
POWER PURCHASE AGREEMENT
(Monmouth County Renewable Energy Program, Series 2012)

By and Between

MONMOUTH COUNTY IMPROVEMENT AUTHORITY

and

[COMPANY]

Dated as of January 1, 2012

with respect to the Monmouth County Improvement Authority's
Not to exceed \$50,000,000 aggregate principal amount of
County of Monmouth Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2012 (Federally
Taxable)

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

Section 1.1	Definitions	10
-------------	-------------------	----

ARTICLE II

CONDITIONS

Section 2.1	Conditions Precedent for Service Provider	14
Section 2.2	Conditions Precedent for Authority	14
Section 2.3	Conditions Precedent for all Parties	14
Section 2.4	Non-Satisfaction of Conditions	15
Section 2.5	Inapplicable Terms	15

ARTICLE III

COMMENCEMENT DATES, REQUIRED COMPLETION DATE AND INITIAL TERM

Section 3.1	Commencement and Length of Initial Term	16
Section 3.2	Construction and Interconnection Phase	16
Section 3.3	Designated Representatives	17
Section 3.4	Cooperation	17
Section 3.5	Commencement Dates and PPA Price	18
Section 3.6	Required Completion Date; Liquidated Completion Damages	20
Section 3.7	Extension of Initial Term and other options; Obligations at Termination	21

ARTICLE IV

DEVELOPMENT OF PROJECTS AND RELATED AGREEMENTS AND UNDERTAKINGS

Section 4.1	Development of Projects	24
Section 4.2	Operation and Maintenance of the Renewable Energy Projects	25
Section 4.3	Reserved.....	25
Section 4.4	Outages	25
Section 4.5	Removal and Re-installation of Panels; Roof Maintenance & Repairs	26
Section 4.6	Certain Local Unit Facility Issues	27

Section 4.7	Incorporation of Company RFP Terms and Conditions	29
Section 4.8	Service Provider’s Ability to Choose Subcontractors.....	21

ARTICLE V

LOCAL UNIT LICENSE AGREEMENT – LOCAL UNIT FACILITY ACCESS

Section 5.1	Local Unit License Agreement	22
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ARTICLE VI

**ENERGY SERVICES PROVIDED BY SERVICE PROVIDER
PRIOR TO OR UPON COMMENCEMENT DATE**

Section 6.1	Sale and Purchase of Electricity Converted from Solar Energy	23
Section 6.2	Rates and Charges.....	24
Section 6.3	Service Provider Reservation of Rights; Benefits Shared	24
Section 6.4	Payment Terms	24
Section 6.5	Taxes; Other Governmental Charges.....	24
Section 6.6	Alterations to Customer's Facilities	25
Section 6.7	Point of Delivery.....	25
Section 6.8	Energy Metering.....	25
Section 6.9	Information Technology Support.....	26

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1	Representations and Warranties of the Authority.....	26
Section 7.2	Representations and Warranties of Customer.....	26
Section 7.3	Representations and Warranties of Service Provider.....	27

ARTICLE VIII

INDEMNIFICATION AND INSURANCE

Section 8.1	Indemnification	29
Section 8.2	Service Provider’s Insurance.....	29
Section 8.3	Customer’s Insurance.....	30
Section 8.4	Additional Insured and Waiver of Subrogation	30
Section 8.5	Evidence of Insurance	31
Section 8.6	Use of Insurance Proceeds	31

Section 8.7 Casualty and Condemnation with Respect to Underlying Local Unit Facilities....39

ARTICLE IX

EVENT OF DEFAULT

Section 9.1 Service Provider Event of Default40
Section 9.2 Customer Event of Default40
Section 9.3 Authority Event of Default40

ARTICLE X

REMEDIES

Section 10.1 Remedies upon a Service Provider Event of Default.....42
Section 10.2 Remedies upon a Customer Event of Default.....42
Section 10.3 Remedies upon an Authority Event of Default.....43

ARTICLE XI

FORCE MAJEURE

Section 11.1 Suspension of Performance.....43
Section 11.2 Termination by Reason of Force Majeure43

ARTICLE XII

LIMITATION ON LIABILITY

Section 12.1 Limitation on Liability43

ARTICLE XIII

TERMINATION

Section 13.1 Termination.....44

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ARTICLE XIV

MISCELLANEOUS

Section 14.1	Indemnification	44
Section 14.2	Governing Law, Waiver of Right to Jury Trial, and Jurisdiction	44
Section 14.3	Successors and Assigns.....	45
Section 14.4	Waiver.....	45
Section 14.5	Arbitration.....	45
Section 14.6	Entire Agreement; Amendment	45
Section 14.7	Partial Invalidity.....	45
Section 14.8	Non-Substitution.....	46
Section 14.9	Further Assurances.....	46
Section 14.10	Counterpart Execution; Facsimile Signatures.....	46
Section 14.11	Waiver of Sovereign Immunity.....	46
Section 14.12	Notice.....	47
Section 14.13	Approvals.....	48

EXHIBITS

EXHIBIT A	List of Customers and Local Unit Facilities	A-1
EXHIBIT B	PPA Price - Electricity Rates and Escalation Adjustments.....	B-1
EXHIBIT C	Plans and Specifications for Renewable Energy Projects.....	C-1
EXHIBIT D	Plans, Specifications and Local Unit Facility Warranty Duration Chart for Capital Improvement Projects	D-1
EXHIBIT E	Form of Local Unit License Agreement	E-1
EXHIBIT F	Notice Information for Customer.....	F-1
EXHIBIT G	Construction Performance Bond.....	G-1
EXHIBIT H	Initial List of Subcontractors.....	H-1

POWER PURCHASE AGREEMENT
(Monmouth County Renewable Energy Program, Series 2012)

THIS “**POWER PURCHASE AGREEMENT (Monmouth County Renewable Energy Program, Series 2012)**” (including any amendments or supplements hereto from time to time in accordance with the terms hereof, this “**Power Purchase Agreement**”), dated as of January 1, 2012, is made by and among the **MONMOUTH COUNTY IMPROVEMENT AUTHORITY** (including any successors and assigns, the “**Authority**”), duly created by resolution of the Board of Chosen Freeholders (“**Board of Freeholders**”) of the County of Monmouth (the “**County**”), State of New Jersey (“**State**”) as a public body corporate and politic of the State pursuant to and in accordance with the provisions of the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (as codified at N.J.S.A. 40:37A-44 *et seq.*, the “**Act**”) and other applicable law, and [COMPANY, a limited liability company organized and existing under the laws of the State of Delaware], duly authorized to conduct business in the State (including any successors and assigns, the “**Company**” or “**Service Provider**”).

WHEREAS, the Monmouth County Improvement Authority (the “*Authority*”) has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the “*Board of Freeholders*”) of the County of Monmouth (the “*County*”) in the State of New Jersey (the “*State*”) as a public body corporate and politic of the State pursuant to and in accordance with the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (as codified at N.J.S.A. 40:37A-44 *et seq.*, the “*Act*”), and other applicable law;

WHEREAS, the Authority has developed a program (the “*Renewable Energy Program*”) for the financing, design, permitting, acquisition, construction, installation, operation and maintenance of renewable energy capital equipment and facilities such as solar panels, wind turbines, and hydro-electric, bio-diesel, geothermal, and bio-mass facilities, including any related electrical modifications, work related to the maintenance of roof warranties, or other work required, desirable or convenient for the installation of such systems (collectively, the renewable energy capital equipment and facilities, the “*Renewable Energy Projects*”) for and on behalf of the County and its affiliates, and the local governmental units within the County, including without limitation municipalities, boards of education for school districts, local authorities and any other local government instrumentalities, public bodies or other local government entities (collectively, including the County, the “*Local Units*”);

WHEREAS, the Renewable Energy Projects procured under the Renewable Energy Program, are to be installed on, in, affixed or adjacent to and/or for any other Local Unit controlled buildings, other structures, lands or other properties of the Local Units (collectively, the “*Local Unit Facilities*”);

WHEREAS, it may be necessary, desirable or convenient, in connection with the financing, design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects, to finance, design, permit, acquire, construct, renovate and install certain capital improvements to the Local Unit Facilities, including without limitation, improvements to or replacement of, roofing systems, if any (the “*Capital Improvement Projects*” and together with the Renewable Energy Projects and any Completion Project as defined in the hereinafter defined Bond Resolution, the “*Projects*”), and to the extent no Capital Improvement Projects are so financed, references herein shall have no meaning;

WHEREAS, the primary goal of the Renewable Energy Program is to expand the use of renewable energy sources available and utilized by the Local Units for their Local Unit Facilities, with the attendant environmental and financial benefits associated thereby, and to reduce the energy related operating costs to the Local Units for their Local Unit Facilities;

WHEREAS, in order to implement the Renewable Energy Program, the Authority has determined to finance the respective Renewable Energy Projects and Capital Improvement Projects, if any, on, in or about the respective Local Unit Facilities, all as set forth on Exhibits A, B and C to the hereinafter defined Local Unit License Agreement for each of the following participating Local Units:

- (i) Borough of Eatontown, Township of Middletown and Borough of Tinton Falls (collectively, the “*Municipal Series 2012 Local Units*”); and
- (ii) Little Silver Board of Education and Middletown Board of Education (collectively, the “*Board of Education Series 2012 Local Units*”); and
- (iii) Monmouth County Vocational Technical School (the “*County Series 2012 Local Units*”); and
- (iv) Township of Middletown Sewerage Authority (the “*Sewer Authority Series 2012 Local Unit*”); and

(each a “*Series 2012 Local Unit*”, and together with any additional local governmental units within the County that might be added or removed by the Authority to the Renewable Energy Program, pursuant to the hereinafter defined Local Finance Board Application or otherwise, collectively, the “*Series 2012 Local Units*”), through the issuance by the Authority of one or more series of bonds and notes entitled “County of Monmouth Guaranteed Pooled Program Renewable Energy Program Lease Revenue [Notes] Bonds, Series 2012 (Federally Taxable)” dated their date of delivery, Outstanding (as defined in the Bond Resolution upon issuance) in the aggregate principal amount (including Sinking Fund Installments, if any, as such term is defined in the Bond Resolution) not to exceed \$ _____ (the “*Series 2012 Bonds*”);

WHEREAS, in order to finance the Renewable Energy Projects for the Series 2012 Local Units on, in or about their Local Unit Facilities, the Authority may sell one or more series of Series 2012 Bonds, (i) one series by either a competitive process or by negotiated sale after the selection of an underwriter (the “*Underwriter*”) the terms of which sale shall be as set forth in that certain Bond

Purchase Agreement between the Underwriter and the Authority (the “Series 2012A Bonds”), and (ii) one or more series of notes (collectively, the “*Series 2012B Notes*”, and together with the Series 2012A Bonds, the previously defined “*Series 2012 Bonds*”), either by the same sale method as the Series 2012A Bonds or by direct sale to the County; provided, however that the aggregate principal amount of the Series 2012A Bonds and the Series 2012B Bonds together with any other bonds issued under the Bond Resolution shall not exceed \$50,000,000;

WHEREAS, the Series 2012 Bonds, and any Additional Pooled Program Bonds defined under the Bond Resolution (collectively, the “*Bonds*”) shall be issued pursuant to the terms of that certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF MONMOUTH GUARANTEED POOLED PROGRAM RENEWABLE ENERGY PROGRAM LEASE REVENUE NOTES AND BONDS, SERIES 2012 (FEDERALLY TAXABLE) AND ADDITIONAL BONDS OF THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY” to be adopted by the governing body of the Authority, as amended and supplemented from time to time in accordance with its terms, including by one or more Certificates of an Authorized Officer of the Authority, each dated the date of issuance of the respective series of Series 2012 Bonds (the “*Bond Resolution*”), all in accordance with Sections 17-19 of the Act (N.J.S.A. 40:37A-60, 61 and 62) and all other applicable law;

WHEREAS, in order to implement the Renewable Energy Program, the Authority has determined that the proceeds of the Series 2012 Bonds shall be deposited with the trustee to be designated under the hereinafter defined Local Unit Bond Resolution (the “*Local Unit Trustee*”) and be used to acquire one or more separate series of bonds (the “*Series 2012A Local Unit Bonds*”) or notes (the “*Series 2012B Local Unit Notes*”) for each Series 2012 Local Unit entitled “County of Monmouth Guaranteed Renewable Energy Program Lease Revenue [Notes] [Bonds], Series 2012 (Federally Taxable - [] Project” dated their date of delivery (collectively, the “*Series 2012 Local Unit Bonds*”);

WHEREAS, any notes issued as Series 2012 Bonds may be refunded through the issuance of one or more series of notes or bonds issued as Series 2012 Bonds, so long as (i) the principal amount of such notes or bonds, each issued as Series 2012 Bonds and Outstanding in the aggregate at any one time under and as defined in the hereinafter defined Bond Resolution, does not exceed \$50,000,000 and (ii) the interest rates thereon do not exceed the maximum interest rates set forth in the Local Finance Board Application;

WHEREAS, the Series 2012 Local Unit Bonds shall also finance all other costs associated with the Renewable Energy Program that the Authority determines to be necessary, convenient or desirable for the successful implementation of the Renewable Energy Program, including without limitation (i) all or a portion of the Preliminary Program Costs, Administrative Expenses and Company Development Fees and Expenses (as such terms are defined in the hereinafter defined Local Unit Bond Resolution), (ii) costs incurred in connection with the issuance of the Series 2012 Local Unit Bonds, (iii) costs incurred or to be incurred in connection with the design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects for the Series 2012 Local Units, (iv) costs incurred or to be incurred in connection with the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for the Series 2012 Local Units, if any, (v) capitalized interest and/or reserves, if any, and

(vi) such other amounts as shall be set forth in the Local Unit Bond Resolution (collectively, the *Series 2012 Project*”);

WHEREAS, the Series 2012 Local Unit Bonds, and any Additional Bonds defined under the Local Unit Bond Resolution (collectively, the “*Local Unit Bonds*”) shall be issued pursuant to the terms of that certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF MONMOUTH GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE NOTES AND BONDS (COUNTY OF MONMOUTH PROGRAM), SERIES 2012 (FEDERALLY TAXABLE - [_____] PROJECT) AND ADDITIONAL BONDS OF THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY” to be adopted by the governing body of the Authority, as amended and supplemented from time to time in accordance with its terms, including by one or more Certificates of an Authorized Officer of the Authority, each dated the date of issuance of the respective series of Series 2012 Local Unit Bonds (the “*Local Unit Bond Resolution*”), all in accordance with Sections 17-19 of the Act (N.J.S.A. 40:37A-60, 61 and 62) and all other applicable law;

