

TOWN OF NORTH HEMPSTEAD



REQUEST FOR PROPOSALS RFP No. TNH092-2013

**DEVELOPMENT OF UTILITY-SCALE SOLAR ENERGY GENERATING
FACILITIES ON TOWN OF NORTH HEMPSTEAD-OWNED PROPERTY**

PORT WASHINGTON LANDFILL

WEST SHORE ROAD, PORT WASHINGTON, NEW YORK

August 14, 2013

TABLE OF CONTENTS

	PAGE
1. INTRODUCTION.....	1
A. Purpose.....	1
B. Background.....	3
2. OVERVIEW OF PROJECT.....	9
A. Host Site.....	9
B. Solar Energy Generating Facility Configuration	9
C. Host Site LIPA Interconnection.....	9
D. Site Lease Agreement – Private Ownership Option	10
E. Power Purchase and Sale Agreement	11
F. Project Scope of Work.....	11
G. Environmental Permits and Approvals	12
H. Solar Energy Project Development Tasks and Agreement Deliverables.....	16
3. RFP MILESTONE SCHEDULE.....	18
A. Proposed RFP Schedule.....	18
B. Questions.....	19
C. Proposal Submittal.....	19
4. GENERAL PROPOSAL INSTRUCTIONS.....	20
A. Proposal Submittal Address.....	20
B. Oral Communications	20
C. Changes to the Request for Proposals.....	20
D. Exceptions/Deviations	20
E. Pre-Contractual Expenses	21
F. Town’s Rights and Options	21
G. Proposals Not Withdrawn Irrevocable.....	21
H. Disposition of Proposals	22
I. Agreement.....	22
J. Media Statements and News Releases.....	23
5. PROPOSAL FORMAT AND CONTENT.....	24
A. General.....	24
B. Cover Letter	24
C. Executive Summary	24
D. Technical Proposal.....	25
E. Financial Proposal and Project Financing Plan	29
F. Financial Qualifications	30
G. Proposal Security	30

H.	Consent of Surety.....	31
I.	Appendices.....	31
J.	Additional Requirements	31
K.	Selected Proposers Obligations.....	32

6. PROPOSAL EVALUATION AND SOLAR ENERGY DEVELOPER SELECTION
..... **33**

A.	General.....	33
B.	Evaluation Procedures and Process	33
C.	Evaluation Criteria	34

FIGURES

Figure 1-1:	General Location Map	5
Figure 1-2:	Regional Location Map.....	6
Figure 1-3:	Town Boundary and Project Location Map.....	7
Figure 1-4:	LIPA Service Territories.....	8

TABLES

Table 2-1:	Anticipated Required Environmental Permits/Approvals	12
Table 3-1:	Proposed RFP Schedule.....	18
Table 6-1:	Solar Energy Facility Proposal Review and Developer Selection Process.....	35

APPENDICES

1. Orthometric of Host Site and Interconnection Locations
2. Host Site Town Zoning Code
3. Model Host Site Lease Agreement
4. Division of Responsibilities
5. Required Insurance Policies and Coverage
6. Certification of Insurance Form
7. Proposer Qualification Form
8. Proposer Reference Facility Description Form
9. Solar Energy Facility Technical Specifications
10. Solar Energy Facility Operating/Performance Characteristics
11. Solar Energy Facility AC Energy Production Schedule
12. Statement of Understanding Form
13. Disclosure Form

14. Statement of Non Collusion Certificate
15. Affidavit If Proposer Is a Corporation
16. Affidavit of Compliance With Respect to the Hiring Of Employees in Accordance with Federal Law
17. Acknowledgement of Receipt of Addenda Form
18. Proposal Checklist
19. Prevailing Wage Rates and Certificate

1. INTRODUCTION

A. Purpose

As part of the Town of North Hempstead's (Town) ongoing commitment to Federal, State and Town initiatives and policies regarding development and use of sustainable renewable energy and reduction of the Town's carbon footprint, the Town of North Hempstead intends to participate in the Long Island Power Authority's (LIPA) 2013 Clean Solar Initiative Feed-In Tariff II Program (2013 FIT II Program) which is expected to become available on or about September 30, 2013. To best position the Town to participate in the 2013 FIT II Program, the Town is requesting Proposals from qualified, experienced entities (company, corporation, partnership, or joint venture) to undertake the development of two (2) separate 2 MW solar energy generating facilities (Solar Facilities) at the Town-owned Port Washington Landfill located along West Shore Road (802 West Shore Road) in the unincorporated hamlet of Port Washington within the Town of North Hempstead, Nassau County, New York (the Host Site). LIPA has reviewed the Host Site to evaluate suitable electric interconnection locations and has identified two potential, independent 13.2 kV overhead feeder locations and indicated that the Town can submit 2013 FIT II Program Applications for two 2 MW solar energy generating facilities at the Host Site.

Recognizing that private versus public ownership of the Solar Facilities offers different advantages and disadvantages, e.g. Federal energy tax credits and accelerated depreciation for privately-owned, or public sector construction grants or special low interest financing for publically-owned, the Town wishes to receive Proposals for both privately-owned and publically-owned development options, however, the Proposer has the option of submitting a proposal for either the privately-owned option or publically-owned option or for both options.

- Under the Private Ownership Option, the selected developer (Developer) would undertake the full service development (design, permit, finance, install, own, operate, maintain, generate, and sell energy) of the Solar Facilities at the Town-owned Host Site. Through a long-term Site Lease Agreement executed with the Town, the Developer would have an exclusive franchise to occupy and utilize the property for solar energy facility construction, operation, maintenance and sale of all generated energy to LIPA. Under this option, the Developer would make two (2) applications to LIPA to participate in the 2013 FIT II Program, one for each of the two Solar Facilities.
- Under the Public Ownership Option, the Town would own the Solar Facilities with the Town financing the project cost and the Developer would provide the design, permitting support, procurement and bidding, and managing the installation of the Solar Facilities under a Lump Sum AIA-type contract including utility interconnection, and operating and maintenance of the Solar Facilities under a separate Operating Agreement. Under this option, the Town would make application to participate in the 2013 FIT II Program.

The goal of the Town under either ownership option is to promote development of renewable energy and maximize financial value to the Town for hosting the Solar Facilities.

Each party submitting a Proposal in response to this Request for Proposal (RFP) is referred to as a Respondent and the Respondent that is ultimately selected by the Town for this Project through this RFP process is referred to herein as the Developer.

Proposals submitted in response to this RFP must - at a minimum - demonstrate the following:

- Proposer intends to enter into a Feed-In Tariff Solar Power Purchase Agreement (the “PPA”) exclusively with LIPA under the Private Ownership Option and qualify under and satisfy all the requirements of LIPA’s *Small Generator Interconnection Procedures*, including interconnection at LIPA approved distribution locations and voltages, and that the Proposer intends to enter into an interconnection agreement with LIPA;
- Address local economic development through use of local labor, goods and materials, suppliers, and subcontractors;
- Best serve the interests of the Town;
- Provide Development Plans that:
 - Reflect the Proposer’s ability to achieve timely commercial operation of the proposed Solar Facilities, including design, permitting, financing, construction, and operation; and
 - Provide financial value to the Town for offering a viable, Town-supported site for solar energy facility development.
- If the Private Ownership Option is selected by the Town, the Developer will bear one hundred percent (100%) of the costs associated with the full-service development, and operation and maintenance of the Solar Facilities at no cost to the Town. The Town will not be responsible for financing any costs associated with the proposed Solar Facilities’ development, operation and maintenance unless specified otherwise in any of the agreements between the Town and the Developer.
- Under the Private Ownership Option, the Developer will enter into a long-term Host Site Lease Agreement with the Town – in the form of the Model Host Site Lease Agreement provided in Appendix 3 of this RFP – to occupy and utilize the Host Site for Solar Facility Development Phase surveying and engineering, Construction Phase activities, and Operation Phase monitoring and maintenance. The Town anticipates that the term of the Site Lease Agreement will be commensurate with the terms of the LIPA PPAs.
- Under the Public Ownership Option, the Contract will provide terms and conditions for the Developer’s access and use of the Host Site during the construction, start-up and acceptance testing period, and a separate Operating Agreement will be developed to address ongoing operations and maintenance of the Solar Facilities and the interconnection equipment at the Host Site.

B. Background

The Town

The Town of North Hempstead is a municipality of approximately 226,000 residents, located in northwestern Nassau County, Long Island, New York as shown in Figures 1-1 and 1-2. As illustrated in Figure 1-3, the Town is bounded to the north by the Long Island Sound, to the south by the Town of Hempstead, to the west by the borough of Queens, and to the east by the Town of Oyster Bay. The Town's northern land boundaries are arranged along Little Neck and Manhasset Bays, Long Island Sound, and Hempstead Harbor. The entire Town is located within the boundaries of LIPA's electric service area (Figure 1-4).

The Project

The Town intends to participate in LIPA's 2013 FIT II Program for installation of two 2 MW solar energy generating facilities to be located on the Host Site. LIPA has reviewed the Host Site and has evaluated potential interconnection locations. LIPA has confirmed to the Town that two potential separate, independent interconnect locations are available and that each can support a 2 MW solar generating facility, and that the Host Site location can qualify for two separate solar generating facilities up to 2 MW each under the 2013 FIT II Program.

The Host Site

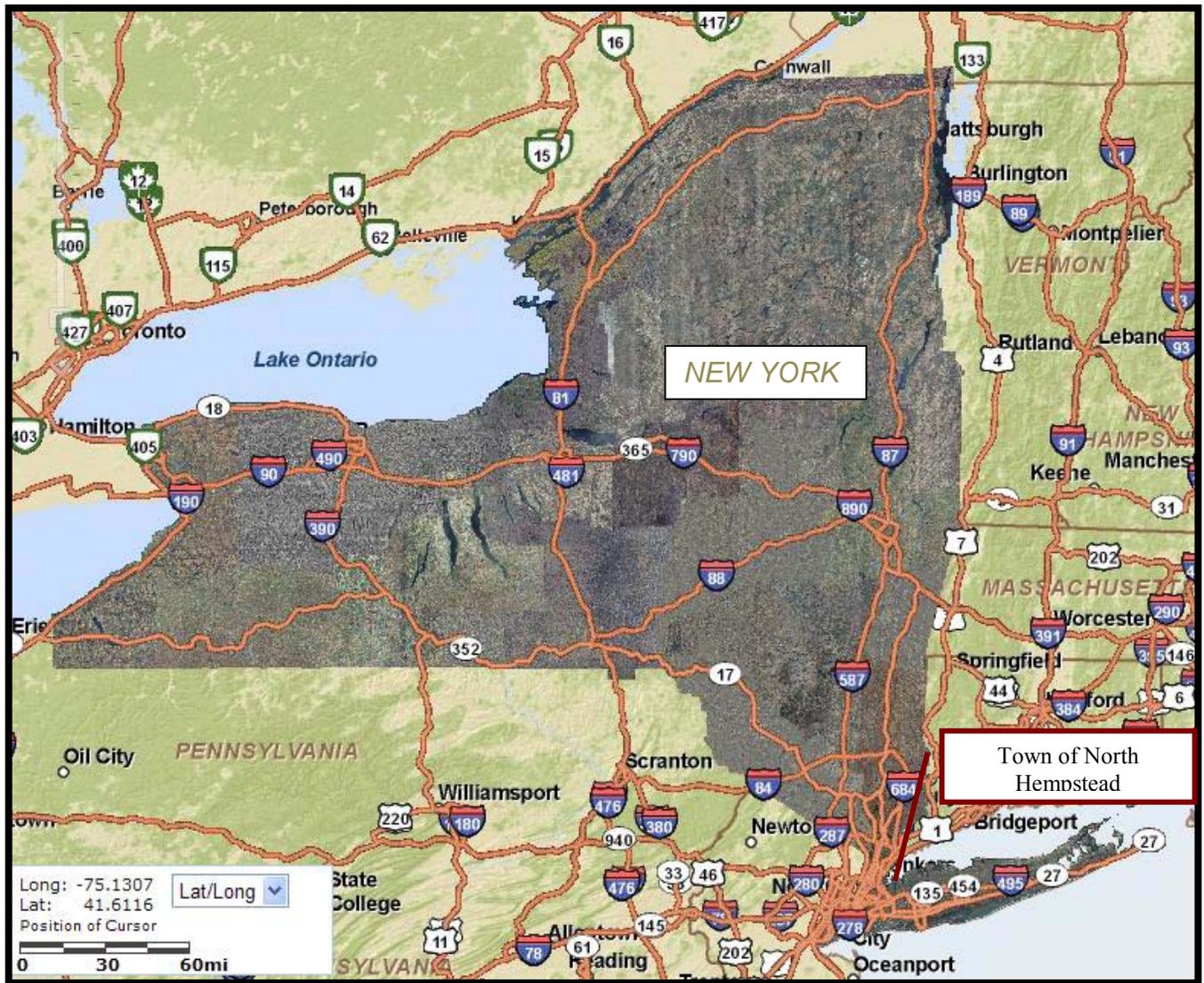
The Port Washington Landfill site comprises two (2) landfill Fields, L-4 and L-5 (an orthometric of the site is provided in Appendix 1). Field L-4, which is approximately 42 acres, is a Federal Superfund (CERCLA) site which was remediated/capped under a Consent Decree between the United States Environmental Protection Agency and the Town in 1997. Field L-4 was used for waste disposal from 1974 to 1983. The cap for L-4 comprises a 60 mil HDPE geomembrane overlain with two (2) feet of barrier protection soil and six (6) inches of topsoil. Field L-4 has an active landfill gas collection system along its northern and western boundaries and passive vents throughout landfill itself. Field L-5, which is approximately 45 acres, is a solid waste landfill which was closed/capped in accordance with New York State Department of Environmental Conservation Part 360 requirements. The eastern portion of Field L-5 was capped in 2001 and the western portion was capped in 2004. Field L-5 was used for waste disposal from 1983 to 1992. The cap for L-5 comprises a 60 mil HDPE geomembrane overlain with one (1) foot of barrier protection soil and six (6) inches of topsoil. Field L-5 has an active landfill gas collection system. Drawings of the closed Fields L-4 and L-5 will be provided to those Proposers that attend the mandatory Proposers Conference. It is the Town's desire to locate a 2 MW solar energy generating facility on each Field L-4 and Field L-5.

LIPA 2013 Feed-In Tariff II Program

In response to the State's RPS, LIPA's 2010-2020 Electric Resources Plan includes an aggressive commitment to increase LIPA's renewable energy portfolio to achieve 30% electric generation from renewable resources by 2015 through a variety of programs, including direct solicitations for such additional renewable energy resources in 2012 and 2013. In 2012, LIPA created a new Feed-In Tariff through revisions to its Service Classification No. 11. The initiative was fully subscribed and is closed. LIPA has announced a new 100 MW Clean Solar Initiative Feed-In Tariff II Program (2013 FIT II Program) for solar energy which will offered a 20 year

fixed price per kWh based on a “Clearing Price Auction” process, i.e. LIPA’s fixed price will be set following submittal, review and evaluation of all Proposer’s per kWh bid prices. LIPA plans to start accepting applications for renewable energy projects starting September 30, 2013 with the application period closing on January 31, 2014. Applications will be accepted and reviewed by LIPA for completeness, formal documentation of site control and interconnection suitability for development of a viable project. Applications that meet LIPA’s completeness requirement will be ranked based on each proposer’s 20 year bid price per kWh. The top 10% of bids will be eliminated. The remaining 90% of bids will be ranked from lowest to highest price and the LIPA FIT II Program price will be the highest price to achieve 100 MW or if the 100 MW threshold is not met, the highest bid price after elimination of the top 10% of the bids. For a more detailed description of the 2013 FIT II Program see LIPA’s website (www.lipower.org/FIT).

