



**MONTGOMERY COUNTY**

**REQUEST FOR ENERGY PROPOSALS**

**PURCHASE OF ELECTRICITY FROM SOLAR  
PHOTOVOLTAIC SYSTEMS HOSTED ON  
MONTGOMERY COUNTY FACILITIES**

**February 9, 2015**

**RFEP # OES 01-15**

## Local Small Business Reserve Program (LSBRP) Notice

RFEP # OES 01-15

### PURCHASE OF ELECTRICITY FROM SOLAR PHOTOVOLTAIC SYSTEMS HOSTED ON MONTGOMERY COUNTY FACILITIES

This solicitation is reserved for only self-certified local small businesses timely registered with the County's LSBRP. This solicitation thus comes under County Code, sections 11B-17A; 11B-65; 11B-70 and Executive Regulation 21-05AM. These documents can be accessed through the LSBRP web site at ([www.montgomerycountymd.gov/LSBRP](http://www.montgomerycountymd.gov/LSBRP)).

LSBRP criteria are based on a firm's location, ownership status, and the level of pre-existing contracts with the County. Submitting a bid/proposal constitutes willfully stating your firm is a self-certified Local Small Business. Therefore, if you wish to submit a bid/proposal for this solicitation adhering to the LSBRP, you must:

1. Self-certify as a LSBRP firm prior to the bid's/proposal's due date. If your LSBRP self-certification is not registered prior to the bid's/proposal's due date, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from consideration. Go to the LSBRP web site ([www.montgomerycountymd.gov/LSBRP](http://www.montgomerycountymd.gov/LSBRP)) and follow the instructions under "Register."
2. After the IFB opens or the RFP closes and upon notification by the County, you must provide within three (3) business days the LSBRP documentation of:
  - all of its business location(s) (if more than one),
  - number of employees by location
  - annual gross revenue of the business for the past three fiscal years.

(The preferred documents are copy of a lease, Maryland Unemployment Insurance Contribution Report (summary or quarterly), and Financial Statement/Tax Returns. At the discretion of the LSBRP, an alternative type of documents might be accepted.)

If, after receipt of these documents, the LSBRP finds that your firm does not meet the LSBRP requirements, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from further consideration. For questions, contact the LSBRP (240-777-9913).

## SECTION I NOTICES AND CONTACTS

| <b>Event</b>                          | <b>Date</b>   |
|---------------------------------------|---|
| <b>RFEP Issued</b>                    | February 9, 2015  |
| <b>Proposal Conference (Optional)</b> | February 17, 2015<br>1:00 to 2:30 PM<br><br>Executive Office Building<br>101 Monroe Ave, 9 <sup>th</sup> Floor<br>Rockville, MD 20850 |
| <b>Site Tours</b>                     | February 23 & 24, 2015<br>( <i>Schedule to be Published</i> )   |
| <b>Deadline for Questions</b>         | March 6, 2015   |
| <b>Proposals Due</b>                  | <b>March 27, 2015 3:00 P.M</b>  |
| <b>Interviews</b>                     | <b>April 11, 2015</b>   |
| <b>Anticipated Award Date</b>         | <b>April 20, 2015</b>   |

A pre-proposal conference will be held. RSVP at <https://eventbrite.com/event/15691741421>. The event link will also be posted on the OES Business Opportunities Page as part of the FAQ. <http://www.montgomerycountymd.gov/DGS-OES/BusinessOpportunities.html>

Contact:

Michael Yambrach  
Capital Projects  
Office of Energy and Sustainability  
Department of General Services  
Montgomery County, Maryland 20850  
240-777-6091  
Michael.yambrach@montgomerycountymd.gov

Email inquiries are strongly preferred and will receive the quickest service.

## SECTION II BACKGROUND AND DEFINITIONS

### 1. GENERAL BACKGROUND

Montgomery County Government is committed to creating a more vibrant, healthy, prosperous and sustainable community. The County's 2009 Climate Protection Plan and 2010 Green Economy Plan both identify deployment of clean energy systems as a priority of the County's climate and energy goals. Montgomery County is launching an effort to identify and install solar photovoltaic systems in and around Montgomery County facilities.

The County is specifically seeking a third party to install, own, operate and finance solar projects hosted on select County facilities. The Montgomery County Department of General Services (DGS) is custodian of County buildings and sites and is responsible for the ownership, operation, maintenance, management, utilities and leasing of County facilities. Collectively, the Department's portfolio includes 271 owned facilities encompassing over 5,000,000 square feet (sq

ft.) of gross floor area (GFA). In addition, DGS is responsible for extensive grounds and properties that can be used for solar deployment where economical and consistent with the County's development plans.

The Solar Provider, in their response to this RFEP should be prepared to provide complete turn-key photovoltaic solar project including financing and selling the electricity generated to the County. The County respects economies of scale and has an interest in bundling as many projects into large awards but also may consider multiple awards where multiple vendors are in the County's best interests.

## 2. DEFINITIONS

For purposes of this solicitation and any resulting contracts the following definitions apply:

### A. General Definitions

**Clean Energy:** The "clean renewable energy" to be provided under this RFEP is intended to be in the form of Renewable Energy Certificates (REC), and is separate from any other contract for power supply.

**Clean Energy Resources:** Electricity generation resources meeting the definition of a Tier 1 Resource under the Maryland Renewable Portfolio Standard, and meeting the standards of Green Power as defined by the U.S. Environmental Agency's Green Power Partnership. For purposes of this solicitation this means zero-emissions renewable energy resources.

**Contractor:** Same as Solar Provider

**Environmental Attributes:** The environmental characteristics intrinsic to the generation of one megawatt hour of electricity, including emissions resulting from generation, any credits or allowances that are assigned or allocated to the source of generation by any federal or state body (such as carbon credits and/or *Allowances* of nitrogen oxides or other criteria pollutants provided under a set-aside by a state within a Cap & Trade region).

**Facility:** Any building, parking lot, property specified by the County.

**Generation Attributes:** The characteristics associated with the generation of one megawatt hour (MWh) of electricity including fuel type, location, and date of electricity generation. For purposes of this RFEP the geographic criteria for eligible RECs will be those associated with electricity generated within the United States. As part of the reporting requirements, the Solar Provider must verify the eGRID sub-region within which generation occurred.

**Gross Floor Area (GFA):** The total floor area calculated by the County across a building's footprint. Not to be confused with roof area.

**Megawatt Bonus:** Price reduction by vendor, expressed as \$/kWh delivered, if awarded over 1 MW of identified capacity.

**Photovoltaic Solar System:** A system of solar panels and ancillary equipment that converts sunlight to usable electricity. For the purposes of this procurement, electricity delivered to the County to support operations. The output at the County's building interface is alternating current (AC), unless otherwise specified.

**Premium Item:** An energy efficient technology, product or service installed or provided in conjunction with a solar system and ancillary in function.

**PJM:** The regional grid operator.

**Renewable Energy Certificate (REC):** The renewable attributes of one megawatt hour (MWh) of electricity generated using clean renewable energy resources. Attributes include *generation attributes* and *environmental attributes*. For purposes of this solicitation, RECs shall come from zero-emissions resources.

**REC Delivery:** This means the delivery of the renewable energy certificate to the participants, including the provision of all necessary documentation verifying the creation and retirement of the REC. This will include (to the satisfaction of the Participants) evidence of registry of the REC, generation and environmental attributes, and retirement within a regional tracking system. Specific delivery requirements are described in the Scope of Services.

**REC Vintage:** The year during which the electricity associated with the REC was generated (including a period up to six month prior to the calendar year and up to three months after the calendar year) as meets the annual purchasing requirements of the US Environmental Protection Agency's (EPA) *Green Power Partnership*. For example, for purposes of this procurement, a 2014 "vintage" REC may be associated with power generated any time between July 1, 2013 and March 31, 2014.

**Renewable Energy Request for Proposals:** this proposal is covered under COMCOR 11B.04.01 Electricity Procurement Regulations and being issued directly by Department of General Services (DGS) and administered by the Office of Energy and Sustainability (OES).

**Solar Provider:** A private or non-profit organization that installs, owns, operates and finances a solar system on a Montgomery County owned facility while selling the electricity to the County government or the County's delegate.

### **SECTION III PROCESS/METHOD OF AWARD/EVALUATION CRITERIA**

#### **1. PROCESS**

##### **A. Process**

The RFEP will be evaluated in two stages. In the first stage, the County will review Solar Provider qualifications and price proposals. In the second stage, the County will conduct interviews with project teams that score above 70 as determined by the Selection Committee.

The County reserves and may exercise one or more of the following rights and options in its sole discretion with respect to this RFEP to:

- (a) reject any or all proposals;
- (b) supplement, amend or otherwise modify this RFEP;
- (c) cancel this RFEP with or without the substitution of another RFEP;
- (d) issue additional or subsequent RFEPs;
- (e) conduct investigations with respect to the qualifications of any provider;
- (f) change any time for performance set forth in this RFEP; and

(g) waive any non-material deviation from this RFEP.

**B. Qualified Selection Committee (QSC)**

The Selection Committee will consist of representatives of Participants selected by the DGS who will evaluate all proposals in accordance with evaluation criteria set forth in this RFEP. During evaluation of the proposals, the Selection Committee may contact providers for written clarification or additional information at the Department's discretion.

**C. Notes and Instructions to Qualified Solar Providers Regarding Pricing**

Solar Providers are prohibited from making any changes to the format or formulas within the pricing spreadsheet, and are to enter their proposal data in the fields specified only. Any alterations to the proposal format will be grounds for rejecting the price proposal.

## 2. QUALIFICATIONS AND PRICING

### A. Evaluation Criteria

The Solar Provider will submit to the County a written proposal and pricing sheet as specified in Attachment A and B. The submission shall be reviewed according to the evaluation criteria in Figure 1.

Figure 1. Evaluation Criteria

| Area                 | Details  | Points |
|----------------------|--|--------|
| <b>Qualification</b> | <ul style="list-style-type: none"> <li>- Company's experience installing photovoltaic systems on Public facilities (up to 10 points)</li> <li>- Experience with turn-key power purchase agreements (up to 8points)</li> <li>- Financing: Demonstrated ability and past experience in financing solar projects (up to 8 points)</li> <li>- Experience of project key staff that will be assigned to the proposed project (up to 5 points)</li> <li>- Experience in Local Permitting, Land use studies and Environmental Impact Studies (up to 3 points)</li> <li>- Experience in educating stakeholders on environmental impacts of this system (up to 2 points)</li> <li>- Certification under the Montgomery County Green Business Certification Program if applicable <a href="http://mcgreenbiz.org/">http://mcgreenbiz.org/</a>. Organizations that are not eligible or have not chosen to participate in the program may provide a narrative outlining actions they have taken to green their business (e.g., operations, supply chain, etc.) (up to 4 points)</li> </ul> | 40     |
| <b>-Price</b>        | <ul style="list-style-type: none"> <li>- Price per kilo-watt hour (kWh) of total proposed project. (up to 50 points)</li> </ul>  | 50     |
| <b>Innovation</b>    | <ul style="list-style-type: none"> <li>- Novel approaches, advanced photovoltaic designs, (4)</li> <li>- Availability and pricing of premium items (4)</li> <li>- Design, engineering and other approaches to reduce the carbon footprint of proposed projects. (2)</li> </ul>   | 10     |
| <b>Total</b>         |  | 100    |

### 3. Oral Proposals and Interviews

The County will interview project teams who score higher than 70 points on their written and pricing proposal. If selected for an interview, the project team will deliver a concise 20 minute PowerPoint presentation to the QSC, with an additional 10 minutes allocated for questions. The criteria for written proposals are specified in Figure 2.

