entity Name in its sole discretion and in accordance with the Permits and Applicable Laws, (iii) to use any and all appropriate means of restricting access to the System and Premises, including without limitation, the construction of a fence or other encumbrances existing on the Premises determined to be necessary by lessee in its sole discretion and in accordance to the Permits and Applicable Laws. Except as may otherwise be specifically agreed upon by the Parties or as expressly set forth herein, Entity Name shall be responsible for all costs of designing, permitting, construction, installation, operation, and maintenance of the System, and System Removal.

### **6.5 As-built Plans.**

Within ninety (90) days following the issuance of the Completion Notice, Entity Name shall prepare and deliver to the Town detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment, certified to the Town. Entity Name shall also deliver to the Town a certification from its engineer, who shall be duly licensed in the State of New York, that the System has been constructed in accordance with all approved plans and specifications.

### **6.6 Operations.**

Entity Name shall submit to the Town annually a written summary of operations which shall include any material modifications and a summary of the amount of production for the preceding twelve (12) months.

### **6.7 Removal of the System.**

6.7.1 Within ten (10) days following the anniversary of the Commercial Operation Date, if the Parties have determined that this Agreement will definitely terminate at the 25th anniversary of the Commercial Operation Date without extension or replacement and that the Town has determined that it wishes that the System be removed from the Premises at the Termination Date of this Agreement, then (i) Entity Name shall provide to the Town the estimated cost of System removal, and (ii) the Parties shall meet and discuss the options for removal of the System, and (iii) if the Town requests, Entity Name shall post a bond or provide another financial assurance to the Town, in form and amount reasonably satisfactory to the Town, to demonstrate its ability to satisfy the financial costs of the removal of the System from the Premises. Upon the Termination Date, Entity Name shall at its sole cost and expense remove from the Premises all of the tangible property comprising the System, including but not limited all structures built by the Entity Name, any fencing and/or barriers to secure the System and

any System mounting and other support structures, not later than 360 days after such Termination Date and shall return the Lease Area to the same condition as it was in on the Effective Date (including uniform grass coverage for areas impacted) except for any reasonable use and wear or damage by casualty or eminent domain. Lessee shall return the Premises “as is” with all vegetation, trails or roadways, utilities and site conditions existing as of the expiration of the Lease Term and shall have no obligation to restore the Premises to their condition prior to the Effective Date.

6.7.2 Entity Name shall repair any damage it causes in connection with such removal not related to ordinary use and wear at its sole cost and expense.

6.7.3 If Entity Name fails to remove or commence substantial efforts to remove the System within 180 days of the expiration of the date that the Agreement terminates, the Town shall have the right, at its option, to possession, use of and ownership of the System including the right, without limit, to remove and to sell same, and restore the Lease Area to its original condition (other than ordinary wear and tear) and Entity Name shall reimburse the Town for reasonable out-of-pocket costs and expenses incurred by the Town in removing, storing and selling the System and in restoring the Lease Area.

6.7.4 The provisions of this Section 6.7 shall survive the Termination Date of this Agreement.

## ARTICLE 7 – LIENS

### 7.1 No Liens.

Entity Name shall not create, or suffer to be created or cause to remain, and shall promptly discharge, any mechanic’s, laborer’s or materialman’s lien, or any other lien upon the Premises and Entity Name will not suffer any other matter or thing arising out of Entity Name’s use and occupancy of the Premises whereby the estate, rights and interests of the Town in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this Agreement.

### 7.2 Discharge.

If any mechanic’s, laborer’s or materialman’s or other lien shall at any time be filed against the Premises, Entity Name, within sixty (60) days after notice to Entity Name of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Entity Name shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Town may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by the Town and costs reasonably incurred by the Town in connection therewith, together with interest thereon at the Interest Rate from the respective dates of the Town’s making of the payment of the cost and expenses, shall be paid by Entity Name to the Town within ten (10) Business Days of the Town’s invoice therefor.

### 7.3 Town’s Obligations.

The Town shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System or any interest therein.

## ARTICLE 8 – RIGHT TO INSPECT AND ENTER

### 8.1 Inspection and Entry.

During the course of construction and completion of the System and any substantial alteration thereto, Entity Name shall maintain all plans, shop drawings, and specifications relating to such construction which the Town, whose agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced in this Agreement. The Town may, upon reasonable prior notice to Entity Name by telephone or otherwise, enter upon the Lease Area and inspect the System for the purpose of ascertaining its condition or whether Entity Name is observing and performing the obligations assumed by it under this Agreement, all without hindrance or molestation from Entity Name. Entity Name shall obtain the Town’s prior written approval of any proposed substantial alteration, other than alterations required by any Applicable Legal Requirement, and such approval shall not be unreasonably withheld, conditioned or delayed.