Proposers are responsible for familiarizing themselves with the terms and conditions of the 2013 LIPA Solar Feed-In Tariff II Program, as described on LIPA’s web site, regarding qualifying technologies, Project performance, 20 year flat tariff rate, delivered energy only payments, and for factoring both the Feed-In Tariff process and resulting PPA into their proposals.



**Town of North Hempstead
Solar Energy Facility Project
Nassau County, New York**

Figure 1-1: General Location Map

Source: NYGIS Clearinghouse



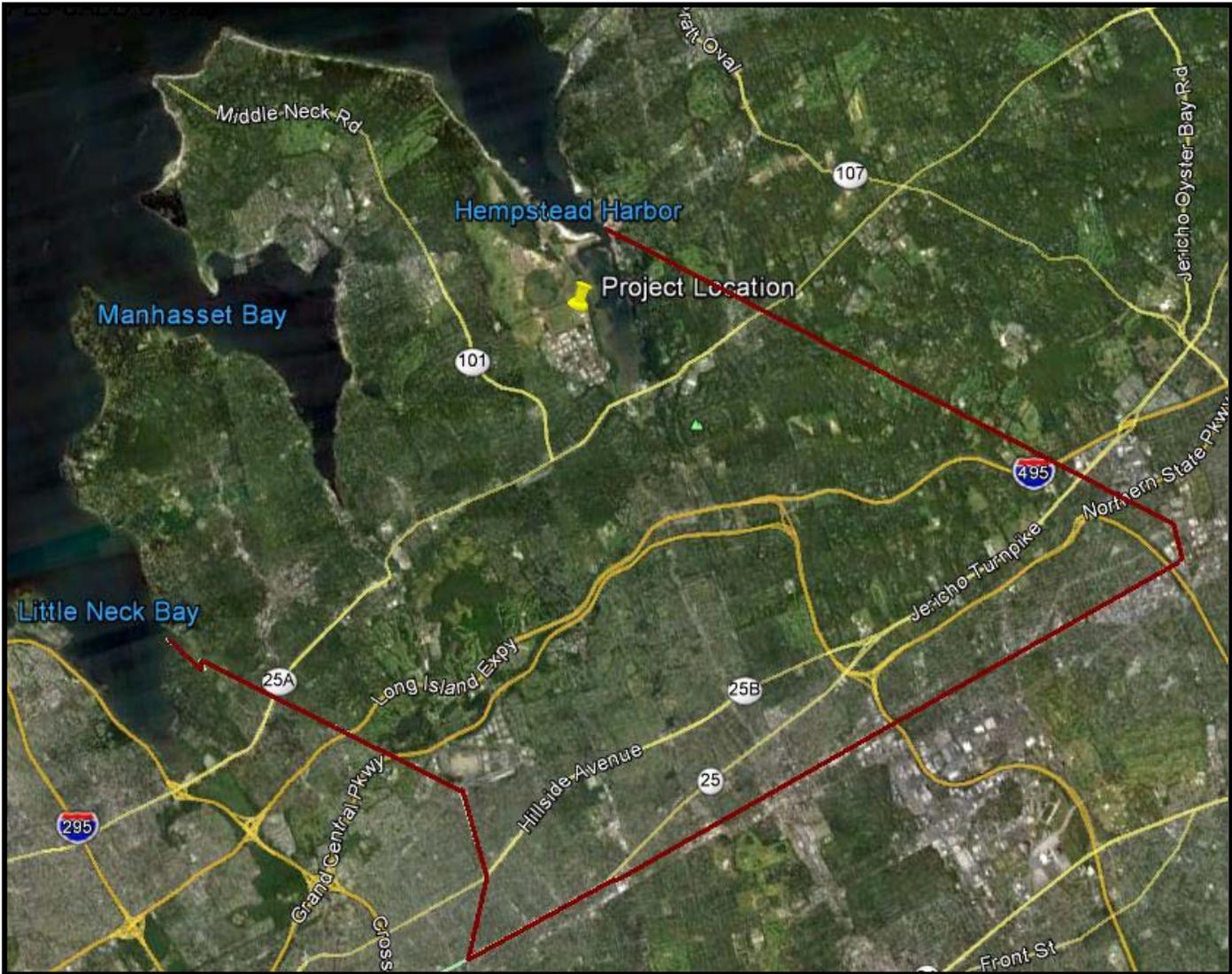


**Town of North Hempstead
Solar Energy Facility Project
Nassau County, New York**

Figure 1-2: Regional Location Map

Source: NYGIS Clearinghouse



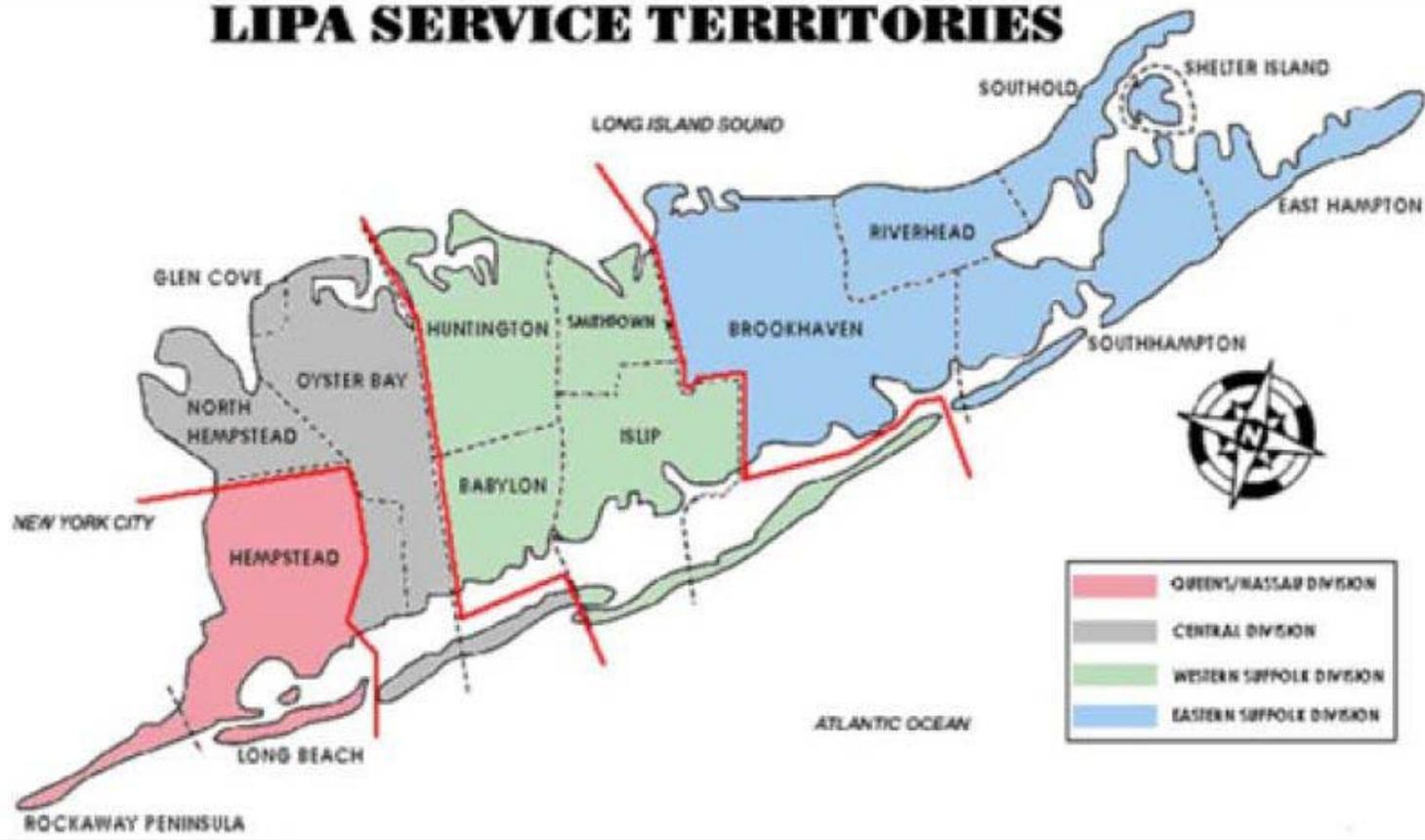


— Town Boundary

<p>Town of North Hempstead Solar Energy Facility Project Nassau County, New York</p>
<p>Figure 1-3: Town Boundary and Project Location Map</p>
<p><i>Source: Google Earth</i></p>



LIPA SERVICE TERRITORIES



**Town of North Hempstead
Solar Energy Facility Project
Nassau County, New York**

Figure 1-4: LIPA Service Territories

Source: LIPA



2. OVERVIEW OF PROJECT

A. Host Site

The Town has identified a Town-owned property that can potentially accommodate two (2) solar energy generating facilities up to 2 MW each (the Host Site). This property, which is a former landfill, is located along West Shore in the unincorporated hamlet of Port Washington and operated and maintained by the Town's Solid Waste Management Authority (SWMA).

An Orthometric Site Plan of this Town-owned property is provided in Appendix 1.

This Property is zoned Residential AAA (R-AAA).

The Landfill site offers the opportunity for a utility-scale solar energy project with solar equipment installed on the closed landfill cover system/cap and surrounding non-landfill areas. The Town has discussed use of the Landfill site with the New York State Department of Environmental Conservation (NYSDEC) and the United States Environmental Protection Agency (USEPA) and has received support from both NYSDEC and USEPA that they consider this site to be environmentally viable for permitting and development of a solar energy facility providing that the integrity of the landfill cap is not compromised, that slope stability is maintained and that storm water is properly managed. As part of the Town's commitment to this Project, the Town will take the lead role in coordinating with the NYSDEC and USEPA on the landfill closure/remediation aspects of a solar development project.

B. Solar Energy Generating Facility Configuration

All Proposals must include a narrative technical description of the proposed Host Site Solar Facilities supplemented with conceptual plans, elevations, and supporting illustrative photos and renderings.

C. Host Site LIPA Interconnection

As described above, solar energy facility configuration at the Host Site will require direct interconnection and electric supply to LIPA's local electric distribution grid. On-site direct current (DC) to alternating current (AC) inverters will be required to interconnect to LIPA's grid. LIPA has reviewed potential interconnect locations in the Host Site vicinity and has identified two (2) separate 13.2 kV overhead feeder interconnect locations that can each support 2 MW of solar power. The two LIPA-identified potential interconnect locations are shown in Appendix 1.

Interconnection equipment and strategy shall meet LIPA's regulations for metered interconnection and safe and reliable parallel operations with LIPA's grid. Under either the private or public ownership option, the Developer will be responsible for all interconnection engineering drawings showing the Solar Facilities' layouts and the electrical paths from the facilities to the LIPA interconnection locations.

During initial solar energy facility start-up phase, LIPA shall be invited to observe and verify the system's performance. Required commissioning and acceptance test services shall include:

- Start-up of the two Solar Facilities and delivery of power to the grid in amounts that are in accordance with the Agreement with LIPA and the system manufacturer's published performance curve for power production at the solar irradiance that is present at the time of the start-up of the system. To the extent practical, such start-up shall be at or near the time of peak solar irradiance for the day;
- Performance testing over a consecutive 24-hour period; and
- Successful delivery of energy within 30 days of completion of a system.

D. Site Lease Agreement – Private Ownership Option

The terms and conditions of the Town's hosting of the proposed Solar Energy Project on Town-owned property for the Private Ownership Option are set forth in Appendix 3 which contains the Town's Model Host Site Lease Agreement. Respondents' Proposals, in order to be deemed complete and in full compliance with this RFP's requirements, MUST include a copy of Appendix 3 clearly marked with Respondent's exceptions (comments, deletions and additions) if Respondent is submitting a Proposal for the Private Ownership Option. All Respondent's exceptions to the Model Host Site Lease Agreement submitted by a Proposer must include alternate language shown in track change red line format using Microsoft Word. The nature and extent of exceptions, if any, taken by Respondent to the Model Host Site Lease Agreement will be an important factor in the evaluation of the Proposal by the Town. A Word version of the Model Host Site Lease Agreement will be provided to those Proposers that attend the mandatory Proposers Conference.

Proposers should be aware that Appendix 3 – Model Host Site Lease Agreement – among other things, provides for the following payments to be made by the Developer:

- Quarterly Lease payments, in the form of rent, during the pre-Operating and Operating periods; and
- Any property taxes, special assessments or ad valorem taxes determined to be directly attributable to Developer's Improvements (the Solar Energy Project) as same may be levied or assessed against the Property.

As noted above, a major reason for the Town offering its property for solar energy facility development under the Private Ownership Option is to maximize the financial value of its property through site lease payments from the selected Project Developer. The Model Host Site Lease Agreement mark-up together with the proposed site lease payments are to be included in the Proposer's Financial Proposal.

E. Power Purchase and Sale Agreement

This RFP anticipates that the Town will be approved for two (2) 2 MW solar energy generation facilities under the LIPA 2013 FIT II Program and that the Developer will enter into a long-term PPA for each Solar Facility with LIPA for a term of no less than 20 years under the Private Ownership Option, whereas under the Public Ownership Option the Town would contract directly with LIPA for the PPAs.

- **For the purpose of this RFP, under the Private Ownership Option Proposers shall provide its 20 year fixed price per kWh bid which will be the bid price used by the Proposer in its application to LIPA together with proposed quarterly Site Lease Payment.**
- **Recognizing that LIPA has chosen to implement a Clearing Price Auction method to set the 20 year fixed kwh price and that the 20 year fixed kWh price will not be set by LIPA until after all applications are submitted, for the Private Ownership Option, Respondents must submit a formula that adjusts the Site Lease Payment based on the LIPA 20 year Clearing Price that is finally set by LIPA. For example, if a Respondent's proposal to the Town provided for a Site Lease Payment of \$400,000 per year at a 20 year fixed electricity price of \$0.20/kwh, and the LIPA Clearing Price is set at \$0.22/kWh, the Site Lease Payment should be adjusted/increased.**

F. Project Scope of Work

Note: For both the Private Ownership Option and the Public Ownership Option, all Solar Facility installation labor and all maintenance and repair labor must be performed in accordance with the New York State Department of Labor Prevailing Wage Rate Schedule for Nassau County and all New York labor laws. A copy of this schedule is provided in Appendix 19 and must be taken into consideration by each Proposer in development of its Proposal.

Private Ownership Option: The Developer shall be responsible for developing; permitting; financing; engineering; procurement; installing; interconnecting; commissioning; testing; owning; operating; and maintaining the solar energy generating facilities at the Host Site. The Developer shall be required to supply all facility-related equipment, materials, and labor necessary for the installation, operation and maintenance of the Solar Facilities.

Public Ownership Option: The Developer shall be responsible for developing; permitting support; engineering; procurement; installing; interconnecting; commissioning; testing; operating; and maintaining the Solar Facilities at the Host Site. The selected Proposer shall be required to supply all facility-related equipment, materials, and labor necessary for the installation, operation and maintenance of the Solar Facilities.

G. Environmental Permits and Approvals

The solar energy Project's Development Phase - State Environmental Quality Review Act (SEQRA) review, permitting, financing, engineering, and procurement – is expected to occur in 2014 with the solar energy Project construction and commissioning phases anticipated to commence in the later part of 2014.

Planning, construction, and operation of the Solar Facilities will require a variety of Federal, State, County, Town and LIPA approvals under an established regulatory regime. The Town has identified an anticipated preliminary list of permits/approvals expected to be required for construction and operation of a solar energy facility at the Host Site (see Table 2-1). The Developer will not be responsible for securing permits/approvals associated with remediation/closure of the landfill if required at the time of construction. However, the Solar Facilities within the landfill footprint will be required to be consistent with the USEPA-approved Remedial Action Plan for Field L-4 and with the NYSDEC-approved Closure Plan for Field L-5 and comply with all USEPA and NYSDEC reviews and approvals.