Figure 2. Oral Presentation Criteria and Scoring

| Area   | Details   | Points |
|--|---|--------|
| <b>Clarity of Presentation</b>                 | Ability to deliver a concise and professional presentation.   | 10     |
| <b>Process</b>                                 | Description of Construction process   | 10     |
| <b>Clarity of Responses to Questions</b>       | Ability to provide accurate and concise responses to QSC questions.   | 10     |
| <b>Presentation Distribution by Staff Type</b> | Coordination of presentation across professionals who will be working with financing, construction, project management etc. | 10     |
| <b>Total</b>                                   |   | 40     |

## SECTION IV SCOPE OF SERVICES

### 1. Solar Provider Responsibilities

#### SCOPE OF SERVICES

Seller will be responsible for designing, financing, installing, owning, operating, and maintaining turn-key Solar Photovoltaic Systems on County facilities. This includes, but is not limited to, all necessary design, permitting, operational and other functions necessary to operate the System over the service life specified in any SPPA executed under this Contract, as well as decommissioning of the System at the end of the service life.

##### A. Pre-Project

For each Project, Seller to provide a plan and schedule for execution of the following, subject to Contract Administrator's approval:

1. Provide all initial and final engineering drawings and plans to County's reasonable satisfaction. All plans for a System to be built pursuant to an SPPA must be approved in writing by the Contract Administrator before commencement of such System, provided that County shall respond in writing to any submission of drawings or plans by Seller within fifteen (15) days of County's receipt thereof by either accepting such drawings or plans or describing to Seller in detail the County's reasons for rejecting such drawings or plans.
2. Meet with internal and external stakeholders to address specific concerns regarding solar integration into a site or community. This may include, for example, departments that occupy Facilities as well as the general public.
3. At County's request, provide a project plan that outlines the logistics for installing the



- System at the Facility, specifically addressing County and stakeholder concerns.
4. At County's request, provide architectural renderings of Systems. Renderings should be sufficient to visualize the ground level view, footprint, and general aesthetics of the site. The Parties acknowledge and agree that aerial layouts and photographs of previous systems installed by Seller, such as those provided by Seller in its original response to the County's RFP, will be used for purposes of this paragraph; *provided* that, to the extent that further renderings are required for permitting or stakeholder approvals, Seller shall cooperate with the County to provide such renderings.
  5. Prepare Pre and Post informational signage at a project site to 1) inform tenants and citizens of the size, scope and timing of their specific project, and 2) upon completion of the project, provide signage and monitors as to the start-date and environmental attributes of this specific project.
  6. Conduct any interconnection studies required by the regional grid operator, utilities and others necessary to execute the Project.
  7. Obtain interconnection agreements with the applicable utilities or PJM.
  8. Obtain all necessary federal, state, local, and other permits necessary to complete the System; Seller will be responsible for payment of all permit fees.
  9. Obtain all necessary zoning and land use approvals, including Environmental Impact Studies where needed.
  10. Provide a construction schedule outlining dates for the design, planning, permitting, execution and commissioning of the Project.
  11. Provide monthly updates on planning to County; County may request more frequent updates as needed and Contractor must comply with such requests.
  12. At County's request, provide information and certifications of design build professionals involved in the Project.

#### B. Construction and Implementation

1. Build the Solar Photovoltaic System as planned and in accordance with the plans and drawings approved by the County pursuant to Section A.1 above.
2. Project site preparation including all repairs and site preparations necessary to install the System;
3. Coordinate, at County's direction, with tenants and others to minimize impacts to Facility operations.
4. Maintain a safe working environment consistent with federal, state and local laws and regulations.
5. Ensure the integrity of the roof membrane or surface, including negotiating with roof warranty providers where applicable. This includes limiting roof penetrations, unless otherwise specified by County.
6. Install the System, to the satisfaction of the County, including all photovoltaic equipment, inverters, wiring, and ancillary equipment necessary for System operations.
7. No work done on this Project shall void an existing roof warranty or designer-stipulated roof loading limitation. If commercially possible, the roofing firm holding the existing warranty will be involved in the Project sufficiently to maintain validity of warranty. Upon County's request, Seller shall provide copies of any structural analysis prior to commencement of installation of any System.
8. LED, or equivalent energy efficient lighting under canopy sufficient to meet IESNA recommended lighting levels.
9. Any temporary interruption of electric power in buildings, either partial or for the

- entire service, must be performed in coordination with Facility operational schedules so as not to impede Facility function, or coordinated with County staff.
10. For the finished installation, special attention shall be paid to minimizing the risk of exposed fasteners, sharp edges, and potential future damage to the modules or support structure. Corrosion resistance and durability of the mechanical hardware shall be provided through the use of stainless steel fasteners and an aluminum support structure. The use of ferrous metals, wood, or plastic components is not allowed unless explicitly approved by the County. Galvanic corrosion shall be avoided. The County acknowledges and agrees that the racking equipment specifications provided in Seller's response to the County's RFP are acceptable and hereby waives this requirement to the extent that Seller utilizes racking equipment that is substantially comparable thereto. Vendor shall promptly notify the County of any such change in racking equipment prior to commencement of construction at any Project.
  11. If requested by County as a Premium Item pursuant to Section H below, Seller shall, for a mutually agreed upon additional fee, coordinate with County to provide rough-outs (e.g., conduit, baseplates) and other elements to facilitate later installation of electric vehicle charging infrastructure for any System where canopy over parking is installed.
  12. Provide light emitting diode or equivalent lighting under canopy solar where needed to comply with lighting design specified by the Illuminating Engineering Society of North America (IESNA) or other accepted standard approved by the Contract Administrator.
  13. Ensure that the Project and System comply with County laws and regulations related to environmental sustainability. This may include ensuring SPPAs executed after December 15, 2014 comply with an upcoming County Renewable Energy Plan for operations; see County Council legislation 8-14 for additional information.
  14. At Project and System completion, provide County an electronic version of a commissioning manual outlining the System design, components, cutsheets of components, operating characteristics, electrical diagrams, and other relevant data.
  15. Commission and activate the System and ensure power is delivered to the County on the Commercial Operation Date.

#### C. Maintenance and Ongoing Operations

1. Maintain the System for its service life, including any washing, upgrades, and/or repairs necessary to ensure the commercially reasonable continuous delivery of electricity.
2. Accept responsibility for repairs, moisture, infiltration, and/or damage caused by the photovoltaic System and any ancillary equipment in accordance with a warranty that is provided with each SPPA.
3. Provide revenue grade metering to establish the amount of electricity delivered to County, and for billing purposes.
4. Provide ongoing monitoring and a data output via web, suitable for display on County websites or LCD monitors in the building.
5. Supply all necessary internet connections for monitoring of the System, unless waived by County.
6. Use commercially reasonable efforts to ensure all warranties are transferrable to County or other Party, where ownership is transferred.

#### D. Operational Training

Seller shall provide training to County's operational staff. Such training shall include troubleshooting to help ensure that issues with the System are promptly identified and reported.

#### E. Financing

1. Arrange and secure financing for the term of the SPPA.
2. Aggregate all federal, state, local and utility incentives and incorporate these into the cost per kWh of power delivered.
3. Aggregate and market all Environmental Attributes (as defined in the SPPA) and RECs generated by the System to reduce the price per kWh realized by County. County may request that Seller offer to sell to County alternative RECs from less expensive national sources to maintain the integrity of carbon reduction claims from the Project.
4. Items included in Attachment J – PPA, (Attachment 6, of the PPA) must be financed and billed as part of the per kWh PPA price.
5. Montgomery County reserves the right to purchase SREC's at any time after five (5) years
6. Secure financing within 60 days of contract signing. Should financing not be secured within the time frame, the County reserves to contract with the next highest bidder.

#### F. Electricity Generation and Sales

Provide County all electricity generated by the System, unless explicitly waived by County. In any case where a System is designed to exceed the Facility's annual demand, Seller must assist the County in applying the generation to another County facility via Maryland's virtual net metering law ([Code of Maryland Regulations 20.50.10](#)). For projects not covered under Maryland Net Metering, the Seller will coordinate with the County to transfer title of electricity to any wholesale accounts, existing load service entities or PJM subaccounts.

#### G. End of Service Life

Seller must execute the following at the end of the term of an SPPA:

Remove the System from the Facility in accordance with Section 10 of the SPPA. Seller may offer County an opportunity to purchase the System, in accordance with Section 15 of the SPPA. Upon removal of the System, Seller must restore any areas of the Facility that Seller modified to accommodate the System to pre-project condition, excluding ordinary wear and tear, unless explicitly waived by County.

#### H. Ancillary Items

County is interested in other Ancillary Items directly related to the System's design, operation, footprint or relationship with surrounding facilities. As part of any SPPA and in accordance with Attachment J – PPA, (Attachment 6 of the PPA). subject to County's approval. The costs of ancillary items, where applicable, must be amortized across the contract term and expressed as an "adder" in \$/kWh, including negative numbers (discounts) where the premium item's cost is offset by incentives. Seller can propose the following Ancillary Items,

- Battery storage for selected building functions – may leverage demand response and other incentives from the regional grid operator.
- Electric vehicle charging stations, when coupled with solar photovoltaic canopy
- Roofing material replacement/major repairs – may include vegetative roofing in concert with the solar photovoltaic install

- 40" or greater HD monitor and necessary installation/networking at each site to display energy generation from the system
- Alternative renewable energy supply in the form of Renewable Energy Certificates
- Other items related to the Project or impacted sections of the Facility

Each item, where applicable, must be financed and billed concurrently with the SPPA and payments must be co-terminus with the end of the SPPA unless mutually agreed by the Parties. Cost must be specified in Attachment J - PPA, (Attachment 6, of the PPA) for each Ancillary Item specified for a given Facility.

#### I. Site Management Provisions

Environmental Site Design: Each site design will incorporate environmental site design (ESD) features that comply with applicable national, state and local laws as well as standards established by the County by applicable law or regulation. Seller will coordinate in good faith with the County to mitigate any stakeholder concerns, including Departments occupying or using the facility adjoining property owners or individuals with a reasonable interest in the disposition of the facility, provided that such mitigation does not increase the cost of the project to Seller or impact the construction schedule. This includes but is not limited to compliance with the County's Municipal Separate Storm Sewer System permit, minimizing impervious surfaces, no or limited impact on trees, preservation of topsoil, wildlife habitat enhancements, mitigating impacts to neighboring properties etc. These features will be clearly defined in the engineering documents and approved by the County before construction can proceed. The scope of these will be included in the design documents to be approved by the County.

Habitat Enhancement as Ancillary Item: Upon agreement by the Parties under Attachment J - PPA, (Attachment 6, of the PPA), including the additional fee applicable thereto, Seller shall incorporate appropriate habitat enhancements within the footprint of the System and adjacent areas. This may include pollinator-friendly native ground cover for Ground Mount Systems or other such natural covering. County must approve the plan and any consultants or contractors used by Seller before Seller proceeds.

#### J. Coordination

In cases where multiple initiatives are underway at a specific Facility (e.g., micro grid, energy performance contracting, distributed generation, re-roofing projects) Seller will be required to coordinate with County staff and any County contractors involved. In the case of conflicts or coordination issues between contracts, County's decisions are final, provided that the County will use commercially reasonable efforts to limit the disruption to Seller's installation operations.

#### K. Performance Guarantee

Supplier shall provide a system Performance Guarantee for each site. This Performance Guarantee will provide the number of kWh to be generated for each site

#### 2. County Requirements:

The County will be responsible for the following:

- Providing necessary space to host the system, as identified in design documents approved by the County,
- Providing access to the site for all agreed upon installation and maintenance,
- Providing a notice to proceed in a timely manner,
- Purchasing the electricity for the term and value identified in the contract and pricing model. Note this term may vary depending on the facility.
- In the case of termination for convenience. The County will either relocate the system to an alternative facility at the County's expense, or purchase the system at the buy-out price specified in the pricing model.