WHEREAS, pursuant to N.J.S.A. 40:37A-77 of the Act, N.J.S.A. 40A:65-4 of the Uniformed Shared Services and Consolidation Act (as amended and supplemented from time to time, the “*Shared Services Act*”) and other applicable law, upon or prior to the issuance of the Series 2012 Bonds and Series 2012 Local Unit Bonds, the Authority shall have entered into a “License and Access Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and Series 2012 Local Unit Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, each agreement shall constitute a “*Local Unit License Agreement*”, and collectively, the “*Local Unit License Agreements*”) with each Series 2012 Local Unit that would, among other things, provide the Authority and/or its assignees the right and obligation to (i) access the Local Unit Facilities of each such Series 2012 Local Unit, most particularly their roofs and electrical systems (the “*Local Unit License*”), (ii) finance, design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities, (iii) finance, design, permit, acquire, construct, renovate, and install, the Capital Improvement Projects, if any, on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities, (iv) receive the right to the renewable energy produced from the Renewable Energy Projects financed by the Series 2012 Bonds and Series 2012 Local Unit Bonds, and (v) sell all or a portion of the renewable energy produced from such Renewable Energy Projects through the Authority to the respective Series 2012 Local Units, pursuant to an assignment (under each Local Unit License Agreement) from the Authority to the Series 2012 Local Units of the Power Purchase Agreement (as hereinafter defined), the terms of which Power Purchase Agreement could be entered into directly by the Series 2012 Local Units under N.J.S.A. 40A:11-15(45) of the Local Public Contracts Law (for the Municipal and County Series 2012 Local Units) and under N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law (for the Board of Education Series 2012 Local Units);

WHEREAS, upon or prior to the issuance of the Series 2012 Bonds and Series 2012 Local Unit Bonds, and in accordance with (i) N.J.S.A. 40A:11-4.1(k) of the Local Public Contracts Law, (ii) Local Finance Board Notice 2008-20, December 3, 2008, *Contracting for Renewable Energy Services*, (iii) the State Board of Public Utilities (“*BPU*”) protocol for measuring energy savings in

PPA agreements dated February 20, 2009 (*Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines*), (iv) Local Finance Board Notice 2009-10 dated June 12, 2009, *Contracting for Renewable Energy Services: Update on Power Purchase Agreements*, and (v) all other applicable law, and pursuant to a competitive contracting process governed thereby, which shall include a request for solar developer proposals to be issued by the Authority (the “*Company RFP*”) and the receipt of proposals from prospective solar developers, including that (the “*Company Proposal*”) of the successful respondent (the “*Company*”), the Authority shall select the Company to (y) design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects and (z) design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, if any, in both cases for the designated Local Unit Facilities of such Series 2012 Local Units, with such Program terms to be set forth in the following Company Documents to be entered into between the Company and, at a minimum, the Authority, or acknowledged by the Company, as applicable:

- (a) Pursuant to N.J.S.A. 40:37A-78 of the Act, a “Lease Purchase Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and Series 2012 Local Unit Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the “*Company Lease Agreement*”) between the Authority, as owner and lessor, and the Company, as lessee, (I) conveying to the Company a leasehold interest in and to the Renewable Energy Projects, (II) assigning to the Company a license of the necessary portion of each Series 2012 Local Units’ Local Unit Facilities (obtained by the Authority through the Local Unit License Agreements) in order for the Company to design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects, and to design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, if any, in both cases, for such Series 2012 Local Units, and (III) obligating the Company to operate and maintain, or cause the operation and maintenance of, the Renewable Energy Projects for the Series 2012 Local Units;
- (b) That certain “Power Purchase Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and Series 2012 Local Unit Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the “*Power Purchase Agreement*”) authorized pursuant to N.J.S.A. 40:37A-77 and -78 of the Act, N.J.S.A. 40A:65-4 of the Shared Services Act, N.J.S.A. 40A:11-15(45) of the Local Public Contracts Law (regarding that portion to be assigned to the municipal/County Series 2012 Local Unit under the applicable Local Unit License Agreement), N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law (regarding that portion to be assigned to the board of education Series 2012 Local Units under the applicable Local Unit License Agreements) and the guidelines applicable to such contracts promulgated by the State Board of Public Utilities (the “*BPU*”), whereby, among other things,

(I) The Company shall establish a power purchase price based, in part, on the Authority's covenant in the Company Lease Agreement to issue the Series 2012 Local Unit Bonds to finance the Renewable Energy Projects, and if applicable, the Capital Improvement Projects, for the Series 2012 Local Units, and the Company shall be entitled to draw a dedicated portion of the net proceeds of the Series 2012 Local Unit Bonds for the design, permitting, acquisition construction, renovation, and installation of such Projects on a requisition basis,

(II) The Company shall establish a power purchase price based, in part, on the Authority's covenant in the Company Lease Agreement, as nominal owner of the Renewable Energy Projects for State law purposes, to assign to the Company all or a portion of the Authority's rights to the Solar Renewable Energy Certificates ("SRECs") generated by the Renewable Energy Projects for the Series 2012 Local Units, and

(III) The Company shall sell to the Authority for the benefit of the Series 2012 Local Units, for a term of fifteen (15) years, plus extensions if applicable, for a fixed power purchase price per kilowatt hour, as escalated under the terms thereof (such terms to be established pursuant to the Company Proposal), the renewable energy generated by the Renewable Energy Projects, which Authority obligation to purchase shall be assigned to the Series 2012 Local Units as part of the Local Unit License Agreements; and

- (c) The Company Lease Agreement, the Power Purchase Agreement, the hereinafter defined Company Disclosure Agreement, and the hereinafter defined Company Pledge Agreement, may be collectively defined as the "*Company Documents*";

WHEREAS, payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2012 Bonds, shall be secured by the Trust Estate, as defined under and in accordance with the terms of the Bond Resolution, which shall include, among other things (i) the principal and interest or other investment earnings received or to be received on any moneys or securities including, but not limited to the Series 2012 Local Unit Bonds, held pursuant to the Bond Resolution and paid or required to be paid into the Debt Service Fund under the Bond Resolution, (ii) payments by the hereinafter defined Municipal Guarantor under the hereinafter defined Municipal Guaranty to the extent other funds are not available to make the Series 2012 Bond debt service payments on time and in full, all in accordance with the terms of the Bond Resolution; and payments by the County under the hereinafter defined County Guaranty to the extent other funds (including payments pursuant to the Municipal Guaranty) are not available to make the Series 2012

Bond debt service payments on time and in full, all in accordance with the terms of the Bond Resolution;

WHEREAS, payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2012 Local Unit Bonds, shall be secured by the Trust Estate as defined under and in accordance with the terms of the Local Unit Bond Resolution, which shall include, among other things, (i) Basic Lease Payments to be made by the Company under, and as defined in, the Company Lease Agreement, (ii) certain Additional Lease Payments to be made by the Company under, and as defined in, the Company Lease Agreement, which Additional Lease Payments shall be attributable to (a) the Purchase Option Price payable in accordance with Section 701 of the Company Lease Agreement upon any optional redemption of the Series Local Unit 2011 Bonds or (b) the Mandatory Purchase Price payable in accordance with Section 702 of the Company Lease Agreement upon any acceleration of the Series 2012 Local Unit Bonds, (iii) payments by the Municipal Guarantor under the Municipal Guaranty to the extent other funds (including the Basic Lease Payments) are not available to make the Series 2012 Local Unit Bond debt service payments on time and in full, all in accordance with the terms of the Local Unit Bond Resolution; and (iv) payments by the County under the County Guaranty to the extent other funds (including the Basic Lease Payments and payments pursuant to the Municipal Guaranty) are not available to make the Series 2012 Local Unit Bond debt service payments on time and in full, all in accordance with the terms of the Local Unit Bond Resolution;

WHEREAS, the payment of the principal (including mandatory sinking fund installments, if any) in an aggregate principal amount not to exceed \$_____ of, and interest (at interest rates not to exceed the maximum rates set forth in the Local Finance Board Application) on the Series 2012 Local Unit Bonds, but not any redemption premium, shall be fully, unconditionally and irrevocably guaranteed in accordance with (i) the terms of a guaranty ordinance of the municipality providing the guaranty on behalf of the applicable Series 2012 Local Unit (the "*Municipal Guarantor*") to be finally adopted by its governing body, (ii) by a guaranty certificate to be executed by an authorized officer of the Municipal Guarantor within each Series 2012 Local Unit Bond and (iii) a "Municipal Guaranty Agreement (Monmouth County Renewable Energy Program, Series 2012)" to be dated as of the first day of the month of issuance of the Series 2012 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the "*Municipal Guaranty Agreement*") by and between the Municipal Guarantor and the Authority, as acknowledged by the Company and the Credit Facility Provider, if any (as defined in the Local Unit Bond Resolution) setting forth, among other things, the Municipality's obligation to make any such guaranty payments in accordance with and within the parameters set forth in the guaranty ordinance and the Local Unit Bond Resolution (collectively, the "*Municipal Guaranty*"), all pursuant to Section 37 ("*Section 37*") of the Act (N.J.S.A. 40:37A-80);

WHEREAS, the payment of the principal (including mandatory sinking fund installments, if any) in an aggregate principal amount not to exceed \$_____ of, and interest (at interest rates not to exceed the maximum rates set forth in the Local Finance Board Application) on the Series 2012 Local Unit Bonds, but not any redemption premium, shall be fully, unconditionally and irrevocably guaranteed in accordance with (i) the terms of a guaranty ordinance of the County to be finally adopted by the County Board of Freeholders, (ii) by a guaranty certificate to be executed by

an authorized officer of the County within each Series 2012 Local Unit Bond and (iii) a “County Guaranty Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*County Guaranty Agreement*”) by and between the County and the Authority, as acknowledged by the Company and the Credit Facility Provider, if any (as hereinafter defined) setting forth, among other things, the County’s obligation to make any such guaranty payments in accordance with and within the parameters set forth in the guaranty ordinance and the Local Unit Bond Resolution (collectively, the “*County Guaranty*”), all pursuant to Section 37 (“*Section 37*”) of the Act (N.J.S.A. 40:37A-80);

WHEREAS, the holders of any Additional Bonds issued under the terms of the Local Unit Bond Resolution, the Act and all other applicable law shall also be entitled to the pledge of the Trust Estate under the Local Unit Bond Resolution on a pro-rata basis with the holders of any Outstanding Local Unit Bonds as defined therein, including the Series 2012 Local Unit Bonds, although the guaranty of the Municipal Guarantor and the County shall only extend to any such Series of Additional Bonds to the extent (i) the aggregate principal amount of all such Series of Additional Bonds, when taken together with the aggregate principal amount of the Series 2012 Local Unit Bonds, shall not exceed \$_____, or (ii) the Municipal Guarantor and the County adopts and executes similar official action and documents constituting the Municipal Guaranty and the County Guaranty;

WHEREAS, under the Municipal Guaranty Agreement, the County Guaranty Agreement, the Company RFP, and as applicable, the Company Proposal, the Authority shall be obligated to obtain a letter of credit, cash, a covenant to provide same, or other form of security acceptable to and issued for the benefit of the Municipal Guarantor and the County (the “*Guarantor Security*”) to be issued by a sufficiently rated banking or other financial institution, or if the Guarantor Security is provided in the form of immediately available funds or the right to same, then the Company (in any such case, the “*Guarantor Security Provider*”), all to secure, in part, the Municipal Guarantor’s or County’s payment obligations under their respective Municipal Guaranty and County Guaranty (but not to secure the payment of debt service on the Series 2012 Local Unit Bonds, as any such Guarantor Security shall be deposited in the Guarantor Security Fund under the Local Unit Bond Resolution, which Fund shall not be a part of the Trust Estate pledged for the payment of the Series 2012 Local Unit Bonds), the terms of which Guarantor Security shall be set forth in a letter of credit and reimbursement or other agreement to be dated the first day of the month of issuance of the applicable series of Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*Guarantor Security Agreement*”) among the Company, the Guarantor Security Provider, and the Authority, and acknowledged by the Municipal Guarantor or the County, as applicable, the provisions of which Guarantor Security Agreement, to the extent the Guarantor Security is in the form of immediately available funds or the right to same deposited in the Guarantor Security Fund created under the Local Unit Bond Resolution, shall (i) not be set forth in an independent Guarantor Security Agreement, and accordingly (ii) be set forth in the Local Unit Bond Resolution, the Municipal Guaranty Agreement, the County Guaranty Agreement and the Company Lease Agreement;

WHEREAS, should the Company fail to make its Basic Lease Payments on time and in full, thereby causing the Municipal Guarantor or the County to make payments to the Series 2012 Local Unit Bondholders under the Municipal Guaranty or the County Guaranty, which in turn causes the Guarantor Security to be drawn upon to reimburse the Municipality or County for all or a portion of any such Municipal Guaranty or the County Guaranty repayments, (i) the Guarantor Security Agreement, if any, shall provide that the Authority assign and pledge the Reimbursement Collateral (as defined in the Bond Resolution) to the Guarantor Security Provider, as reimbursement security for any such draw on the Guarantor Security , or (ii) to the extent the Guarantor Security is in the form of immediately available funds or the right to same deposited in the Guarantor Security Fund created under the Local Unit Bond Resolution, in which case no Guarantor Security Agreement shall exist, then the Company, as Guarantor Security Provider in such instance, shall only be entitled to such excess Guarantor Security , as Reimbursement Collateral, if any shall remain available, after and to the extent the Municipal Guarantor or the County has been fully paid under its respective Municipal Guaranty or County Guaranty;

WHEREAS, the Authority, with the consent of the Municipal Guarantor and the County, may, depending on the Company Proposal, determine to (i) waive Guarantor Security due to the strength of the Company Proposal or otherwise, in which case the terms Guarantor Security , Guarantor Security Fund , Guarantor Security Fund Requirement, Guarantor Security Provider and Reimbursement Collateral shall have no effect, or (ii) initially accept as Guarantor Security , in lieu of a Guarantor Security Agreement, immediately available funds in such amount (defined under the Bond Resolution as the Guarantor Security Fund Requirement) as set forth in the Company Proposal, to be funded by the Company in accordance with the terms of the Company Lease Agreement, all as contemplated by the Company Proposal, and all to secure, in part, the Municipal Guarantor's or County's payment obligations under its Municipal Guaranty or County Guaranty, as applicable, should such Municipal Guaranty or County Guaranty ever be drawn upon, and which Guarantor Security Fund Requirement monies would then be deposited by the Trustee in the Guarantor Security Fund created and defined in the Local Unit Bond Resolution, and which Guarantor Security Fund would be specifically excepted from the pledge of the Trust Estate and would not be available to secure the payment of debt service on the Series 2012 Local Unit Bonds;