As noted above, the Host Site is in the Residential-AAA zoning district. Solar panels and their supporting apparatus are generally considered to be permitted accessory structures in this zone. It is not anticipated that site plan approval will be needed unless a proposal includes a new building or extension containing more than 750 square feet of gross floor area. Variances may be required if any solar installation exceeds either the allowable height or has insufficient setback distance.

Table 2-1: Anticipated Required Environmental Permits/Approvals			
Permit/Approval	Agency	Description	Notes
FEDERAL			
Section 7: Threatened and Endangered Species Review and Consultation	U.S. Fish and Wildlife Service (USFWS)	Provides a determination of whether Federally-regulated species or their habitats are mapped on-site and is required for Federal permits/approvals.	Should Federal approvals be required at any of the Sites, the USFWS review may be required.
STATE			
State Environmental Quality Review Act (SEQRA) Review Process	Town of North Hempstead Town Board	Must be completed before any State or local agency can issue a permit or approval. Steps include establishing the lead agency for conducting the environmental assessment, determining the environmental significance of a proposed project, analyzing the potential environmental, social, and economic impacts of a proposed project, and, as appropriate, issuing	

**Table 2-1:
Anticipated Required Environmental Permits/Approvals**

Permit/Approval	Agency	Description	Notes
		a findings statement regarding that analysis and any mitigation measures identified to address adverse impacts that are identified.	
Approval to Modify a Closed Landfill Site and Modification of NYSDEC Part 360 Permit, as necessary*	New York State Department of Environmental Conservation (NYSDEC)	Required to install structures at a landfill with a NYSDEC Part 360 Permit.	
Coastal Consistency Determination	Department of State, Division of Coastal Resources (NYSDOS, DCR)	Actions that are located within New York State's Coastal Area and are subject to Federal discretionary review must be consistent to the maximum extent practicable with New York State's Coastal Management Program (CMP) policies. State agencies are also required to review a project's consistence for any action, including permits, for which they are an involved or lead agency pursuant to SEQRA.	
Section 106 Cultural and Historic Resources Review and Consultation- "Determination of No Effect"	New York State Office of Parks, Recreation, and Historical Preservation (OPRHP)	OPRHP must determine the impact of the proposed project on historic and archaeological resources before Federal agencies and NYSDEC can issue permits/approvals.	
Threatened and Endangered Species Review	New York Natural Heritage Program (NYNHP)	Consultation letters must be sent to the NYNHP, which is a partnership between the NYSDEC and The Nature Conservancy (TNC), to determine if the project will impact any known protected plant or animal species habitat.	
LOCAL			
General Municipal Law 239-m referral	Nassau County Planning Commission	Required for all sites at which solar energy facility installation would be located within 500 feet of County or State roads (and other County facilities, including parks), municipal boundaries, and/or estuaries-	
Site Plan Approval	Town of North Hempstead Town Board	Required for all land development and construction activities in the Town.	

Table 2-1: Anticipated Required Environmental Permits/Approvals			
Permit/Approval	Agency	Description	Notes
Zoning Variances	Town of North Hempstead Board of Zoning Appeals	Required for accessory structures exceeding permitted height or minimum setback regulations	
Building Permits	Town of North Hempstead Building Department	Required for all projects involving greater than 750 sq. ft. of gross floor area.	
Notes: <ul style="list-style-type: none"> • Coordination with the USEPA will also be necessary as the Town has entered into a Consent Order with the USEPA associated with remediation of the landfills which are on the National Priority List. 			

Respondents should note that additional solar energy facility permits/approvals may be required based on the final engineering design of the facilities proposed for development at the Host Site. Other permits that may be required depending on the final engineering design include the following issued by the New York State Department of Environmental Conservation (NYSDEC):

- State Pollution Discharge Elimination System (SPDES) Stormwater Permit for construction activities. A SPDES Construction Permit is required for construction of Projects that - in the aggregate - will disturb greater than one (1) acre; and
- Freshwater or Tidal Wetlands Permit (Article 24). A Freshwater or Tidal Wetlands Permit is required to conduct any regulated activity in a designated NYSDEC wetland or its adjacent area.

Additional permits may also be required from Nassau County and the Town of North Hempstead Building Department.

Project Permitting – Private Ownership Option

The Town has retained TRC Environmental Corporation (TRC) as its Solar Energy Project consultant to provide supporting professional expertise and services during the Project's Development Phase.

After selection of a successful Developer, it is the Town's desire that the successful Developer coordinate directly with TRC for preparation of the Project's SEQRA-related documents, as well as required permit applications, consistent with the Town's successful Project development expectations. As indicated in the Division of Responsibilities between the Town and the Developer, which is provided in Appendix 4, the Developer will be the sole party responsible for all Project SEQRA and permitting costs. Accordingly, the Developer shall reimburse the Town for all Town-incurred costs associated with Project-related SEQRA actions, documents and determinations as described above, as well as Project-related approvals and permitting. This

would include Developer reimbursement of all Town-incurred TRC costs related to Project SEQRA and permitting.

Project Permitting – Public Ownership Option

The Town will assume responsibility for preparation and filing of all permits under the Public Ownership Option. The Developer shall be responsible for providing the Town with all reasonable requests for supporting information or documentation relating to the permitting of the Solar Energy Project in a timely manner, including but not limited to drawings, specifications, calculations, and manufacturer's information relating to the design, installation, operation and maintenance of the Solar Energy Project. Any costs incurred by the Developer in performance of this task shall be borne by the Developer at no cost to the Town.

Other Permit Related Items

Throughout the Project's duration, the Developer shall be responsible for adhering to the requirements of the permits and approvals issued for the installation, operation and maintenance of the solar energy facilities. The Developer shall also adhere to all applicable Federal, State, and local laws, rules and regulations.

Once facility construction is completed at the Host Site and prior to commercial operation, the Developer shall:

- Obtain all warranty documentation from its solar array components manufacturer(s)/suppliers; and
- Provide the Town with three (3) complete sets and one (1) CD of the solar energy facilities as-built drawings sealed by a New York State Licensed Professional Engineer.

Upon solar energy facility commercial operation, the Developer shall be responsible for metering of the energy production of the solar facility using a LIPA-approved revenue grade meters for all facilities interconnected to LIPA's electric distribution system and provide this metering data to the Town on a monthly basis. Under the Private Ownership Option, the Developer shall be responsible for solar energy facility decommissioning and removal at the end of the Host Site Lease Agreement term as established in the Host Site Lease Agreement. Proposers shall set out in their Financial Proposal what financial structure or assurances will be provided to insure that such decommissioning will occur (e.g., annual set aside or a reserve fund setup for financing decommissioning or some other type of guarantee).

H. Solar Energy Project Development Tasks and Agreement Deliverables

In general, following the Town's Developer selection, this Project will include, but is not limited to, the following tasks and/or deliverables:

1) Project Kickoff Meeting:

Conduct a Project kickoff meeting with Town, Solid Waste Management Authority (SWMA) and LIPA staff to refine and clarify the Project's objectives and schedule.

2) Data Collection and Field Review

The Developer will perform its diligence to secure all the information required to design and install the solar energy generating facilities. Such diligence shall include, but is not limited to a full inspection of the Host Site to establish existing conditions, constraints, and limitations, and a review of existing on-site utilities infrastructure and LIPA approved interconnection locations.

3) Site Plans

The Developer shall submit Site Plans to the Town and SWMA for Town and SWMA review and approval prior to construction. As mentioned previously, the Town will be responsible for coordination of review of plans with USEPA and NYSDEC related to the remediation/closure aspects of the landfill. The Site Plans shall include the following:

- Area map indicating development location;
- Solar energy facility, including switchgear and inverters;
- Proposed point(s) of solar energy facility interconnection;
- Construction laydown area(s);
- Construction entrance;
- Fencing (if required);
- Site perimeter dimensions;
- Detailed views (elevations and cross sections) of the proposed solar energy facility mounting system (including module dimensions and row-to-row spacing panel anchor construction); and
- Cross-sections of electrical trenching required for wiring from combiner boxes to inverter.

The Town, SWMA, and LIPA will review the submitted Site Plans for logistics, aesthetics, and applicable code requirements. The Town will also provide the Site Plans to NYSDEC and USEPA for review, as applicable. The Town, SWMA, and LIPA reviews, as well as NYSDEC and USEPA reviews, are not intended to be an engineering review. It is the sole responsibility of the selected entity to ensure compliance with all applicable laws, codes, manufacturer's installation requirements, and solar energy facility interconnection requirements.

Non-Town (e.g., Federal, State and County) permit applications will be submitted to the Town and SWMA for Town and SWMA review and comment prior to submittal to the jurisdictional regulatory agency.

Prior to commencement of solar energy facility construction at the Host Site, the following items shall be delivered to the Town:

- Required insurance documentation as required in the Host Site Lease Agreement for the Private Ownership Option or in the Design/Build Contract and the Operating Agreement under the Public Ownership Option;
- Solar energy facility drawings sealed by a New York State Licensed Professional Engineer;
- An executed copy of the Host Site Lease Agreement with the Town under the Private Ownership Option or an executed copy of the Design/Build and Operating Agreement under the Public Ownership Option;
- An executed copy of the PPAs with LIPA under the Private Ownership Option;
- Copies of all required permits/approvals issued by the involved jurisdictional agencies under the Private Ownership Option;
- A Project Milestones Schedule; and
- A Safety and Emergency and Response Preparedness Plan.

The Developer shall also be responsible for preparation of an Operation and Maintenance Plan that includes a Solar Energy Facility Project Operation and Maintenance Manual for each of the solar energy generating facilities.

The Solar Energy Facility Project Operation and Maintenance Plan will be reviewed by the Town, SWMA and LIPA, and any changes necessary shall be made prior to implementation.

3. RFP MILESTONE SCHEDULE

A. Proposed RFP Schedule

Table 3-1: Proposed RFP Schedule	
Event	Target Date
Town RFP Issued	August 14, 2013
Proposers Notice of Intent To Attend Proposers' Conference and Host Site Tour	August 23, 2013
Proposers Pre-Proposal Conference and Host Site Tour	August 28, 2013
Deadline for Submission of Proposer Questions	September 18, 2013
Final Town Response to Proposer Questions and Notice of (any) RFP Addendum	September 25, 2013
Proposal Submission Due Date	October 9, 2013
Town Proposal Clarifications Request Period	October 18, 2013
Town Proposal Evaluation Committee Shortlist Recommendations To Town Board	October 25, 2013
Town Board Shortlisted Proposers Interviews	November 6, 2013
Negotiations Completed and Ownership Option Selected by Town	November 15, 2013
Town Board Final Developer Selection	December 10, 2013
Finalization and Execution of Agreements	December 10, 2013
Town Board SEQRA Determination	December 10, 2013

Note that the Town reserves the right to change this schedule from time to time, as circumstances warrant, and no Proposer shall rely on this schedule as a commitment on the part of the Town to proceed within that timeframe.

As indicated in Table 3-1, the Town intends to conduct a Proposers Conference and Host Site Tour on August 28, 2013. Proposers are REQUIRED to take part in the Proposers' Conference and Site Tour. Proposals received from Proposers that do not attend the Proposers Conference and Site Tour will not be considered. The Proposers Conference will commence at 10:00 A.M. at the SWMA Administrative Building located at 802 West Shore Road, Port Washington which will be immediately followed by a tour of the Host Site. The Proposers Conference will include a Town presentation covering key aspects of the RFP, as well as the opportunity for potential Proposers to ask questions, however, the Town requests that potential Proposers submit as many questions as possible prior to the Proposers Conference.

Proposers are also encouraged to have the persons responsible for coordinating the financial and technical components of any Proposal in attendance at the Proposers Conference.

The Town requests potential Proposers to notify the Town via email to Contracts@northhempsteadny.gov on or before August 23, 2013, of their intention to attend the Proposers' Conference, indicating the names and titles of anticipated attendees. It is requested that no more than two (2) representatives from each Proposer attend the Conference.

B. Questions

All Proposer questions regarding this RFP must be submitted via email to Contracts@northhempsteadny.gov no later than September 18, 2013. Questions must be direct and concise for each issue to be addressed. If necessary, a representative from the Town may contact a Proposer representative to gather additional details prior to replying to inquiries. A final summary of Proposer questions with associated responses will be compiled and posted on the Town's Website one (1) week following the Proposer question deadline on September 25. Proposers are encouraged to check the Town's Website regularly. No questions will be answered past the deadline for submission of final questions date indicated in Section 3.A., Table 3-1.

C. Proposal Submittal

General

The Town is interested in receiving Proposals only from entities (companies, corporations' partnerships, or joint ventures) engaged and experienced in the development of utility-scale solar energy generating facilities on closed landfills. The Town will not accept Proposals from entities that are in "association". Respondents must also be the proposed Developer of the Solar Energy Project offer and establish to the Town's satisfaction that it is the provider of overall managerial and financial control of the proposed Solar Energy Project.

Delivery of proposals to the specified place by the specified deadline is the sole responsibility of the Proposer. Any proposal received after this date and time shall not be considered. The Town shall not be responsible for, nor accept as a valid excuse for late proposal receipt, any delay in mail service or other method of delivery used by the Proposer, except where it can be established that the Town was the sole cause of the late receipt. Seven (7) hard copies and one (1) electronic copy, preferably in PDF format on a CD ROM, of both the Technical and Financial Proposal shall be submitted separately to the person and address provided in Section 4.A. below

4. GENERAL PROPOSAL INSTRUCTIONS

A. Proposal Submittal Address

Department of Administrative Services
Purchasing Division
Attn: **Maria Gomes**
Town of North Hempstead
220 Plandome Road
Manhasset, NY 11030

B. Oral Communications

Any oral communication by the Town concerning this RFP is not binding and shall in no way modify the RFP or the obligations of the Town or Proposer.

As discussed above, administrative questions (e.g., procedural questions on how to respond to this RFP) and technical questions (questions which are specific to the services requested in this RFP) must be submitted via email to Contracts@northhempsteadny.gov.

It is planned to post the Town's final responses to submitted questions on the Town's Website one (1) week after the deadline for receipt of Proposer questions. Proposers are encouraged to check the Town's Website regularly. No other communication of questions and answers will be made. The Town shall not be obligated to answer any questions received after the specified deadline in Table 3-1.

C. Changes to the Request for Proposals

If it is necessary to make changes to the RFP, the Town will provide an RFP Addendum(s) on the Town's Website. It is planned to post (any) Addendum one (1) week after the Proposer question deadline. It shall be the responsibility of the Proposer to check the Town's web site regularly regarding any addendum(s) issued. All addenda issued shall become part of the RFP. In addition, responses to questions received via email to Contracts@northhempsteadny.gov will be provided on the Town's Website.

D. Exceptions/Deviations

Any exceptions to or deviations from the requirements set forth in this RFP must be clearly declared in the Proposal submitted by the Proposer. Such exceptions or deviations must be clearly identified as "Exceptions and/or Deviations." The Town may waive any immaterial deviation or defect in a Proposal. The Town's waiver shall in no manner modify the RFP documents or excuse the Proposer from full compliance with the RFP requirements if awarded the contract.

E. Pre-Contractual Expenses

All Proposals prepared in response to this RFP are at the sole expense of the Proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the Town for the expenses of preparation. The Town shall not be liable for any expenses incurred by the Proposer prior to the date of award and commencement of contract services.