## **SECTION V. PROJECTS AND SITES**

Montgomery County has identified 12 sites, which it is making available for the Solar Provider to price as part of this solicitation. Solar Provider may offer a proposal to any system included on this list, and is encouraged to offer proposals for each facility. The Solar Provider does not need to propose for each site, however sites that are bid by one provider and not another may be bundled based on provided pricing.

### *A. Phase I Projects:*

| Site # | FACILITY_NAME                   | Use             | CALCULATED GFA | ADDRESS   | Electric Utility Tie in  | Ground mount (GM), Parking Lot (PL), Roof (RF) | Estimated Year Roof completed | Roof System Type         | Roof Warranty | Roof Manufacturer | Roof Contractor               | GALE Comments          |
|--------|---------------------------------|-----------------|----------------|---|--------------------------|--|-------------------------------|--------------------------|---------------|-------------------|-------------------------------|------------------------|
| 1      | Fire Station #15, Burtonsville  | Fire and Rescue | 17845          | 13900 Old Columbia Pike, Burtonsville, MD         | Baltimore Gas & Electric | RF   | 2000                          | Metal Panels             | 20 year w     | Unknown           | Unknown                       |                        |
| 2      | Fire Station #2 Takoma Park     | Fire and Rescue |                | 7201 Carroll Ave, Takoma MD                       |                          | RF   |                               |                          |               |                   |                               |                        |
| 3      | Public Training Center - Ground | Police          |                | 8751 Snouffer School Rd, Gaithersburg, MD         | PEPCO                    | Ground   |                               |                          |               |                   |                               |                        |
| 4      | Damascus Library                | Public Library  | 15725          | 9701 Main St. Damascus MD 20872                   | Potomac Edison           | RF   | 1995                          | metal panels             | Unknown       | Unknown           | Unknown                       | Original to building   |
|        | Damascus Day Care Center        | HHS             |                | 9701 Main St. Damascus MD 20872                   | Potomac Edison           | RF   | 1995                          | metal panels             | Unknown       | Unknown           | Unknown                       | Original to building   |
|        | Damascus Senior Ctr.            | Recreation      | 10350          | 9701 Main St. Damascus MD 20872                   | Potomac Edison           | RF   | 1995                          | metal panels             | Unknown       | Unknown           | Unknown                       | Original to building   |
| 5      | Clara Barton E.S.               | Recreation      | 23205          | 7425 MacArthur Blvd, Cabin John, MD 20818         | PEPCO                    | RF   | 2010                          | 4-ply BUR with Cap sheet | 20 Year NI    | Firestone Blc     | Simpson of Md                 |                        |
| 6      | East County Rec. Center         | Recreation      | 27700          | 3400 Gateshead Manor Way, Silver Spring. MD 20904 | Baltimore Gas & Electric | RF   | 2001                          | metal panels             | Unknown       | Unknown           | Unknown                       |                        |
| 7      | East County Rec. Center         | Recreation      |                | 3400 Gateshead Manor Way, Silver Spring. MD 20904 |                          | PL   |                               |                          |               |                   |                               |                        |
| 8      | Scotland Community Ctr.         | Recreation      | Pending        | 7700 Scotland Drive, Potomac, MD                  | PEPCO                    | RF   | 2014                          | metal panels             | 20 year w     | Merchant an       | RCS Construction Services LLC |                        |
| 9      | White Oak Rec Center            | Recreation      |                | 1700 April Lane, Silver spring, MD                |                          | RF   |                               |                          |               |                   |                               |                        |
| 10     | Colesville Depot                | Transportation  | 8940           | 14335 Cape May Road, Colesville, MD               | PEPCO                    | RF   | 2015                          | PVC single - ply         | 20 Year NI    | Fiber Tite        | YSK Roofing                   | Project just beginning |
| 11     | Colesville Depot Salt Storage   | Transportation  | Pending        | 14335 Cape May Road, Colesville, MD               | PEPCO                    | RF   |                               |                          |               |                   |                               |                        |
| 12     | Executive Office Building       |                 | 233496         | 101 Monroe St. Rockville, MD 20850                | PEPCO                    | RF   | 2006                          | 2-ply modified bitumen   | 20 Year NI    | Unknown           | Unknown                       |                        |

*B. Phase II Projects:*

In addition to the projects listed above, the County anticipates that additional County sites may be added. The County will work with the Solar Provider to screen appropriate facilities. The County anticipates the identification of additional projects could occur simultaneously with the implementation of Phase I projects, but may add or adjust as needed.

**SECTION VI CONTRACT TERMS AND POWER PURCHASE AGREEMENTS (PPA's)**

A. Power Purchase Agreement: The County's intent is to enter into a framework agreement with the selected Offers' that defines the overall scope, working terms and other provisions. For each individual site, the County anticipates entering into an individual power purchase agreement and a site license agreement. See Attachment J for sample PPA.

B. Payment: Invoices will be paid net 30 days after the beginning of metered electricity production by the system.

## **SECTION VII. MINORITY – FEMALE – DISABLED OWNED BUSINESS PARTICIPATION**

The prime contractor will be required to set a goal of at least 25% participation by qualified MFP firms of the total contract value using county registered and certified minority businesses. It is County policy that good faith efforts are to be exercised in identifying minority firms in the purchase of goods/services or subcontracting in support of the contract for any available purchasing opportunities. See Attachment K, and this link for more information.

<http://www.montgomerycountymd.gov/DGS/OBRC/MFD.html>

## **SECTION VIII INSTRUCTIONS**

### **1. DETERMINATION OF RESPONSIBILITY**

Upon request by the County or the Selection Committee, the provider will affirmatively demonstrate its responsibility in connection with this RFEP. The County reserves the right to consider as non-responsible a provider that has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the provider to be unable or unlikely to perform the requirements of the contract.

At any time, the County may request a provider to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of a provider to furnish requested information may constitute grounds for a finding of non-responsibility of the provider. The County may deny the award, renewal, or assignment of a contract to or for any provider that is in default of payment of any money due the County.

Factors that may be considered in connection with a determination of responsibility include:

- 1) The ability, capacity, organization, facilities, and skill of the provider to perform the contract or provide the goods or services required;
- 2) The ability of the provider to perform the contract or provide the services within the time specified without delay, interruption or interference;
- 3) The integrity, reputation, and experience of the provider, and its key personnel;
- 4) The quality of performance of previous contracts or services for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility;
- 5) The sufficiency of financial resources of the provider to perform the contract or provide the services;
- 6) The certification of an appropriate accounting system, if required by the contract type; and
- 7) Past debarment by the County or other entity.

The County may require providers to furnish satisfactory evidence that they are qualified and regularly engaged in performing the services for which they are submitting a proposal and maintain a regularly established place of business. An authorized representative of the County may visit any provider's place of business during normal business hours to determine ability, capacity, reliability, financial stability and other factors necessary to perform the contract. If so



requested, a provider must submit information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying the Participants' needs and requirements for a specific contract.

## **2. LATE PROPOSALS**

Responses to each step of this RFEP received after the date and time specified are considered late, and may not, under any circumstances, be considered for any award resulting from this RFEP.

## **3. MONTGOMERY COUNTY CODE AND ELECTRICITY PROCUREMENT REGULATIONS**

The Montgomery County Code and the Montgomery County COMCOR 11B.04.01 Electricity Procurement Regulations apply to this RFEP.

## **4. PROPOSAL WITHDRAWAL/MODIFICATION**

A provider may withdraw or modify a Stage 1 proposal upon receipt by the County of a written request received from the provider before the time specified for the due date and time. However, once a proposal price has been given, it must be held until the date specified at 3:00 PM EST.

## **5. PROPRIETRY & CONFIDENTIAL INFORMATION**

Providers are notified that the County and Participants have unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that the County and Participants have the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the providers in response to this or any solicitation issued by the County. However, the County will exempt information that is confidential commercial or financial information of a Provider, as defined by the Maryland Public Information Act, State Government Article, Section 10-617, from disclosure. It is the responsibility of the provider to clearly identify each part of its proposal that is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with one-inch bold face letters stating the words "confidential" or "proprietary." The provider agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for the County keeping the information confidential, the provider must agree to defend and hold the County harmless if any information is not released at the request of the provider.

## **6. PUBLIC POSTING**

The County will publicly post a list of the Stage 1 contract awardee(s) on the County's Department of General Services Website and physical versions are available from the Department of General Services, 101 Monroe St. 9<sup>th</sup> Floor, Rockville, MD. 20850.

## **7. RFEP AMENDMENTS**

In the event that the County issues an amendment to this RFEP ("RFEP Amendment"), all terms and conditions will remain in effect unless they are specifically and explicitly changed by the amendment. Providers must acknowledge receipt of such RFEP Amendments, to the designated place, and prior to the hour and date specified in this RFEP or RFEP Amendment

for receipt of proposals. Providers may acknowledge RFEP Amendments by doing one of the following:

- 1) By returning one signed copy of the RFEP Amendment either with its proposal or separately to Michael Yambrach at the address set forth on page 1 of this RFEP.
- 2) By acknowledging receipt of the RFEP Amendment on the Acknowledgment submitted.
- 3) By stating that the RFEP Amendment is acknowledged in a signed letter that refers to the procurement and RFEP Amendment numbers.

## **8. PROPOSAL PREPARATION EXPENSES**

Except for costs awarded as a result of successful solicitation protests, all costs incurred in the preparation and submission of proposals will be borne by the provider and will not be incurred in anticipation of receiving reimbursement from the Participants. In the case of a successful solicitation protest, only reasonably incurred actual costs may be awarded and the total amount of costs that may be awarded may not exceed \$5,000.

## **9. VERBAL EXPLANATIONS**

Verbal explanations or instructions given by an agent or employee of Montgomery County to a provider in regard to this proposal will not be binding on the County. Any binding information given to a provider in response to a request will be furnished to all providers as an RFEP Amendment if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed providers. Only such RFEP Amendments, when issued by the County, will be considered binding on the County.

## **10. TERMS AND CONDITIONS**

All Contracts awarded as a result of this proposal will contain the RFEP Terms and Conditions of Contract between the Participant & Solar Provider contained in Attachment 1 of the PPA of this RFEP, except and unless modified by the County. In addition, Contracts involving deliveries of energy conforming to the Clean Renewable Energy requirements described below will contain Solar Provider warranties, representations and covenants with respect to meeting such requirements.

Each provider must acknowledge that it agrees to all Electricity Purchase Terms and Conditions of Contract (see Acknowledgment page).

## **11. PROTESTS**

### **A. Stage 1**

Any provider who is aggrieved in connection with a decision regarding Stage 1, and wishes to challenge the decision, must file and deliver a written protest to the Director, Department of General Services, no later than ten (10) days after the list of Stage 1 Qualified Solar Providers is posted by the Director. Protests should be filed as early in the proposal process as possible to enable timely correction of irregularities; however, protests must not be filed and will not be accepted after the expiration of the 10 day deadline. The Director must dismiss any tardy protests.

Each protest must contain the following information:

- 1) An identification of the RFEP;

- 2) The name, address and telephone number of the Solar Provider protesting;
- 3) A statement supporting the standing of the provider to file a protest;
- 4) Specification of all grounds for the protest, including:
  - a. A submission of detailed facts and all relevant documents;
  - b. A citation to relevant language in the RFEP, regulations, or law relied upon; and
  - c. All other matters which the provider contends support the protest; and
  - d. Factual allegations regarding information not appearing on the face of the procurement or offer must be supported by affidavit based on personal knowledge
- 5) If proposal preparation costs are sought, the protesting provider must provide, by affidavit based on personal knowledge, evidence supporting the costs claimed.