WHEREAS, in the event the Company provides the Guarantor Security Fund Requirement through such a covenant to provide immediately available funds, if applicable, but in any event to secure other Company obligations under the Company Documents, the Authority shall require the Company to further secure such obligations by pledging certain property interests of the Company and its managing member's interest in and to the Company to the Trustee, all as shall be set forth in the Company Lease Agreement and that certain "Pledge and Guarantor Security Agreement (Monmouth County Renewable Energy Program, Series 2012)" to be dated as of the first day of the month of issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the "*Company Pledge Agreement*"), and issued by the managing member of the Company, in favor of the Trustee, and acknowledged and accepted by the Company;

WHEREAS, the Company as a potential "materially obligated person" within the meaning and for the purposes set forth in Rule 15c2-12 ("*Rule 15c-12*") promulgated by the Securities and

Exchange Commission pursuant to the Securities and Exchange Act of 1934, as amended, may be required to enter into that certain “Company Continuing Disclosure Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*Company Continuing Disclosure Agreement*”) with the Authority and the Trustee, as dissemination agent (the “*Dissemination Agent*”) in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, the Series 2012 Local Unit as a potential “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, may be required to enter into that certain Local Unit Continuing Disclosure Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the *Local Unit Continuing Disclosure Agreement*”) with the Dissemination Agent in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, pursuant to the terms of the Bond Resolution, as a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, the County will be required to enter into that certain “County Continuing Disclosure Agreement (Monmouth County Renewable Energy Program, Series 2012)” to be dated as of the first day of the month of issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*County Continuing Disclosure Agreement*” and together with the Company Continuing Disclosure Agreement and the Local Unit Continuing Disclosure Agreement, the “*Continuing Disclosure Agreements*”) with the Dissemination Agent in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, pursuant to the terms of the Bond Resolution and/or the Continuing Disclosure Agreements, the Authority shall (i) not be considered a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, and (ii) be required to provide certain material events notices in accordance with Rule 15c2-12, and accordingly, the Authority shall be required to provide such material events notices under the terms of the Company Continuing Disclosure Agreement, the Local Unit Continuing Disclosure Agreement and the County Continuing Disclosure Agreement, all in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, prior to the issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds and in accordance with N.J.S.A. 40A:5A-6, 7 and 8 of the Local Authorities Fiscal Control Law, the Authority shall have made an application (the “*Local Finance Board Application*”) to, and seek, obtain, and officially recognize the findings from, the Local Finance Board (the “*Local Finance Board*”) in the Department of Local Government Services of the State Department of Community Affairs;

WHEREAS, in order to market and sell the Series 2012 Bonds, the Authority shall determine to either (i) privately place the Series 2012 Bonds with any of the County, the State or State affiliate, or other third party, either directly, or through a private placement agent (“*Private*

Placement Agent”), or (ii) alternatively, by negotiated or competitive sale, publicly offer the Series 2012 Bonds, in which public offering case the Authority shall need to:

- (a) Authorize the distribution of a preliminary official statement “deemed final” within the meaning and for the purposes of Rule 15c2-12 describing the terms of the Series 2012 Bonds, the Series 2012 Project and the other transactions contemplated hereby (the “*Preliminary Official Statement*”);
- (b) If the Series 2012 Bonds shall be sold by:
 - (I) Competitive sale, authorize the distribution of a notice of sale (“*Notice of Sale*”), pursuant to which the Authority shall select an underwriter to purchase all of the Series 2012 Bonds (the “*Underwriter*”), or
 - (II) Negotiated sale, enter into a bond purchase agreement (the “*Bond Purchase Agreement*”) with an underwriter to be selected by the Authority (alternatively, the “*Underwriter*”) to purchase all of the Series 2012 Bonds; and
- (c) Execute and deliver a final Official Statement incorporating the terms of the sale of the Series 2012 Bonds and certain other information into the Preliminary Official Statement (the “*Official Statement*”, and together with the Preliminary Official Statement, the Notice of Sale or the Bond Purchase Agreement, as applicable, and any of the same or other offering or sale documents that may be required by any Private Placement Agent or direct purchaser under the private sale methodology in clause (i) above, the “*Sale Documents*”);

WHEREAS, prior to the issuance of the Series 2012 Bonds and the Series 2012 Local Unit Bonds and in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), the Authority shall have made a detailed report regarding the Renewable Energy Program to the Board of Freeholders, which report shall include, without limitation, descriptions of the Series 2012 Bonds, the Series 2012 Local Unit Bonds, the Bond Resolution, the Local Unit Bond Resolution, the Company Lease Agreement, the Municipal Guaranty (including the Municipal Guaranty Agreement), the County Guaranty (including the County Guaranty Agreement), the Power Purchase Agreement, the Company Pledge Agreement, the Continuing Disclosure Agreements, the Local Unit License Agreements, and if and as applicable, the Sale Documents (collectively, the “*Program Documents*”), and which report and amended report shall be accepted by the County and the Board of Freeholders pursuant to Section 13.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions referenced and exchanged herein, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions.

(a) The terms set forth in this Section shall have the meanings ascribed to them for all purposes of this Power Purchase Agreement unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

(b) The following defined terms shall have the respective meanings ascribed to such terms in the preambles hereof:

Act
Authority
BPU
Capital Improvement Projects
Company
Company Lease Agreement
Company Proposal
Company RFP
County
Local Unit Facilities
Local Unit License Agreement
Power Purchase Agreement
Projects
Renewable Energy Projects
Series 2012 Local Units
Service Provider
Shared Services Act
State

(c) The following defined terms shall, for all purposes of this Power Purchase Agreement, have the meanings as set forth in the Company Lease Agreement:

Acceptance Certificates
CIP Acceptance Certificates
Company Documents
Construction Manager
County Security
County Security Agreement
County Security Provider
Development Contract

**Interconnection Agreement
Plans and Specifications
Program Document
Principal Office
Renewable Energy Program
Renewable Energy Program Interested Party
REP Acceptance Certificates
Series 2012 Bonds
Trustee**

(d) The following defined terms shall, for all purposes of this Power Purchase Agreement, have the following meanings:

“**Business Day**” shall mean, with respect to the Bonds of any Series, any day other than (i) a Saturday, Sunday or legal holiday or a day on which banking institutions, in the city in which the Principal Office of the Authority, any Series 2012 Local Unit, the Trustee or the Paying Agent is located, are closed, or (ii) a day on which the New York Stock Exchange is closed.

“**Commencement Date**” shall have the meaning set forth in Section 3.5 of this Power Purchase Agreement.

“**Completion Conditions**” shall have the meaning set forth in Section 3.6(a) of this Power Purchase Agreement.

“**Construction and Interconnection Phase**” shall have the meaning set forth in Section 3.2 of this Power Purchase Agreement.

“**Construction Performance Bond**” shall mean that construction performance bond provided by or on behalf of the Company securing, in part, the Company’s obligations under this Power Purchase Agreement to complete the Projects, in the form set forth in **Exhibit G** to this Power Purchase Agreement.

“**Customer**” shall mean individually or collectively, as the case may be, the Series 2012 Local Units that are receiving or have contracted to receive Electricity under the combination of this Power Purchase Agreement and the Local Unit License Agreements, including Section 5.1(c)(i) thereof, which Series 2012 Local Units shall be entitled to the rights and obligated to perform the duties and obligations of Customer hereunder, both as a third-party beneficiary and third-party obligor of this Power Purchase Agreement.

“**Designated Representative**” shall have the meaning set forth in Section 3.3 of this Power Purchase Agreement.

“**Effective Date**” shall have the meaning set forth in Section 3.1(a) of this Power Purchase Agreement.

“**Electricity**” shall mean that alternating current electricity which is produced by the Renewable Energy Projects at the respective Local Unit Facilities as the result of the conversion of solar energy into electricity pursuant to the terms of this Power Purchase Agreement and pursuant to the Plans and Specifications;

“**Event of Default**” shall have the various meanings, as applicable, set forth in Article IX of this Power Purchase Agreement.

“**Fair Market Value**” shall mean the price at which an asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts, and which price shall be established by one or more third party appraisals from firms experienced in the valuation of assets similar to those comprising the Renewable Energy Projects, as contemplated by Section 3.7(b) hereof.

“**Force Majeure**” shall mean any event which is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party or its affiliates, including, but not limited to and without limitation, (a) strikes or other labor disputes (other than strikes or labor disputes solely by employees or contractors of the Parties to this Power Purchase Agreement as a result of such Party’s failure to comply with a collective bargaining agreement), (b) adverse weather conditions, breakdown or failure of the utility transmission or distribution system not caused by the Service Provider and (c) other acts of nature, riot or civil unrest. The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, customer, or supplier of the Service Provider, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the Renewable Energy Projects that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear, unless such mishap is caused by Force Majeure; (iii) changes in market conditions that affect the cost of the Service Provider’s supplies, or that affect demand or price for any of the Service Provider’s products, including, but not limited to the price of electricity, SRECs or other environmental attributes; or (iv) any action that constitutes negligence or gross negligence by the Party claiming a Force Majeure event.

“**Initial Term**” shall have the meaning set forth in Section 3.1(a) of this Power Purchase Agreement.

“**Meter**” shall mean that metering system or systems owned or controlled by Service Provider that accurately measures the amount of solar energy that is converted into Electricity by the Renewable Energy Projects and delivered to each Customer pursuant to this Power Purchase Agreement.

“**Parties**” or “**Party**” shall mean, individually or collectively, as the case may be, the Authority, the Service Provider, and the Series 2012 Local Units, as third-party beneficiaries and obligors under this Power Purchase Agreement.

“**Point of Delivery**” shall mean that physical point, which is identified in the Plans and Specifications, at which Service Provider shall deliver Electricity to each Customer’s Applicable

Local Unit Facility pursuant to this Power Purchase Agreement, it being understood that Service Provider shall be responsible for all operating, maintenance and repair costs associated with the delivery of Electricity from the Renewable Energy Projects to and including the Point of Delivery, and that Customer shall be responsible for all operating, maintenance and repair costs incurred from the Point of Delivery to Customer's operating site at or in its Local Unit Facility.

“**PPA Price**” shall have the meaning set forth in Section 6.2 of this Power Purchase Agreement.

“**Required Completion Date**” shall have the meaning set forth in Section 3.6(a) of this Power Purchase Agreement.

“**SREC**” shall mean a New Jersey Solar Renewable Energy Certificate available as a result of the operation of the Renewable Energy Projects.

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ARTICLE II

CONDITIONS

Section 2.1 Conditions Precedent for Service Provider.

The obligations of Service Provider under this Power Purchase Agreement are expressly conditioned on and subject to the satisfaction, or waiver by Service Provider, of the following conditions precedent:

(a) The execution and delivery by the Customer of any license, easement, or other real property interests in or contract rights to use the Customer's real property that Customer is obligated to deliver hereunder prior to the scheduled commencement of construction of the Projects. The Parties acknowledge that such condition precedent shall be satisfied by the authorization, execution and delivery of the Local Unit License Agreements by each Customer and the Authority contemporaneously herewith, which Local Unit License Agreements, among other things, by their respective terms (including Section 3.1(a) thereof) provide authority for the Company (and their subcontractors, consultants, agents or other designees) to access the Local Unit Facilities of Customer for the purpose of (i) designing, permitting, acquiring, constructing, installing, operating and maintaining the Renewable Energy Projects and (ii) designing, permitting, acquiring, constructing, renovating and installing the Capital Improvement Projects.

Section 2.2 Conditions Precedent for Authority.

The obligations of the Authority hereunder, assumed by the respective Customers under the Local Unit License Agreements (including Section 5.1I thereof) to accept deliveries of Electricity derived from the Renewable Energy Projects and make service payments hereunder to the Service Provider, are expressly conditioned on and subject to the satisfaction or waiver of the following conditions precedent:

(a) The receipt by the Authority of the County Security, County Security Agreement, and the Company Lease Agreement.

Section 2.3 Conditions Precedent for all Parties.

The respective obligations of Service Provider, the Authority and the Customer with respect to the Projects related to any Customer are each expressly conditioned on and subject to the receipt, prior to the commencement of construction of such Projects, of (a) any policies of insurance that the Service Provider is required to maintain hereunder and under the Company Lease Agreement and (b) the receipt by Service Provider of all required State and local regulatory permits, consents and approvals, including without limitation the New Jersey Department of Education to (i) design, permit, acquire, construct and install the Renewable Energy Projects in accordance with the Plans and Specifications and the technical specifications of Appendix C to the Company RFP attached as a portion of Exhibit A-1 to the Company Lease Agreement, such that the REP Acceptance Certificates required under the Company Lease Agreement can be obtained prior to the Required Completion

Date, and (ii) design, permit, acquire, construct, renovate and install the Capital Improvement Projects, if any, in accordance with the Plans and Specifications and the attached technical specifications of the Company RFP such that the CIP Acceptance Certificates required under the Company Lease Agreement can be obtained prior to the Required Completion Date.

Section 2.4 Non-Satisfaction of Conditions.

In the event that the conditions precedent set forth in this Article II are not satisfied, unless Service Provider, or the Authority, on behalf of the Customers, shall elect to waive such conditions precedent, then Service Provider or the Authority may terminate this Power Purchase Agreement with respect to such Projects without further liability effective upon five (5) days advance written notice to the other Party, in which event neither Party shall have any further rights or obligations hereunder. Notwithstanding the Service Provider's commercially reasonable efforts to satisfy the conditions precedent in Section 2.3, in the event that the conditions precedent in Section 2.3 are not satisfied by _____, the Parties agree to act in good faith to secure a replacement Project in accordance with the relevant provisions in Section 4.6 hereof.

Section 2.5 Inapplicable Terms.

Notwithstanding anything to the contrary contained in this Power Purchase Agreement, the Parties hereto acknowledge and agree that (a) the Service Provider is not responsible for the construction of any Capital Improvement Projects under the Program Documents and any references herein to Capital Improvement Projects, CIP Acceptance Certificates or any other term defined by reference to Capital Improvement Projects (without limiting the application of any such term to the extent not related to Capital Improvement Projects) shall be of no further force and effect, [(b) as recited in the preambles, there shall be no need for a County Security Agreement, a County Security Provider or County Security and any references thereto shall be of no further force and effect and (c) any County Security Fund Requirement shall equal \$0]. [To be revised based upon successful Company RFP if such RFP meets certain criteria.]

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ARTICLE III

COMMENCEMENT DATES, REQUIRED COMPLETION DATE, AND INITIAL TERM

Section 3.1 Commencement and Length of Initial Term.

(a) This Power Purchase Agreement shall become effective and legally binding upon the Parties (including their permitted successors and assigns) and be enforceable in accordance with its terms, upon the execution and delivery hereof by the Authority, the Company and each Customer (the “**Effective Date**”), and shall remain in full force and effect, (i) with respect to the Authority and the Service Provider, until the end of the fifteenth (15th) annual anniversary of the final Commencement Date of all Customers, as set forth in subsection (b) below, and (ii) with respect to each respective Customer, until the end of the applicable period for such Customer set forth in subsection (b) below (as applicable, the “**Initial Term**”).