F. Town's Rights and Options

This RFP constitutes only an invitation to make a Proposal to the Town. Issuance of this RFP and receipt of Proposals does not commit the Town to award a contract. The Town reserves, holds, and may in its sole discretion, exercise the following rights and options with respect to this RFP:

- Reject Proposals not submitted by the date, time, manner and/or to the designated place as set forth in the RFP;
- To select and enter into a contract with the Proposer whose Proposal best meets the needs of the Town and is most responsive to the RFP;
- To amend or cancel all or part of this RFP;
- To reject any or all of the Proposals, or any part thereof, submitted in response to this RFP, and to waive formalities, if such action is deemed to be in the best interest of the Town;
- To request additional information from any Proposer;
- To conduct investigations with respect to the qualifications of each Proposer;
- To negotiate with Proposers for amendments or other modifications to their Proposals; and
- To interview selected Proposers and request presentations.

G. Proposals Not Withdrawn Irrevocable

A Proposer may withdraw its Proposal at any time prior to the submittal deadline by sending the Town a request in writing from the authorized person who signed the submitted Proposal. As of the deadline for submittal, any Proposal received by the Town and not withdrawn becomes an irrevocable offer available for acceptance by the Town immediately and for one hundred and twenty (120) days thereafter. The Town reserves the right to extend its time for acceptance of the Proposal for an additional thirty (30) days. Nothing in this RFP shall be deemed to prohibit a Proposer from submitting a new Proposal in place of a withdrawn Proposal if such submission and withdrawal occur prior to the submittal deadline.

For the Town's economic evaluation purposes, Proposals must include pricing that remains firm and not subject to revision for one hundred and twenty (120) days after the Proposal due date. The Town reserves the right to extend this time period for an additional thirty (30) days. Any indices used to index pricing must be published regularly, either publicly published or readily available, with a reasonable historic basis. All prices must be in United States dollars and not subject to currency exchange rate adjustment.

The Proposer is responsible for the accuracy of the Proposal submitted, and no allowance will be made for errors or price increases that the Proposer later alleges are retroactively applicable.

H. Disposition of Proposals

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

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

I. Agreement

The Proposer selected for award through this RFP shall be required to enter into the final written Host Site Lease Agreement with the Town under the Private Ownership Option or the Design/Build Agreement and the Operating Agreement under the Public Ownership Option upon such terms and conditions as approved by the Town Attorney's Office. The Proposer shall provide all necessary insurance certificates to the Town at the time of execution of the selected Agreement with the Town and SWMA named as an additional insured, as set forth in the Required Insurance Policies and Coverages, Appendix 5 and Certification of Insurance Form, Appendix 6. The Proposer shall comply with all applicable laws, rules and regulations. The Agreements entered into are non-assignable without the prior written consent of the Town.

J. Media Statements and News Releases

News releases pertaining to any award resulting from this RFP shall not be issued without the prior written approval of the Town. Proposer agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the proposed award shall not be disseminated in any way to the public, nor shall any presentation be given regarding the proposed contract without prior written approval from the Town, which written approval shall not be unreasonably withheld.

5. PROPOSAL FORMAT AND CONTENT

A. General

Separate Technical and Financial Proposals are to be submitted in 8 1/2" x 11" size, using 12-point font, bound with staples or GBC or spiral binding. Ring binders are prohibited.

Technical Proposal submissions should be concise and not include extraneous or unnecessarily elaborate promotional material.

B. Cover Letter

Proposer's separate Executive Summary and Technical and Financial Proposals shall each include Proposer's letter of transmittal, which shall, at a minimum, contain the following:

- Identification of the Proposer, including business name, address, and telephone phone and fax numbers;
- Name, title, address, telephone number, fax number, and e-mail address of the designated contact person during the period of Proposal evaluation;
- Acknowledgement of RFP addenda received, if any;
- A statement that the Proposal, including the Financial Proposal, shall remain firm and valid for one hundred twenty (120) days; and
- Signature of a person authorized to bind the offering firm to the terms of the Proposal.

C. Executive Summary

Respondent shall provide a stand-alone summary that includes, at a minimum, a brief overview of the following:

- Overview of the Solar Energy System proposed at the Host Site:
 - Narrative, plans and computer simulations;
 - Solar energy technologies and equipment proposed;
 - Amount of capacity offered; and
 - Points of interconnection to LIPA's grid for each solar facility.
- Respondent's experience with similar projects and proposed Project elements;
- Summary of Development Phase, Construction Phase and Operating Phase;
- Summary of Financing Plan/arrangements for the Private Ownership Option;
- Site Lease Payment and 20 year fixed price per kWh to be included in the Town's LIPA application for the Private Ownership Option, and
- Summary of Project Development Phase and Construction Phase Schedule.

D. Technical Proposal

1) Table of Contents

Immediately following the Cover Letter, insert a complete table of contents for material included in the Proposal, including page numbers.

2) Project Description

This section shall include an overall description of the Project. The description must address all of the following:

- Host Site configuration, size, and timing of Project;
- The overall Project development strategy that will ensure that the Project can be developed;
- Any relevant issues that may positively or negatively influence the Project's engineering, construction, operation, and maintenance;
- Any external influences on and impacts of the Project, including electrical interconnection; and
- How the Project provides benefits to the Town.

3) Proposer's Qualifications, Related Experience and References

Overview: This section of the Proposal should establish the abilities - qualifications and experience - of the Proposer and principal members of the proposed Project team - to satisfactorily undertake and perform the required work by reasons of: demonstrated competence in the services to be provided; the nature and relevance of similar work currently being performed or recently completed; record of meeting other solar energy facility project schedules and deadlines; competitive advantages over other firms within the utility scale solar projects industry; strength and stability as a business entity; and supportive client references. Information should be furnished for both the Proposer and all principal/prime Project team members included in the Proposal.

- Furnish background information about the Proposer, including date of founding, legal form (i.e., sole proprietorship, partnership, LLC, corporation/state of incorporation, joint venture); number and location of offices; principal lines of business; number of employees and office location; and other pertinent data. This information should be provided on the Proposer Qualification Form in Appendix 7.

- Describe solar energy facility installation and operation experience including: the total number, types, locations and capacity (MW) of solar energy facility installations performed; the total number, types, and capacity (MW) of solar energy facilities currently operating; and examples of projects completed at sites similar to the Town of North Hempstead Host Site.
- Identify all New York Municipalities and other public agencies for which the Proposer has provided professional services of similar nature to this Project.
- Identify at least three (3) clients for which the Proposer has completed solar energy facility installations and/or operation projects and that the Town may contact as references. Describe the work performed and value of contract, and include the name, title, address, and telephone number of a contact person for each reference. This information should be provided on the Proposer Reference Facility Description Form provided in Appendix 8. New York State experience should be included on this Form.
- List any and all contracts the Proposer was found to be in default or involved in litigation. List, any and all actions which resulted in the revocation or suspension of the Proposer, any officer or director thereof, any affiliate or related company's permit or license to do business. This and other disclosure information shall be provided on the Proposer Disclosure Form in Appendix 13.

4) Project Staffing and Organization

Overview: This section should discuss the staff of the proposing entity and any subcontractors to that entity (if proposed) who would be assigned to work on this engagement and their reporting relationships.

- Identify the key personnel of the Proposer that would be assigned to this Project. Include a brief description of qualifications, professional certifications, job functions and office location(s). Designate a Project Executive who would be ultimately responsible for the relationship and a Project Manager who would provide day-to-day direction of the required work. Furnish summary resumes for all key personnel and include detailed resumes as an appendix.
- The Proposer shall submit an organizational chart illustrating management and functional relationships among all Project team members including any subcontractors at each significant stage of the work, such as permitting, design, construction, testing and commissioning, operation and maintenance, and decommissioning. The Proposer shall also provide a narrative to accompany the organizational management plan, roles and responsibilities, and lines of authority. The Project organizational chart shall be updated as necessary.
- If subcontractors are necessary, the Proposer shall provide information on key subcontractors, if they are known at this time, and shall address the following:

- Working relationship with each subcontractor (provide contact names and dates);
 - Number of projects worked with each subcontractor (provide names, dates and nature of work);
 - Description of process for qualifying subcontractors;
 - Indication of level of confidence this subcontractor will meet expectations;
 - Inclusion of subcontractor letter of commitment to support the Project; and
 - Risk mitigation strategy if the subcontractor fails to meet commitments.
- If the Proposer has no pre-selected subcontractors, the Proposal should address how the Proposer will select its subcontractors.

5) Projects Plans

Overview: This section should establish that the Proposer understands the Town's objectives and requirements, demonstrate the Proposer's ability to meet those requirements, and outline clearly and concisely the Development Phase Plan; Engineering, Procurement and Construction Phase Plan; Resource Plan; and Operation and Maintenance Plan for accomplishing the specified work as outlined in RFP Scope of Work in Section 2. Provide a Project Schedule using Gantt Chart format that includes all start and finish dates for all Project activities (SEQRA; approvals and permits; financing; engineering; procurements; installations; and commissioning) for the solar energy facilities proposed at the Host Site.

- **Project Development Phase Plan**

- Proposers must demonstrate a firm understanding of SEQRA, and all approvals and permits required to successfully execute the Project. Proposers should provide a SEQRA/Permitting Plan and Milestone Schedule;
- Proposers must also show an understanding of key stakeholders through a Stakeholder Outreach Plan; and
- Proposer must describe the Project agreements that will be necessary for Host Site access and lease, as well as installation and long-term operation of the solar energy facilities, and energy delivery and sales.

- **Resource Plan**

For the Host Site, Proposers shall include a Resource Plan covering:

- Identification of the solar incidence models used;
- Identification of the input variables and assumptions used in the model;
- The shading analysis results and a description of the tool used for this analysis; and
- A description of the potential variability actual energy output to projected energy output.

- **Project Engineering, Procurement, and Construction Plan**

Under both ownership options, the Town needs certain technical information that will assist the Town in evaluation of proposals related to quantity, quality and content, and make a credible technical case for acceptance by LIPA of the solar projects. For each Host Site installation being proposed, include the following:

- A Conceptual Plan for the proposed solar energy facility configuration, electrical interconnection strategy, and site staging plan.
- Inverters
 1. Make/Model
 2. Specifications/Standards
 3. Efficiency
- PV Energy Panels
 1. Make/Model
 2. Type
 3. Rating in Watts DC
- Racking/Mounting Systems
- Meters
 1. Make/Model
 2. Guarantee Accuracy
 3. Revenue Grade Specifications
- Monitoring Systems
 1. Software
 2. Instrumentation

- **Operation and Maintenance Phase Plan**

Respondents shall include a Project Operation and Maintenance Plan addressing the Host Site, as well as PV systems included in their Proposals. At a minimum, the Plan should address the following:

- Site access requirements;
- Planned building structures and use during construction and operation;
- Sharing of existing Town and SWMA facilities and services;
- Expected construction hours;
- Abatement plans for noise, dust, penetration of the landfill geomembrane cap and disturbance of the landfill gas collection and storm water conveyance systems;
- How will access to the landfill cap and gas collection and storm water conveyance systems for repairs to the cap or gas collection and storm water conveyance systems be accomplished, and
- As part of the Technical Proposal, the Solar Energy Facility Technical Specifications, Operating/Performance Characteristics and AC Energy Production Forms provided in Appendices 9, 10 and 11, respectively, need to be completed and submitted with the Proposal.

E. Financial Proposal and Project Financing Plan

- Proposers shall provide detailed pricing information in their Financial Proposal, regardless of ownership option. For the Private Ownership Option, price information shall also include the lease payment for use of the Host Site and the 20 year fixed price per kWh to be included in the Developer's application to LIPA under the 2013 FIT II Program. Also to be included under the Private Ownership Option is a formula to adjust the proposed Site Lease payments based on the difference between the Respondent's 20 year fixed kWh price bid as proposed to the Town and the final Clearing Price set by LIPA for the 2013 FIT II Program.
- For the Private Ownership Option, Proposers shall provide a Project Financing Plan for acquiring the necessary equity and debt financing to develop, install and operate the proposed Solar Energy Facilities. At a minimum, include a detailed discussion of:
 - The proposed Project's legal ownership structure;
 - Whether there will be a guarantor standing behind any specific financial obligations, including security on Project milestones;

- The expected percentage of debt and equity capital that the Proposer has committed to secure; and
- The identity of any firms that are likely to provide Proposer with Project financing.
- Describe in this Plan all tax credits, incentives, environmental attributes, and subsidies available that will be needed to finance the installation and operation of the solar energy facilities including the timeline for applying and receiving such incentives. Also in this Plan describe the proposed financial assurances to be provided by the Proposer for decommissioning the Solar Facilities at the end of the 20 year operational period.
- Prior solar project financing experience, including:
 - Name of solar project
 - Date of financing
 - Total project development and construction cost
 - Amount of equity contributed and source of equity
 - Amount of debt financed, source of debt and term of loan

For the Public Ownership Option, Proposers shall provide a total Project price together with a price breakdown for the following items: 1) project development/engineering/design; 2) permitting; 3) facility construction; 4) interconnection; 5) commissioning/testing; 6) annual operation and maintenance; and 7) other items as identified by the Proposer.

F. Financial Qualifications

Each Financial Proposal must include the following financial information:

- Certified financial reports for the last three (3) years (Income Statement, Balance Sheet, and Statement of Changes in Financial Position); and
- Latest Quarterly Report and Annual Statement.

The above financial information requirements supersede “Item 7. Financial Disclosure” in the Disclosure Form (Appendix 13). Note that the Disclosure Form must still be completed and submitted with the proposal.

G. Proposal Security

Each Proposer shall submit with each of its Proposals a certified check, cashier’s check or Proposal Bond in the amount of \$20,000 payable unconditionally to the Town. The Proposal Bond shall be accompanied by Power of Attorney for the full amount of the Proposal Bond from a surety company authorized to do business in the State of New York. The check or bond of the selected entity shall be retained until all required documents are executed, including the

applicable PPAs, Site Lease Agreement, etc. and the required Construction Performance Bond is submitted to the Town.

Once an award is made, except for the selected Proposer, all Proposal security will be returned in accordance with law. No interest shall be allowed upon any certified or cashier's check. If after award, the Preferred Proposer chooses not to proceed with the Project, the Preferred Proposer will forfeit its \$20,000 security to the Town.

H. Consent of Surety

Each Proposer shall submit with its Proposal a Consent of Surety executed by a surety company or companies qualified to do business in New York, who shall, at the time of submission of the Proposal, agree that in the event of an award to such Proposer, the surety shall furnish a Construction Performance Bond in the amount of 100% of the costs of designing, permitting, constructing, and installing the solar energy facilities.

I. Appendices

- Furnish appendices i.e., those supporting documents, such as staff resumes, requested in the preceding instructions.
- Include any additional information deemed essential to a proper evaluation of the Proposal and which is not solicited in any of the preceding sections. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous material. Appendices should be relevant and brief.

J. Additional Requirements

In addition to the requirements, certifications and forms described above that need to be submitted as part of the Proposal, all documents listed below must also be completed and notarized as indicated on the respective documents and submitted with the Proposal:

- Statement of Understanding, Appendix 12
- Disclosure Form, Appendix 13
- Statement of Non Collusion Proposal Certificate, Appendix 14
- Affidavit if Proposer is a Corporation, Appendix 15
- Affidavit of Compliance with Respect to the Hiring of Employees in Accordance with Federal Law, Appendix 16
- Acknowledgement of Receipt of Addenda Form, Appendix 17
- Proposal Checklist, Appendix 18

- Prevailing Wage Rate Certificate, Appendix 19

Proposers shall also submit a Local Resource Utilization Plan that includes a detailed description of intended use of Long Island-based labor, materials, suppliers, and subcontractors.