## **8.2 Notice of Damage.**

The Town shall promptly notify Entity Name of any matter it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

# **ARTICLE 9 – ASSIGNMENT AND SUBCONTRACTING**

## **9.1 Successors and Assigns; Subcontracting.**

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns; provided, that Entity Name in its discretion may elect to use such certified and licensed subcontractors as it may choose in performing any of its obligations hereunder and performance of any obligation of Entity Name by any such subcontractor shall satisfy such obligation to the extent of such subcontractor's performance.

9.1.1 **Assignment by Town.** The Town shall not sell, transfer, assign, pledge or cause to be assumed (together, "Assign"; and any such action, an "Assignment") this Agreement, in whole or in part, without the prior written consent of Entity Name and its applicable Financing Parties.

9.1.2 **Assignment by Entity Name.** Entity Name may with the prior written notice to and the prior written consent of, the Town in each instance, except as provided for in §9.2 this ARTICLE 9, assign this Agreement, in whole or in part. Any assignment shall be conditioned upon the assignee explicitly assuming in writing all of Entity Name's obligations under this Agreement. Entity Name shall deliver to the Town thirty days' (30) advance written notice of its intent to assign this Agreement. Entity Name shall also have the right to enter into one or more subleases with respect to this Agreement and/or to assign any rights under this agreement to any purchaser(s) of metering credits.

## **9.2 Consent to Assignment for Financing or Leasing.**

Entity Name may seek financing for the ownership of all or a portion of the System under this Agreement, whether by a sale-leaseback of all or a portion of the System from an Equipment Leasing Party or entering into other arrangements with a Financing Party in the form of an equipment lease, finance lease, debt, equity, tax equity or other financing arrangement. Entity Name may collaterally assign or assign fully in connection with any financing of the System (which may, in connection with such Assignment, permit the Financing Party to further assign collaterally), its rights, and/or obligations hereunder for purposes of securing such financing or leasing arrangement. The Town hereby consents to any such Assignment, provided that:

9.2.1 Such Assignment shall not create any lien or other encumbrance on the Premises other than Entity Name's rights and obligations contemplated in this Agreement nor on any other real or personal property located on the Premises other than the System; and all provisions regarding the entry onto and use of the applicable Lease Area shall remain in effect;

9.2.2 If Entity Name assigns this Agreement, or any portion hereof, to a Financing Party as provided herein, the Town acknowledges and agrees that such Financing Party shall not be personally liable for the performance of such assigned obligations hereunder except to the extent of the interest of the Financing Parties in the System. Notwithstanding any such Assignment to one or more Financing Parties or a designee thereof, Entity Name shall not be released and discharged from and shall remain liable for any and all obligations to the Town arising or accruing hereunder (and, in the case of a partial Assignment, for the obligations accruing after the date of such Assignment with respect to obligations accruing under the unassigned portion of the Agreement).

9.2.3 The Town agrees to sign, execute and deliver or cause to be delivered each such consent to assignment, legal opinion, instrument or other document as Entity Name or its Financing Parties, if any, may reasonably request to satisfy the requirements of any Financing Party with respect to or in connection with any financing or leasing of the System. The Town also agrees, to the extent required by a Financing Party, if any, to provide Entity Name and/or a Financing Party with such information about the Town or the Premises as Entity Name, a Financing Party may reasonably request, provided that Entity Name shall be responsible for any expense incurred by Town in connection therewith, and provided further that the Town shall not be required to disclose any information deemed confidential under any Applicable Law.

9.2.4 Entity Name shall be responsible to reimburse the Town for all costs and expenses incurred in connection with the Town's obligations hereunder in connection with any System Financing including, without limitation by reason of specification, reasonable attorney, engineer and other consultant fees and disbursements.

### **9.3 Rights of Financing Parties.**

#### **9.3.1 Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

(a) The Financing Party, as owner of the System, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Entity Name, any and all rights and remedies of Entity Name under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the System;

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

(c) Upon the exercise of remedies, including any sale of the System by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Entity Name to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to the Town of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

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

#### **9.3.2 Right to Cure.**

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

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

## **ARTICLE 10 – DEFAULT AND REMEDIES**

### **10.1 Entity Name Events of Default and Town Remedies.**

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

(a) Entity Name fails to pay when due any sum of money becoming due to be paid to the Town under this Agreement, whether such sum be any installment of the rent reserved by this Agreement, any other amount treated as additional rent under this Agreement, or any other payment or reimbursement to the Town required by this Agreement, whether or not treated as additional rent under this Agreement, and such failure shall continue for a period of twenty (20) business days after written notice that such payment was not made when due;

(b) Entity Name fails to perform or observe any material term or condition of this Agreement, including any violation by Entity Name of Applicable Legal Requirements and/or any negligent or wrongful actions by Entity Name which cause damage to the membrane or other landfill feature which violates the NYS DEC closure plan with respect to the Landfill

and such failure is not cured within thirty (30) days after written notice of such failure to Entity Name, which period shall be extended for an additional period not to exceed thirty (30) days if such failure cannot be cured within such initial 30-day period provided Entity Name has commenced such cure within such period and is diligently prosecuting the same to completion;

- (c) Entity Name is Bankrupt;
- (d) Entity Name vacates or abandons the Premises;
- (e) Entity Name's interest in this Agreement devolves upon or passes to any Person, whether by operation or law or otherwise, except as expressly permitted hereunder.