Except as provided herein, any protests, including appeals, will be governed by the applicable County Procurement Regulations, including, but not limited to, the County Electricity Procurement Regulations. The burden of production of all relevant evidence, data, and documents and the burden of persuasion to support the protest is on the provider making the protest. In the event a provider protests a Stage 1 decision, its potential remedy in the event of a successful protest shall be limited to inclusion on the list of Stage 1 Qualified Solar Providers, or, if time does not permit the addition of another Qualified Solar Provider to such list, the protesting provider's actually incurred reasonable costs in connection with its preparation of its response to Stage 1. If such an award for costs is made, then said award must not exceed \$5,000.

#### B. Stage 2

Any Qualified Solar Provider who is aggrieved in connection with a decision regarding Stage 2, and wishes to challenge the decision, must file and deliver a written protest to the Director, Department of General Services, no later than ten (10) days after the proposed award is posted. Protests should be filed as early in the procurement process as possible to enable timely correction of irregularities; however, protests must not be filed and will not be accepted after the expiration of the 10 day deadline. The Director must dismiss any tardy protests.

Each protest must contain the following information:

- 1) An identification of the RFEP;
- 2) The name, address and telephone number of the Qualified Solar Provider protesting;
- 3) A statement supporting the standing of the Qualified Solar Provider to file a protest;
- 4) Specification of all grounds for the protest, including:
  - a. A submission of detailed facts and all relevant documents;
  - b. A citation to relevant language in the procurement, regulations, or law relied upon; and
  - c. All other matters which the Qualified Solar Provider contends support the protest; and
  - d. Factual allegations regarding information not appearing on the face of the procurement or offer must be supported by affidavit based on personal knowledge.

- 5) If proposal preparation costs are sought, the protesting Qualified Solar Provider must provide by affidavit based on personal knowledge evidence supporting the costs claimed.

Except as provided herein, the protests, including appeals, will be governed by the applicable County Electricity Procurement Regulations, (cite procurement section ()) including, but not limited to, the County Electricity Procurement Regulations. The burden of production of all relevant evidence, data, and documents and the burden of persuasion to support the protest is on the Qualified Solar Provider making the protest. In the event a Qualified Solar Provider successfully protests a Stage 2 decision, its potential is limited to the Qualified Solar Provider actually incurred reasonable costs in connection with the preparation of its response to Stage 2 of the proposal. If an award for costs is made, then said award must not exceed \$5,000.

## SECTION IX: MANDATORY SUBMISSIONS

In order to reduce paper consumption, the County is accepting only proposals on electronic media. Proposals must be delivered on a flash drive or CD-ROM to the Montgomery County, Department of General Services, 9<sup>th</sup> Floor, Rockville, MD 20850. Files must be either Adobe PDF or Microsoft Office, with exception of the pricing sheets which may only be provided in Excel. A one page cover letter may be provided.

In order to facilitate quick review, accurate scoring and timely award of the project, the Solar Provider must submit their proposal within the following guidelines and format.

| <b>Section</b>                         | <b>Maximum Length (double sided)</b> | <b>Details</b>   |
|--|--------------------------------------|--|
| <b>Cover letter</b>                    | 1 page                               | Identify your company, responsible parties, and any alternative names (e.g., doing business as or DBA). Clearly include contact information.   |
| <b>Project Narrative</b>               | 4 pages                              | Given your experience and technical know-how in designing, financing and building solar projects, what are some proven pluses that you feel, will help improve your team's ability to deliver economically viable, turn-key power purchase agreement projects, and also be able to favorably compete with utility supplier rates within the contract term. |
| <b>Qualifications</b>                  | 3 pages                              | Provide a brief summary of similar projects completed for private or government clients. Include reference contact information for each project.   |
| <b>Staff</b>                           | 3 pages                              | Provide brief biographies, no longer than 400 words per individual, including key engineers, principals and project managers.  |
| <b>Project Forms and Pricing Model</b> | Unlimited                            | Provide a completed project description (Attachment A) and completed pricing model (Attachment B) for each project you plan to proposal.   |
| <b>Cut sheets</b>                      | Unlimited                            | Manufacturer cut sheets for anticipated photovoltaic solar panels, inverters, and any premium equipment where specified  |
| <b>County Requirements</b>             | Unlimited                            | Attachment E Acknowledgement<br>Attachment F MWCOG Rider<br>Attachment G Certifications and References<br>Attachment I Price and Cost Certification  |
|  |                                      | .  |

## ATTACHMENT A. - PROJECT DESCRIPTION FORM

Provide one form for each project/building address

|  |  |
|--|--|
| <b>Building Name:</b>  | Use name of building as provided in County Section V                                     |
| <b>Address:</b>  | Use County assigned address  |
| <b>Proposed System Size (kW/DC)</b>  | Size in kW DC  |
| <b>Proposed System Size (kW/AC)</b>  | Size in kW AC  |
| <b>Area Used (sq. ft)</b>  | Square foot of Roof, Ground or Parking Lot used  |
| <b>Photovoltaic Manufacturer</b>   | Proposed equipment manufacturer (include cut sheet)                                      |
| <b>Inverter Manufacturer</b>   | Proposed Inverter Manufacturer (include cut sheet)                                       |
| <b>System Design Life (Years)</b>  | Life of system, must not exceed any limitations established by the County in Section III |
| <b>Description of Mounting System:</b>   |  |
| Describe the mounting system; how it attached to the roof, if there are any roof penetrations expected etc.  |  |
| <b>Description of System:</b>  |  |
| Provide a brief description of the system, its design, any unique characteristics.   |  |
| <b>Rendering:</b>  |  |
| Provide a simple rendering of the system showing at a minimum:   |  |
| <ol style="list-style-type: none"> <li>2. Orientation relative to the building and site,</li> <li>3. Amount of roof area used and where relative to any visible obstructions,</li> </ol> |  |
| <b>Premium Items:</b>  |  |
| Describe any premium items provided (As requested in Section III) including details on the technology, the provider, any site restrictions, or site limitations.                         |  |

## **ATTACHMENT B. – PRICING FORMAT**

See linked Excel spreadsheet at

<http://www.montgomerycountymd.gov/DGS-OES/BusinessOpportunities.html>

**ATTACHMENT C – Reserved**

**ATTACHMENT D – In and effort to reduce paperwork and increase brevity, See attachment 1 of the PPA (Attachment J), T&C's will be the same for both documents**



## **ATTACHMENT E – INSTRUCTIONS FOR ACKNOWLEDGEMENT PAGE**

### **INSTRUCTIONS**

The Acknowledgement page is to be submitted with the Stage 1 Proposal.

#### **Solar Purchase Terms and Conditions of Contract:**

The provider must include a signed acknowledgment that all of the “Electricity Purchase Terms and Conditions of Contract between Participant and Solar Provider” (Exhibit E) for this RFEP will be applicable to each contract that is expected to result from a subsequent award. Proposals that do not include this acknowledgment page may be rejected. The requirement may be satisfied by executing and returning (with the proposal) the acknowledgment shown below.

#### **Amendments to RFEP:**

Providers must acknowledge receipt of any Amendments to this procurement in the space indicated below, and with the understanding that except to the extent specifically set forth in the Amendments, the remaining terms of the RFEP will remain the same.

#### **Name and Signature Requirements for Proposals and Contracts:**

The correct legal business name of the provider must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) should not be used when the legal name is different. Corporations must have names that comply with the laws of the states and/or federal jurisdictions in which they conduct business. The provider provider’s signature must conform to the following:

Where the provider is a corporation, a corporate officer must sign.

Where the provider is a partnership, at least one general partner must sign.

Where the provider is a limited liability company, an authorized representative must sign

Where the provider is a sole proprietor, the proprietor must sign.

**ACKNOWLEDGMENT**

**ACKNOWLEDGMENT**

The Solar Provider must include a signed acknowledgment that all the terms and conditions of the offer may, at the County's option, be made applicable in any contract issued as a result of this Solicitation. Offers that do not include such an acknowledgment may be rejected. Executing and returning (with the offer) the acknowledgment shown below will satisfy this requirement.

The undersigned agrees that all the terms and conditions of this Solicitation and offer may, at the County's option, be made applicable in any contract issued as a result of this Solicitation.

Business Firm's Typed Name: \_\_\_\_\_

Printed Name and Title of  
Person Authorized to Sign Proposal: \_\_\_\_\_

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

**NAME AND SIGNATURE REQUIREMENTS FOR PROPOSALS AND CONTRACTS**

The correct legal business name of the Solar Provider must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different. Corporations must have names that comply with State Law. The Solar Provider's signature must conform to the following:

All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of this offer or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the Solar Provider or Solar Provider.

By submitting a proposal under this Solicitation, the Solar Provider agrees that Montgomery County has within 120 days after the due date in order to accept the proposal.

**ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS**

The Solar Provider acknowledges receipt of the following Amendment(s) to the Solicitation:

| Amendment Number | Date |
|------------------|------|
|                  |      |
|                  |      |
|                  |      |

**ATTACHMENT F**

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE**

**USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.**

- A. If authorized by the Solar Provider(s), resultant contract(s) will be extended to any or all of the listed members as designated by the Solar Provider to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful Solar Provider. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your proposal.
- D. It is the awarded Solar Provider's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

**SOLAR PROVIDER'S AUTHORIZATION TO EXTEND CONTRACT:**

| <u>YES</u> | <u>NO</u> | <u>JURISDICTION</u>                            | <u>YES</u> | <u>NO</u> | <u>JURISDICTION</u>                                  |
|------------|-----------|--|------------|-----------|--|
| _____      | _____     | Alexandria, Virginia                           | _____      | _____     | Manassas Park, Virginia                              |
| _____      | _____     | Alexandria Public Schools                      | _____      | _____     | Maryland-National Capital Park & Planning Commission |
| _____      | _____     | Alexandria Sanitation County                   | _____      | _____     | Metropolitan Washington Airports County              |
| _____      | _____     | Arlington County, Virginia                     | _____      | _____     | Metropolitan Washington Council of Governments       |
| _____      | _____     | Arlington County Public Schools                | _____      | _____     | Montgomery College                                   |
| _____      | _____     | Bladensburg, Maryland                          | _____      | _____     | Montgomery County, Maryland                          |
| _____      | _____     | Bowie, Maryland                                | _____      | _____     | Montgomery County Public Schools                     |
| _____      | _____     | Charles County Public Schools                  | _____      | _____     | Northern Virginia Community College                  |
| _____      | _____     | College Park, Maryland                         | _____      | _____     | OmniRide   |
| _____      | _____     | Culpeper County, Virginia                      | _____      | _____     | Potomac & Rappahannock Transportation Commission     |
| _____      | _____     | District of Columbia                           | _____      | _____     | Prince George's County, Maryland                     |
| _____      | _____     | District of Columbia Courts                    | _____      | _____     | Prince George's County Public Schools                |
| _____      | _____     | District of Columbia Public Schools            | _____      | _____     | Prince William County, Virginia                      |
| _____      | _____     | District of Columbia Water & Sewer County      | _____      | _____     | Prince William County Public Schools                 |
| _____      | _____     | Fairfax, Virginia                              | _____      | _____     | Prince William County Service County                 |
| _____      | _____     | Fairfax County, Virginia                       | _____      | _____     | Rockville, Maryland                                  |
| _____      | _____     | Fairfax County Water County                    | _____      | _____     | Spotsylvania County Schools                          |
| _____      | _____     | Falls Church, Virginia                         | _____      | _____     | Stafford County, Virginia                            |
| _____      | _____     | Fauquier County Schools & Government, Virginia | _____      | _____     | Takoma Park, Maryland                                |
| _____      | _____     | Frederick, Maryland                            | _____      | _____     | Upper Occoquan Sewage County                         |
| _____      | _____     | Frederick County, Maryland                     | _____      | _____     | Vienna, Virginia                                     |
| _____      | _____     | Gaithersburg, Maryland                         | _____      | _____     | Virginia Railway Express                             |
| _____      | _____     | Greenbelt, Maryland                            | _____      | _____     | Washington Metropolitan Area Transit County          |
| _____      | _____     | Herndon, Virginia                              | _____      | _____     | Washington Suburban Sanitary Commission              |
| _____      | _____     | Leesburg, Virginia                             | _____      | _____     | Winchester, Virginia                                 |
| _____      | _____     | Loudoun County, Virginia                       | _____      | _____     | Winchester Public Schools                            |
| _____      | _____     | Loudoun County Public Schools                  | _____      | _____     |  |
| _____      | _____     | Loudoun County Sanitation County               | _____      | _____     |  |
| _____      | _____     | Manassas, Virginia                             | _____      | _____     |  |
| _____      | _____     | City of Manassas Public Schools                | _____      | _____     |  |