Proposer shall submit to the Town a copy of its Quality Assurance and Quality Control Plan for review not later than forty-five (45) days after contract execution for Town review and comment. The Project shall be managed in accordance with this Plan.

K. Selected Proposers Obligations

After selection, the Developer will be obligated to pay or reimburse the Town for all third party costs incurred by the Town related to the Project for technical, legal and financial advice and assistance if the Town selects the Private Ownership Option.

6. PROPOSAL EVALUATION AND SOLAR ENERGY DEVELOPER SELECTION

A. General

All timely submitted and properly completed Proposals in accordance with these RFP instructions will be received, opened and evaluated by the Town in accordance with the process established within this RFP Section 6.

The Town will use reasonable efforts to maintain the Schedule set forth in Table 3-1 Proposed RFP Schedule of this RFP, but the Town's failure to do so shall not serve as the basis for challenges by any Proposer as all Respondents to this RFP automatically acknowledge and agree by submission of their Proposal. The Town's selected Preferred and Alternate Proposers will emerge as solar energy facility Proposers whose offers are determined - through the evaluation factors and process identified herein - to be the most advantageous to the Town. The Town also expressly reserves the right to reject all Proposals and make no award under this RFP.

All Proposals received by the Town shall, following the Proposal Due Date, become Town property and as previously stated shall remain irrevocable by the Proposers for a period of one hundred and twenty (120) consecutive calendar days from the date of Respondent's Proposal receipt by the Town with an option by the Town to extend the period an additional thirty (30) days.

B. Evaluation Procedures and Process

All Proposals will be reviewed, analyzed and evaluated in accordance with the criteria described below. The Town intends to use Town and SWMA staff, consultants, industry experts and staff of other agencies in its evaluation of the Proposals throughout the Proposal review and selection process. The RFP evaluation steps are as follows:

- The information provided in each Proposer's Technical and Financial Proposal will be initially evaluated for completeness and consistency with this RFP's requirements, which are the minimum requirements that all Proposals must meet to be eligible for evaluation by the Town's Screening and Evaluation Committee. Proposals with substantial deficiencies will be rejected. For Proposals with marginal deficiencies, the Town may request that the Proposer promptly provide missing information or appropriate clarifications.
- Proposals judged to be eligible will be evaluated on their consistency with the RFP's objectives and requirements. Project evaluations will be based on the information provided in the Proposals.
- Throughout the Proposal evaluation process, the Town may request clarifications and also require Proposers' development and submission of supplemental Proposal-related information in order to evaluate a Proposer's offer. Proposers will be notified if supplemental information is required, and be permitted a reasonable time to submit the requested information.

- Proposers may be required to present the Technical and/or Financial merits of their Proposal to the Town. Such presentation is intended to provide both the Town and Proposer the opportunity to identify and clarify any remaining uncertainties regarding the Town’s evaluation of the proposed Project.
- Proposals that successfully meet the threshold and eligibility screen will be further evaluated based upon:
 - Technical feasibility, pricing, and economics; and
 - Other solar energy facility Project benefits as proposed.
- As indicated in Table 6-1 below, Proposer interviews and agreement negotiations may be conducted with one or more Proposers.

C. Evaluation Criteria

The Town has a multi-step process for Proposer selection and long-term agreements approval. The Town’s Proposer selection process will be predicated on qualitative and quantitative evaluations of the Proposers and their Technical and Financial Proposals pursuant to an evaluation process established by the Town. As presented in Table 6-1, a Screening and Evaluation Committee comprised of Town and SWMA employees, Town-retained consultants, and possibly others will perform the initial proposals screening, review, and evaluations and apply the Proposals evaluation criteria presented below. As also indicated in Table 6-1, selection of the Developer, as well as ultimate award, will be made by the Town based upon the Town’s review of the Screening and Evaluation Committee’s evaluation report and the Town’s interviews with Proposer finalists.

Table 6-1: Solar Energy Facility Proposal Review and Developer Selection Process		
Responsible Town Party	Process Phases	Evaluation
Screening & Evaluation Committee	I	Proposal Screening for Compliance with All RFP requirements.
	II	Technical and Financial Proposal Evaluation
	III	Proposer Interviews
	IV	Proposer Best and Final Technical, Commercial and Financial Offers Committee Scoring and Shortlisting of Proposers/Proposals
Town	V	Shortlisted Proposer Interviews Selection of Preferred and Alternate Solar Project Developer
Screening & Evaluation Committee	VI	Final Agreements Negotiation and Recommendation of Award
Town	VII	Award and Agreements Execution Authorization

The key evaluation criteria and weighting that will be applied are the following:

- Overall completeness, clarity, and quality of the Proposal and responsiveness to the RFP (5%);
- Proposer’s Project Resource Plan, and Financial Proposal and Financing Plan, as well as Proposer’s financial condition and creditworthiness, including the creditworthiness of the Proposer’s Guarantor, if any (15%);
- Proposer’s references, qualifications, and depth of experience in developing, owning, and operating relevant utility-scale solar energy generating facilities (15%);
- Intended use of Long Island and New York State labor, materials, suppliers, and subcontractors (5%);
- Proposer’s Project Development Phase Plan; Engineering, Procurement, and Construction Phase Plan; and Operation and Maintenance Plan (10%);
- Proposer’s Net MW project output (10%);
- Financial Value to the Town for use of its Site under either ownership option (40%).

In addition to the evaluation criteria set forth above, the Town may take into consideration any other criteria that it deems necessary and desirable in the best interests of the Town. Also, the Screening and Evaluation Committee will establish a short list of Proposals that may require the short-listed Proposers to give presentations to the Town Board. As part of their presentation, short-listed Proposers will be required to present photorealistic renderings that address Host Site-specific development concerns (e.g., aesthetics and visual impacts).

Appendix 1

Orthometric of Host Site



Potential point of interconnection for Landfill L4

Potential point of interconnection for Landfill L5

<p>— Project Boundary</p>	
<p>Town of North Hempstead Solar Energy Facilities Project Former Landfills L4 and L5 802 West Shore Road, Port Washington Nassau County, NY</p>	
<p>Site Location Map</p>	
<p> TRC</p>	<p>1200 Wall Street West Lyndhurst, NJ 07071</p>
<p>August 2013</p>	

S:\Magical\GIS\Town of North Hempstead Solar\MXD\DIS-1 SWMA Transfer Station.mxd

0 240 480 720 960 Feet

Basemap: NYSGIS Clearinghouse:
Town of North Hempstead, jp2, 2010

Appendix 2
Town Zoning Code

**Town of North Hempstead, Nassau County, New York
Bulk Requirements**

Zoning	Front Yard	Rear Yard	Side Yard	% Lot	Height
Residence AAA (R-AAA)	Minimum 40 ft ¹	Minimum 25 ft for all buildings 35 feet or less in height. Minimum 30 ft for buildings over 35 feet in height.	Minimum 25 ft for all buildings 35 feet or less in height. Minimum 30 ft for buildings over 35 feet in height.	Max 15%	Max 3 stories 45 ft

Notes:

¹On a corner lot, a front yard shall be required on each street. The front yard on the narrower street frontage shall not be less than 40 feet in depth and the other front yard shall not be less than 35 feet in depth and, if the street frontages are equal, a minimum front yard of 40 feet shall be required on each street front.

Source:

Town of North Hempstead Zoning Code Accessed November 2011

Appendix 3

Model Host Site Lease Agreement

SOLAR ENERGY FACILITY HOST SITE LEASE AGREEMENT

BETWEEN

TOWN OF NORTH HEMPSTEAD, NEW YORK

AND

Premises: Port Washington Landfill

Date: _____, 2013

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions	1
Section 2. Purpose	5
Section 3. Description	5
Section 4. Term	8
Section 5. Payment to Town	8
Section 6. Late Charges	9
Section 7. Lessee's Duties and Obligations	9
Section 8. Prevailing Wage	13
Section 9. Other Construction By Lessee	14
Section 10. Requirements of Governmental Agencies	15
Section 11. Liens	15
Section 12. Waiver of Nuisance	16
Section 13. Temporary Storage	16
Section 14. Insurance	16
Section 15. Indemnity	19
Section 16. Removal and Restoration	20
Section 17. Ownership of Attributes	21
Section 18. Hazardous Substances and Waste	21
Section 19. Signs	22
Section 20. Quiet Enjoyment	22
Section 21. Representations, Warranties and Covenants	22
Section 22. Confidentiality	23
Section 23. Successors and Assigns	24
Section 24. Leasehold Financing	25
Section 25. Condemnation	26
Section 26. Additional Fees and Charges	27
Section 27. Termination/Default Remedies and Damages	27
Section 28. Force Majeure	30
Section 29. Notices	31
Section 30. Broker	31
Section 31. Paragraph Headings	32
Section 32. Town Board Approval	32
Section 33. Waiver of Jury Trial	32
Section 34. Off-set of Arrears or Default	32
Section 35. Cooperation on Claims	32
Section 36. Not a Co-Partnership or Joint Venture	33

TABLE OF CONTENTS

	<u>Page</u>
Section 37. Independent Contractor	33
Section 38. Town Representatives	33
Section 39. No Credit	34
Section 40. No Implied Waiver	34
Section 41. Certification	34
Section 42. Conflicts of Interest	34
Section 43. Lawful Hiring of Employees	34
Section 44. Town Requirements	34
Section 45. Lease Fee Renegotiation	34
Section 46. Governing Law	35
Section 47. Severability	35
Section 48. Interpretations	35
Section 49. Memorandum	35
Section 50. Execution in Counterparts	35
Section 51. Entire Agreement	35
Signature Page	36

EXHIBITS

- Exhibit A – Descriptions of Property**
- Exhibit B – Approved Site Plan**
- Exhibit C – Form of Letter of Credit/Bond**
- Exhibit D – Liens and Encumbrances**
- Exhibit E – Town Requirements**
- Exhibit F – Form of Memorandum of Lease**

SOLAR ENERGY HOST SITE LEASE AGREEMENT

THIS SOLAR ENERGY HOST SITE LEASE AGREEMENT (“Agreement”), made as of _____, 2013, by and between the TOWN OF NORTH HEMPSTEAD, a municipal corporation with its principal offices at 220 Plandome Road, Manhasset, New York 11030 (hereinafter referred to as “the Town”), and _____, with its principal offices at _____ (hereinafter referred to as “Lessee”). Town and Lessee shall hereinafter also be referred to as a “Party” or collectively, the “Parties.”

W I T N E S S E T H

NOW, THEREFORE, in consideration of the mutual agreements and respective promises herein contained and made by the Parties hereto, the Parties hereby agree, effective as the last date of execution below (the “Effective Date” of this Agreement) unless otherwise stated, as follows:

Section 1. Definitions

Affiliate: means any partnership, corporation or other entity which controls, is controlled by, or is under common control with Lessee or Lessee’s parent.

American Arbitration Association: means the organization selected to administer arbitration between the Parties regarding Restoration Cost estimates.

Business Day: means any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in New York.

Calendar Quarter: means each three (3) month period during the Calendar Year, i.e., January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31.

Calendar Year: means January 1 through December 31.

Cash Flow Estimate: shall have the meaning set forth in Section 5.02.

Commencement Date: means the date on which the approvals of Long Island Power Authority (“LIPA”) and the Town have been received. Promptly after the Commencement Date, Town and Lessee shall execute a written confirmation of the Commencement Date in the form provided by Town. In the event the Commencement Date does not occur on or before _____[intent of this date is to provide sufficient time for the selected developer to secure a LIPA PPA, but not unlimited time, i.e., the LIPA PPA needs to be obtained within a reasonable time period], the Town shall have the right to terminate this Agreement upon ten (10) days written notice to Lessee. Except for those obligations herein which are intended to survive the termination of this Agreement, neither party shall have any obligations to the other party after such termination.

Condemnor: means an entity which has authority to take private property.

County: means the County of Nassau, New York.

Day: means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Eastern Prevailing Time (EPT) on any calendar Day and ending at 24:00 hours EPT on the same calendar Day.

Effective Date: means the last date of execution of this Agreement.

Environmental Attributes: means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Solar Energy System, or otherwise attributable to the generation, purchase, sale or use of energy from or by the Solar Energy System, however entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or Laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency (or successor agency), or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Green Tag Reporting rights to such Environmental Attributes.

Expiration Date: shall have the meaning set forth at Section 4.01.

Force Majeure: means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance and may include without limitation: an act of God or the elements such as heavy rains, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; site conditions (including subsurface conditions, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); unavailability of materials; full or partial reduction in the electric output of the Solar Energy System caused by defective equipment or equipment failure due to equipment design defects or serial defects; full or partial reduction in the electric output of the Solar Energy System caused by systematic weather patterns that alter irradiation rates; System Emergencies; the inability of any warranty provider for the Solar Energy System to fulfill its warranty due to bankruptcy or other end of

going concern event; or any restraint or restriction imposed by applicable Law or any directive from a Governmental Authority, (including the failure to grant or the repeal, rescinding, non-renewal or the like of any permit or Law, to the extent the affected Party exercised diligent and reasonable efforts to obtain or maintain such permit or the applicability of such Law).

Governmental Authorities: means the Town, County, State of New York, Federal Government and/or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

Green Tag Reporting Rights: means the right of a purchaser of solar energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future Federal, State or local certification program or emissions trading program.

Hazardous Materials: includes, without limitation, any “hazardous substance”, “hazardous material”, “toxic substance” “solid waste” or similar term as defined in any applicable Law pertaining in whole or part to the protection of the environment, natural resources or human health. Improvements means the Solar Energy Facilities and Transmission Facilities collectively.

Laws: means all applicable laws, statutes, regulations, ordinances, directives, and requirements of all Federal, State, County and Town departments, bureaus, boards, agencies, offices, commissions, and other subdivisions thereof, or of any official thereof, or of any other governmental, public or quasi-public authority.

Lender: means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Solar Energy System, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of Lessee), including any equity and tax investor directly or indirectly providing financing or refinancing for the Solar Energy System or purchasing equity ownership interests of Lessee and/or its affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

Monetary Default: shall have the meaning set forth at Section 27.03(1).

Non-Monetary Default: shall have the meaning set forth at Section 27.03.

Notice of Termination: shall have the meaning set forth at Section 27.04.

Nuisances: shall have the meaning set forth at Section 12.

Obligor: shall have the meaning set forth at Section 24.01.

Operations Date: means the date on which electricity is generated, delivered and sold (excluding startup and testing of the Solar Energy System) by the Project or any portion thereof or used by Lessee. In the event the Operations Date does not occur on or before the third (3rd) anniversary of the Commencement Date, the Town shall have the right to terminate this Agreement upon ten (10) days written notice to Lessee.

Parties: means the Town and Lessee, collectively.

Party: means either the Town or Lessee.

Premises: shall have the meaning set forth at Section 3.01.

Pre-Operating Annual Payments: means \$ _____ per annum.

Pre-Operating Period: means the period from the Effective Date through the Operations Date.

Property: means Town property which is the subject of this Agreement, described in Section 3.01 and further identified in Exhibit A.

Quarterly Operating Payments: means \$ _____ per quarter year.

Solar Energy Incentives: means (i) any Federal, State, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Energy System (including credits under Sections 38 and 45K of the Internal Revenue Code of 1986, as amended); (ii) any investment tax credits and any other tax credits associated with the Solar Energy System (including credits under Sections 38 and 48 of the Internal Revenue Code of 1986, as amended); (iii) any Federal, State, or private cash payments or grants relating in any way to the Solar Energy System or the output thereof; (iv) Federal, State, or private grants or other benefits related to the Solar Energy System or the output thereof, and (v) any other form of incentive that is not an Environmental Attribute that is available with respect to the Solar Energy System.