(b) Unless otherwise terminated as provided herein, this Power Purchase Agreement shall remain in full force and effect, for each Customer, for a period of time (i) beginning on the respective Commencement Dates for each such Customer as established in accordance with Section 3.5 below and (ii) ending on the fifteenth (15th) annual anniversary of each such Commencement Date.

Section 3.2 The Construction and Interconnection Phase.

The period commencing on the Effective Date and continuing until the earlier occurrence of either (a) the respective Commencement Dates for each Customer or (b) a termination of this Power Purchase Agreement in accordance with Section 2.4 herein shall be hereinafter referred to as the “**Construction and Interconnection Phase**” for each such Customer. During this phase, the Service Provider shall use commercially reasonable efforts to complete (but in any event shall complete by [_____], unless extended, per Project, by Force Majeure or Series 2012 Local Unit Event of Default as defined in and contemplated by the applicable Local Unit License Agreement), for each such Customer, the construction, start-up and testing of their respective Renewable Energy Projects and the interconnection of their Renewable Energy Projects to their applicable Local Unit Facility, all to permit the transfer of Electricity on or before the applicable Required Completion Date. Note that pursuant to the Company Lease Agreement, the applicable Interconnection Agreement must be in place prior to the issuance of the Acceptance Certificates, which are a prerequisite to the Commencement Dates for each Customer. The Service Provider further agrees to commence construction of all Renewable Energy Projects for each Customer no later than [_____], unless extended, per Project, by Force Majeure or Series 2012 Local Unit Event of Default as defined in and contemplated by the applicable Local Unit License Agreement. Service Provider agrees to the maximum extent practicable that it shall not interfere with the Customer’s use of the Local Unit Facility during the Construction and Interconnection Phase.

Section 3.3 Designated Representatives.

(a) To insure a smooth and orderly coordination of activities during the Construction and Interconnection Phase, the Authority, the Service Provider and each Customer shall appoint a designated representative of such Party (each a “**Designated Representative**”) who or which shall be authorized and directed by its principal to meet with the Designated Representative of the other Parties and shall have full power and authority, to the greatest extent practicable in light of applicable law governing the actions of the Authority and Customer, to bind its principal with respect to all construction matters relating to the Projects, and all operational matters relating to the Renewable Energy Projects.

(b) As soon as practicable following the Effective Date, the Designated Representatives shall hold, at a mutually acceptable time and location, an initial Project meeting, at which time the Designated Representatives shall prepare jointly, based on the best information available to Customer and Service Provider (and if applicable, the Authority) at such time, a preliminary schedule for completing the construction of the Projects, and the interconnection, testing and start-up of the Renewable Energy Projects. After the initial Project meeting, the Designated Representatives shall meet periodically, but no less frequently than once every two (2) weeks, at such times and locations as they may mutually agree or as may be requested by one of the Parties for the purposes of coordinating all relevant construction matters with respect to the Projects, and all relevant operational matters with respect to the Renewable Energy Projects, and achieving a timely completion of all Project work and all testing of the Renewable Energy Projects.

(c) The Authority hereby appoints the Construction Manager designated by it under the Company Lease Agreement as its Designated Representative. The Service Provider shall submit its proposed Designated Representative to each Customer. Each Customer shall have five (5) Business Days to either approve or reject Service Provider’s proposed Designated Representative; *provided however*, that its approval shall not be unreasonably withheld, and any failure to respond within the five (5) Business Days specified shall be deemed to be a conclusive approval of Service Provider’s proposed Designated Representative.

Section 3.4 Cooperation.

The Authority and each Customer agree to reasonably cooperate and assist Service Provider to the fullest extent practicable, at Service Provider’s cost, to perform any and all actions within their respective control that Service Provider may reasonably request in connection with (a) the design, permitting, acquisition, construction, installation, interconnection, start-up, and testing of the Renewable Energy Projects, and (b) the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects, including, without limitation, the granting of any required rights of access to Service Provider and its contractors in accordance with the terms of the Local Unit License Agreements, the timely execution and return of any required consent of the Authority and/or such Customers, the execution and delivery of any Interconnection Agreement, and the participation as and when required of the Authority’s and/or Customers’ employees and representatives, including the Construction Manager, in the performance of any test in respect of the Renewable Energy Projects.

Section 3.5. Commencement Dates and PPA Price.

(a) Each Customer shall have its own Commencement Date (which may or may not be the same date as that for one or more other Customers) determined as set forth in subsection (b) below. Accordingly, except as set forth in subsection (c) below, there shall be six (6) Commencement Dates for purposes of this Power Purchase Agreement and the Local Unit License Agreements.

(b) Except as the Authority, in its sole discretion, may determine in accordance with subsection (c) below, the “**Commencement Date**” for each Customer shall be the date on which the Company shall have filed with the Trustee both the REP Acceptance Certificate and the CIP Acceptance Certificate with respect to all of the Local Unit Facilities for such Customer (see **Exhibit A** hereto for a list of Customers and their Local Unit Facilities), certifying that all of the Renewable Energy Projects and Capital Improvement Projects for such Customer have been completed and accepted.

(c) Notwithstanding subsection (b) above, the Authority may, in its sole discretion, determine to establish an earlier Commencement Date for one or more Customers, by written notification of same to the Company, the Trustee, and the affected Customer, but only with respect to the completed Renewable Energy Projects and Capital Improvement Projects for the Local Unit Facilities of such Customer (otherwise eligible for the issuance of Acceptance Certificates, were it not for the following), and only in the event the Authority determines that the Acceptance Certificates (which require completion of all such Projects for a Customer under subsection (b) above) are being unduly delayed for some reason not within the control of the Company.

(i) Nothing in this subsection (c) shall waive the requirement to ultimately receive such Acceptance Certificates for other purposes of the Renewable Energy Program.

(ii) Should the Authority act to establish an earlier Commencement Date for one or more Renewable Energy Projects for a Customer (as opposed to when all Renewable Energy Projects for such Customer shall have received Acceptance Certificates under subsection (b) above) in accordance with this subsection (c), there shall be more than one Commencement Date for such Customer, and the terms and provisions in this Power Purchase Agreement relating to Commencement Dates shall be applied separately, as applicable, for such one or more Renewable Energy Projects of such Customer.

(d) Upon the earlier to occur of (i) the completion of the construction and start-up of each Renewable Energy Project for any Customer and the interconnection thereof to the applicable Local Unit Facility for such Customer, or (ii) the applicable Commencement Date for such Customer, then:

- (A) The full Electricity production capability of such completed Renewable Energy Project for such Customer shall be exclusively dedicated to such Customer for the applicable Initial Term and any extensions thereto;
- (B) Service Provider shall operate and maintain the Renewable Energy Projects for such Customer through the Initial Term and any extensions thereof;
- (C) Service Provider shall commence the delivery of all Electricity produced from such Renewable Energy Projects to such Customer; and
- (D) Upon receipt of such Electricity, such Customer shall pay the PPA Price in the amount and manner as set forth in subsection (e) below, in Section 6.4 hereof, and **Exhibit B** attached hereto.

(e) (i) When Service Provider commences deliveries of Electricity to such Customer in accordance with subsection (d) above, either prior to or on the applicable Commencement Date for such Customer, such Customer shall pay for such deliveries, at the initial PPA Price specified in **Exhibit B, Section 1** attached hereto, without escalation. Therefore, the escalation to the first year PPA Price specified in **Exhibit B, Section 1** attached hereto shall not be made until the first annual anniversary of the Commencement Date for such Customer. The escalation (as specified in **Exhibit B, Section 2** attached hereto) for amounts payable in any following year shall be made on each succeeding anniversary after such Commencement Date, for such succeeding year. Escalation adjustments (as specified in **Exhibit B, Section 2** attached hereto) shall be made on each such anniversary date through the end of the Initial Term and any extension thereto for such Customer. As so adjusted for each subsequent year beyond the first annual anniversary of the Commencement Date, each such escalated amount (as specified in **Exhibit B** attached hereto) shall be the PPA Price payable for such year.

(ii) Notwithstanding anything to the contrary herein or in any other Program Document, the PPA Price set forth in **Exhibit B, Section 1** attached hereto, shall be promptly adjusted (without any further authorization or other action required by any Renewable Energy Program Interested Party, but with notice of such change to be promptly provided by the Authority to the Company (and any other County Security Provider, if any), the County, the Municipal Guarantor, the Series 2012 Local Units, and the Trustee) to reflect (A) any change in the County Security Fund Requirement in accordance with the terms of the definition thereof as set forth in the Bond Resolution, or (B) a mutually agreeable allocation of the unknown financial / environmental benefits attributable to the Renewable Energy Projects for the Series 2012 Local Units or the Renewable Energy Program relating thereto, including but not limited to the refunding of any Series 2012 Bonds.

(f) The obligations of Customers under this Power Purchase Agreement, including those to take and pay for Electricity with respect to their applicable Local Unit Facilities, shall be several, and not joint. The Authority shall have no obligation with respect to such take and pay obligations other than to obligate the Series 2012 Local Units, as Customers, to take and pay for such Electricity in accordance with the terms hereof, including this Section 3.5, and other than to enforce such obligations, all as set forth in the Local Unit License Agreements, including Section 5.1I thereof.

Section 3.6. Required Completion Date; Liquidated Completion Damages.

(a) Unless excused by reason of Force Majeure, fault of Customer due to its default under the Local Unit License Agreement, or otherwise as may be expressly provided herein, Service Provider hereby covenants to satisfy the following conditions (the “**Completion Conditions**”) no later than [_____] (the “**Required Completion Date**”):

(i) Service Provider shall, in such order and timeframe as Service Provider shall determine, as shall be communicated by Service Provider to the Authority and Customer in accordance with Section 3.3 hereof, complete, in accordance with the Plans and Specifications for Projects prepared by or on behalf of Service Provider and approved by the applicable Customer (all in accordance with Section 501 of the Company Lease Agreement), which Customer approval shall be promptly provided to Service Provider and not withheld unreasonably, which Plans and Specifications shall incorporate, as necessary, desirable or convenient, the technical specifications of the Company RFP, and any further applicable requirements of (A) **Exhibits C and D** to this Power Purchase Agreement, (B) Exhibit A-2 to the Company Lease Agreement and (C) Exhibit C to the Local Unit License Agreements:

(Y) The design, permitting, acquisition, construction, installation, interconnection, start-up, and testing of all of the Renewable Energy Projects for all Customers on their Local Unit Facilities (see **Exhibit A** attached hereto); and

(Z) The design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects, if any, for all applicable Customers on their Local Unit Facilities (see **Exhibit A** attached hereto);

(ii) Service Provider shall obtain all of the Acceptance Certificates relating to all Customers on all of the Local Unit Facilities; and

(iii) Service Provider shall commence the production, delivery and sale of Electricity to all Customers through the operation and maintenance of the Renewable Energy Projects, to continue through the Initial Term of this Power Purchase Agreement, and any extensions hereof.

(b) Unless excused by reason of Force Majeure, fault of Customer due to its default under the Local Unit License Agreement, or otherwise as may be expressly provided herein, if Service Provider fails to satisfy the conditions set forth in subsection (a) prior to the Required Completion Date, then Service Provider shall pay liquidated damages to each such Customer equal to the difference between the variable line item per kWh costs for delivered electricity payable by each such Customer to the local electric utility distribution provider, minus the initial PPA Price (as specified in **Exhibit B, Section 1** attached hereto per kWh), multiplied by the guaranteed kWh production of Electricity referenced in Section 6.1(b) of this Power Purchase Agreement for each day after the Required Completion Date, until the Renewable Energy Projects for such respective Customers are able to produce, and Service Provider shall deliver, Electricity for and to such Customers as contemplated by this Power Purchase Agreement.

(c) At the Authority's option, whereby the Authority may look to be directed by the respective Customers, or determine on its own, as the Authority shall in its sole discretion decide, the Authority may recover any amounts due and owing by the Service Provider in accordance with subsection (b) above either through realization of such liquidated damage amount under the Construction Performance Bond provided by Service Provider, or alternatively, accrue and offset such liquidated damage amount against next due PPA Price payments made by Customers, or some combination thereof, in any event as such determination shall be communicated in writing by the Authority to Service Provider and Customer.

(d) In the event Service Provider has an allowable excuse as outlined in subsection (a) above, which shall be the sole cause for failing to meet the timeframes and conditions set forth in subsection (a) above, and after Service Provider has used all commercially reasonable efforts to meet such timeframes and conditions (e.g., overtime), then Service Provider shall not be liable to Customer for such liquidated damages contemplated by subsection (b) above. In the event of any such performance excusing event, Service Provider shall promptly give written notice to Customer and the Authority (but in no event later than twenty-four (24) hours following such occurrence), specifying the Force Majeure event or Customer's alleged failure to act, cooperate or assist Service Provider or other performance excusing event, as applicable. Should the Service Provider performance excusing event be caused by Customer's action or inaction, Customer shall promptly respond (but in no event later than forty-eight (48) hours) to Service Provider and the Authority regarding such notice by outlining all such remedial actions to be undertaken by or on behalf of Customer, and further, Customer shall promptly implement such action outlined in such response as shall be necessary, desirable or convenient in order to remedy such event, and allow Service Provider to meet such conditions as set forth in subsection (a), as soon as practicable, after the Required Completion Date.

Section 3.7 Extension of Initial Term and other options; Obligations at Termination.

(a) At least one-hundred and twenty (120) days prior to the expiration of the Initial Term, to the extent then permitted by applicable law, the Authority, on behalf of one or more Customers, may submit a written request to Service Provider expressing a desire by such Customer

to pursue a possible extension of this Power Purchase Agreement. Upon receipt of the Authority's request, Service Provider, the Authority and Customer agree to promptly meet with the intent of negotiating an amendment on mutually agreeable terms and conditions, reflecting, among other things, the cost of any necessary equipment replacements or upgrades, the costs of contract maintenance and operating services, and Service Provider's profit and overhead. Neither Service Provider nor Customer shall be legally obligated to enter into or perform any extension or replacement of this Power Purchase Agreement until and unless reduced to a writing duly executed and delivered by both parties, and the provisions of Sections 5.1 and 7.1 of the applicable Local Unit License Agreement are either complied with or waived by the Authority and/or the applicable Customer.

(b) If the parties shall fail to enter into an agreement extending the Initial Term, then Customer shall elect, at its sole option, to either require that the Service Provider promptly remove the Renewable Energy Projects and return the Local Unit Facilities to the state and condition existing prior to construction and installation of the Renewable Energy Projects (i.e., after the construction, renovation and installation of the Capital Improvement Projects on the applicable Local Unit Facility, if applicable), reasonable wear and tear excluded, at Service Provider's sole cost, or purchase the physical Renewable Energy Projects at Fair Market Value, in any event in compliance with Sections 5.1 and 7.1 of the applicable Local Unit License Agreement. Such Fair Market Value shall be established by an appraisal firm agreed to by the Parties. The cost of the appraisal shall be shared equally by Service Provider and the applicable Customer. In the event the Parties cannot agree to a single appraisal firm, then the Company, the Authority and the Customer shall each contract with a qualified appraisal firm for an appraisal at its own cost, and Fair Market Value shall be the average of the three (3) appraisals.