\_\_\_\_\_  
Solar Provider Name

## ATTACHMENT G – CERTIFICATIONS AND REFERENCES

(TO BE SUBMITTED WITH STAGE 1 PROPOSAL)

I, \_\_\_\_\_ am the \_\_\_\_\_ of \_\_\_\_\_ (Provider), and I am duly authorized to provide the following certifications and information regarding this entity:

1. The provider will provide the County with documentation, if requested, supporting the certifications made above.
2. Additionally, within 10 days after the award of any contract(s) to the provider, it will comply with, and provide documentary proof to the County thereof, the insurance requirements set forth in this RFEP. **The provider attaches hereto its letter(s) of intent from its surety, insurance, and/or other provider demonstrating its ability to comply with these insurance requirements.**

/s/ \_\_\_\_\_ Date: \_\_\_\_\_

The County may at its discretion contact the following persons as references for the provider (provide a minimum of three names):

| Contact Name and Title<br>Number | Organization and Address | Telephone |
|----------------------------------|--------------------------|-----------|
| _____                            | _____                    |           |
| _____                            | _____                    |           |
| _____                            | _____                    |           |

**Attachment H - In and effort to reduce paperwork and increase brevity, See attachment 2 of the PPA ( Attachment J), T&C's will be the same for both documents**

**ATTACHMENT I – SOLAR Provider’s CERTIFICATION OF COST AND PRICE**

The Director, Department of General Services has the authority to require that contract cost and pricing principles are followed. Cost and Pricing Data must be submitted by Solar Provider in the attached format prior to the execution of any contract or contract amendment based on the following:

1. A competitively negotiated contract valued at more than \$100,000.
2. A non-competitive contract valued at more than \$50,000.
3. Any contract modification for which the price adjustment is expected to exceed \$50,000, except contract modifications that is fully in accordance with the terms and conditions of the contract.
4. Any other contracts or contracts modification, as may be required by the CAO or Director.

**SOLAR PROVIDER’S CERTIFICATION**

This cost proposal reflects our best estimates and/or actual costs as of this date and conforms to the cost exhibits and schedules provided by the County’s Department of General Services. By submitting this proposal, the Solar Provider grants the contracting officer or an authorized representative the right to examine, as the basis for pricing that will permit an adequate evaluation of the proposed price, books, records, documents, and other types of factual information, if specifically referenced or included in the cost proposal.

The Solar Provider also agrees that the price to the County, including profit or fee, may, at the option of the County, be adjusted to reduce the price to the County to the extent that the price was based on inaccurate, incomplete, or non-current data supplied by the Solar Provider.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Date of Submission

\_\_\_\_\_  
Signature of Authorized Representative

## COST AND PRICE REQUIREMENTS

By submitting your proposal, you, if selected for negotiation, grant the Contracting Officer or an authorized representative the right to examine those books, records, documents and any other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award of a contract. The Montgomery County Government may utilize an independent Solar Provider for cost and price analysis or to examine your books and records.

The Cost/price for any resultant contract will be negotiated on the basis of the successful Solar Provider's normal estimating and/or accounting system or the system set forth in Cost Accounting Standards Board Disclosure Statement as required by Public Law 100-679.

Prior to contract execution, the intended awardee may be required to provide the following information;

- A. Latest and previous year's financial statement or profit and loss statement.
- B. Burdened rate verification detailing the composition and value of the elements of Fringe Benefits, Overhead, General and Administrative Overhead, Profit or Fee.

**ATTACHMENT J – SAMPLE PPA**

**SAMPLE SOLAR POWER PURCHASE AGREEMENT**

**FOR SOLAR SITED ON MONTGOMERY COUNTY FACILITIES**

**BETWEEN**

**MONTGOMERY COUNTY, MARYLAND**

**AND**

**CONTRACTOR CORPORATION**

**AGREEMENT NO. XXX**





This Agreement is by and between Montgomery County, Maryland (hereinafter referred to as "County" or "Purchaser") and Contractor Corporation, (hereinafter referred to as "Seller").

## ARTICLE 1

### DEFINITIONS

The following words and phrases, here appearing capitalized and in quotes, have the following meanings for the purposes of this Agreement:

- a. "AGREEMENT" means this Solar Power Purchase Agreement and all attachments hereto and made a part hereof.
- b. "COMMERCIAL OPERATION DATE": Date Seller gives Purchaser written notification that the System is mechanically complete and capable of delivering electricity to the delivery point, including all necessary interconnection agreements with the Electric Distribution Company.
- c. "CONTRACT ADMINISTRATOR": The individual identified in Article 3 responsible for the administration of the Agreement in accordance with the authorities and limitations delegated to him by the Director as specified in the Agreement.
- d. "COUNTY" or "PURCHASER": Montgomery County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland.
- e. "ELECTRIC DISTRIBUTION COMPANY": The company that owns the power lines and equipment necessary to provide electric distribution and interconnection services to the Purchaser at the Facility.
- f. "ENVIRONMENTAL ATTRIBUTES": Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydro fluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradable renewable credits and Green-e® products. Environmental Attributes do not include Environmental Incentives and Tax Credits.
- g. "ENVIRONMENTAL INCENTIVES": Any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.
- h. "FACILITY": The County's facility specified in Attachment 3, which will receive electricity generated by the Project.
- i. "GOVERNMENTAL AUTHORITY": Any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the Maryland Public Service Commission), or any arbitrator with authority to bind a party at law.
- j. "PARTIES" means the Seller and the County collectively.

- k. "PARTY" means either the Seller or the County individually.
- l. "PREMISES" has the meaning set forth in Article 2, Section 5.a.i.
- m. "PROJECT": A specific Solar Photovoltaic System and all ancillary equipment and services installed on a County Facility, as more particularly described in Attachment 3.
- n. "SOLAR PHOTOVOLTAIC SYSTEM" or "SYSTEM": A system of solar panels and ancillary equipment that converts sunlight to usable electricity; for the purposes of this Agreement, electricity delivered to Purchaser to support operations. The output at Purchaser's building interface is alternating current (AC) unless otherwise specified.
- o. "SOLAR RENEWABLE ENERGY CERTIFICATE" or "SREC": The renewable attributes of one megawatt hour (MWh) of electricity generated using solar energy, tracked in a regional exchange administered by the regional transmission operator (RTO) or equivalent. Attributes include Environmental Attributes. SRECs shall come from zero-emissions resources.
- p. "SELLER": The entity entering into this Agreement with the County and that will install, own, operate and finance the System at the Facility for the purpose of selling the electricity to Montgomery County or the County's delegate.
- q. "TAX CREDITS": Any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

## ARTICLE 2

### GENERAL PROVISIONS

1. Definitions and Interpretation: Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. Term.
  - a. Initial Term. This Agreement is effective on the date of execution by the Parties (the "Effective Date"). The initial term ("Initial Term") for payment of compensation under this Agreement shall commence on the Commercial Operation Date and continue for the length of time specified in Attachment 4, unless earlier terminated as provided for in this Agreement. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor. Purchaser's payment obligations shall begin upon the delivery of electricity from System to the point of use on the Commercial Operation Date. Purchaser's failure to enable Seller to provide the electric energy by preventing Seller from installing the System or otherwise failing to perform shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  - b. Additional Terms. If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, Purchaser at its sole discretion may elect to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Attachment 4 (each an "Additional Term"). In this case, Purchaser shall provide notice of such intent to extend not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. Seller shall respond positively or negatively to that notice in writing within thirty (30) days after receipt of the notice. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If the Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If Purchaser does not elect to extend this Agreement, it shall terminate at the end of the Initial Term (if the same has not been

extended) or the then current Additional Term. Seller must then remove the System in accordance with Article 2, Section 10 of this Agreement.

3. Billing and Payment.

- a. Monthly Charges. Purchaser shall pay Seller monthly for 100 percent of the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Attachment 4 (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
- b. Monthly Invoices. Seller shall invoice Purchaser monthly. Monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.

All invoices must be sent to:

Attention: Utilities Management Team  
Office of Energy and Sustainability  
Department of General Services  
101 Monroe St., 9th Floor  
Rockville, MD 20850-2540  
(240) 777-5595

- c. Payment Terms. All amounts due under this Agreement shall be due and payable net thirty (30) days from County's receipt of an invoice that meets the requirements set forth in subsection (b) above. Interest shall accrue, in accordance with Montgomery County Code § 11B-34, on any undisputed portion of the invoice amount not paid within the thirty (30) day period. If payable under § 11B-34, interest accrues beginning on the 31<sup>st</sup> day after County's receipt of an invoice, and is calculated using the interest rate paid by 5 year U.S. Treasury Bills as of the date the interest first begins to accrue.
- d. Taxes. Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 3.d, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- e. Non-Appropriation Event.
  - i. Purchaser represents and warrants to Seller that its applicable budgetary entity has appropriated and encumbered sufficient funds for the work to be performed by Seller and payments to be made by Purchaser from the Effective Date for a period of no less than the end of the first fiscal year following the Commercial Operation Date. Further, and notwithstanding anything to the contrary in this Agreement, including Section 25 of Attachment 1, it is the present intention and expectation of the Purchaser that the applicable budgetary entity, within the limits of available funds and revenues, will continue to appropriate and encumber a sufficient amount to fund Purchaser's obligations hereunder during each fiscal year of the Term; provided, however, this declaration of intent shall not be binding upon any future applicable budgetary entity in any future fiscal year, except to the extent of any previously appropriated funds. Purchaser shall use reasonable good faith efforts to have funds properly budgeted, appropriated, allotted, or otherwise made available for this Agreement (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner. If an appropriation for this Agreement is not made for Purchaser by the applicable budgetary entity for any fiscal year of Purchaser during the Term (a "Non-Appropriation Event"), Purchaser shall promptly give notice of such Non-Appropriation Event (the "NAE Notice"). Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of the NAE Notice, Purchaser will not interrupt or impair the delivery of

electricity or jeopardize Seller's sale, transfer or other monetization of Environmental Attributes, Environmental Incentives or Tax Attributes.

- ii. Following receipt by Seller of an NAE Notice, Seller, in its sole discretion, (x) may terminate this Agreement and remove the System, or (y) continue to operate the System and deliver the Energy Output to Purchaser or to a third party or utility company without payment by Purchaser therefore during the applicable fiscal year (and each fiscal year thereafter until an appropriation is made). Under the circumstances of (y), other than with respect to the purchase and sale obligations for electricity, all obligations of Purchaser and Seller under this Agreement (including, without limitation, the Site Access and License Agreement), shall remain in full force and effect, and Purchaser shall provide Seller with all assistance reasonably requested by Seller to secure another buyer for the System's electrical output.
- iii. Within 30 days of Seller's receipt of the NAE Notice, Seller shall give notice to Purchaser of Seller's election among options (x) and (y) under subsection (ii) above. If Seller does not provide notice to Purchaser of Seller's election under this subsection (iii) within such period, Seller shall be deemed to have elected option (y) under subsection (ii) above, provided that, if Seller elects or is deemed to have elected option (y) and if a Non-Appropriation Event is continuing, Seller may subsequently change its election at any time upon prior written notice to Purchaser.
- iv. If Seller elects option (x) under subsection (ii) above, Seller shall cause the System to be disconnected and removed from the Site and Purchaser shall pay to Seller all reasonable removal costs within 30 days after receiving Seller's invoice for such removal costs.