Solar Energy System: shall have the meaning set forth at Section 2.02(b).

Requirements: means all rules, regulations, laws, ordinances, statutes, and requirements of all Governmental Authorities, and the requirements of any fire insurance rating organization and all insurance companies writing policies covering the Premises or any part or parts thereof and any Fire Insurance Rating Organization, Board of Fire Underwriters and/or similar bodies having jurisdiction thereof, whether the same now are in force or at any time in the future may be passed, adopted, enacted, or directed.

Resolution: means Resolution No. _____ - 2013 of the Town Board.

Solar Energy Facilities: means individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic energy generation, including without limitation, existing and/or future technologies used or

useful in connection with the generation of electricity from sunlight, and associated support structure, braces, wiring, plumbing, and related equipment.

Term: shall have the meaning set forth at Section 4.01.

Termination Date: means the date specified in the Notice of Termination upon which the Agreement shall expire in the event Lessee fails to cure a Default.

Transmission Facilities: means any of the following improvements on the Property: underground and/or overhead distribution, collection and transmission underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers, transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

Section 2. Purpose

Section 2.01 The Parties hereto acknowledge that the Town is a municipal corporation and is entering into and executing this Agreement by virtue of the authority of Town Board Resolution No. ____-2013 dated the ____ day of _____, 2013, for the use, purpose and intent expressed in the Resolution, that the Resolution is incorporated herein by reference, and further that Lessee has examined the Resolution and is fully aware of the intended purpose thereof.

Section 3. Description

Section 3.01 The Town owns a parcel of real property known and designated as Section 6, Block 53, Lots 1033 and 1055 on the Land and Tax Map of the County of Nassau (the "Property"). On and after the Effective Date, and in consideration of and subject to the terms, covenants, agreements, provisions, conditions, and limitations set forth in this Agreement, the Town hereby agrees to lease to Lessee a portion of the Property in connection with the installation and operation of solar energy conversion equipment, which property is more specifically bounded and described in Exhibit A attached hereto and made a part hereof (the "Premises"), together with all buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under during the term of this Agreement (the "Premises"). Upon survey of the Premises, the actual survey shall replace the aerial map described above as Exhibit A. It is understood by Lessee that the Property is a public facility and as such, limited access to the same is not permitted.

Section 3.02 Lessee accepts the Property in its "as is" physical condition without any representation or warranty by the Town as to the condition thereof or as to the use or occupancy which may be made thereof under any existing or future law, rule, regulation, or ordinance and

Town shall not be liable for any latent or patent defect thereon. Lessee may use the Property for the uses set forth in this Agreement. Lessee will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste.

Section 3.03 In accordance with applicable Federal, State and local laws, rules and regulations, The Town hereby leases to Lessee for the Term, the Premises for the following purposes:

- a. Conducting studies of solar energy, soils, and other meteorological, geotechnical and structural data;
- b. Constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) Solar Energy Facilities, (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, crossarms, guy lines, anchors, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) substations, interconnection and/or switching facilities and electric transformers and transformer pads, (v) energy storage facilities, (vi) meteorological towers and solar energy measurement equipment, (vii) control buildings, control boxes and computer monitoring hardware, (viii) utility installation, (ix) safety protection facilities, (x) maintenance yards, (xi) roads and erosion control facilities, (xii) signs and fences, and (xiii) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the Solar Energy System, collectively the Solar Energy Facilities); other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the Solar Energy Facilities, collectively a “Solar Energy System”);
- c. The development, erection, installation, construction, improvement, interconnection, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation of, facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the Solar Energy System, including the following that are developed, constructed and/or operated on the Property and/or on property to be acquired by leasehold or by fee purchase, by or on behalf of Lessee the Parties acknowledging and agreeing that Lessee shall have an obligation to obtain Town’s prior consent to the location of any Transmission Facilities;

- d. Drilling, digging and excavating one or more wells on the Property for the purposes of servicing, operating and maintaining the Solar Energy System. Lessee covenants and agrees to obtain Town's prior written consent and any necessary permits required in connection with such wells;
- e. Removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant or other vegetation; dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or upon maturity could intrude) into the Property that could obstruct, interfere with or impair the Solar Energy System or the use of the Property intended by Lessee hereunder;
- f. Vehicular and pedestrian access, ingress and egress to, from and over the Property, for purposes related to or associated with the Solar Energy System and/or the Transmission Facilities constructed, installed, maintained or repaired on the Property; or, subject to the prior written consent of the Town: for promotional or marketing purposes: or on adjacent property owned by the Town or other property acquired by leasehold, easement or fee simple purchase by or on behalf of Lessee; which, without limiting the generality of the foregoing, shall entitle Lessee to use and improve any existing and future roads and access routes (a) from time to time located on or providing access to the Property, (b) across any other adjacent property owned by the Town or other property acquired by leasehold, easement, or fee simple purchase by or on behalf of Lessee and (c) across any access routes over which the Town has the right to travel;
- g. Extracting soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis of or on the Property as Lessee deems necessary, useful or appropriate; and
- h. Undertaking any other lawful activities directly related to the purposes of this Agreement, whether accomplished by Lessee or a third party authorized by Lessee and approved by the Town as otherwise required in this Agreement, that Lessee determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes.

Section 3.04 Without limiting the provisions of Section 3.03, the Town acknowledges and agrees that the activities contemplated by this Agreement may be accomplished by Lessee or one or more third parties authorized by Lessee and approved by the Town Supervisor as otherwise required in this Agreement, subject to any such third party/subcontractor agreeing to the terms and conditions set forth in this Agreement.

Section 3.03 Notwithstanding Lessee’s right to use the Premises under the terms of this Agreement, the Town retains its rights to continue to use the Premises for its purposes not inconsistent with Lessee’s use.

Section 4. Term

The term of this Agreement (“Term”) shall begin on the Effective Date and shall remain in effect until the later to occur of: a) the twenty-first (21st) anniversary of the Operations Date; or (b) the date which is three (3) months following the expiration of Lessee’s power purchase agreement with LIPA (the latter of which shall be referred to herein as the “Expiration Date”) subject to earlier termination as set forth hereinafter; provided, however, that if such date does not fall on a Business Day then this Agreement shall end on the next Business Day).

Section 5. Payments to Town

Section 5.01 During the Pre-Operating Period, Lessee shall pay to Town the Pre-Operating Annual Payment as follows: The first Pre-Operating Annual Payment shall be paid by Lessee within sixty (60) Days from the Effective Date (“First Pre-Operating Payment Date”) and thereafter, on the anniversary of the First Pre-Operating Payment Date through the Term until the Operations Date. In the event that the Operations Date is not an anniversary of the First Pre-Operating Payment Date, the Pre-Operating Annual Payment shall be prorated on a per diem basis.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to Town (the “Quarterly Operating Payments”). Quarterly Operating Payments shall be paid, in arrears, sixty (60) Days after the end of each Calendar Quarter during the Term unless such Day falls on a weekend or holiday in which case it shall be due on the next Business Day. If the Operations Date is not the first Day of a Calendar Quarter, the Quarterly Operating Payment for the portion of the first Calendar Quarter shall be prorated on a per diem basis.

Section 5.03 Lessee shall make a one-time payment to the Town, in an amount mutually agreed to, in writing, which amount shall in no event exceed actual expenses incurred by the Town for the installation/relocation of security cameras, which in the opinion of the Town is necessary to accommodate installation of Lessee’s Solar Energy Project while at the same time maintaining the Town’s and public’s continued safe use of the Town’s premises.

Section 5.04 Nothing contained in the foregoing shall affect the survival of the obligation of Lessee as set forth in the Sections of this Agreement covering the survival of Lessee’s obligations.

Section 5.05 Lessee shall pay all Pre-Operating Payments without set-off, abatement, deductions, defense or claims, except as specifically set forth herein, to the Town at Town’s address set forth herein or at such other place as Town may designate in writing in lawful

currency of the United States of America. All remittances shall be made payable to "Town of North Hempstead Comptroller."

Section 5.06 Lessee shall pay all Quarterly Operating Payments without set-off, abatement, deductions, defense or claims, except as specifically set forth herein, to Town at Town's address set forth herein or at such other place as Town may designate in writing in lawful currency of the United States of America. All remittances shall be made payable to "Town of North Hempstead Comptroller."

Section 6. Late Charges

Section 6.01 If Lessee should fail to pay any amount required to be paid by Lessee under this Agreement within fifteen (15) Days of the due date for such payment to the Town, including without limitation, any payment of fees or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Town may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount, in the amount of 2.5% of any part of the invoiced amount which has become past due for each thirty (30) Day period the subject payment is late. Such penalty shall accrue on the unpaid balance until said unpaid balance is liquidated.

Section 6.02 Each late charge shall be payable immediately upon demand made at any time therefore by the Town. No acceptance by the Town of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Town of payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be and become additional fees, recoverable by the Town in the same manner and with like remedies as if it were originally a part of the fees payable hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Town under this Agreement, including without limitation the Town's rights set forth in Section 28 of this Agreement or (ii) any obligations of Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed the legal maximum, such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 7. Lessee's Duties and Obligations

Section 7.01 Lessee hereby agrees to design, construct and install the Improvements in accordance with this Agreement and the Approved Site Plan. For purposes of this Agreement, the "Approved Site Plan" is the site plan depicting the initial location and specifications of the Improvements to be constructed and installed by Lessee which has been approved by the Town. The Approved Site Plan shall be attached hereto as Exhibit B and incorporated herein by this reference. An "Amended Approved Site Plan" may be substituted as Exhibit B upon mutual agreement of the parties. Notwithstanding the foregoing, the parties agree that solar energy

technologies are improving at a rapid rate and that it is probable that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Premises with newer model or design Solar Energy Facilities which have increased energy capture and efficiency, subject to prior approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 7.02 Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof. Notwithstanding any rights the Town may have reserved to itself hereunder, the Town shall have no liabilities or obligations of any kind to any contractors engaged by Lessee or for any other matter in connection therewith and Lessee hereby releases and discharges the Town, its officers, representatives, and employees of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, including reasonable attorney's fees and other professional fees, or from any action or cause of action arising or alleged to arise out of or in connection with the performance of any of the construction associated with the Improvements pursuant to the contracts between Lessee and its contractors.

Section 7.03 Lessee agrees to provide a construction schedule and an alternative parking plan to the Town no less than thirty (30) days prior to the commencement of construction, which schedule and plan shall minimize disruption to persons using the parking facilities during construction.

Section 7.04 During the term of this Agreement, Lessee, its authorized representatives, contractors/subcontractors shall have the right at their own cost, expense, liability and risk, of access to the Property for the purposes set forth in this Agreement. Lessee shall use due care at all times that Lessee, its authorized representatives, contractors and/or subcontractors are on Town Property and shall perform all work in connection with the construction, installation, maintenance or repair of the Improvements in a safe manner.

Section 7.05 Lessee shall use its commercially reasonable efforts to avoid interfering with the Town's use of the Property. Lessee shall further provide proper striping for parking spaces upon completion of those Improvements within parking lots and shall clean up and remove all debris and materials generated pursuant to its construction and installation on the Property at Lessee's sole cost, expense, liability, and risk.

Section 7.06 Lessee shall provide, at Lessee's sole cost and expense, all security measures reasonably necessary, in Lessee's opinion, subject to the Town's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, for the Premises, including, warning signs, fencing, and other measures appropriate and reasonable to or destruction of Lessee's Improvements or injury or damage to persons or property on the Premises.

Section 7.07 Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, tradespersons and workers, and all claims lawfully made against it by other third persons arising out of or in connection with Lessee's use of the Premises under this Agreement, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them; provided, however, that nothing herein contained shall be construed to limit the right of Lessee to contest any claim of a contractor, subcontractor, tradespersons, workman, or other person and no such claim shall be considered to be an obligation of Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. Lessee shall use its best efforts to resolve any such claims and shall keep the Town fully informed of its actions with respect thereto.

- (a) Nothing contained herein shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor, or any other person engaged by Lessee or any of its contractors in the performance of any part of the duties or obligations under this Agreement, any right of action or claim against the Town, its officers, agents and employees with respect to any work any of them may do in connection with the Project.
- (b) Nothing contained herein shall create or be deemed to create any relationship between the Town and any such contractor, architect, supplier, subcontractor, or any other person engaged by Lessee or any of its contractors in the performance of any part of the duties or obligations under this Agreement and the Town shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Improvements.

Section 7.08 This Agreement includes the right of ingress to and egress from the Solar Energy System over, under, and along the Property by means of any existing roads and lanes thereon, and by such other, mutually agreed upon route or routes as Lessee may construct on the Property from time to time, subject to the Town's prior written approval, for the benefit of and for purposes incidental to Lessee's operation and maintenance in connection with the Improvements that are developed, constructed and/or operated on the Property.

Section 7.09 The Town shall not grant any rights in the Property purporting to permit others to conduct operations on the Property in derogation of Lessee's right to conduct operations on the Property in connection with the Solar Energy System.

Section 7.10 Lessee shall pay any personal property taxes, special assessments or ad valorem taxes that may be levied or assessed on the Improvements (or any taxes that are directly attributable to the Improvements) Lessee shall also pay for any increase in the ad valorem property taxes or special assessments levied or assessed against the Property that are assessed for the period from and after the Effective Date until the end of the Term hereof to the extent such increase is caused solely by the Solar Energy System; provided, however, such obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or

any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Property by the Town, and Lessee shall have the right, at its own expense, to appeal or contest any such taxes or increases thereto and to compromise and settle the same and Town shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so Lessee shall be responsible for all taxes and special assessments that may be levied or assessed against the Premises.

Section 7.11 Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical, drainage and landfill gas systems, and other systems installed or located on the Property, including the landfill geomembrane cap.

Section 7.12 Lessee shall provide submittal drawings approved by its engineering consultant of installation components and others and as reasonably requested by the Town for a review prior to installation of any Improvements.

Section 7.13 To the extent the same exist, the Town will provide Lessee with drawings, standard roadway and curbing details, and other information regarding existing site layouts and underground utilities. Lessee bears full responsibility for ensuring all underground utilities and geomembrane cap are identified prior to excavation and will be wholly liable for any damage to any utilities.

Section 7.14 In the event that the point of connection to LIPA's utility system is located on Town property, Lessee agrees that it shall not install any equipment and appurtenances to deliver energy to LIPA unless prior written approval for the same is granted by the Town.

Section 7.15 Lessee shall maintain and promptly repair the Premises and those portions of the Property used by the Lessee to keep same in good repair and condition, regardless of fault, except in the event of negligence or willful misconduct by the Town, and in accordance with general industry practice in the operation of such Solar Energy System, at Lessee's sole cost and expense. Lessee acknowledges that the Property is used for public purposes and agrees to maintain the Improvements in a manner which minimizes nuisances and inconvenience to persons using the Town's facilities including, but not limited to, nesting birds and water run-off.

Section 7.16 Lessee shall have a physical inspection of all Improvements conducted by a New York State Licensed Professional Engineer at least once every year during the Term to ensure that the Improvements continue to maintain structural stability. Lessee will provide an annual written report to the Town, setting forth the findings of such survey and delineating any remedial actions to be taken.

Section 7.17 Lessee warrants and represents that any exterior lighting installed as part of Lessee's Installation shall be in compliance with the Town's dark skies initiatives, policies,

requirements and regulations. In the event existing lighting located on the Property needs to be altered as part of Lessee's Installation, Lessee agrees to provide, at its sole cost and expense, alternate lighting satisfactory to the Town.

Section 7.18 Lessee understands that the Property may be located in high area and appropriate care must be taken to assure to ensure that all designs meet the applicable loading wind, seismic and snow loading criteria.