(i) In the event the end of term option selected by the Local Unit is removal of the Renewable Energy Projects, Service Provider shall remove all of its tangible property comprising such Renewable Energy Projects from the Local Unit Facility by a mutually convenient date but in no case later than one hundred eighty (180) days after the end of the Initial Term. Service Provider shall provide Customer, the applicable roof warrantor for the applicable Local Unit Facility, and the Authority, with a removal plan, at Service Provider's sole cost and expense, with respect to such removal. Such removal plan is subject to the review and approval by Customer, such warrantors, and the Authority, which approval (with respect to Customer and the Authority) shall not be unreasonably withheld or delayed.

(ii) In implementing such removal plan, Service Provider (A) shall cause the portion of the Local Unit Facility on which the Renewable Energy Projects were installed to be returned to the state and condition set forth in subsection (b) above, including removal of above grade electrical wires and conduits, inverters, photovoltaic panels, steel superstructure, combiner boxes, and Renewable Energy Projects disconnect switches, and (B) shall not adversely affect the remaining warranties then in existence with respect to such roofs on such Local Unit Facilities. Not included in the removal schedule are below-grade electric/wiring components (unless otherwise specified in the approved removal plan), material that cannot be

removed due to safety concerns, and ordinary wear and tear. Service Provider shall leave the portion of the Local Unit Facilities on which the Renewable Energy Projects were installed in neat and clean order, having sealed any penetrations into such portion of the roofs of such Local Unit Facilities, all subject to the applicable Customer's inspection and approval, not to be unreasonably withheld or delayed.

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ARTICLE IV

DEVELOPMENT OF PROJECTS AND RELATED AGREEMENTS AND UNDERTAKINGS

Section 4.1 Development of Projects.

(a) Service Provider has covenanted to undertake the obligations set forth in Section 3.6(a) hereof with respect to the development of the Projects prior to the Required Completion Date. Thereupon, Service Provider shall deliver Electricity to each Customer, each Customer shall pay for such Electricity, and Service Provider shall operate and maintain the Renewable Energy Projects, all through the Initial Term and any extensions thereof, and all as set forth in Section 3.5(d) hereof.

(b) Service Provider shall be solely responsible for taking, and shall take or cause to be taken, with the cooperation of the Authority and Customer, including as applicable and as required pursuant to Section 3.4 hereof, all action deemed necessary, desirable or convenient by Service Provider in order to discharge its obligations set forth in subsection (a) above. Toward that end, Service Provider shall coordinate all Project construction activities with the Authority and the applicable Customer, and shall provide the Authority and such Customer with all Plans and Specifications and other information that the Authority or such Customer may reasonably request from time to time. The Authority and such Customer shall be provided with submittals during design and construction of such Projects. Such Customer shall provide comments, if any, within ten (10) Business Days of receipt of such submittals. Review and comments by Customer, if any, shall not relieve Service Provider of its obligations under this Power Purchase Agreement. The Authority shall have no obligation, but may on its own volition undertake, to review and comment on such submittals. Service Provider reserves the right to substitute products provided such substitutions are equal or better in quality and performance than the products submitted in Service Provider's Company Proposal, based on which the Authority selected Service Provider, as the successful respondent to the Company RFP, as such substitution shall be agreed to and approved in writing (consent not to be unreasonably withheld) by such Customer and the Authority. Service Provider shall timely apply for all required permits and approvals from all applicable authorities having jurisdiction relating to the construction of the Projects, and the operation and maintenance of the Renewable Energy Projects, and any other activities contemplated by this Power Purchase Agreement. If despite commercially reasonable efforts, Service Provider is unable to obtain a required permit; such occurrence shall be deemed an event of Force Majeure hereunder.

(c) For its undertaking of the obligations set forth in subsection (a), Service Provider shall be entitled to receive the PPA Price from Customer in accordance with Section 6.2 hereof, as full and complete consideration for such services and the undertaking and discharging such obligations by Service Provider.

Section 4.2 Operation and Maintenance of the Renewable Energy Projects.

Throughout the Initial Term and any extensions thereof, Service Provider shall operate and maintain the Renewable Energy Projects in a manner that meets or exceeds good industry practice, and in good working order and repair, and shall coordinate all planned maintenance activities with Customer in order to minimize any adverse impact on Customer and/or its Local Unit Facility. The Renewable Energy Projects shall remain in Service Provider's sole custody and control during the term of this Power Purchase Agreement and Customer shall not attempt to use, repair or otherwise interfere with Service Provider's custody, except in accordance with Service Provider's express consent. Service Provider shall have the right, but not the obligation, to replace or exchange, in its discretion, any component of the Renewable Energy Projects during the Initial Term or any extensions thereof provided that the Renewable Energy Projects continue to operate in accordance with the Plans and Specifications. Service Provider shall be responsible, at its sole cost and expense, for performing all required Renewable Energy Projects operation and maintenance to insure that the Renewable Energy Projects shall operate in an efficient manner in accordance with the Plans and Specifications. It is understood and agreed that Service Provider may delegate its operation and maintenance responsibilities to a technically qualified and financially responsible third party, upon notification to the Authority and the applicable Customer, and upon their review and approval of any such contract, which Authority and Customer approval shall be promptly provided to Service Provider and not withheld unreasonably. Any delegation by Service Provider to such third party shall not relieve Service Provider from its obligations under this Power Purchase Agreement.

Section 4.3 Reserved

Section 4.4 Outages.

Service Provider, the Authority and Customer understand and agree that from time to time it shall be necessary for Service Provider to remove all or part of the production, distribution, and interconnection portions of the Renewable Energy Projects from service to make any necessary repairs or replacements. Accordingly, Service Provider shall have the right to interrupt, reduce or discontinue the delivery of Electricity for the purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of the same; *provided however*, that unless the exigencies of the situation require otherwise, Service Provider shall use commercially reasonable efforts to only interrupt or restrict delivery of Electricity at such times as Service Provider and Customer shall mutually agree. Customer and Service Provider agree to act in good faith to accommodate the reasonable requests of the other in fulfilling their respective obligations under this Power Purchase Agreement. If the circumstances require Service Provider to remove the Renewable Energy Projects from service for more than several hours, Service Provider shall take such actions as are reasonable under the circumstances to minimize the effect on Customer's Local Unit Facility and its operations. Unless the exigencies of the situation require otherwise, Service Provider shall provide Customer with at least ten (10) days prior notice of any proposed service outage, which notice shall explain in detail the reason for the proposed interruption, the proposed maintenance or other corrective action to be undertaken, and the expected length of the interruption. For the purposes of this Section 4.4, exigent circumstances shall include, but shall not be limited to, conditions which, in Service Provider's

reasonable judgment, pose an imminent and unreasonable risk of personal injury or property loss, or circumstances under which Service Provider's failure to remove its system from service would, in Service Provider's reasonable judgment, constitute an illegality or violation of any statute, regulation or order of any federal, State, or local governmental authority in the exercise of its regulatory jurisdiction, or any similar events or circumstances.

Section 4.5 Removal and Re-installation of Panels; Roof Maintenance & Repairs.

(a) If at any time during the term of this Power Purchase Agreement, Customer is required to remove or interrupt, or cause the removal or interruption, as applicable, of the operation of one or more of Service Provider's solar panels that comprise a portion of the Renewable Energy Projects, to repair or replace the roof of such Customer's Local Unit Facility, or perform required maintenance on any other of the Local Unit's equipment located on such roof, or for any other governmental reason for which no other commercially reasonable solution exists other than to interrupt some portion of service provided by the Renewable Energy Projects, Customer shall promptly notify Service Provider and the Authority of the specific panels and/or other portion of the affected Renewable Energy Project that must be removed or shut down, and when removal or shut-down is required, taking into account to the greatest extent practicable any efforts within Customer's control to minimize the loss of Electricity generated by such removed or shut down (in whole or in part) of the Renewable Energy Project. In such instance, Service Provider agrees to remove and re-install or shut down and re-initiate the operation of such minimum number of panels for the minimum amount of time necessary in order to allow Customer access to its Local Unit Facility to undertake the required task causing the need for such removal.

(b) To the extent Customer is required to take the action set forth in subsection (a) above in whole or in part due to some action or inaction of Service Provider or any of its designees, consultants, subcontractors or agents, or another licensee (other than the Authority or the Authority's designees, consultants, subcontractors or agents) under Customer's Local Unit License Agreement, then Service Provider shall (i) bear and pay for the cost of such removal, and (ii) reimburse Customer for the difference between (A) Customer's actual cost for electricity, as evidenced by that amount delivered and billed by the local electric utility distribution provider to Customer in lieu of the Electricity to have been provided by Service Provider during such applicable period for which Customer is not receiving Electricity from Service Provider, in whole or in part, and (B) the PPA Price that would have been applicable to such amount of electricity so delivered to Customer under clause (i) above, had Service Provider delivered such deficient amount of Electricity during such period.

(c) Conversely, to the extent Service Provider is required, with the Authority's consent, to remove and re-install or shut down and re-initiate the operation of a portion, or all of a Renewable Energy Project due to some action or inaction by Customer or any of its designees, consultants, subcontractors, or agents, Service Provider shall be reimbursed by Customer at Service Provider's actual out-of-pocket cost, plus ten percent (10%) overhead. Further, Customer shall reimburse the Service Provider for the cost of lost production during the period of removal or shut-down in excess of ten (10) days in any twelve (12) month period, starting on the Commencement Date (for such Customer or as applicable, such Local Unit Facility) and each anniversary thereafter.

The cost of lost production shall include an allowance for both lost Electricity at the applicable PPA Price, and lost SRECs, at the market value of such SREC's as determined in comparable transactions. Customer may at its option, elect to pay Service Provider any amounts in this subsection (c) in either a lump sum payment, or in uniform monthly payments, including interest on the unpaid balance, at the rate set out in Section 6.4 (relating to payment terms) over not greater than a twelve (12) month period. For purposes of this subsection, an action of inaction of a Customer's designees, consultants, subcontractors or agents shall not include students unless such students are under the direct control of the Customer at the time such action or inaction occurred.

Section 4.6 Certain Local Unit Facility Issues.

(a) Prior to commencement of construction of each of the Renewable Energy Projects, preferably prior to the Effective Date, and no later than the completion of the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects, if applicable, for each Local Unit Facility, Service Provider shall investigate and secure an opinion from a structural engineer licensed in the State that the Local Unit Facility roof is structurally sound and requires no structural reinforcement to support the Renewable Energy Projects to be provided in accordance with the terms hereof. A wind analysis shall also be conducted by or on behalf of Service Provider to insure the proposed mounting structures for the Renewable Energy Projects shall be sufficient to meet wind conditions at each Local Unit Facility. A copy of such opinion and analysis for each Local Unit Facility shall be delivered to the Authority and applicable Customer.

(b) If the Service Provider delivers to the Authority a Certificate of an Authorized Officer of the Service Provider to the effect that such opinion and/or analysis and/or other credible evidence demonstrates any of the following: (i) that structural reinforcement of a Local Unit Facility would be required in order to support the contemplated Renewable Energy Projects, (ii) that any roof of a Local Unit Facility is structurally unsound or that the Local Unit Facility is not otherwise available for the contemplated Project, including issues of title, damage, or condemnation affecting the Local Unit Facility, (iii) that there are other latent subsurface or structural conditions present at any Local Unit Facility that is not a roof, which latent subsurface or structural conditions were not contemplated in its Company Proposal and would have a material adverse financial impact on the Service Provider or (iv) that the existing warranties can only be maintained through an unreasonable scope of work, or at an unreasonable cost, in either case as determined solely by the Authority, and if in any such case (clauses (i) – (iv) inclusive) the Authority, in exercising its reasonable discretion, agrees with such determination as evidenced by their acknowledgment of such Service Provider Certificate by an Authorized Officer of the Authority, then neither the Authority nor Customer shall have any responsibility to provide any additional funding for such Renewable Energy Projects, and Service Provider is not entitled to any additional compensation for such Renewable Energy Projects, it being understood by the Parties that any such circumstance has been preliminarily reviewed and dilligenced by Service Provider, as any contemplated cost relating thereto shall have been included in the Company Proposal as part of the submitted cost of the Projects.

(c) To the extent the Authority executes and delivers to the Service Provider the acknowledgment contemplated by subsection (b) above, notwithstanding the other provisions of

subsection (b) above the Parties shall work together in good faith to select an alternative location (hereinafter, such alternative location shall be known as the revised Local Unit Facility for such Series 2012 Local Unit for all purposes hereof and of the other Program Documents) within the jurisdiction of the following, and in the following order: (i) first of the affected Series 2012 Local Unit for which the Renewable Energy Project shall no longer be developed, in which case the revised Local Unit Facility shall act as the location for the replacement renewable energy project (hereinafter a Renewable Energy Project for all purposes hereof and of the other Program Documents), and as necessary, required or desirable, the revised capital improvement project (hereinafter a Capital Improvement Project for all purposes hereof and of the other Program Documents), both of which Projects, shall to the maximum extent practicable, be of a similar (or more advantageous to the Parties) size, scope and economic impact as the Projects being replaced, (ii) second, within the jurisdiction of any other Series 2012 Local Unit, in which case the revised Local Unit Facility and Project shall be located in such agreed upon jurisdiction, and (iii) if a suitable replacement location within such jurisdiction is still not available on a mutually agreeable basis, then from any location within (and including) the County upon which the Parties can agree, in which case the revised Local Unit Facility and Project shall be located in such agreed upon jurisdiction,.

(d) Should an alternative Local Unit Facility be selected by the Parties in accordance with subsection (c) above, (i) a new Commencement Date and a new Completion Date shall be developed for the replacement Renewable Energy Project, and as applicable, Capital Improvement Project, (ii) such revised Commencement Date and Completion Date for such replacement Renewable Energy Project shall be incorporated into this Power Purchase Agreement via a written amendment executed by the Parties, which amendment shall also incorporate a revised **Exhibit A** hereto and any other changes the Parties deem necessary, desirable, or convenient to implement the change in Project and Local Unit Facility, and (iii) the other Program Documents shall be amended to reflect any required changes caused by such amendment hereof, including without limitation the revised Project, the replaced Local Unit Facility, and if necessary, a new Series 2012 Local Unit (in which case instead of an amended Local Unit License Agreement with such new Series 2012 Local Unit, there shall be a new Local Unit License Agreement with such new Series 2012 Local Unit), provided that the economic rights and responsibilities of the Parties shall not be amended (including without limitation, the PPA Price), unless agreed to at the complete discretion of the Parties.