10.1.2 **Town Remedies.** Upon a Entity Name Event of Default, the Town shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

- (a) the Town may terminate this Agreement;
- (b) Upon any termination of this Agreement, whether by lapse of time or otherwise, Entity Name shall surrender possession and vacate the Lease Area immediately and deliver possession thereof to the Town, and the Town may enter into and upon the Lease Area in such event and to repossess the Lease Area and to expel or remove Entity Name and any others who may be occupying or be within the Premises, and to remove Entity Name's signs and other evidence of tenancy and all other property of Entity Name therefrom, subject only to the provisions in § 6.6 on Removal of the System, without the Town being deemed in any manner guilty of trespass, eviction or forcible entry or detainer and without incurring any liability for any damage resulting therefrom, Entity Name waiving any right to claim damages for such re-entry and expulsion, and without relinquishing the Town's right to rent or any other right given to the Town under this Agreement or by operation of law. The Town may, but need not, enter into a new lease of the Lease Area or any part thereof for such rent and upon such terms as the Town, in its sole discretion, shall determine (including the right to re-lease the premises upon such terms as the Town desires, including without limitation a greater or lesser rent, or for a greater or lesser term than that remaining under this Agreement and the right to change the character or use made of the Premises). In connection with or in preparation for any re-leasing, the Town may, but shall not be required to, make repairs or alterations to the Premises to the extent the Town deems necessary or desirable, and Entity Name shall, upon demand, pay the cost thereof, together with Town's expenses of re-leasing;
- (c) Until such time as the Town shall elect to terminate the Agreement and shall thereupon be entitled to recover the amounts specified herein, Entity Name shall pay to the Town upon demand the full amount of all rent, including any amounts treated as additional rent under this Agreement and other sums reserved in this Agreement for the remaining Term, together with the costs of repairs or alterations and the Town's expenses of re-letting and the collection of the rent accruing therefrom (including attorney's fees and disbursements), as the same shall then be due or become due from time to time, less only such consideration as the Town may have received from any re-leasing of the Premises; and Entity Name agrees that the Town may file suits from time to time to recover any sums falling due under this section as they become due. Any proceeds of re-leasing by the Town in excess of the amount then owed by Entity Name to the Town from time to time shall be credited against Entity Name's future obligations under this Agreement (unless previously terminated) but shall not otherwise be refunded to Entity Name or inure to Entity Name's benefit;
- (d) the Town, without being under any obligation to do so and without waiving any Entity Name default, may remedy any state of facts constituting a default for the account of Entity Name, immediately upon notice in the case of emergency or if necessary to protect public health or safety, or to avoid forfeiture of a material right, or in any other case, but only provided Entity Name shall have failed to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such other default (provided Entity Name has commenced and is diligently prosecuting a cure), after the Town notifies Entity Name in writing of the Town's intention to remedy such other default. All costs reasonably incurred by the Town to remedy such default (including, without limitation, all reasonable and documented attorney's fees and disbursements), shall be at the expense of Entity Name;
- (e) Regardless of whether the Town exercises its rights pursuant to § of this Agreement, it shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the System until Entity Name demonstrates to the reasonable satisfaction of the Town that the events giving rise to the Event of Default have been cured, and that Entity Name has taken all reasonably necessary steps to ensure that such events shall not re-occur. The Town shall not be liable to Entity Name for any damages, losses or claims sustained by or made against Entity Name

as a result of the Town's exercise of possession and operational control of the System except to the extent such damages, losses or claims result from the negligence or willful misconduct of the Town. The Town shall, if taking operational control of the System, recognize the right of any subtenant of which the Town has actual knowledge if such subtenant is then in full compliance with all of its obligations under the applicable sublease of the Premises. The Town shall, however, be entitled to demand that any payments due to Entity Name from any such subtenant be made to Town until the Event of Default has been cured. No subtenant shall incur any liability to Entity Name by reason of compliance or non-compliance with any such demand;

(f) If, on account of any breach or default by Entity Name in Entity Name's obligations under the terms and conditions of this Agreement, it shall become necessary or appropriate for the Town to employ or consult with an attorney concerning, or to enforce or defend, any of Town's rights or remedies arising under this Agreement or to respond to or interpret an inquiry of Entity Name under the Agreement, Entity Name agrees to pay all of the Town's attorney's reasonable and documented fees and court costs so incurred. Entity Name expressly waives any right to trial by jury.