Section 7.19 In the event Lessee removes any trees or shrubs located on the Property, Lessee shall provide a like number of such trees and/or shrubs on the Property, in accordance with the directions of the Town.

Section 7.20 Lessee shall not tie into, or in any manner use or otherwise access utility services to the Property in a manner which increases costs to the Town.

Section 8. Labor Requirements

Section 8.01 Lessee acknowledges and agrees to comply with the prevailing wage requirements in connection with the construction, operation and maintenance of the Improvements and maintenance of the Premises. No person performing, aiding in, or assisting in Lessee's construction, operation and maintenance of the Improvements or maintenance of the Premises shall be paid less than the said prevailing rates as defined and utilized under Section 220 of the Labor Law. The wages to be paid shall not be less than the prevailing rate of wages and supplements as set forth by law. Attached to this Agreement is the current prevailing wage schedule issued by the New York State Department of Labor for the activities contained in this Agreement.

- a.** Lessee, its contractors, and subcontractors shall file transcripts of original payrolls for the construction, operation and maintenance of the Improvements and maintenance of the Premises under this Agreement, in connection with the construction and preparation of the entire Premises, with the Town, within ten (10) Days after its first payroll, and every thirty (30) Days thereafter, said payroll transcripts to be subscribed and affirmed as true under penalty of perjury. Lessee, its contractors and subcontractors, shall keep their books open for inspection by representatives of the Town Department of Public Works and Comptroller and/or its representatives, including the Town Attorney's Office, on a monthly basis during the construction of the Improvements, to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to Lessee, its contractors and/or subcontractors prior to the inspection.
- b.** Lessee agrees that it shall include clauses in all of its agreements with its contractors and subcontractors for the construction of the Improvements stating that: (i) said

contractors and subcontractors shall pay prevailing wages, as agreed to in this Agreement; (ii) said contractors and subcontractors shall file transcripts of original payrolls for all work performed in connection with the construction and preparation of the Improvements under this Agreement with the Town within ten (10) Days after its first payroll, and every thirty Days thereafter, said transcripts to be subscribed and affirmed as true under penalty of perjury; and (iii) Lessee, its contractors, and subcontractors shall keep their books open for inspection by representatives of the Town Department of Public Works and Comptroller and/or its representatives, including the Town Attorney's Office, on a monthly basis during the construction of the Improvements to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to Lessee to comply with such notice, the Town may affect the removal or change and Lessee shall pay the cost thereof to the Town.

Section 8.02 Eight (8) hours shall constitute a legal day's work. No laborers, workmen or mechanics in the employ of the Lessee, a sub-Lessee or other person doing or contracting to do all or part of the work contemplated by this Agreement shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) calendar days in any one (1) week except in cases of extraordinary emergency including fire, flood, or danger to life or property. "Extraordinary Emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay if the public work is necessary in the judgment of the New York State Commissioner of Labor for the preservation of the work site or for the protection of the life and limb of persons using the work site.

Section 8.03 Any entity retained by the Lessee for the construction and maintenance of the Improvements must submit verification that that have in place or will participate in an apprenticeship training program appropriate for the type and nature of work to be performed which have been registered with and approved by the New York State Department of Labor, Pursuant to Section 816-b of the New York State Labor Law.

Section 9. Other Construction by Lessee

Except as otherwise expressly provided herein, Lessee shall not erect any structures, make any improvements, or do any other work on the Property, or install any fixtures other than as set forth in the Site Plan and in Section 7.01 without the prior written approval of the Town. In the event any construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then upon reasonable notice to do so, Lessee shall remove the same or, at the option of the Town, cause the same to be changed to the satisfaction of the

Town. In case of any failure on the part Lessee agrees to comply with all reasonable requests for special inspections by the Town during construction including, but not limited to, concrete testing, and electrical inspections.

Section 10. Requirements of Governmental Agencies

Section 10.01 Lessee will proceed with due diligence to construct and install the Solar Energy System and shall comply in all material respects with Laws, and all requirements, obligations and conditions of all instruments of record which may be applicable to the Premises. All work of Lessee and its subcontractors will be coordinated with the Town. Lessee reserves the right, in its sole discretion and at its sole expense, to contest the validity or applicability of any Laws.

Section 10.02 Lessee understands that the Town is the authority having jurisdiction with respect to Building Permits relating to construction on Town property. All Improvements constructed by Lessee pursuant to this Agreement shall be coordinated with the Town to ensure and maintain the safety of the public. Lessee shall be in compliance with all pertinent codes and shall obtain all necessary permits for the construction, use, and/or operation of the Improvements. All documents (surveys, plans, drawings, specifications, etc.) regarding the Improvements shall be prepared by and bear the seals and signatures of New York State Licensed Professionals.

Section 10.03 Lessee agrees to secure, maintain and comply with all provisions of Town Building Permit for the Improvement including compliance and cooperation with Town inspections by its Building Department during construction of the Solar Energy Project.

Section 11. Liens

Lessee shall keep the Town's interest in the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment furnished in connection with Lessee's use of the Premises under this Agreement. In the event it is permissible for any mechanics' or other liens to be filed against any portion of the Property by reason of Lessee's acts or omissions or because of a claim against Lessee, Lessee shall cause the same to be cancelled or discharged of record by bond or otherwise within ninety (90) Days after notice from the Town of the filing thereof and Lessee shall indemnify and save the Town harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting there from; claims and demands, including reasonable attorneys' fees, resulting there from; , that nothing herein contained shall be construed to limit the right of Lessee to contest any claim of a contractor, subcontractor, tradespersons, workman, or other person and no such claim shall be considered to be an obligation of Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. If Lessee shall fail to cancel or discharge said lien or liens within said 90-Day period, Town may cancel or discharge the same and upon Town's demand, Lessee shall reimburse the Town for the costs or expenses thereof, within sixty (60) days after receipt of an invoice therefore. Nothing

contained in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Town, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Property or any part thereof, nor as giving Lessee any right, power or authority to contract for or permit the rendering of such services or the furnishing of any materials that would give rise to the filing of any lien against the Property or any part thereof.

Section 12. Waiver of Nuisance

The Town has been informed by Lessee and understands that the presence and operation of the Improvements on the Property may potentially result in some nuisance to the Town, such as higher noise levels than currently occur at the Property and the surrounding area and visual impact (“Nuisances”). It is the intent of the parties hereto that these Nuisances shall be held to a commercially reasonable minimum. To this end Lessee shall take all possible care, caution and precaution and shall use its commercially reasonable efforts to minimize Nuisances.

Section 13. Temporary Storage

Section 13.01 Temporary Storage Space During Installation. The Town will use commercially reasonable efforts to provide sufficient space on the Property, if needed, for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the installation of the Solar Energy System. The Town will also provide Lessee a reasonable area on the Property, if needed, for construction type lay-down and staging. The Town and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

Section 13.02 Temporary Storage Space During Maintenance. The Town will use commercially reasonable efforts to provide sufficient space adjacent to the Premises, if needed, for the temporary storage and staging of tools, materials and equipment during any maintenance of the Solar Energy System. The Town and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

Section 14. Insurance

Section 14.01 Lessee shall procure and continuously maintain, without interruption, during the Term, insurance, naming the Town as an additional insured, in amounts not less than as follows:

- (i) Commercial General Liability, in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and Five Million Dollars (\$5,000,000.00) per occurrence for property damage (such limits may be maintained by using a combination of primary and excess liability policy limits);

- (ii) Automobile Liability Insurance (if any vehicles are used by Lessee in the performance of this Agreement) in an amount not less than Five Million Dollars (\$5,000,000.00) per person, per accident, for bodily injury and not less than Five Million Dollars (\$5,000,000.00) for property damage per occurrence; and
- (iii) Workers' Compensation and Employer's Liability insurance in compliance with all applicable New York State laws and regulations and Disability Benefits insurance, if required by law. Lessee shall furnish to the Town, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§ 57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless Lessee shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law;
- (iv) Builders Risk Insurance "All Risk" coverage in an amount equal to the total value of the Improvements which shall be obtained prior to commencement of construction of the Improvements and shall remain in effect until a permanent Certificate of Occupancy is obtained therefore. Such coverage shall include vandalism and malicious mischief, in broad form covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's equipment and property owned by contractor's or subcontractor's employees.
- (v) Mandatory Insurance – All insurance required by any Requirements. With respect to insurance requirements during construction of the Improvements, Lessee may provide such insurance by requiring each contractor engaged by it for the construction to procure and maintain such insurance including such contractual liability endorsement, said insurance not to contain any care, custody or control exclusions, any exclusions for explosions, collapses, or damage to, bodily injury to, or sickness, disease, or death of any employee of Lessee or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. There shall be no self insurance retention aspects to such insurance unless agreed to in writing by the Town.

Section 14.02 All policies of insurance described in this Section 14 shall:

- (i) Be written as primary policies not contributing with and not in excess of coverage that Town may carry;
- (ii) The Contractor shall furnish to the Town Declaration Pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. In the case of

commercial general liability insurance, the Town and the Town Solid Waste Management Authority (SWMA) shall be named as an additional insured and the Contractor shall furnish a Declaration Page and endorsement page evidencing the Town's and Town SWMA status as an additional insured on said policy;

- (iii) Expressly provide that Town shall have no liability for premiums;
- (iv) Shall be issued by insurance companies with an A.M. Best rating of A-or better and are licensed to do business in the State of New York; and
- (v) All such Declaration Pages, certificates and other evidence of insurance shall provide for the Town to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in said policies. Such Declaration Pages, certificates, policies and other evidence of insurance and notices shall be mailed to the Town at its address as set forth in this Agreement or at such other address of which the Town shall have given the Contractor notice in writing.

Section 14.03 In addition to the obligations set forth in this Section 14, and all other insurance required under this Agreement, the policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded Lessee thereunder with respect to any claim or action against Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against Lessee by the Town, but such endorsement shall not limit, vary, change, or affect the protections afforded the Town and Town SWMA there under as an additional insured. In addition, all the aforesaid policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Town there under with respect to any claim or action against the Town by Lessee shall be the same as the protections afforded Lessee there under with respect to any claim or action against Lessee by a third person as if the Town were the named insured thereunder.

Section 14.04 In the event Lessee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the Town may, but shall not be required to, obtain such policies and add the cost thereof to payments due Town under this Agreement or any other agreement between the Town and Lessee.

Section 14.05 Notwithstanding the foregoing, it is specifically understood and agreed that the Town shall have the right to submit, from time to time, in writing to Lessee, a request that one or more coverage line limits be increased; provided Town provides Lessee with a reasonable justification for said request. Lessee shall take all reasonable requests under consideration and comply by submitting a revised Certificate of Insurance to the Town evidencing the limit increases.

Section 14.06 Each policy of insurance required by this Section 14 shall contain a provision that the insurer shall not, without obtaining express advance permission from the Town Law Department, raise any defense involving in any way the jurisdiction of the court over the person

of the Town, the immunity of the Town, its officers, agents or employees, the governmental nature of the Town or the provisions of any statutes respecting suits against the Town.

Section 14.07 If at any time any of the insurance policies shall become reasonably unsatisfactory to the Town as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Town, Lessee shall promptly obtain a new and satisfactory policy in replacement, the Town agreeing not to act unreasonably hereunder. Failure to maintain insurance in the amounts reasonably required and commercially available from insurers licensed to do business in the State of New York, and in accordance with industry standards shall constitute grounds to immediately terminate this Agreement.

Section 15. Indemnity

Section 15.01 Lessee shall protect, indemnify and hold harmless the Town, its Commissioners, officers, officials, employees, agents, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims and demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorney's fees, including, but not limited to, claims and demands for death or personal injuries, or for property damages (collectively, "Losses"), arising out of or in connection with Lessee's use of the Property under this Agreement and arising out of the acts or omissions or negligence of Lessee, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement, except for Losses arising out of Town's sole negligence or willful misconduct.

Section 15.02 For any claim for which Lessee shall be required to indemnify the Town, Lessee shall, at its own expense, defend any suit with counsel of Lessee's selection (approved by the Town) and Lessee shall any defend such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the Town Attorney's Office, make any material decisions related to the defense of the claim on the Town's behalf. Lessee shall reimburse the Town for any costs or expenses, including legal expenses, incurred by the Town.

Section 15.03 Lessee hereby represents and warrants the Lessee will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the term of this Agreement. Furthermore, Lessee agrees that it shall protect, indemnify, and hold harmless the Town and its officers, officials, employees, contractors, agents, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorney's fees arising out of the acts or omissions or the negligence of Lessee in connection with the operations described or referred to in this Agreement. Lessee shall defend the Town and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the Town's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of Lessee, its officers, officials, employees, subcontractors, lessees, licensees,

invitees or agents, if any, in connection with the services described or referred to in this Agreement.

Section 16. Removal and Restoration

Section 16.01 Simultaneous with any Notice of Termination or, at least three (3) months prior to the expiration of the Term, Lessee shall present the Town a decommissioning plan (“Decommissioning Plan”) for the Improvements, which Decommissioning Plan shall include the removal of all physical material related to the Improvements and restoration of the Premises to substantially the same condition it was in as of the Effective Date, including lighting (reasonable wear and tear, condemnation, casualty damage and acts of God excepted (all hereinafter referred to as “Restoration”). Within twenty (20) business Days of receipt of such Decommissioning Plan, the Town shall have the right to request that Lessee abandon all or any portion of the Improvements on the Premises (the “Abandonment Request”). In the event the Town does not submit an Abandonment Request, Lessee shall proceed with the Decommissioning Plan. If the Town does submit an Abandonment Request, Lessee shall then have ten (10) business Days to respond to such Abandonment Request with its acceptance or rejection of such Abandonment Request. Failure by the Lessee to respond to any Abandonment Request shall be deemed to be an approval of such Abandonment Request. If Restoration is required herein, Lessee shall use commercially reasonable efforts to complete the Restoration within one hundred and eighty (180) Days following the expiration or earlier termination of this Agreement. Further, Lessee shall execute and record a quitclaim deed of Lessee’s right, title and interest in and to the Premises and, if applicable, title to any portion of the Improvements abandoned by Lessee following the expiration or earlier termination of the Agreement shall be deemed to have vested in the Town. In the event Lessee shall abandoned all or any part of the Improvements, Lessee shall remain liable for any costs incurred by the Town in removing and disposing of such Improvements in accordance with the provisions of this Section 16.01.

Section 16.02 In the event the Town requires a decommissioning surety, Town shall give Lessee written notice no earlier than nine (9) years from the Effective Date to require Lessee to provide Town with a bond or one or more letters of credit with Town designated as the beneficiary, to be deposited with the Town Comptroller in the amount of the estimated costs of Restoration (“Restoration Costs”). Within no less than one hundred eighty (180) days after receipt of the written notice, Town and Lessee shall determine the amount of the Restoration Costs as follows:

- (a) Lessee shall obtain an estimate of the Restoration Costs from a qualified contractor licensed in New York State and notify the Town of the name and address of the contractor which it has selected. Within thirty (30) days thereafter, Lessee shall provide the estimate to Town. In the event Town is not in agreement with Lessee’s estimate, Town may, at its own cost and expense, obtain its own estimate within thirty (30) days of Lessee presenting its estimate. If the bids are within a 10%

difference of the cost of the other, Lessee shall be entitled to use the bid from its contractor as the basis for the Restoration Costs. In the event the bids are more than 10% different, a third contractor shall be selected by the existing contractors. The three contractors shall meet and exchange their estimates and the Restoration Costs shall be the average of the estimates of the three contractors.

- (b) Lessee shall deliver the letter of credit/bond within thirty (30) days after the Restoration Costs is determined. The letter of credit/bond shall remain in force through the expiration or earlier termination of this Lease and until the completion of such work. Upon written request, no more than once in any calendar year, Town may request that Lessee provide Town with information and documentation to confirm the existence and maintenance of such security in favor of Town.