(e) If after good faith negotiations the Parties are unable to secure a replacement Local Unit Facility and Project within six (6) months of the date of the Authority's acknowledgment of the Certificate of an Authorized Officer of the Service Provider contemplated in subsection (b) above, then the Service Provider shall have the option, exercisable at any time within nine (9) months of the date of such Authority Certificate, to abandon the Project associated with the Local Unit Facility that was to be replaced. Such option shall be exercised by the Service Provider delivering a Certificate of an Authorized Officer of the Service Provider to the Trustee, the County, the Authority, and the affected Series 2012 Local Unit, (i) setting forth the authorization for, and the reasons why the Project and Local Unit Facility are being abandoned, and (ii) further, that attached thereto is a partial prepayment of Basic Lease Payments (or evidence thereof, in the case of a wire transfer or other similar conveyance) in immediately available funds that shall be applied in the manner set forth in Section 701(a) of the Company Lease Agreement. Upon the abandonment of any

Project, the Service Provider, the Authority and the Customer will enter into such amendments of the Program Documents as shall be necessary to evidence the partial termination of the Program Documents solely with respect to such Project.

Section 4.7 Incorporation of Certain Company RFP Terms and Conditions.

To the extent not otherwise inconsistent with the provisions of this Power Purchase Agreement, the terms and conditions of Article VII and Appendix C to the RFP, as attached to the Company Lease Agreement as part of Exhibit A-1 thereto, are hereby incorporated by reference into this Power Purchase Agreement.

Section 4.8 Service Provider's Ability to Choose Subcontractors.

Service Provider shall enter into the applicable contract(s) for construction, renovation and installation of the Projects, subject to the terms of any Renewable Energy Program agreement executed by any Party. Prior to implementing any such contract(s), Service Provider and Customer shall have agreed upon a list of acceptable subcontractors, with all other subcontractors subject to notification to the Authority and Customer's consent, such consent not to be unreasonably withheld or delayed; *provided, however*, that Customer's agreement as to the list of acceptable subcontractors shall not make the Authority or Customer in any way responsible for, or a guarantor of, such subcontractors, nor relieve Service Provider of any of its duties and obligations with respect to subcontractors or otherwise hereunder. Service Provider shall insure all subcontractors are qualified, reputable and adhere to all applicable regulations and laws of the State. The Service Provider identified and the Authority and Customer have approved the initial list of subcontractors, as set forth in **Exhibit H**, by the time of execution and delivery hereof (such list is not intended to be exclusive, should Service Provider subsequently determine to proffer one or more other subcontractors):

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ARTICLE V

LOCAL UNIT LICENSE AGREEMENT – LOCAL UNIT FACILITY ACCESS

Section 5.1. Local Unit License Agreement.

(a) For consideration of the transactions contemplated by this Power Purchase Agreement and the Local Unit License Agreement, Service Provider, the Authority and Customer hereby agree that Service Provider and their subcontractors, including _____ pursuant to their Development Contract with Service Provider, and other agents and designees shall each be deemed a permitted licensee under Customer's Local Unit License Agreement, and accordingly, Service Provider and their subcontractors and other agents and designees shall have access to the Local Unit Facility of Customer to (i) design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects, (ii) design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, and (iii) perform the other related Project activities set forth in Section 3.1, including subsection (c) thereof, of the Local Unit License Agreement for Customer.

(b) The license provided to Service Provider in accordance with subsection (a) and Customer's Local Unit License Agreement, subject to Section 3.7 of such Customer's Local Unit License Agreement, shall be irrevocable for the Initial Term of this Power Purchase Agreement and any extension, for so long as Service Provider is not in default of its delivery obligations hereunder, thereby causing an Event of Default hereunder, and except as otherwise expressly provided in this Power Purchase Agreement.

(c) Service Provider shall insure that any equipment used or installed by the Service Provider shall not adversely affect the structural integrity or existing roofing warranties of the Local Unit Facility roof and shall be completed in strict accordance with manufacturer's requirements by a certified manufacturer roofing contractor.

(d) In the event a Customer exercises revocation rights pursuant to Section 3.7 of such Customer's Local Unit License Agreement, upon the satisfaction of all requirements under such Section 3.7, this Power Purchase Agreement shall be terminated in respect of, and solely with respect to, such applicable Project.

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ARTICLE VI

ENERGY SERVICES PROVIDED BY SERVICE PROVIDER PRIOR TO OR UPON COMMENCEMENT DATE

Section 6.1 Sale and Purchase of Electricity Converted from Solar Energy.

(a) On the date set forth in Section 3.5(d) of this Power Purchase Agreement, which date shall be on or prior to the Commencement Date, Customer shall purchase and take, and Service Provider shall sell and deliver, all Customer's electric energy requirements for the Local Unit Facility (upon or in which the Renewable Energy Project shall have been constructed and installed) from the Electricity produced from the Renewable Energy Projects, up to the actual output from the Renewable Energy Project, regardless of its estimated delivery capability, prior to Customer supplementing its electricity requirements with other sources, including the local electric utility distribution provider.

(b) The Plans and Specifications for the Renewable Energy Projects shall provide for the output guaranteed by Service Provider in Section 8 of its Form A-1 of the Company Proposal attached hereto as **Exhibit C** (which, in accordance with Form A-1 of the Company Proposal, needs to be adjusted to reflect the actual solar insolation measured at the site for the time period under review), unless Customer agrees in writing to a different output to be set forth in such Plans and Specifications. For the avoidance of doubt, the Parties hereto expressly agree that the proposed output so set forth in Form A-1 of the Company Proposal is _____MW, and is the standard against which the output guaranty contemplated by this Power Purchase Agreement is measured, notwithstanding the fact that the anticipated output set forth in **Exhibit A** hereto is _____ MW (as the difference was financed by the Service Provider away from the Series 2012 Bonds).

(c) Service Provider shall guarantee the output of the Renewable Energy Projects cumulatively through the 5th, 10th, and 15th years of the Initial Term to be within ten percent (10%) of the output (calculated using the PV Watts version 2 with initial system sizes rated at STC methodology employed by the Company in the Company Proposal as described in **Exhibit C** attached hereto) as set forth in the final Plans and Specifications for the Renewable Energy Projects; provided, that to the extent that such output shall fall below such limit, the remedy therefor shall be solely as set forth in subclause (d) below.

(d) To the extent that the Renewable Energy Projects' output shall fall below the limits set out in the preceding subsection (c) and such shortfall is not due to an action of the Customer, Service Provider shall reimburse Customer for the difference between Customer's variable line item cost for electricity, per kWh, as evidenced by that amount delivered and billed by the local electric utility distribution provider to Customer in lieu of the Electricity to have been provided by Service Provider, and the PPA Price, per kWh, set forth in this Power Purchase Agreement, such difference in price per kWh to be applied to the amount of such Renewable Energy Projects' output deficiency. Such reimbursement shall occur no later than sixty (60) days after the next occurring anniversary of the Commencement Date that arises after the date in which the

shortfall occurred. In the event such reimbursement payment is not made by Service Provider, Customer shall be entitled to deduct such amount in three (3) equal amounts from its PPA Price invoice payments in the following three (3) months after such sixty (60) days, or if invoice amounts are not large enough to allow for the entirety of such credit during such time, the balance shall be credited as quickly as possible thereafter.

(e) To the extent that the Renewable Energy Projects' output shall fall below the limits set out in the preceding subsection (c) at the end of one of the 5-year periods of the Initial Term, and Service Provider reimburses Customer as set out in the preceding subsection (d), the amount of the shortfall in kWh upon which the reimbursement payment is based shall be deducted from the cumulative guaranteed output amounts at the end of subsequent 5-year periods.

(f) To the extent that a reduction in the amount of Electricity produced by the Renewable Energy Projects is caused due to action of the Customer, such as that contemplated in the preceding section 4.5, subsection (c) or due to the circumstances described in Sections 3.6(d), 4.6(b) or 6.6 hereof, 100% of the amount of Electricity that would otherwise have been produced will be deducted from both (i) the cumulative guaranteed output at the end of the 5-year period in which the reduction due to Customer action occurs, and (ii) the cumulative guaranteed output amounts at the end of all subsequent 5-year periods.

Section 6.2 Rates and Charges.

Customer shall pay to Service Provider the monthly fees and charges for Electricity as set forth in **Exhibit B** and Sections 3.5(e) and 6.4 hereof (the "PPA Price").

Section 6.3 Service Provider Reservation of Rights; Benefits Shared.

(a) Service Provider retains all ownership and rights to use, sell, or transfer (i) SRECs and (ii) rights with respect to Federal tax benefits (Investment Tax Credit and MACRS Depreciation) associated with the Renewable Energy Projects. Nothing in this Section 6.3 shall relieve Service Provider from its obligation to sell Electricity generated by the Renewable Energy Projects to the Customers.

(b) Any financial / environmental benefits, with the exception of SRECs, determined in the future (but unknown at this time) to be attributable to Renewable Energy Projects shall be the property of the Service Provider.

Section 6.4 Payment Terms.

Service Provider shall measure and read all Meters on or about the first Business Day of each calendar month during the term of this Power Purchase Agreement, commencing the first month immediately following the date set forth in Section 3.5(d) of this Power Purchase Agreement, which date shall be on or prior to the Commencement Date. Promptly thereafter, Service Provider shall provide in writing to Customer, with a copy to the Trustee, an invoice setting forth the Electricity

charges as set forth in **Exhibit B** and quantity of Electricity delivered during the previous period. Should an error in invoicing be determined, then Service Provider agrees to promptly provide for an adjustment of the next-due invoice to remedy said error. Customer shall have thirty (30) Business Days after the date of the invoice in which to pay the invoice in full. Any sums owing and remaining unpaid after the expiration of said period of time shall bear interest at a rate equal to the lesser of one and one-half percent (1 and ½%) per month until paid in full, or highest rate allowed by law.

Section 6.5 Taxes; Other Governmental Charges.

To the extent that Service Provider, Customer, and/or the Authority shall become responsible for the payment of any tax as a result of the placement, operation or maintenance of the Renewable Energy Projects on the Local Unit Facility (other than taxes imposed by Customer after the date of this Power Purchase Agreement), Service Provider shall be responsible for the payment of all such taxes and or assessments. Such obligation shall be limited to the Renewable Energy Project improvements constructed by the Service Provider on the Local Unit Facility. The Service Provider shall have the right to challenge the lawfulness of any tax or assessment associated with the construction, operation, or maintenance of the Renewable Energy Projects on the Local Unit Facility that shall be imposed on Service Provider, or that shall be attributable to Customer and/or the Authority for which Service Provider shall be required to pay. The Authority and Customer shall be notified of any such challenge by Service Provider, and further, shall be periodically kept informed of all developments, including copies of any pleadings or other documents comprising the docket of any such challenge.

Section 6.6 Alterations to Customer's Facilities.

The Authority and Customer agree not to undertake any structural alterations or repairs to the Local Unit Facilities that may adversely impact the operation and maintenance of the Renewable Energy Projects by Service Provider, without giving prior written notice to Service Provider, and without obtaining the input from Service Provider regarding the best manner in which such alterations or repairs might be conducted without affecting, or minimizing the affect on, as applicable, the operations and maintenance of the Renewable Energy Projects. If the Authority or Customer shall perform any alterations or repairs that permanently reduce the production of the Renewable Energy Projects resulting from such alteration or repairs, then the Parties shall negotiate a per kWh PPA Price adjustment to make the Service Provider whole for any loss in production capability. The per kWh PPA Price adjustment shall be established by negotiation by the Parties or, failing agreement within a reasonable time, by arbitration pursuant to the provisions of Section 14.5.

Section 6.7 Point of Delivery.

Service Provider agrees that it shall provide Electricity services to Customer at the Point of Delivery as specified in the Plans and Specifications.

Section 6.8 Energy Metering.

The output of the Renewable Energy Projects will be measured by revenue grade production meters in addition to load metering, inverter monitoring, and sub-combiner monitoring meters installed by the Service Provider in accordance with industry standards. Service Provider shall conduct tests of the Meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Service Provider shall promptly repair all Meter failures or defects. Should a Meter ever be deemed to reflect inaccuracies in measurement, the Service Provider shall make corresponding adjustments to the records of the amount of electrical energy being provided by the Renewable Energy Project delivered based on the period in between the date of the discovery of the inaccuracy and the last testing date of the Meter. Should the Meter ever become non-operational, but Electricity is still being provided by Service Provider to Customer hereunder, then the Parties hereto shall endeavor in good faith to address the Meter failure based upon, among other things, historical and cyclical consumption. To the extent that the Parties hereto are unable to adjust the inaccuracy, then they shall appoint their respective engineers or an independent meter consultant who, along with a third party independent engineer chosen by the Parties' engineers, shall review, examine, mediate and arbitrate the Meter adjustment. The decision of the engineers shall be final, and shall be reduced to the form of an invoice adjustment to be delivered by Service Provider to Customer. Notwithstanding the existence of any inaccuracy, or the allegation or belief of the existence of an erroneous Meter reading, Customer shall at all times pay all invoices in accordance with those time periods set forth herein, with the understanding that adjustments shall be reflected on subsequent invoices. Customer shall have no right to withhold invoice payment due to the actual or alleged existence of Meter inaccuracy except in the case when the current invoice varies by thirty percent (30%) or greater compared with historic like month data.

Section 6.9 Information Technology Support.

Customer shall provide Service Provider with access to the Customer's data management network for the Service Provider to monitor system performance and metering from remote locations, as required by Section 3.1(c)(iv) of the Local Unit License Agreement.

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ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 Warranties and Representations of the Authority.

The Authority does hereby warrant, represent, covenant and agree with the other Parties as follows:

(a) The Authority is a duly constituted governmental entity that possesses the full power and authority to enter into this Power Purchase Agreement, and perform its obligations hereunder;

(b) The Authority has obtained all authorizations, consents and approvals that are required in order for the Authority to execute and deliver this Power Purchase Agreement, and to perform its obligations hereunder;

(c) The performance by the Authority of its obligations hereunder do not conflict with the Authority's constituent documents, bylaws and/or resolutions, or otherwise conflict with or be in violation of any other indenture, loan agreement, covenant, condition, order, agreement or other obligation to which the Authority is a party or is otherwise bound; and

(d) The Authority shall cause Customer to purchase and acquire the Electricity from Service Provider during the Initial Term and any extensions hereto, and further, cause Customer to not otherwise look to or utilize any other entity as the source of Electricity until after Customer has acquired all of the Electricity that the Renewable Energy Projects is capable of producing. The Authority shall be deemed to have satisfied this subsection through its entering into and enforcement of the Local Unit License Agreement with Customer.