10.1.2 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Agreement or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any rent due to the Town under this Agreement or of any damages accruing to the Town by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

10.1.3 No act or thing done by the Town or any of its agents, officers or employees during the Term shall be deemed a termination of this Agreement or an acceptance of the surrender of the Premises, and no agreement to terminate this Agreement or accept a surrender of said Premises shall be valid, unless in writing signed by the Town.

## **10.2 Town Events of Default and Entity Name Remedies.**

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

(a) Any representation or warranty by the Town herein is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Entity Name identifying the defect;

(b) the Town obstructs installation of the System or fails to take any actions necessary for the interconnection of the System required hereunder;

(c) The Town fails to perform or observe any material term or condition of this Agreement including, without limitation, violation of any Applicable Legal Requirements which materially interferes with the operation of the System with respect to the Landfill or the Landfill Closure Plan and such failure is not cured within: (A) thirty (30) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment, after receipt of notice from Entity Name identifying the failure, unless the Town, prior to the expiration of either of said periods, contests any claimed failure on its part and thereafter continues to diligently do so;

(d) the Town is Bankrupt;

(e) the Town's interest in this Agreement devolves upon or passes to any Person, whether by operation or law or otherwise, except as expressly permitted hereunder.

10.2.2 **Entity Name Remedies.** Upon a Town Event of Default, Entity Name may exercise any one or more of the following remedies:

(a) terminate this Agreement; and/or

(b) pursue any other remedies available at law or in equity.

## ARTICLE 11 – CASUALTY; FORCE MAJEURE

- 11.1 If the Premises is damaged by fire or other casualty whatsoever so that such damage may reasonably be expected to materially and adversely disrupt the Entity Name's operations at the Premises for more than three hundred and sixty five (365) consecutive days, then the Entity Name may at any time following such fire or other casualty so long as such material and adverse disruption is continuing, terminate this Agreement upon sixty (60) days written notice to the Town.
- 11.2 In the event of the damage to or destruction of the Landfill and/or the System by fire, explosion, the elements or otherwise during the Term, or such partial damage or destruction thereof as to render the Lease Area and/or the System wholly untenable or unfit for occupancy, or should the Landfill be so badly damaged that the same cannot (notwithstanding the Town's exercise of due diligence) be repaired within the "Permitted Repair Period" or should the System be so badly injured that the same cannot (notwithstanding Entity Name's exercise of due diligence) be repaired within the "Permitted Repair Period" then and in any case the Term shall, at the option of either the Town or Entity Name, cease and become null and void effective as of the date of such damage or destruction (the "Casualty Date").
- 11.3 The "Permitted Repair Period" means one hundred eighty days (180) from the Casualty Date, provided, however, that Entity Name shall have the right at its option, at any time within sixty (60) days after the Casualty Date, to elect to extend the Permitted Repair Period for an additional one hundred eighty (180) days (in which case the Permitted Repair Period will be three hundred sixty (360) days).
- 11.4 Upon cessation of the Term as provided in § 11.3, this Agreement shall expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement, and the Parties shall make an appropriate adjustment, as of such Termination Date, with respect to payments due to the other under this Agreement. Nothing herein shall relieve Entity Name from its obligations under § 6.7 to restore the Lease Area.
- 11.5 Should the System be rendered, wholly or partially untenable and unfit for occupancy, or if the Landfill shall be damaged, but yet be repairable within the Permitted Repair Period:
- 11.5.1 The Town shall enter and repair the Landfill with reasonable speed, except as to damage caused and to the extent of any damage caused wholly or partly by Entity Name or any of its related entities, contractors, invitees or licensees.; and Entity Name shall enter and repair the System with reasonable speed;

### 11.6 Force Majeure Event.

- 11.6.1 Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement if and to the extent that any failure or delay in such Parties' performance of one or more of its obligations hereunder is attributable to the occurrence of a Force Majeure Event; provided that, the Party claiming a Force Majeure Event shall (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) promptly exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter.
- 11.6.2 Notwithstanding anything in this Agreement to the contrary, if the Town claims relief pursuant to a Force Majeure Event, the obligation of Entity Name to make any rent payment hereunder shall be suspended as of the date that the Force Majeure Event commenced until the Town notifies Entity Name that it has resumed performance of its obligations under the Agreement. If a Force Majeure Event shall have continued for a period of at least 180 consecutive days, then Entity Name may terminate this Agreement upon thirty (30) days' written notice to the Town. If at the end of such thirty (30) day period such Force Majeure Event shall still be continuing, this Agreement shall automatically terminate. Upon such termination, neither Party shall have any liability to the other, subject to any obligations which arose prior to such termination (including the payment of rent, additional rent or other payments adjusted to the date of termination on a pro rata basis) and subject to provisions which expressly survive termination.