#### 4. Environmental Attributes and Environmental Incentives.

Unless otherwise specified on Attachment 4, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Notwithstanding the foregoing, the Parties acknowledge that under Maryland law, the Purchaser, as the "eligible customer-generator", is the owner of any Maryland solar renewable energy credits ("Maryland RECs") associated with the System's electrical output. Purchaser hereby assigns all of its right, title and interest in all such Maryland RECs to Seller, provided that if Purchaser purchases the System pursuant its purchase option, all right, title and interest to any Maryland RECs generated following such purchase shall revert to Purchaser. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 4, to the extent applicable.

#### 5. Conditions to Obligations.

- a. Conditions to Seller's Obligations. Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date set forth on Attachment 4:
  - i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
  - ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "Construction Agreement" as used in this subsection means an agreement between Seller and a subcontractor to install the System;
  - iii. Confirmation that Seller will obtain all applicable Environmental Incentives, Environmental Attributes and Tax Credits;

- iv. Receipt of all necessary zoning and land use approvals and receipt of all necessary building permits;
  - v. Execution of all necessary agreements with the Electric Distribution Company for interconnection of the System to the Utility's electric distribution system; and
  - vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance maintained by Purchaser as described in Section 14.b.ii.
- b. Conditions to Purchaser's Obligations. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date as specified in Attachment 4, or as may be extended subject to Contract Administrator approval.
- c. Failure of Conditions. If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

6. Seller's Rights and Obligations.

- a. Permits and Approvals. Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense, but with the Purchaser's reasonable cooperation and assistance:
- i. any zoning, land use and building permits required to construct, install and operate the System;
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.
- Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.
- b. Standard System Repair and Maintenance. Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Access and License Agreement. Seller's responsibilities include replacement or refurbishment of the inverter and all System components during the Term. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Any dispute regarding the reasonableness of such rates shall be resolved by an independent construction estimator or other party mutually agreed upon by Seller and Purchaser. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. Non-Standard System Repair and Maintenance. If Seller incurs incremental costs to maintain the System due to conditions at the Facility that arise after the Effective Date and that are not related to the System, or the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement shall be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, Purchaser will be notified, and the Parties will attempt to negotiate such equitable adjustment in good faith.
- d. Breakdown Notice. Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or

alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

- e. Suspension. Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser.
- f. Use of Contractors and Subcontractors. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. All contractors and subcontractors, other than those specified in the Framework Agreement, shall be subject to Purchaser's prior written consent, not to be unreasonably conditioned, delayed or withheld.
- g. Tax-Exempt Bonds. Seller must adhere to conditions identified by the Montgomery County Department of Finance to maintain the integrity of any County tax-exempt bonds related to the facility, which conditions, if applicable, are set forth and attached to this SPPA as Attachment 6.

## 7. Purchaser's Rights and Obligations.

- a. Facility Access Rights. Seller's access rights to the Premises and Purchaser's obligations with respect to such access rights shall be as set forth in the Site Access and License Agreement incorporated into this Agreement and attached hereto as Attachment 5.
- b. OSHA Compliance. Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. Maintenance of Facility. Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. If the System is ground-mounted, Purchaser shall be responsible for mowing the grass within the fenced perimeter of the ground-mounted portion of the System so as to prevent any interference with the System's Insolation by such grass or vegetation. The Parties may agree to have Seller perform such mowing services as an Ancillary Item, provided that the additional costs of such services will be incorporated as an adder via Attachment 6 in the PPA (Exhibit "J"). Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times. Purchaser will not permit, within its operational control, the cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. No Alteration of Facility. Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs shall be performed at Purchaser's cost. Costs shall be capped at a level determined by a mutually acceptable construction estimator. All alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. Outages. Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify

Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalty payments associated with the same) of associated Environmental Attributes in accordance with Section 3. For avoidance of doubt, the forty-eight (48) hour period shall include all Scheduled Outage hours allowed under any of the terms of this Agreement, including those undertaken pursuant to Section 7.d. Outages caused by a disruption in electricity service by the local distribution utility shall not be counted toward the 48-hour allowance.

- f. Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller. To the full extent allowed under law, Purchaser shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
  - g. Security. Purchaser shall be responsible for using reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
  - h. Insolation. Purchaser understands that unobstructed access to sunlight ("insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not interfere with the System's insolation. If Purchaser becomes aware of any activity or condition that could diminish the insolation of the System, Purchaser shall notify Seller within a reasonable timeframe and shall cooperate with Seller in preserving the System's existing insolation levels. Purchaser shall not be responsible for reductions in insolation due to third party actions beyond the control of the Department of General Services. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this section against Purchaser.
  - i. Data Line. Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. If a line is not provided or is not available, Purchaser and Seller may estimate production based on nationally accepted models by mutual agreement.
  - j. Breakdown Notice. Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
8. Relocation of System. If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Electric Distribution Company's territory as the terminated System or in a location with similar utility rates and insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) Site Access and License Agreement, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's



Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility. Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during the period of time the System is not in operation due to the relocation and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 3. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute Facility has inferior insulation as compared to the original Facility, Seller and Purchaser shall negotiate a reasonable adjustment to the pricing in Attachment 4 to cover the remaining service life of the relocated System. The adjustment shall be based on an industry-accepted and mutually agreeable methodology. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

9. Change in Law. "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. Removal of System at Expiration. Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.
11. Measurement. Electricity delivered to the Facility shall be measured by Seller's monitoring system installed and maintained by Seller as part of the System. If a monitoring system of the electricity cannot be measured or a data line is not available, Purchaser and Seller shall agree upon a common and industry-accepted methodology.
12. Default, Remedies and Damages.

- a. Default. A Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below and does not cure such experience or circumstance within the time period specified, shall be deemed a “Defaulting Party” and each event of default shall be a “Default Event”:
- 7.
- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the “Non-Defaulting Party”) of such failure to pay (“Payment Default”);
  - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. Purchaser loses its rights to occupy and enjoy the Premises and fails to provide Seller with a substitute premises in accordance with Section 8;  
A)
  - v. a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
  - vi. Purchaser prevents Seller from installing the System or otherwise prevents the delivery of electric energy from the System.
- b. Remedies: Any such action shall be governed by Code of Montgomery County Regulations (COMCOR) Section 11B.04.01.14.2. Nothing herein shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. Nothing herein shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.[]
- i. Remedies for Payment Default. If a Payment Default occurs the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon thirty (30) days prior written notice to the Defaulting Party following the Payment Default.
- c. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “Termination Payment”):
- i. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to (i) the Early Termination Fee specified in Attachment 4, (ii) removal costs as provided in Section 12.c.iii, and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

- ii. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
- iii. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

13. Representations and Warranties.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following:
  - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
  - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:
  - i. License. Purchaser has title to or a leasehold or other property interest in the Facility. Purchaser has the full right, power and authority to grant the Site Access and License Agreement contained in Attachment 5. Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises and/or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
  - ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
  - iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
  - iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
  - v. No Pool Use. The System will not be used to heat a swimming pool.

14. System and Facility Damage and Insurance.

a. System and Facility Damage.

- i. Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System to purchase the System at the buy-out rate specified in Attachment 4.
- ii. Purchaser's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to purchase the System at the buy-out rate specified in Attachment 4 and pay all other costs previously accrued but unpaid under this Agreement, and thereupon terminate this Agreement.

b. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain the insurance specified in Attachment 2.
- ii. Purchaser's Insurance. Purchaser is a member of the Montgomery County Self-Insurance Program. General liability coverage is in the amounts of \$500,000 aggregate and \$200,000 each occurrence. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the LGTCA.

c. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the Party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

d. Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

15. Ownership; Option to Purchase.

- a. Ownership of System. Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes (unless otherwise provided in Attachment 4), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Seller and Purchaser agree that Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a

fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

- b. Option to Purchase. At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the buy-out amount specified in Attachment 4 and the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

16. Indemnification and Limitations of Liability.

- a. General. To the full extent allowable under applicable law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty made under this Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 16.a however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 16.c.
- b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. To enable the Purchaser to comply with its County Charter which requires the County Attorney's Office to represent the County in all legal matters, the Purchaser will evaluate any third party claim against it concerning which

Seller has agreed to indemnify the Purchaser. If the Purchaser chooses not to tender to Seller the control of the defense of a third-party claim for which Seller has agreed to indemnify Purchaser, then Seller will have no duty to defend, indemnify or hold the Purchaser harmless for the claim not tendered. If the Purchaser chooses to tender the claim to Seller, then Seller must provide the defense and indemnity as provided in this Agreement; and the County Attorney's Office may participate in the defense to the extent necessary to protect the Purchaser's interests but may not unreasonably interfere with the defense provided by Seller. Seller agrees not to settle or compromise the third party claim without the prior written consent of the County Attorney's Office if the settlement or compromise would result in the Purchaser admitting liability, exposing the Purchaser or its employees or agents to liability, or would result in the Purchaser paying money to the third party claimant as a result of this indemnification provision, or otherwise.

- c. Environmental Indemnification. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined below) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. "Hazardous Substance" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. Any indemnification given by Purchaser is given only to the extent permitted by applicable law, contingent upon the appropriation and encumbrance of funding, and subject to the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. I Sec. 5-301, et seq. (2013 Repl. Vol.) (the "LGTC"); and Md. Code Ann. Cts. & Jud. Proc. \* § 5-5A-02 (2013 Repl. Vol.), (together the "County Indemnification Statutes"), all as amended from time to time.
- e. Limitations on Liability.
- i.
- - ii. Actual Damages. Seller's aggregate liability under this Agreement shall in no case exceed three million dollars (\$3,000,000). The provisions of this section shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within three (3) years after the cause of action accrues. Notwithstanding the foregoing or anything to the contrary in this Agreement, nothing shall limit Seller's liability for indemnifying Purchaser in respect of personal injury claims pursuant to Section 16.a above.

17. Force Majeure.

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility

grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. If a Force Majeure event continues for a period of one hundred (100) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

#### 18. Assignment and Financing.

- a. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. If Purchaser has been provided with reasonable proof that the proposed assignee has comparable experience in operating and maintaining solar photovoltaic systems and the financial capability to do the same, Purchaser's withholding of consent shall be deemed unreasonable.
- b. At all times during the Term, either Seller, or the Operator on Seller's behalf (as applicable), shall be responsible for performance under the Performance Guaranty Agreement entered into by the Parties on the date hereof.
- c. Notwithstanding Section 18.a, Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to any Financing Party, any entity through which Seller is obtaining financing from a Financing Party, any affiliate of Seller, or any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee); provided, that with respect to any assignment described above, the assignee either (A) is an entity that has the appropriate experience and ability to operate and maintain photovoltaic solar systems and the financial capability to do same (an "Operator"); or (B) enters into a contract with an Operator, pursuant to which (1) such Operator shall be responsible for all System operation and maintenance under this Agreement and (2) Seller shall have granted to Operator all other rights granted to Seller herein necessary for operation and maintenance of the System (including access rights to the Facility) as required by this Agreement. When an assignment is executed, Seller shall provide notice to the Contract Administrator within 30 days, including the corporate name and address of the assignee.
- d. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- e. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) ("Financing Parties") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser

agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

19. Confidentiality and Publicity.

- a. Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this section by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this section. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this section, but shall be in addition to all other remedies available at law or in equity.
- b. Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.
- c. Notwithstanding any of the above, neither Party may hold confidential any information that is required to be disclosed under any applicable public records law or regulation, including the Maryland Public Information Act. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

20. Goodwill and Publicity. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. County and Seller shall agree upon guidelines for public announcements related to the execution and existence of this Agreement, including, specifically, sensitive areas that may require mutual review. In this case, each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other publicity statements that refer to this Agreement (except for filings or other statements or releases as may be required by applicable law). Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives (as defined in the SPPA) and any related reporting rights.