Section 7.2 Warranties and Representations of Customer.

Each Customer does hereby warrant, represent, covenant and agree with the other Parties as follows:

(a) Customer is a duly constituted governmental entity that possesses the full power and authority to acknowledge and be bound by the terms of this Power Purchase Agreement, and to perform its financial and other obligations hereunder;

(b) Customer has obtained all authorizations, consents and approvals that are required in order for Customer to acknowledge, be bound by the terms of, and deliver this Power Purchase Agreement, and perform its financial and other obligations hereunder;

(c) The performance by the Customer of its obligations hereunder does not conflict with the Customer constituent documents, bylaws and/or resolutions, or otherwise conflict with or be in

violation of any other indenture, loan agreement, covenant, condition, order, agreement or other obligation to which the Customer is a party or is otherwise bound; and

(d) Customer shall purchase and acquire the Electricity from Service Provider under this Power Purchase Agreement and Local Unit License Agreement during the Initial Term and any extensions hereto, and shall not otherwise look to or utilize any other entity as the source of Electricity until after Customer has acquired all of the Electricity that the Renewable Energy Projects is capable of producing.

Section 7.3 Warranties and Representations of Service Provider.

Service Provider does hereby warrant, represent, covenant and agree with the other Parties as follows:

(a) Service Provider is a duly constituted business entity that possesses the full power and authority to enter into this Power Purchase Agreement and perform its financial and other obligations hereunder;

(b) Service Provider has obtained all authorizations, consents and approvals that are required in order for Service Provider to execute and deliver this Power Purchase Agreement and perform its financial and other obligations hereunder, except for permits and approvals to be obtained after the date hereof as contemplated by Section 2.3(b) hereof;

(c) The performance by Service Provider of its financial and other obligations hereunder do not conflict with Service Provider's constituent documents, bylaws and/or resolutions, or otherwise conflict with or be in violation of any other indenture, loan agreement, covenant, condition, order, agreement or other obligation to which Service Provider is a party or is otherwise bound;

(d) Service Provider warrants it will promptly cause to be removed (or post security pending resolution as provided by law) any mechanics', suppliers' or similar liens or encumbrance which will exist or attach to the Local Unit Facility as a result of any Project, and at the completion of construction of the Capital Improvement Projects and the Renewable Energy Projects, all contractors, vendors, suppliers and workers relating to any Project will have been paid in full;

(e) All Project equipment shall be new, and all work performed by or on behalf of Service Provider pursuant to this Power Purchase Agreement shall be free of any liens other than such liens and security interests in connection with the authorization, sale, issuance and security of the Series 2012 Bonds; and

(f) The Renewable Energy Projects shall interconnect with Local Unit Facility's existing electrical system, and the Electricity delivered to the Local Unit Facility's existing system shall conform to utility and BPU requirements, and the Projects and the Electricity generated from the Renewable Energy Projects shall conform to the Plans and Specifications.

ARTICLE VIII

INDEMNIFICATION AND INSURANCE

Section 8.1 Indemnification.

Customer and Service Provider shall each indemnify, defend and hold harmless the other, the Authority, and their respective officers, agents, servants, and employees from and against any and all claims, demands, actions, suits, recoveries, judgments, and any associated costs and expenses, including any reasonable attorney fees, expert expenses and costs of litigation, relating to the loss of life, property, or injury to the person or property of any person(s) and which results from, in the case of Service Provider, Service Provider's performance of its obligations under the Power Purchase Agreement, and, in the case of Customer, Customer's operation, maintenance, repair, construction, or alteration of the Local Unit Facility.

Section 8.2 Service Provider's Insurance.

(a) On or before the Effective Date and at all times thereafter for as long as this Power Purchase Agreement remains in effect, Service Provider shall maintain at its sole expense the following insurance:

(i) Comprehensive General Liability Coverage in the amount of \$1,000,000.00. This coverage must be in writing on an occurrence form, claims made policies will be unacceptable. This Comprehensive General Liability insurance shall cover Service Provider, the Authority, Customer and their employees, agents and officers from and against any claim arising out of personal injury of Service Provider or Service Provider's failure to comply with the terms of this Power Purchase Agreement. Such policy or policies of insurance shall include coverage for claims of any persons as a result of an incident directly or indirectly related to the employment of such persons by Service Provider. This coverage shall include blanket contractual insurance and such coverage shall make express reference to the indemnification provisions set forth in this Power Purchase Agreement. The policy shall also be endorsed to include coverage for products, completed operations, and independent contractors.

(ii) Property and Casualty Damage Coverage in the amount of the aggregate replacement value of all of the Renewable Energy Projects.

(iii) Workers' Compensation Coverage as statutorily required by the State for all employees of Service Provider. Employers' Liability coverage on the Workers Compensation policy shall be written in the minimal amount of \$1,000,000.00.

(iv) Comprehensive Automobile Liability Coverage, in an amount not less than \$1,000,000.00, shall be maintained. Such coverage will include all owned, non-owned, leased and/or hired motor vehicles, which may be used by Service Provider in

connection with the services, required under the Power Purchase Agreement.

(v) Excess Liability Coverage, in the amount of \$1,000,000.00 shall be in the form of an umbrella policy rather than a following form excess policy. This policy or policies shall be specifically endorsed to be excess of the required coverages in clauses (i) through (iii) above.

(b) All such insurance coverages, with the exception of Workers' Compensation, shall name the Authority, Customer, and their employees, agents, officers and directors as additional insured hereunder.

(c) Evidence of such coverages being in place shall be promptly delivered to the Authority prior to or simultaneously with the Effective Date. All such coverages shall be endorsed to indicate that such coverages shall not be materially changed or canceled without at least thirty (30) days prior notice to the Authority and Customer, such prior notice being mandatory and not the best efforts of the carrier to notify. Prior to the expiration of the required coverages, Service Provider shall provide the Authority and Customer with evidence of the renewal of all such coverages required on at least the same terms and conditions as originally required for this Power Purchase Agreement. All agents, contractors and other licensees under the Local Unit License Agreement (other than the Authority) working for the Service Provider shall also be required to maintain all insurance coverages set forth in this Section 8.2.

(d) In addition to the coverages set forth in subsection (a) above, Service Provider shall maintain, for the Initial Term and any extensions hereof, all risk insurance on the Renewable Energy Projects equal to the replacement cost thereof. The Authority shall be named a loss payee, and the Customer may be named an additional insured.

Section 8.3 Customer's Insurance.

On or before Service Provider shall commence any construction activities at the Local Unit Facilities and at all times thereafter for as long as this Power Purchase Agreement remains in effect, Customer shall maintain at its sole expense Comprehensive General Liability (including contractual) and coverage for loss or damage, in an amount not less than \$1,000,000, with respect to any liability, losses, damages, expenses, claims, actions, judgments and settlements for any personal injury, death or property or economic loss occurring in Local Unit Facilities or surrounding premises and arising out of or incident to the operation, maintenance, repair, construction, replacement or modification of the Local Unit Facilities, excluding the Renewable Energy Projects.

Section 8.4 Additional Insured and Waiver of Subrogation.

Service Provider and Customer shall each name the other, the Authority, and the local government, if different from Customer that owns the Local Unit Facility as an additional insured on each policy of insurance procured by it in satisfaction of this Article VIII. Further, Service Provider and Customer shall each cause its respective insurance carriers to waive any and all rights of subrogation against the other.

Section 8.5 Evidence of Insurance.

Prior to commencing any construction or deliveries under this Power Purchase Agreement, Service Provider and Customer shall each furnish to the other one or more certificates of insurance evidencing the existence of the coverage set forth in Sections 8.2 and 8.3, respectively. Each certificate shall state that the insurance carrier will give Service Provider and Customer at least thirty (30) days written notice of any cancellation or material change in the terms and conditions of such policy during the periods of coverage.

Section 8.6 Use of Insurance Proceeds.

Unless the Authority, the Customer, and the Service Provider agree otherwise, in the event of any loss or liability related to the Projects, Service Provider agrees to promptly restore the Projects to the condition prior to such loss, and Service Provider will use the proceeds received by or on behalf of the Authority (the Authority agreeing to make such proceeds available) or the Service Provider, in either case from any policy of insurance providing coverage for such loss to make all necessary repairs or replacements to the Projects and to promptly restore deliveries of Electricity to Customer.

Section 8.7 Casualty and Condemnation with Respect to Underlying Local Unit Facilities.

(a) Casualty. In the instance where a Local Unit Facility has suffered a casualty which renders the applicable Project inoperable and such Customer fails to rebuild such Local Unit Facility within a commercially reasonable time, then Customer shall comply with the terms of Section 3.7(i)-(iv), inclusive, of such Customer's Local Unit License Agreement with respect to such Local Unit Facility as if such failure to rebuild is deemed a revocation pursuant to Section 3.7 of the applicable Local Unit License Agreement.

(b) Condemnation. In the instance where a Local Unit Facility has suffered a taking which renders the construction or operation of the applicable Project unfeasible and such Customer fails to remediate such taking, then Customer shall comply with the terms of Section 3.7(i)-(iv), inclusive, of such Customer's Local Unit License Agreement with respect to such Local Unit Facility as if such taking is deemed a revocation pursuant to Section 3.7 of the applicable Local Unit License Agreement.

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ARTICLE IX

EVENT OF DEFAULT

Section 9.1 Service Provider Event of Default.

Any of the following events shall constitute a Service Provider Event of Default:

(a) Service Provider shall fail or cease to deliver Electricity to a Customer for a continuous period of thirty (30) days unless (i) Service Provider's performance is excused by a Force Majeure event, or by action or inaction of such Customer, or otherwise as provided in this Power Purchase Agreement, and Service Provider is diligently pursuing a cure, or (ii) Service Provider is willing to pay Customer during the term of such non-performance liquidated damages equal to the positive difference, if any, of the cost of replacement power less the per kwh PPA Price provided in this Power Purchase Agreement;

(b) Service Provider fails to make timely lease payments or otherwise causes an Event of Default as defined under the Company Lease Agreement or as defined in any other Company Document, notwithstanding a Force Majeure event; or,

(c) Service Provider shall fail to comply with any other provision of this Power Purchase Agreement, other than as described in subsection (a) and (b) above, and such failure continues for ninety (90) days of a written demand to cure; *provided, however*, that if such failure cannot be cured within said ninety (90) day period, Service Provider shall not be in default if it has commenced to cure within such ninety (90) day period if such action to cure the default is acceptable to the Authority and the Authority indicates the same in writing; and *provided, further*, that Service Provider diligently seeks to cure such failure.

Section 9.2 Customer Event of Default.

The following events shall constitute a Customer Event of Default:

(a) Customer shall fail or refuse to pay any bill for service rendered under this Power Purchase Agreement for Electricity on which payment is due in accordance with the terms of this Power Purchase Agreement, within forty-five (45) days of Service Provider's written demand therefor.

(b) Customer shall fail to comply with any other provision of the Agreement or their Local Unit License Agreement (including any failure to comply that constitutes a Licensor Event of Default as defined in the Local Unit License Agreement) and such failure shall continue for a period of sixty (60) days after receipt of written notice of such failure provided, that if such failure cannot be cured within sixty (60) days, then within a reasonable time so long as Customer diligently seeks to cure such failure.

Section 9.3 Authority Event of Default.

The following events shall constitute an Authority Event of Default:

(a) Authority shall fail to comply with any other provision of the Agreement or the Local Unit License Agreements and such failure shall continue for a period of thirty (30) days after receipt of written notice of such failure provided, that if such failure cannot be cured within thirty (30) days, than within a reasonable time so long as the Authority diligently seeks to cure such failure.

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ARTICLE X

REMEDIES

Section 10.1 Remedies upon a Service Provider Event of Default.

(a) Upon a Service Provider Event of Default as described in Section 9.1(a) hereof, the affected Customer may terminate the Power Purchase Agreement by written notice to Service Provider, which notice shall be effective upon delivery, which may give rights to certain Parties or other interested parties involved in the Renewable Energy Program to the County Security and/or the Construction Performance Bond. Such rights shall be in addition to any and all other rights and remedies that Customer may have at law or in equity including, without limitation, the right to recover monetary damages and thereafter pursue such damages or other relief to which Customer may be entitled with respect to any monetary damages owed by Service Provider which do not result in a termination of this Power Purchase Agreement,

(b) Upon a Service Provider Event of Default as described in Section 9.1(b), the Authority may exercise its rights under any other Company Document

(c) Upon a Service Provider Event of Default as described in section 9.1(c), the sole remedy of any other Party shall be specific performance or if applicable monetary damages.

Section 10.2 Remedies upon a Customer Event of Default.

(a) Upon a Customer Event of Default as described in Section 9.2(a) hereof (i.e., following expiration of the 45-day period following Service Provider's written demand for payment), (i) Service Provider may suspend performance hereunder until such time as Customer cures the Event of Default), and (ii) if such Event of Default continues for another 30 days, Service Provider may terminate the Power Purchase Agreement with respect to such Customer by written notice to the Authority and Customer, which notice shall be effective upon delivery, it being expressly understood however that any such termination shall not relieve Service Provider from its obligations under the Company Lease Agreement with respect to the lease payments due thereunder, or under any other Company Lease Agreement, with respect to any other Customer. Such rights shall be in addition to any and all other rights and remedies that Service Provider may have at law or in equity including, without limitation, the right to recover monetary damages and thereafter pursue such damages or other relief to which Service Provider may be entitled.

(b) Upon a Customer Event of Default as described in section 9.2(b), subject to Section 9.2(c), the sole remedy available to any other Party shall be specific performance or, if applicable, monetary damages.

(c) To the extent a Customer Event of Default would constitute a Licensor Event of Default under the applicable Customer's Local Unit License Agreement, the remedies set forth in Section 6.2 of such Customer's Local Unit License Agreement shall apply to the same extent as set forth herein.

Section 10.3 Remedies upon an Authority Event of Default.

(a) Upon an Authority Event of Default as described in section 9.3, the sole remedy available to any other Party shall be specific performance, or if applicable, monetary damages.

ARTICLE XI

FORCE MAJEURE

Section 11.1 Suspension of Performance.

No Party shall be in default in respect of any obligation under this Power Purchase Agreement with respect to one or more Projects if the Party is unable to perform such obligation by reason of a Force Majeure event affecting any such Project; *provided* that the suspension of performance with respect to such Project shall be commensurate with the nature and duration of the Force Majeure event and the nonperforming Party is using its commercially reasonable efforts to restore its ability to perform.

Section 11.2 Termination by Reason of Force Majeure.

If a Party's performance with respect to any Project is excused by reason of Force Majeure for more than twelve (12) consecutive months, any of the Parties (otherwise not in breach of this Agreement) may terminate the Agreement in so far as it relates to such Project upon thirty (30) days written notice to the other Parties, notwithstanding the existence of Force Majeure.