## ARTICLE 12 – INSURANCE

### 12.1 Coverages.

Entity Name shall maintain the following insurance coverages in full force and effect throughout the Term:

12.1.1 **Entity Name's Public Liability and Property Damage Insurance.** Entity Name shall obtain and maintain in full force and effect for the entire Term and until all obligations of Entity Name hereunder have terminated, a comprehensive general liability insurance policy providing coverage for all claims for damages because of bodily injury, including death, and for claims for damages, other than to the work itself, to property which may arise out of or result from the Entity Name's operation under this Agreement, whether such operation be by itself or by anyone directly or indirectly employed by Entity Name, or any independent contractor, consultant, or any other person, firm or entity performing work or supplying materials on or to the System, or any other person, firm or entity under Entity Name's direction or control. The insurance shall name the Town as an additional insured and shall be written for not less than \$1,000,000 each person, \$2,000,000 each occurrence and \$3,000,000 aggregate for bodily injury, and \$500,000 each occurrence, \$1,000,000 aggregate for property damage, or such other amount or amounts as required by law, whichever is greater, and shall include contractual liability applicable to the Entity Name's obligations. Coverage must include the following: premises/operations, elevators and hoists, independent contractors, contractual liability assumed under this Agreement, products/completed operations, broad form property coverage, and personal injury;

12.1.2 **Workmen's Compensation Insurance.** Workmen's compensation insurance must be provided at the Entity Name's expense as required by law;

12.1.3 **Vehicle Liability Insurance.** Entity Name shall take out and maintain at its own expense vehicle liability insurance during the Term of this Agreement. The insurance shall name the Town as an additional insured and shall be written for not less than \$1,000,000 each person, \$2,000,000 each occurrence and \$3,000,000 aggregate for bodily injury and \$500,000 each occurrence \$1,000,000 aggregate for property damage, or such amount as required by law, whichever is greater, and shall include contractual liability applicable to the Entity Name's obligations. Coverage must include the following: Owned Vehicles, Leased Vehicles, Hired Vehicles, Non-Owned Vehicles;

12.1.4 **All Risk Property Coverage and Boiler and Machinery Coverage, or All Risk Builder's Risk Insurance.** The Entity Name shall take out and maintain, at its own expense, during construction, against damage to the System during the Term in an amount no less than the full replacement cost of the System, with commercial reasonable sub-limits and deductibles. Such insurance shall provide for a waiver of the underwriters' right to subrogation against the Town; and

12.1.5 **Excess Umbrella Liability Insurance.** The Entity Name shall take out and maintain, at its own expense, an Excess Umbrella Liability Insurance policy in an amount not less than five million dollars (\$5,000,000).

### 12.2 Certificates of Insurance.

The Entity Name shall, prior to entry upon the Premises for any purpose authorized hereby, deliver to the Town copies of all insurance policies and certificates of insurance naming the Town as an additional named insured and evidencing all of the foregoing coverages required by this ARTICLE 12, in form and substance satisfactory to the Town, and shall deliver to the Town new policies and certificates thereof so naming the Town for any insurance about to expire at least ten (10) days before such expirations. All such insurance policies shall contain an endorsement requiring thirty (30) days written notice to the Town prior to cancellation or change in coverage, scope or amount of any such policy or policies. Compliance by the Entity Name with the insurance requirement, however, shall not relieve any contractor or subcontractor from liability pursuant to ARTICLE 13.

## ARTICLE 13 – INDEMNIFICATION

### 13.1 Indemnification of Town.

The Entity Name shall indemnify, save harmless and defend the Town and its officers, employees, and agents (collectively, the “**Town Indemnified Parties**”) from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees and disbursements, that may be imposed upon or incurred by or asserted against any the Town Indemnified Party by reason of any of the following occurrences during the Term:

13.1.1 Any accident, injury, or damage to any person or property occurring in, on or about the Lease Area or elsewhere arising from or related to the installation, operation, repair, maintenance or replacement of the System caused by (i) the negligence or intentional misconduct of Entity Name or any of its agents, contractors, subcontractors, servants, employees, or invitees; or (ii) any failure on the part of Entity Name or any of its agents, contractors, subcontractors, subtenants, servants, employees, licensees or invitees in, on or about the Premises to fully comply with the Applicable Legal Requirements of any of the Entity Name’s other obligations hereunder.

13.1.2 In case any action or proceeding is brought against any Town Indemnified Party by reason of any such claim, the Town may, but shall not be obligated to, elect that Entity Name defend such action or proceeding with counsel approved by the Town. Upon written notice from Town of such election, Entity Name shall defend such action or proceeding at Entity Name’s expense to the reasonable satisfaction of the Town.