21. General Provisions

- a. Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive.



- b. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- c. Right of Waiver. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- d. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- e. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- f. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- g. Full Agreement, Modification, Invalidity, Counterparts, Captions. This Agreement, together with any Attachments, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- h. Forward Contract. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

- i. No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

### ARTICLE 3

#### CONTRACT ADMINISTRATOR

1. The Director, Department of General Services, is the delegated Contracting Officer. Therefore, the Director or designee must approve amendments, modifications, or changes to the terms, conditions, or Minority, Female, Disabled Person Subcontractor Performance Plans in writing.

#### 2. Using Department

The Contract Administrator for this Agreement is:

Eric R. Coffman  
Chief  
Office of Energy and Sustainability  
Department of General Services  
101 Monroe St., 9<sup>th</sup> Floor  
Rockville, MD 20850-2540  
(240) 777-5595

or Delegate.

The Contract Administrator's duties include, but are not limited to, those described in Paragraph 6, Contract Administration, of the Electricity Purchase Terms and Conditions of Contract between County and Seller.

#### 3. Notices

Any notice required by the Agreement or other communications to either Party by the other must be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as must be duly given by notice meeting the requirement of this Article. The Contract Administrator may conduct or request electronic communication at his/her discretion.

To Purchaser:

Eric R. Coffman  
Chief  
Office of Energy and Sustainability  
Department of General Services  
101 Monroe St., 9<sup>th</sup> Floor  
Rockville, MD 20850-2540

To Seller:

Contact Name  
Firm Name  
Address  
City, State, Zip

This Agreement No. [TBD] is effective on the date of execution by both Seller Corporation and the Director, Department of General Services.

SELLER CORPORATION

MONTGOMERY COUNTY, MARYLAND

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

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

David E. Dise, CPPO, Director  
Department of General Services

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

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

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

RECOMMENDED BY:

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

\_\_\_\_\_  
Eric R. Coffman, Chief  
Office of Energy and Sustainability  
Department of General Services

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

THIS FORM HAS BEEN APPROVED AS TO  
FORM AND LEGALITY BY THE OFFICE OF  
THE COUNTY ATTORNEY

\_\_\_\_\_  
Scott Foncannon  
Associate County Attorney

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

## Attachment 1

### ELECTRICITY PURCHASE TERMS AND CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

#### ELECTRICITY PURCHASE TERMS AND CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

##### 1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

##### 2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq.

##### 3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Electricity Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Electricity Procurement Regulations, the Electricity Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

##### 4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Department of General Services. Unless performance is separately and expressly waived in writing by the Director, Department of General Services, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Department of General Services. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

##### 5. CHANGES

The Director, Department of General Services, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Department of General Services, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

##### 6. CONTRACT ADMINISTRATION

A) The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Department of General Services, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Department of General Services, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Department of General Services;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B) The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Electricity Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Department of General Services, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Electricity Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Department of General Services, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of General Services, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of General Services, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Department of General Services or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of General Services, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Department of General Services, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of the Election Law, Annotated Code of Maryland.

13. GUARANTEE

- A) Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B) Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C) All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D) The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.

- E) Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

16. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

17. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

18. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

19. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

20. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Department of General Services, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Department of General Services, may waive the requirements of this section, in whole or in part.

21. LICENSES AND AUTHORIZATIONS

The Contractor warrants and covenants that (a) it will possess, and will continue to possess for the duration of the Contract term, all required licenses and authorizations mandated by federal, state and local law in order to provide Electricity Supply Service under this Contract, and (b) it will at all times comply with all terms and conditions of such licenses and authorizations. The Contractor warrants and covenants that, for the duration of the Contract term, it will maintain in good standing its license and authorization as a Supplier and/or Marketer, as defined in the applicable jurisdiction's statutes and laws, including, but not limited to, Maryland Annotated Code, Public Utility Companies Article, Section 1-101(o). The Participant may request and the Contractor will promptly furnish evidence that the Contractor meets its warranties and covenants under this paragraph.

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Department of General Services prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. TERMINATION FOR DEFAULT

The Director, Department of General Services, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of General Services, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Department of General Services, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

27. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

28. TIME

Time is of the essence.

29. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

30. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

31. TITLE TO ELECTRICITY

The Contractor warrants good and marketable title to all electric energy delivered to the points of delivery under this Contract on behalf of the County, and will indemnify, defend and hold harmless the County and its directors, officers, elected officials and employees from and against all loss, cost, damage and other expenses, including attorney's fees and litigation expenses arising out of (a) Contractor's breach of the above-stated warranty, or (b) Contractor's title to and delivery of electricity, such claims including but not limited to environmental pollution liability. The Contractor's indemnification obligation under this paragraph is in addition to and not in derogation of any or all of the Contractor's indemnification obligations under conditions provided, however, that the Contractor's indemnification under this provision is limited to its liabilities in connection with the supply of electricity and/or performance of its obligations under the Contract.

**THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.**

## Attachment 2

### MANDATORY INSURANCE REQUIREMENTS

#### ***Solar System Installations at Various County Buildings***

#### ***Public Private Partnership – Install, Own and Operate Systems***

Prior to the execution of the Agreement by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies authorized to do business in the State of Maryland and reasonably acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this Agreement, including all extensions. The insurance must be evidenced by a certificate of insurance. The Contractor's insurance shall be primary.

#### Commercial General Liability

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence and ***three million dollars (\$3,000,000)*** general aggregate including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

#### Professional Liability

Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with a limit of liability of at least ***one million dollars (\$1,000,000)*** per claim and aggregate.

#### Automobile Liability Coverage

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

#### Installation Floater / Builders Risk

The Contractor shall provide a Builder's All Risk Policy including fire and extended coverage against loss caused by the perils insured in the amount of 100% of the insurable value of the System. The coverage must be written on a completed value form. The policy must name Montgomery County, Maryland as loss payee.

#### Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

#### Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial Liability Insurance for liability arising out of contractor's products, goods and services provided under this Agreement.

#### Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

#### Certificate Holder

Montgomery County, Maryland  
DGS / Energy and Sustainability / Eric Coffman  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville, Maryland 20850



Attachment 3

SYSTEM DESCRIPTION, DELIVERY POINT AND PREMISES

- A. **System Location:**
- B. **System Size (DC kW):**
- C. **Expected First Year Energy Production (kWh - AC):**
- D. **Expected Structure:** Ground Mount
- E. **Expected Module(s):**

| <u>Manufacturer/Model</u> | <u>Quantity</u> |
|---------------------------|-----------------|
|                           |                 |

- F. **Expected Inverter(s):**

| <u>Manufacturer/Model</u> | <u>Quantity</u> |
|---------------------------|-----------------|
|                           |                 |

- G. **Includes:**  
Seller's Warranty, installation of a Solar Photovoltaic System (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for Solar Photovoltaic System).
- H. **Excludes:**  
Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure, payment bonds, performance bonds, tree removal, tree trimming. Purchaser may exit Agreement with no penalty if unforeseen groundwork exceeds 10% of the anticipated PPA value, unless waived by the Contract Administrator.
- I. **Delivery Point and Premises:** Seller shall attach a schematic that contains the:
  - (i) Facility;
  - (ii) Project
  - (iii) Array;
  - (iv) Delivery Point; and
  - (v) Access points needed to install and service System (bldg access, electrical room, stairs etc.).
  - (vi) Rendering of Project (if requested by Purchaser)

Attachment 4

**Term and Pricing**

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes Accrue to Seller** (unless specified in Attachment X).
4. **Contract Price:**

| <b>Contract Year</b> | <b>\$/kWh</b> | <b>Contract Year</b> | <b>\$/kWh</b> |
|----------------------|---------------|----------------------|---------------|
| 1                    | \$0.0000      | 11                   | \$0.0000      |
| 2                    | \$0.0000      | 12                   | \$0.0000      |
| 3                    | \$0.0000      | 13                   | \$0.0000      |
| 4                    | \$0.0000      | 14                   | \$0.0000      |
| 5                    | \$0.0000      | 15                   | \$0.0000      |
| 6                    | \$0.0000      | 16                   | \$0.0000      |
| 7                    | \$0.0000      | 17                   | \$0.0000      |
| 8                    | \$0.0000      | 18                   | \$0.0000      |
| 9                    | \$0.0000      | 19                   | \$0.0000      |
| 10                   | \$0.0000      | 20                   | \$0.0000      |

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

All bills shall be sent to:  
 Attention: Utilities Management Team  
 Office of Energy and Sustainability  
 Department of General Services  
 101 Monroe St., 9<sup>th</sup> Floor  
 Rockville, MD 20850-2540  
 (240) 777-5595

5. **Condition Satisfaction Date:** 180 days after the Effective Date
6. **Commercial Operation Date:** 270days after the Effective Date
7. **Outside Commercial Operation Date:** 365 days after the Effective Date
8. **Rebate Variance:** All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received. Seller will make all reasonable efforts to obtain grant funding from state, local sources.

**9. Buyout Provisions**

| <b>Year</b> | <b>Buy-Out Schedule Price</b><br>(Greater of the Amount below and the Independently Assessed FMV) |
|-------------|---|
| <b>6</b>    |   |
| <b>10</b>   |   |
| <b>20</b>   | Removal at Seller's cost or buy-out at independently assessed fair market value.                  |

**10. Early Termination Payment.**

| <b>Year</b> | <b>Amount</b> | <b>Year</b> | <b>Amount</b> |
|-------------|---------------|-------------|---------------|
| 1           |               | 11          |               |
| 2           |               | 12          |               |
| 3           |               | 13          |               |
| 4           |               | 14          |               |
| 5           |               | 15          |               |
| 6           |               | 16          |               |
| 7           |               | 17          |               |
| 8           |               | 18          |               |
| 9           |               | 19          |               |
| 10          |               | 20          |               |

**SAMPLE SITE ACCESS AND LICENSE AGREEMENT**

BETWEEN

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AND  
MONTGOMERY COUNTY, MARYLAND

DATED: \_\_\_\_\_, 2014

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## SITE ACCESS AND LICENSE AGREEMENT

THIS SITE ACCESS AND LICENSE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter referred to as the "COUNTY"), and \_\_\_\_\_ with its principal office located at \_\_\_\_\_ (hereafter referred to as "LICENSEE"), (the LICENSEE and the COUNTY together the "Parties").

### RECITALS

- A. The County and Licensee have entered into a Solar Power Purchase Agreement (the "SPPA") dated [DATE] (the "SPPA").
- B. Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the SPPA.
- C. Pursuant to the SPPA, Seller intends to install and operate the System at the Premises for the purpose of providing the System's electricity to the County. For the purposes of this Agreement, "System" means the system of solar photovoltaic panels and ancillary equipment that is more particularly described in the SPPA.

In consideration of the services and agreements made pursuant to the SPPA, and other good and valuable covenants and obligations as hereinafter contained, the Parties agree as follows:

#### 1. USE OF LICENSED PREMISES:

(a) COUNTY hereby grants to LICENSEE an irrevocable non-exclusive license (the "License") running with the Premises for access to, on, over, under and across the Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth herein and in the SPPA; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. The County's grant of the License is subject to all of the terms and conditions contained in SPPA (Agreement No. XX) and herein. The location of installation for the System at the Facility is described in Attachment 3 to the SPPA and is hereinafter referred to as the licensed premises ("Licensed Premises"). No variation in the Licensed Premises will be permitted without the prior written consent of the COUNTY, such consent not to be unreasonably conditioned, delayed or withheld. During the License Term, the County shall ensure that LICENSEE's rights under the License and LICENSEE's access to the Licensed Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of the SPPA by either Party for so long as necessary to allow LICENSEE to remove the System and otherwise perform its obligations or exercise its rights under the SPPA. The County agrees that LICENSEE, upon request to the County, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties.