ARTICLE XII

LIMITATION ON LIABILITY

Section 12.1 Limitation on Liability.

Notwithstanding anything in this Power Purchase Agreement to the contrary, none of the Authority, Customer or Service Provider shall be responsible to any other in contract or in tort for any special, incidental or consequential loss or damage, including opportunity costs, arising out of this Power Purchase Agreement. The parties hereto agree that Customer is fully responsible for the upkeep and maintenance of all of the Customer's equipment and property after the Point of Delivery to Customer's operating site that is utilized in connection with the operation of the Renewable Energy Projects including, without limitation, electric panels, sub-panels and sub-metering. Except as provided in Section 3.6 hereof, which shall be Customer's sole and exclusive remedy, Service Provider shall not be responsible for any damages that Customer may incur as a result of delays associated with the construction of the Projects.

ARTICLE XIII

TERMINATION

Section 13.1 Termination.

No Party may terminate the Agreement, except upon the other's Event of Default as provided herein, or as otherwise expressly provided in this Power Purchase Agreement.

ARTICLE XIV

MISCELLANEOUS

Section 14.1 Assignment.

None of Service Provider, the Authority or any Customer shall assign this Power Purchase Agreement without first having obtained the written consent of the other Parties; *provided, however*, Service Provider may assign its rights and delegate its duties and obligations under this Power Purchase Agreement to any special purpose entity which it may organize for the purpose of owning and operating the Renewable Energy Projects (a "Permitted Provider Assignee"), so long as contemporaneously herewith such Service Provider, or its Permitted Provider Assignee, delivers the County Security and the Construction Performance Bond; and provided, further, that with the consent of Service Provider and Customer, certain payments hereunder may be assigned to the Trustee for the Series 2012 Bonds as further security therefor.

Section 14.2 Governing Law, Waiver of Right to Jury Trial, and Jurisdiction.

(a) This Power Purchase Agreement and the rights and obligations of the Parties shall be governed by, construed, and enforced in accordance with, the laws of the State. In order to expedite resolution of any actions, suits, or proceedings that arise under this Power Purchase Agreement, and in light of the complexity of the transactions contemplated hereby, each of the Parties (i) irrevocably waives the right to trial by jury in any such actions, suit, or proceeding of any kind or nature in any court to which it may be a Party and (ii) other than with respect to arbitration in accordance with the provisions of Section 14.5 hereof, agrees that venue shall be laid in the Superior Courts of Monmouth County, New Jersey.

(b) With respect to any such action, suit, or proceedings relating to this Power Purchase Agreement or arising in connection with the transactions contemplated hereby, the Parties irrevocably (i) submit to the exclusive jurisdiction of the federal and State courts of the State; (ii) waive any objection which it or they may have at any time to the laying of venue of any action, suit or proceeding in any such court; (iii) waive any claim that any such action, suit, or proceeding has been brought in an inconvenient forum and (iv) waive the right to object that such court does not have jurisdiction over the Parties.

Section 14.3. Successors and Assigns.

This Power Purchase Agreement shall inure to the benefit of, and be binding upon the Parties hereto and to their successors and assigns.

Section 14.4 Waiver.

No provision of this Power Purchase Agreement may be waived absent the express written consent of the Authority, the Service Provider and each affected Customer, if any. The failure of any Party hereto to assert any of its rights under this Power Purchase Agreement shall not be construed to constitute a waiver of such provision, nor in any way be deemed to affect the validity of this Power Purchase Agreement or any part hereof or the right of any Party hereto to thereafter subsequently enforce its rights and remedies as otherwise provided herein. No express and written waiver of any breach of this Power Purchase Agreement shall be held to constitute a waiver of any other provision hereof or any subsequent breach hereof.

Section 14.5 Arbitration.

Should any dispute, controversy or claim arise hereunder, then the Parties covenant and agree, to the extent permitted by law, that all such disputes, controversies or claims shall be submitted to non-binding arbitration, and in all other cases legal actions concerning such disputes, controversies and claims shall be brought in the Superior Court of Monmouth County, New Jersey. Arbitration shall be conducted before an arbitrator chosen by the American Arbitration Association, should the Parties hereto not be able to otherwise agree upon an arbitrator to adjudicate said matter. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The cost of arbitration, along with the prevailing Party's legal fees and costs of arbitration, shall be borne by that Party which the arbitrator deems to be the non-prevailing party to the arbitration. It is the intent of the Parties that there shall be liberal discovery permitted including depositions and document production.

Section 14.6 Entire Agreement, Amendment.

This Power Purchase Agreement, together with the other Program Documents, constitutes the entire agreement by and between the Parties hereto and supersedes and replaces all previous understandings and agreements, whether written or oral, which may have existed between the Parties hereto. This Power Purchase Agreement may only be modified by a subsequent written instrument which shall be executed by the Authority and the Service Provider, and to the extent any such amendment involves any terms that could adversely affect any Customer, by such Customer.

Section 14.7 Partial Invalidity.

If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith and if they are unable to reach agreement on an

appropriate amendment within a reasonable time, their disagreement shall constitute a dispute and be resolved pursuant to the provisions of Section 14.5 (relating to arbitration). The arbitrator may grant any remedy or relief, including reformation of the Agreement, that the arbitrator deems just and equitable.

Section 14.8 Non-Substitution.

Customer covenants and agrees that throughout the Initial Term of this Power Purchase Agreement, and all extensions hereof, that with respect to the Local Unit Facility (a) it shall not purchase, lease or rent property to perform the same function or provide the same services as, or functions or services taking the place of, those functions and services being provided by Service Provider under this Power Purchase Agreement, (b) it shall not permit such functions or services to be performed or supplied by Customer's own employees or by Customer or any agency, affiliate or third party of Customer, (c) it shall not otherwise enter into any agreement with any third party or otherwise affiliated party to perform such functions or services, and/or (d) otherwise take steps to circumvent or defeat the intentions of this paragraph or this Power Purchase Agreement. During the Initial Term of this Power Purchase Agreement and throughout all extensions hereof, Customer covenants and agrees to look to and consider Service Provider as the Local Unit's sole and exclusive supplier of Electricity up to the total amount generated by the Renewable Energy Projects.

Section 14.9 Further Assurances.

The Parties hereto agree to execute all documents and take all further actions which might be reasonably requested by the other party in order to better fulfill or evidence the intentions of the Parties hereto.

Section 14.10 Counterpart Execution; Facsimile Signatures.

This Power Purchase Agreement may be executed and acknowledged in counterparts, and when signed by all of the Parties hereto shall constitute one binding agreement. Facsimile Signatures shall be deemed the same as originals.

Section 14.11 Waiver of Sovereign Immunity.

For the purposes of this Power Purchase Agreement, the Authority and each Customer acknowledge and agree that (a) its execution and delivery of this Power Purchase Agreement and (b) its performance of the actions contemplated by this Power Purchase Agreement, constitute private and commercial acts rather than public or governmental acts. To the extent that, in any jurisdiction, the Authority or such Customer in respect of itself or its assets, properties or revenues, shall be entitled to any immunity from suit, from the jurisdiction of any court, from attachment prior to judgment, from attachment in aid of execution of judgment, from execution, or enforcement of a judgment, or from any other legal or judicial process or remedy, such party hereby (i) expressly and irrevocably agrees not to claim or assert, and expressly and irrevocably waives, any such immunity to the fullest extent permitted by the laws of such jurisdiction and (ii) consents generally to the giving of any relief or the issue of any process in connection with any proceeding.

Section 14.12 Notice.

Unless otherwise provided in writing, any notices to be given or to be served upon any Party hereto, or any other documents to be delivered to Party, all in connection with this Power Purchase Agreement, must be in writing and may be delivered personally, by telecopy, by e-mail, or by overnight, certified or registered mail. If such notice or document is delivered by certified or registered mail, it shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail. If such notice or document is delivered by telecopy or e-mail, a hard copy of such notice or document shall be sent by certified or registered mail, although such notice or document shall be deemed to have been delivered upon receipt of the telecopy or e-mail by such Party. If such notice is given or document is delivered otherwise, it shall be deemed to have been given or delivered, as applicable, when delivered to and received by the Party to whom it is addressed. Such notice or document shall be given to the Party at their following respective addresses or at such other address as any Party may hereafter designate to the other Parties hereto in writing:

(a) If to the Authority: The Monmouth County Improvement Authority
Hall of Records
Main Street
Freehold, New Jersey 07728
Attention: Al Rosenthal, Chairman
arosenal@co.Monmouth.nj.us

With a copy to: John D. Draikiwicz, Esq.
Gibbons PC
One Gateway Center
Newark, New Jersey 07102
Email: jdraikiwicz@gibbonslaw.com

and

Stephen B. Pearlman, Esq.
Inglesino, Pearlman, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Email: spearlman@iandplaw.com

(b) If to Service Provider: [COMPANY]
[COMPANY ADDRESS]

With a copy to:

If to Customer: See **Exhibit F** attached hereto.

Section 14.13. Approvals.

In order to ensure that construction of the Renewable Energy Projects is not unduly delayed, in the event that any party to this Power Purchase Agreement, including without limitation any Series 2012 Local Unit, seeks the approval or consent of another party to this Power Purchase Agreement, the party considering such request shall not unreasonably condition, withhold or delay such consent or approval.

IN WITNESS WHEREOF, the undersigned have caused this Power Purchase Agreement to be duly executed and delivered as of the date and day first above written.

[COMPANY]

BY:

BY: _____
NAME:
TITLE:

ATTEST:

By: _____
Name:
Title:

**THE MONMOUTH COUNTY
IMPROVEMENT AUTHORITY**

[SEAL]

By: _____
Al Rosenthal
Chairman

ATTEST:

By: _____
[Name]
Secretary

ACKNOWLEDGMENT

Pursuant to Section 5.1(c) of their respective Local Unit License Agreements, the terms and conditions of this Power Purchase Agreement are hereby **acknowledged** and **accepted** by each of the Series 2012 Local Units, as acknowledgment parties to this Power Purchase Agreement, intending to be severally entitled to, and bound by, the rights, duties and obligations of Customer hereunder, this ____ the day of January, 2012.

[NAME OF LOCAL UNIT]

BY: _____
Name:
Title:

[NAME OF LOCAL UNIT]

BY: _____
Name:
Title:

[NAME OF LOCAL UNIT]

BY: _____
Name:
Title:

[NAME OF LOCAL UNIT]

BY: _____
Name:
Title:

[NAME OF LOCAL UNIT]

BY: _____
 Name:
 Title:

[NAME OF LOCAL UNIT]

BY: _____
 Name:
 Title:

EXHIBIT A

Monmouth County Improvement Authority

not to exceed \$50,000,000 aggregate principal amount of

County of Monmouth Guaranteed Renewable Energy Program Lease Revenue Bonds, Series
2012 (Federally Taxable)

Series 2012 Local Unit List of Local Unit Facilities

[Add list of local units and their projects]

Exhibit B

PPA Price – Electricity Rates and Escalation Adjustments

For any year of this Power Purchase Agreement and with respect to each respective Customer, the PPA Price payable by any one such Customer is the sum of Sections 1 and 2 below (after the escalation percentage factor in Section 2 below is converted into a dollar amount for the applicable year of computation). For the period prior to the first anniversary of the Commencement Date for such Customer, the amount in Section 2 below shall be \$_____.

(a) Cost of Electricity, per kWh, pursuant to the Power Purchase Agreement, for the period (a) from the date of the first delivery by the Service Provider to such Customer of Electricity from the Renewable Energy Project on the Local Unit Facility of such Customer (b) to, but excluding, the first anniversary of the applicable Commencement Date for such Customer: \$_____/ kWh.

(b) Annual escalation (expressed as a fixed percentage increase from the prior year's PPA Price) applicable as of each anniversary date of the Commencement Date for such Customer in effect for the following year to, but not including, the next succeeding anniversary of such Commencement Date for such Customer: two and three-quarters percent (_____%).

(i) This escalation factor commences on the first anniversary of the Commencement Date for such Customer, and ends at the end of the Initial Term, unless further adjusted in accordance with the terms of any extension of the Initial Term pursuant to the terms of the Power Purchase Agreement.

(c) The Parties further agree to the following:

(i) Although the percentage of escalation is fixed in Section 2, since it is based on the prior year's PPA Price, which is itself increasing on an annual basis, the actual dollar amount of each year's escalation increases.

(ii) With the possibility that each Customer shall have different Commencement Dates, and although each Customer shall be subject to the same base cost of Electricity governed by Section 1 above and the same escalation factor governed by Section 2 above, the actual PPA Price payable by one or more Customers may vary on the same date of computation for different Customers.

(iii) In light of the provisions of Section 6.5 of the Power Purchase Agreement, the PPA Price for any Applicable Customer shall be further escalated for any increase in taxes assessed or levied against the Renewable Energy Projects, which taxes shall be imposed by or on behalf of any such Customer, if any; provided, however, that any such increase shall be solely available to the entity that must pay any such tax, the intent being that there shall be no after tax effect on the PPA Price, should any such tax ever be imposed.

EXHIBIT C

PLANS AND SPECIFICATIONS FOR RENEWABLE ENERGY PROJECTS

[NOTE- PHOTOVOLTAIC RENEWABLE ENERGY PROJECTS DESCRIBED BELOW IS SUBJECT TO CHANGE BASED UPON CUSTOMER INPUT, SOLAR MODULE AVAILABILITY AND FINAL DESIGN DETAILS. ALL “AS BUILT” DESIGN DOCUMENTS AND PLANS AND SPECIFICATIONS SHALL BECOME PART OF THIS EXHIBIT C WHEN COMPLETE.]

- 1.** Service Provider shall install the Renewable Energy Projects for each Local Unit Facility as described in **Exhibit A** to this Power Purchase Agreement and, as applicable, with a roof support system that minimizes roof penetrations and assures the safety and integrity of the system and continued validity of the respective roof warranties for each Local Unit Facility.

EXHIBIT D

**PLANS, SPECIFICATIONS AND LOCAL UNIT EXISTING ROOF WARRANTY
DURATION CHART FOR CAPITAL IMPROVEMENT PROJECTS**

EXHIBIT E

[ATTACH FORM OF LOCAL UNIT LICENSE AGREEMENT]

[SEE CLOSING ITEM NO. __]

EXHIBIT F

NOTICE INFORMATION FOR CUSTOMER

Monmouth County Improvement Authority

\$(not to exceed \$50,000,000) aggregate principal amount of
County of Monmouth Guaranteed Renewable Energy Program Lease Revenue Bonds, Series
2012 (Federally Taxable)

Series 2012 Local Unit Distribution List

[insert local unit distribution list]

EXHIBIT G

[Attach Construction Performance Bond]

EXHIBIT H

[Attach Initial List of Subcontractors]