### 13.2 Indemnification of Entity Name.

To the extent permitted by Applicable Legal Requirements, the Town shall indemnify, save harmless and defend Entity Name and its officers, employees, agents, and any subtenants of the Leased Area and/or System (collectively, the “**Entity Name Indemnified Parties**”) from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees and disbursements, that may be imposed upon or incurred by or asserted against any Entity Name Indemnified Party by reason of any of the following occurrences during the Term:

13.2.1 Any accident, injury, or damage to any person or property occurring in, on or about the Lease Area, the Premises or the System of any part thereof which is caused by (i) the negligence or intentional misconduct of the Town or any of its agents, contractors, subcontractors, servants, employees, or invitees; or (iii) any failure on the part of the Town or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees in, on or about the Premises to fully comply with any of the Town’s obligations hereunder.

13.2.2 In case any action or proceeding is brought against any Entity Name Indemnified Party by reason of any such claim, such Entity Name Indemnified Party may, but shall not be obligated to, elect that the Town defend such action or proceeding with counsel approved by such Entity Name.

13.2.3 Indemnified Party. Upon written notice from Entity Name of such election, the Town shall defend such action or proceeding at Town’s expense to the reasonable satisfaction of Entity Name.

### 13.3 Survival.

The provisions of this ARTICLE 13 shall survive the expiration or earlier termination of the Agreement.

## ARTICLE 14 – DISPUTE RESOLUTION.

### 14.1 Binding Arbitration.

The Parties shall meet, confer and negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a “**Dispute**”). Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties conducted in White Plains, New York, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration under this ARTICLE 14. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party and the Parties shall select a single neutral arbitrator. If the Parties cannot agree on a single neutral

arbitrator within fifteen (15) days thereafter, then either Party may request that the American Arbitration Association select and appoint a neutral arbitrator who shall act as the sole arbitrator. The Parties may engage in discovery in connection with the arbitration as provided by the New York statutes and shall be entitled to submit expert testimony or written documentation in such arbitration proceeding. The decision of the arbitrator shall be final and binding upon the Parties and shall be set forth in a reasoned opinion, and award may be enforced thereon by either Party in a court of competent jurisdiction; provided, however, that the arbitrator shall not have the authority to award punitive, exemplary or analogous damages. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement at the Interest Rate. Each Party shall each bear the cost of preparing and presenting its own case, provided, however, that the Parties hereby agree that the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the dispute. The cost of the arbitration, including the fees and expenses of the arbitrator, shall initially be shared equally by Parties, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within one-hundred eighty (180) calendar days of the appointment of the arbitrator.

## **14.2 Exceptions to Arbitration Obligation.**

The obligation to arbitrate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute or (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties.

## **ARTICLE 15 – NOTICES**

### **15.1 Notice.**

Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when delivered.

### **15.2 Financing Party Notice.**

Any notice or other communication which the **Town** shall desire or is required to give to or serve upon a Financing Party in accordance with the terms of this Agreement shall be in writing and shall be served in accordance with the provisions of § 15.1, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by **Entity Name**, and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon **Town** shall be deemed to have been duly given or served if sent in accordance with the provisions of § 15.1 or at such other address as shall be designated by **Town** by notice in writing given to such Financing Party in accordance with the provisions of this ARTICLE 15.

### **15.3 Notice Addresses.**

**Town Address:**

**Entity Name Address:**

### **15.4 Address for Rent Payment.**

All rent payments under this Agreement shall be sent to the **Town's** address as provide in § 15.3 and shall be sent by regular first-class mail postage prepaid or as otherwise agreed by the Parties.

## ARTICLE 16 – MISCELLANEOUS

### 16.1 No Limitation of Regulatory Authority.

The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by the Town to issue or cause the issuance of any approval or permit, or to limit or otherwise affect the ability of the Town or any regulatory authority of the Town, to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

### 16.2 Subordination to Existing Leases, Easements and Rights of Way.

Entity Name acknowledges and understands that this Agreement is subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record, and all existing agreements of the Town with respect to the Premises, and the Town represents that there is no restriction by agreement or otherwise which restricts the Town's right to enter into this Agreement or which would impair, interfere with, or be superior to or have priority over the leasehold estate granted hereunder. The Town reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not cause shading of the System or otherwise unreasonably interfere with Entity Name's use of the Premises and the operation of the System; provided however the Town shall execute and shall cause any holder of an interest in the Premises senior to that of the Entity Name to execute, a form of a non-disturbance agreement reasonably acceptable to Entity Name, any Financing Party and any subtenant with which the Town has executed a recognition agreement.