(b) LICENSEE shall have the right of reasonable ingress and egress, to install and maintain the System and all accessories and appurtenances for use of the System, subject to the restrictions in this paragraph. The Facility is a public facility opened XX hours per day, XX days per week. LICENSEE, its employees, agents, and subcontractors shall be entitled to access the System and the Licensed Premises twenty-four hours per day, seven days per week, provided that in all instances except in the case of an

emergency, LICENSEE shall check in at County Security by calling (240) 777-6161 upon arrival, and advise Facility maintenance staff by calling (240) 777-7777

(c) LICENSEE shall use the Licensed Premises for the purpose of installation, operation and maintenance of the System. In connection therewith, the LICENSEE may complete all work necessary to prepare the Licensed Premises for operation of the System, including but not limited to installation of all photovoltaic equipment, inverters, wiring, and ancillary equipment necessary for System operations. LICENSEE shall use commercially reasonable efforts to cause minimal disruption to COUNTY in the LICENSEE's performance of all work on the Licensed Premises and improvements thereto. Except as expressly set forth in the SPPA, all work, including the plans and specifications for such work, shall be at LICENSEE'S sole cost and expense, and shall be subject to prior review and written approval of the COUNTY, such approval not to be unreasonably conditioned, delayed or withheld. During the initial plan review, COUNTY and LICENSEE shall agree upon the final location for the installation of the System. The County will maintain the Licensed Premises in good condition. LICENSEE shall repair any damage to the COUNTY Facility caused by LICENSEE'S installation, maintenance, repair and/or removal of the System.

(d) It is understood and agreed that the LICENSEE'S ability to use the Licensed Premises is contingent upon its obtaining after the execution date of this Agreement and maintaining throughout the term of this Agreement all of the certificates, permits, and any other approvals ("Approvals") required by any federal, state, and local authorities. In the event that any such application should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, the LICENSEE shall have the right to terminate this Site Access and License Agreement, subject to the terms and conditions contained in the SPPA for this Facility (Agreement No. **xxxxx**). Notice of the LICENSEE'S exercise of its right to terminate shall be given to COUNTY in writing by certified mail, return receipt requested, at least thirty (30) days prior to the termination date, unless otherwise stated in Agreement No. **xxxxx**.

(e) LICENSEE represents and warrants that all information furnished to the COUNTY and required herein including all data contained in specification sheets shall be of sufficient detail to afford any tenant, future tenant, or LICENSEE adequate information to ensure that any tenant or LICENSEE avoids interference with the System. COUNTY reserves the right to require the LICENSEE to make necessary adjustments to the System in the event the System creates a material restriction in COUNTY'S ability to enter into agreements with tenants, potential tenants or licensees, provided that the County shall reimburse LICENSEE for the cost of any such adjustments. LICENSEE'S failure to comply with COUNTY'S requirement for LICENSEE to make necessary adjustments to the System may constitute an event of default pursuant to Section 12.a of the SPPA.

(f) Title to the System and all accessories and appurtenances associated therewith installed by LICENSEE shall remain personal property of the LICENSEE. The Parties agree that the System is the personal property of the LICENSEE and not a fixture to the Facility, and neither Party shall take any action contrary to this intention. The LICENSEE may remove all or part of the System at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Licensed Premises, normal wear and tear excepted.

(g) At LICENSEE'S sole cost and expense, and after approval of all plans by the COUNTY, LICENSEE'S electrical service shall be tied into the COUNTY service at the Facility.

(h) LICENSEE shall provide an as-built engineer's drawing showing the location of the System on the Licensed Premises and Facility within ninety (90) days of the Condition Satisfaction Date set forth in the SPPA.

## 2. TERM:

(a) This License shall commence upon execution by the County and shall be co-terminus with the Solar Power Purchase Agreement for this Facility (Agreement No. **xxxxx**), provided that this License shall

remain in effect for a period of 120 days following any termination of the SPPA (except a termination following the County's exercise of its purchase option under the SPPA) to allow the LICENSEE to remove the System and otherwise fulfill its obligations under Section 10 (Removal of System at Expiration) of the SPPA (such date, the "Termination Date").

(b) This License shall be renewed if the SPPA (Agreement No. **xxxxx**) is renewed; the renewal of this License shall be under the same conditions as and shall be co-terminus with any such renewal of Agreement No. xxxxx.

3. LICENSEE INDEMNIFICATION:

The Parties shall each indemnify the other as set forth in Article 2, Section 16 of the SPPA.

4. LICENSEE INSURANCE:

Throughout the term of the License, the Parties shall carry the insurance required under the SPPA.

5. RIGHT OF ENTRY:

**Emergency Access:** In cases of emergency involving imminent risk of injury or death to persons or damage to property, COUNTY, its agents or employees, without prior notice to LICENSEE, may enter the Licensed Premises, however, COUNTY will attempt, but is not required, to notify LICENSEE of any such entry under this Article 8 as soon as is practicable under the circumstances.

6. SURRENDER OF POSSESSION:

This Agreement shall terminate on the Termination Date without the necessity of notice from either COUNTY or LICENSEE. LICENSEE'S AND COUNTY'S duties, obligations and rights upon termination of this Agreement shall be as provided in the SPPA.

7. COMPLIANCE WITH LAWS:

Each Party shall comply with all current, as amended and future enacted statutes, laws, rules, orders, regulations and ordinances (collectively "Laws") affecting the use or operation of the Licensed Premises. LICENSEE shall not use the Licensed Premises in any manner that causes a violation of any environmental laws or regulations or that could create environmental liabilities under Federal, State or local environmental protection laws.

8. CHOICE OF LAW:

This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

9. CHOICE OF FORUM:

Any action involving a dispute relating in any manner to this Agreement, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in Montgomery County, Maryland.

10. ASSIGNMENT AND OTHER TRANSFER:

(a) LICENSEE may assign this License only in accordance with Article 2, Section 10 of the Contract and Article 2, Section 18 of the SPPA and in conjunction with an assignment of the SPPA. The County shall assign this License to any entity that takes possession of the Licensed Premises and shall ensure that any such assignee takes the Licensed Premises subject to the LICENSEE's rights hereunder.

(b) Other Transfer: This Agreement may not be sold or transferred and the LICENSEE shall not sublet or permit any other party to use the Licensed Premises or Facility or any of the System at the Facility.

11. NOTICES:

All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other Party or if sent by certified mail, return receipt requested, addressed as specified in Article 3, Section 3 of the SPPA (or such other address as the Party to be notified has designated to the sender by like notice).

12. RELATIONSHIP OF THE PARTIES:

It is expressly understood that the COUNTY shall not be construed or held to be a partner, co-venturer, agent or associate of the LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of the LICENSOR and LICENSEE.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seals the day and year first above written.

WITNESS:

LICENSEE:

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
Title

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

WITNESS:

MONTGOMERY COUNTY, MARYLAND

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

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

(Name)

Assistant Chief Administrative Officer

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

Approved for legal form and legality:  
Office of the County Attorney

Recommended by:

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

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

David E. Dise, CPPO, Director  
Department of General Services

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

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



Attachment 6

**OPTIONAL ANCILLARY ITEMS AGREEMENT**

Purchaser and Seller may agree to incorporate Ancillary Items into this Agreement that are integral to the Project (e.g., battery storage) or derived from the System (Solar Renewable Energy Certificates). These may include:

1. Purchaser may opt to purchase the Solar Renewable Energy Certificates (SREC) from the System at a fee added to the base PPA rate. Seller must retire the SRECs and provide Purchaser evidence of tracking by the Regional Grid Operator and successful retirement.
2. At Purchaser's request, Seller will provide electric vehicle chargers as specified below, including all maintenance, warranty, etc. per Purchaser's specifications.
3. At Purchaser's request, Seller shall provide demand response/frequency harmonization equipment (e.g., Demand Logic) for the site, including all maintenance, upkeep, and replacement for the life of the equipment. Seller shall be responsible for coordinating access to demand response, etc. with Purchaser's demand response provider. Purchaser shall provide adequate site availability and access for maintenance.
4. For item nos. 2 and 3 above, Seller must provide, at Purchaser's request, cut sheets and/or specifications and any other pertinent information regarding the equipment provided.
5. Other items ancillary to the Project, directly related to its functions, outputs and other features or specified in the original RFEP.
6. Where a system is ground mounted and to the extent soil is disturbed during the installation process, manage ground cover as specified below.

Address: \_\_\_\_\_

Site Plan and Cutsheets: Attached Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

Descriptions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

| <b>Year</b> | <b>Cost per kWh</b> | <b>Buy-Out Price (if applicable)</b> | <b>Comments</b> |
|-------------|---------------------|--------------------------------------|-----------------|
| 1           |                     |                                      |                 |
| 2           |                     |                                      |                 |
| 3           |                     |                                      |                 |
| 4           |                     |                                      |                 |
| 5           |                     |                                      |                 |
| 6           |                     |                                      |                 |
| 7           |                     |                                      |                 |
| 8           |                     |                                      |                 |
| 9           |                     |                                      |                 |
| 10          |                     |                                      |                 |
| 11          |                     |                                      |                 |
| 12          |                     |                                      |                 |
| 13          |                     |                                      |                 |
| 14          |                     |                                      |                 |
| 15          |                     |                                      |                 |
| 16          |                     |                                      |                 |
| 17          |                     |                                      |                 |
| 18          |                     |                                      |                 |
| 19          |                     |                                      |                 |
| 20          |                     |                                      |                 |

If any such ancillary items are agreed upon by Purchaser and Seller, an agreement in the form of this exhibit will be incorporated into the SPPA.

## ATTACHMENT K

**MINORITY-OWNED BUSINESS ADDENDUM TO GENERAL CONDITIONS OF CONTRACT BETWEEN  
COUNTY AND CONTRACTOR**  
and its companion document  
**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR PERFORMANCE PLAN**

A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.

B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of the Department of General Services or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.

D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.

E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.

F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.

G. Before payments for electricity generated by the System can commence, the Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Department of General Services must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

**MONTGOMERY COUNTY, MARYLAND**  
**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR**  
**PERFORMANCE PLAN**

Contractor's  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: ( \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTRACT NUMBER/PROJECT DESCRIPTION: \_\_\_\_\_

A. A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

B.

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all MFD-certified business subcontractors, is 5% of the total dollars awarded to Contractor.

D. Each of the following MFD-certified businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods

and/or services:

---

2. Certified by: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

FEMALE

ASIAN AMERICAN

DISABLED PERSON

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services:

---

3. Certified by: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services:

---

4. Certified By: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

E. The Seller shall use commercially reasonable efforts to insert the following language into each subcontract with a certified MFD business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
MFD Program Officer Date: \_\_\_\_\_

\_\_\_\_\_  
MFD Program Officer Date: \_\_\_\_\_

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
Director  
Department of General Services Date: \_\_\_\_\_

\_\_\_\_\_  
Director  
Department of General Services Date: \_\_\_\_\_

The Contractor submits this MFD Subcontractor Performance Plan in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

2. TYPE CORPORATE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[

---

Typed Name

---

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

---

Signature

---

Typed Name

---

Title

---

Date

APPROVED:

---

Director, Department of General Services

---

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:  
The Contractor to notify the Director, Department of General Services of any proposed change to the Subcontractor Performance Plan.

**Approved:**

**MONTGOMERY COUNTY**

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

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

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

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

**SELLER**

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

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

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

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