### 16.3 Compliance.

16.3.1 Entity Name shall comply with all Applicable Legal Requirements relating to the System.

16.3.2 The Town shall comply with all Applicable Legal Requirements relating to the Landfill including without limitation, the Landfill Closure Plan, except as to matters resulting wholly or partly by, and to the extent caused by, Entity Name or any of its related entities, contractors, invitees or licensees.

16.3.3 Upon knowingly encountering any Hazardous Materials at the Premises, Entity Name will stop work in the affected area and duly notify the Town and, if required by Applicable Legal Requirements, any Governmental Authority with jurisdiction over the Premises

16.3.4 The Town is not responsible for any Hazardous Materials introduced to the Premises by Entity Name, nor is the Town required to remediate an affected area. Entity Name shall not, and shall not direct, suffer or permit any of its agents, contractors, subcontractors, employees, leases, or invitees at any time to manufacture or dispose of in or about the Premises any Hazardous Materials, including but not limited to flammables, explosives, and radioactive materials. Entity Name agrees to comply with all Applicable Legal Requirements pertaining to the use, storage and disposal of Hazardous Materials ("**Environmental Laws**") at the Premises. Entity Name shall indemnify, defend and hold harmless the Town and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Entity Name or Entity Name's agents, contractors, subcontractors, employees, lessees or invitees at the Premises. In addition, Entity Name shall reimburse the Town for any and all costs related to investigation, clean up and/or fines incurred by Town for non-compliance with Environmental Laws, which are caused by Entity Name or Entity Name's agents, contractors, subcontractors, employees, lessees or invitees at the Premises. Town reserves the right to inspect the Lease Area for purposes of verifying compliance with these Hazardous Materials requirements.

### 16.4 Limited Effect of Waiver.

The failure of either Party to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, 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.

## **16.5 Survival.**

In addition to the other provisions of this Agreement that shall survive any expiration or termination hereof in accordance with the explicit terms thereof, the provisions of ARTICLE 1 (Defined Terms), ARTICLE 14 (Dispute Resolution), ARTICLE 9 (Assignment and Subcontracting), ARTICLE 15 (Notices), ARTICLE 13 (Indemnification) and ARTICLE 16 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason; provided, that the survival of any particular provision or set of provisions shall be limited in duration if and to the extent such survival is explicitly limited herein or otherwise limited by Applicable Legal Requirements.

## **16.6 Severability.**

If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Legal Requirements and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

## **16.7 Non-recourse.**

The obligations of the Town and Entity Name under this Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of the Town's officers, employees, agents nor of Entity Name's trustees or board of directors and officers, as the case may be, or any beneficiaries, employees, agents or the like thereof. In no event shall the Town ever be liable to the Entity Name for any indirect or consequential damages under the provisions of this Agreement.

## **16.8 Representations and Warranties.**

Each Party hereby represents and warrants to the other, as of date hereof, that:

16.8.1 **Organization.** It is duly organized, validly existing and in good standing under the laws of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

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

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

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

(End Terms and Conditions.)

**SOLAR LEASE AGREEMENT**

**EXHIBIT A**

**PREMISES AND LEGAL DESCRIPTION**

That real property at Site Address, as described in the indenture recorded with Organization & Address and The Town, dated Date.

**SOLAR LEASE AGREEMENT**

**EXHIBIT B**

**LEASE AREA DESCRIPTION & DESIGN LAYOUT**

## **GUARANTY**

**The Town**, a New York municipality (hereinafter referred to as the "**Town**") and **ENTITY NAME, NY LLC**, (hereinafter referred to as the "**Lessee**") have entered into a Solar Lease Agreement dated Date (the "**Agreement**"). In order to induce the **Town** to enter into, execute and deliver the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Entity Name**, a New York limited liability company with an address of Address, as guarantor (the "**Guarantor**") hereby warrants, represents, guarantees and agrees with The **Town** as follows:

1. Guarantor has examined and approved and is fully familiar with all of the terms, covenants and conditions of the Agreement. Guarantor represents that Guarantor shall benefit from the making of the Agreement. Guarantor acknowledges that Guarantor executes and delivers this Guaranty on the understanding that Guarantor's doing so is a condition precedent to the **Town's** entering into the Agreement, as the **Town** is relying upon Guarantor's covenants herein in entering into the Agreement with Lessee.
2. Guarantor hereby guarantees and warrants to the **Town** the full, prompt and complete performance of all of the terms, covenants and conditions of the Agreement on the part of Lessee (collectively, the "**Obligations**"). Guarantor acknowledges that the intent of this Guaranty is that in the event Lessee does not in any way fully perform any of Lessee's Obligations in a timely manner under the Agreement, Guarantor shall perform any and all of such Obligations.
3. This guaranty is primary, irrevocable, absolute and unconditional and shall not be released, discharged, mitigated, impaired or affected by any amendments, modifications, extensions and/or renewals of the Agreement, or by any waiver or by failure of the **Town** to enforce any of the terms, covenants and conditions thereof or by any extension of time or indulgence extended by the **Town** to Lessee; and Guarantor hereby consents that the **Town** and Lessee may do any of the foregoing without notice to Guarantor during the term of this Guaranty.
4. Guarantor's liability under this Guaranty shall not be deemed to be waived, released, discharged, mitigated, impaired or affected by reason of the release or discharge of Lessee under the Agreement in any bankruptcy, reorganization or insolvency proceedings.
5. Guarantor's liability under this Guaranty shall not be waived, released, discharged, mitigated, impaired or affected in any respect by reason of any action or proceeding taken against Lessee under the Agreement, and in any such action or proceeding, the **Town** need not include Guarantor as a party thereto. The **Town** may pursue its remedies under this Guaranty concurrently with or independently of any such action or proceeding against Lessee under the Agreement.
6. The word "Lessee" as used in this Guaranty shall be deemed to and shall include any assignee to whom the Agreement shall have been assigned by Lessee in accordance and in compliance with the provisions thereof.
7. Anything to the contrary contained in the Agreement notwithstanding, Guarantor's liability under this Guaranty shall not be waived, released, discharged, mitigated, impaired or affected in any respect by reason of any assignment of the Agreement by the **Town** or Lessee, or by any subsequent assignee of the Agreement.
8. The **Town** may proceed directly against Guarantor under this Guaranty without being required to proceed against Lessee under the Agreement or to the exhaust any other rights or remedies it may have against the Lessee.
9. The Guaranty shall not be changed or terminated orally.
10. This Guaranty shall inure to the benefit of the **Town**, its successors and assigns, and shall be binding upon Guarantor, its successors and assigns.
11. The Guarantor shall pay the **Town's** reasonable attorneys' fees, costs, and other expenses incurred in the successful enforcement of this Guaranty against the Guarantor.
12. The **Town** may, upon written notice, assign this Guaranty to the successor to all of the **Town's** interest in the Agreement and no assignment or transfer of this Guaranty or the Agreement shall operate to extinguish or diminish the liability of the Guarantor hereunder.
13. It is in furtherance of the company purposes of the Guarantor that the Agreement with Lessee be entered into; and this Guaranty has been duly authorized by its members and by all parties whose consent is required for the execution hereof.

This Guaranty is made as of **date**

Entity Name, Guarantor

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

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

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

# 5. Model Law for Charter County Land Leases

The workable version of this document can be found at [nyserdera.ny.gov/SolarGuidebook](https://nyserdera.ny.gov/SolarGuidebook), under the Municipal Solar Procurement Toolkit tab.

## Local Law No. [#] of the year 20[##]

A local law authorizing the County of [ ], notwithstanding Section 215 of County Law of the State of New York, to enter into a lease of County-owned real property for a specific project for a term of up to 45 years.

### SECTION 1. Purpose

The County of [ ] seeks to enter into an agreement with [Developer], which agreement shall lease real property owned by the County of [ ] for an initial term of twenty-five years and four additional optional terms of five years each.

### SECTION 2. Legal Authority

New York State County Law Section 215(5) provides that, after determining that a property is no longer needed for public use, a County may sell the property or lease the property for a term not to exceed five years.

New York State Comptroller Opinion 91-27 opines that, pursuant to County Law Section 2(b), a County that has adopted an alternative form of county government pursuant to Article IX, Section 2 of the New York State Constitution (i.e., a Charter County), may enter into leases for a term in excess of five years if the county authorizes such leases by local law.

New York State Municipal Home Rule Law Section 24 provides that any local law that changes a provision of law relating to leasing of real property is subject to referendum on petition (permissive referendum).

### SECTION 3. Applicability

The County of [ ], which is a Charter County, is authorized, notwithstanding Section 215 of the County Law of the State of New York, which is hereby superseded, to enter into a lease of County-owned real property for a specific project for a term of up to [45] years.

This Local Law is applicable to the specific project with [Developer].

### SECTION 4. Effective Date

Notice of the adoption of this local law subject to permissive referendum shall be published in the official newspaper of the County.

This Local Law shall take effect at the end of the permissive referendum period upon filing in the Office of the Secretary of State, and if a permissive referendum is held, upon approval at the permissive referendum upon filing in the Office of the Secretary of State.

## Questions?

If you have any questions about the municipal solar procurement toolkit, please email questions to [cleanenergyhelp@nyserdera.ny.gov](mailto:cleanenergyhelp@nyserdera.ny.gov) or request free technical assistance at [nyserdera.ny.gov/SolarGuidebook](https://nyserdera.ny.gov/SolarGuidebook). The NYSERDA team looks forward to partnering with communities across the state to help them meet their solar energy goals.