Section 16.03 The letter of credit/bond for the performance of the decommissioning of the Improvements shall be in the form annexed hereto as Exhibit C, with a corporate surety licensed to do business in the State of New York.

Section 17. Ownership of Attributes

The Town acknowledges that Lessee shall have all right, title and interest in and to all “Environmental Attributes” and “Renewable Energy Incentives”, and other items of whatever nature which are available as result of solar energy being produced from the Solar Energy System. If any Environmental Attributes, Renewable Energy Incentives or other items are initially credited or paid to the Town, the Town will cause such environmental Attributes, Renewable Energy Incentives and other items to be assigned or transferred to Lessee without delay. The Town will cooperate with Lessee in Lessee’s efforts to meet the requirements for any certification, registration, or reporting program relating to Environmental Attributes or Renewable Energy Incentives.

Section 18. Hazardous Substances and Waste

Section 18.01 The Town represents and warrants to Lessee that, to the best of its knowledge, with the exception of Landfill L4 which is a National Priorities List (NPL) site remediated under a Consent Order between the United States Environmental Protection Agency (USEPA) and the Town (Landfill L5 was closed under the New York State Solid Waste Part 360 Regulations), (i) no Hazardous Materials exist on , or have been released or are in imminent threat of release at, on, in to or from the Property nor (ii) shall the Town use, store, dispose of or release on or to the Property or (iii) cause or permit to exist or be used, stored, disposed of or released on or to the Property any Hazardous Material except in such quantities as may be required in its agricultural use of the Property and only if such use is not harmful to Lessee or its employees and is in full compliance with all applicable Laws.

Section 18.02 Lessee hereby covenants that Lessee shall not (i) use, store, dispose or release on or to the Property or (ii) cause or permit to exist or be used, stored, disposed of or released on or to the Property any Hazardous Material except in such quantities as may be required in its development of the Solar Energy System on the Property and only if such use is in full compliance with all applicable Laws. Should any claim or action be brought against Lessee in connection with its operations with respect to any of the foregoing, Lessee shall immediately notify the Town and shall defend and indemnify the Town with respect to such claim or action, in addition to complying with all other requirements of law or this Agreement, pay to the Town the reasonable fees incurred by Town for the services of attorneys, consultants, contractors, experts, laboratories, and all other reasonable costs incurred in connection with the investigation, required cleanup or remediation, including the preparation of any feasibility studies or reports the performance of any required cleanup, remediation, removal, abatement, containment, closure, restoration, or monitoring work.

Section 18.03 Lessee shall indemnify, defend, and hold harmless the Town, its officers, agents, and employees from all fines, suits, procedures, claims and action of every kind, and all costs associated therewith (including attorney's and consultants' fees) arising out of or in any way connected with, directly or indirectly, any deposit, spill, discharge, leakage or other release of Hazardous Substances, flammable explosives, or contamination caused by Lessee, or as proximately caused by Lessee's use of the Property pursuant to this Agreement. Lessee's obligations and liabilities under this Section shall survive the expiration or earlier termination of this Agreement.

Section 19. Signs

Except with the prior written approval of the Town, Lessee shall not erect, maintain, or display any advertising, signs, or similar device on the Property, which approval shall not be unreasonably withheld.

Section 20. Quiet Enjoyment

The Town agrees that, if Lessee observes and performs all of the covenants, responsibilities and duties imposed on Lessee under this Agreement, at all times during the Term of this Agreement, Lessee shall quietly and peaceably hold, possess and enjoy the Property pursuant to the terms of this Agreement, and for the Term of this Agreement without any hindrance or molestation caused by any party claiming by, through or under the Town. The Town shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, which may materially affect the rights and/or obligations of Lessee hereunder, without first obtaining the prior written consent of Lessee, which consent shall not be unreasonably withheld.

Section 21. Representations, Warranties and Covenants

Section 21.01 The Town shall not take any actions, or permit others to take any actions, at the Property that unreasonably cause shading of the Solar Energy System or otherwise interfere with the direct solar radiation of the Solar Energy System without obtaining the prior written consent of the Lessee.

Section 21.02 If the Town becomes aware of any circumstances relating to the Solar Energy System or the Property which creates an imminent risk of damage or injury to any person or any person's property, the Town will immediately notify Lessee of such threat and Lessee shall immediately remedy such circumstance. If the threat relates to the Property and not to the Solar Energy System, the Town reserves the right to promptly take such action as is necessary or appropriate to prevent such damage or injury.

Section 21.03 Each person executing this Agreement on behalf of the Town represents and warrants that such person is duly and validly authorized to do so and that the Town has the full right and authority to enter into this Agreement, perform all of its obligations hereunder and grant the interests herein granted.

Section 21.04 Each person executing this Agreement on behalf of Lessee represents and warrants that such person is duly and validly authorized to do so and that Lessee has the full right and authority to enter into this Agreement and perform all of its obligations hereunder.

Section 21.05 Town represents and warrants to Lessee that it owns the Property in fee simple, subject to no liens or encumbrances except as disclosed in writing to Lessee prior to the execution of this Lease and attached hereto as Exhibit D and incorporated herein by this reference.

Section 21.06 The Town or other interest in any Improvements installed on the Property by or on behalf of Lessee, except as provided in Sections 16 and 27, and the Town hereby waives any statutory or common law lien that it might otherwise have in or to the Improvements or any portion thereof. Lessee shall at all times retain title to the Improvements, with the right, at any time and in its sole discretion, to remove, replace or repair one or more Improvements as otherwise set forth herein, except as provided in Sections 16 and 27.

Section 21.07 Lessee warrants that the execution and delivery of this Agreement was duly authorized by all necessary action of the Lessee, none of which action has been rescinded or otherwise modified. Lessee has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. No consents, approvals or permits are required for the performance of the terms and provisions herein, or, if any such consents, approvals or permits are required, they have been or will be obtained in a timely fashion. This Agreement is a legal, valid, and binding obligation of the Lessee, enforceable against Lessee in accordance with its terms.

Section 22. Confidentiality

Fully executed contracts, including leases, are subject to the New York Freedom of Information Law (FOIL). Therefore, if Lessee believes that any information it may provide or is contained herein constitutes a trade secret or is otherwise information which if disclosed would cause substantial injury to its competitive position in the industry (collectively, “Lessee Confidential Information”) and Lessee wishes such information to be withheld if requested pursuant to FOIL, Lessee shall submit a separate letter to the Town, specifically identifying the page number(s), section(s), lines(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret or is other information which if disclosed would cause substantial injury to the competitive position of Lessee, and formally requesting that such information be kept confidential. Failure by Lessee to submit such a letter may constitute a waiver of any rights Lessee may have under the FOIL relating to protection of trade secrets. The proprietary nature of the information designated confidential by Lessee may be subject to disclosure if it is requested under FOIL and the Town deems it disclosable or if ordered by a court of competent jurisdiction. A request that an entire Agreement be kept confidential will not be considered. Such a letter may constitute a waiver of any rights Lessee may have under the FOIL relating to protection of trade secrets. The proprietary nature of the information designated confidential by Lessee may be subject to disclosure if it is requested under FOIL and the Town deems it disclosable or if ordered by a court of competent jurisdiction. A request that an entire Agreement be kept confidential will not be considered.

Section 23. Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Town and Lessee, and their respective heirs, successors and assigns. Lessee covenants that it shall not assign this Agreement nor sublet the Premises or any part thereof, by operation of law or otherwise; provide, however, that Lessee may assign the Agreement or portion thereof with the prior written consent of the Town in each instance, not to be unreasonably withheld, conditioned or delayed. Any attempt by Lessee without the Town’s prior written consent to assign, encumber or mortgage this Agreement or a portion thereof shall be null and void, provided however, that Lessee may without obtaining the Town’s prior consent, (but with complying with the other provisions of this Section), assign this Agreement or sublet all or any portion of the Premises to (a) an “Affiliate”, (b) a Lender in connection with any financing by Lessee of the Renewable Energy System in accordance with Section 24 below, or (c) to a person or entity to which it sells or assigns all or substantially all of its assets or equitable ownership interest or with which it may be consolidated or merged (a “Successor Entity”), provided such Successor Entity shall also (i) be an entity having experience in the operation and maintenance of solar photovoltaic systems (ii) be financially capable of performing Lessee’s obligations under this Agreement, and (iii) agree to assume all of Lessee’s obligations under this Agreement in writing. Each assignment, assumption or sublease, as applicable, shall be in writing, and Lessee shall deliver to the Town a fully-executed original of such assignment and assumption or sublease, as

applicable, within ten (10) Days following the full execution thereof. The assignment referred to in subsection (c) above shall be subject to the Town's consent in its reasonable discretion.

Section 24. Leasehold Financing

Section 24.01 Right to Encumber. Lessee or any authorized successor or assignee under Section 23 (each, an "Obligor") may at any time assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion the Solar Energy Facilities to any Lender provided the Town is given written notice of such assignment, encumbrance, hypothecation, mortgage or pledge within a reasonable time of Solar Energy Facilities being encumbered.

Section 24.02 Covenants for Lenders' Benefit. Should an Obligor mortgage any of its interest as provided in Section 24.01 above, the Town expressly agrees for the benefit of Lessee and any Lenders as follows:

- (a) The Town will not amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Agreement, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender.
- (b) Lender shall have the right to do any act or thing required to be performed by Obligor under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any of Obligor's rights under this Agreement as if done by Obligor itself.
- (c) The right of a Lender to receive notices and to act on behalf of Obligor as set forth in this Section 24.02 shall be available only to those Lenders which shall have notified the Town (or which Lessee has notified the Town of) in writing of their name and address ("Registered Lenders"). The Town shall provide notice of the occurrence of any Event of Default hereof to all Registered Lenders, and no Event of Default shall be effective unless a like notice is given to all such Registered Lenders. If the Town shall become entitled to terminate this Agreement due to an uncured Event of Default by Obligor, the Town will not terminate this Agreement unless it has first given written notice of such uncured Event of Default and of its intent to terminate this Agreement to each Registered Lender and has given each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor for curing such Event of Default, to cure the Event of Default to prevent such termination of this Agreement. Furthermore, if within such thirty (30) Day period a Registered Lender notifies the Town that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Agreement in order to cure a Non-Monetary Event of Default, the Town shall not terminate this Agreement and shall permit such Registered Lender a

sufficient period of time as may be necessary for such Registered Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Registered Lender shall elect to exercise its rights hereunder, the sole recourse of the Town in seeking enforcement of its rights under this Agreement or any new lease entered into pursuant to Section 24.02(d) shall be to such Registered Lender's interest in this Agreement and the Improvements. Upon the sale or other transfer of any interest in the rights granted hereunder by any Registered Lender, such Registered Lender shall have no further duties or obligations hereunder.

- (d) In case of the termination of this Agreement as a result of any Event of Default, the Town shall give prompt notice to the Registered Lenders. The Town shall, upon written request of the first priority Registered Lender, made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender, or its designee, within twenty (20) Days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination of this Agreement by reason of Event of Default by Obligor, upon the same terms, covenants, conditions and agreements as contained in this Agreement for the remainder of the Term of this Agreement. Upon the execution of any such new lease agreement, the Registered Lender shall (i) pay the Town any amounts which are due the Town from Obligor, (ii) pay the Town any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of the termination of this Agreement to the date of the new lease agreement, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements set forth in this Agreement to be performed by Obligor to the extent that Obligor failed to perform the same prior to the execution and delivery of the new lease agreement.

- (e) The time available to a Registered Lender to initiate foreclosure proceedings as aforesaid shall be extended by the number of Days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Registered Lender's reasonable control.

Section 25. Condemnation

Should title or possession of all or any portion of the Premises be taken in condemnation proceedings by a government body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Premises wholly unsuitable for Lessee's use, then this Agreement shall terminate upon such vesting of title or

taking of possession. All payments made by a Condemnor on account of any taking of the fee estate by eminent domain shall be made to the Town. Lessee shall be entitled to any portion of the condemnation awards relating to any Improvements taken, and Lessee shall, at its sole discretion also be entitled to seek a separate award from the Condemnor for any damages allowable by law, including but not limited to: (i) the removal and relocation Lessee's business, (iii) for the loss of goodwill, (iv) lost profits, (v) the loss and/or damage to any property that Lessee elects or is required not to remove, and (vi) for the loss of use of the Premises by Lessee and the Town shall have no right, title or interest in or to any separate award made therefore. It is agreed that Lessee shall have the right to participate in any settlement proceedings with the Condemnor and that the Town shall not enter into any binding settlement agreement with the Condemnor, without the prior written consent of Lessee, which consent shall not be unreasonably withheld. In the event of a partial taking that does not render the remaining portion of the Premises unsuitable for Lessee's use, as determined by Lessee in its sole discretion, this Agreement shall continue in full force and effect (with an equitable reduction in the Quarterly Operating Payments). The Parties shall enter into an amendment of the Agreement to reflect such partial taking.

Section 26. Additional Fees and Charges

If the Town is required or elects to pay any sum or sums, or incurs any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill anyone or more of the conditions or agreements contained in this Agreement, or as a result of an act, negligence, or omission of Lessee contrary to the said conditions and agreements, the Town agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any payment thereafter due under this Agreement, and each and every part of the same shall be recoverable by the Town in the same manner and with like remedies as if they were originally a part of the payment set forth in Section 5.

Section 27. Termination/Default Remedies and Damages

Section 27.01 This Agreement shall terminate at the end of the full term hereof and Lessee shall have no further right or interest in the Premises.

Section 27.02 Lessee may choose to terminate this Agreement for all or part of the Premises by nine (9) months' advance written notice ("Lessee's Notice of Termination") to the Town at any time and for any reason. All rights and obligations of the parties hereunder shall terminate as of the termination date set forth in such Lessee's Notice of Termination.

Section 27.03 The following shall constitute an "Event of Default":

- (1) Lessee shall fail duly and punctually to pay any installment under Section 5 of this Agreement, or to make any other payment required hereunder when due to the Town and such default shall persist in its failure for a period of two (2) months

following the receipt of written notice of such default (“Notice of Default”) from the Town (“Monetary Default”); or

- (2) Lessee shall fail to keep, perform, or observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, and has failed to cure such failure within thirty (30) Days after receipt of written notice from the Town (except where fulfillment of its obligation requires activity over a period of time and Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) Days after receipt of notice and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof: or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- (4) By order of decree of a court Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if Lessee is a corporation, by any of the stockholders of Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
- (5) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Lessee and shall not be dismissed within ninety (90) Days after the filing thereof; or
- (6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the Property of Lessee and such possession or control shall continue in effect for a period of ninety (90) Days.

The events described in subsections (3), (4), (5), or (6) above are collectively referred to herein as a “Non-Monetary Event of Default.”

Section 27.04 Upon the occurrence of either a Monetary or a Non-Monetary Event of Default other than an Event of Default described in Section 27.03(2), and after the applicable cure periods have elapsed, or at any time thereafter during the continuance thereof or during the term of this Agreement, the Town shall be entitled to exercise any and all remedies available to it at

law or in equity, including the right to terminate this Agreement and/or evict Lessee from the Property upon the date specified in the a notice of termination (“Notice of Termination”), which date shall not be less than thirty (30) days from the date the Town sends the Notice of Termination (“Termination Date”) (in addition to the initial written notice of default as described in Section 27.03), such termination to be effective upon the date specified in such Notice of Termination in the event Lessee has not cured the default (“Termination Date”). In such case, Lessee’s rights to the possession of the Property shall end absolutely as of the Termination Date as fully and completely and with the same force and effect as if the day so specified were the Expiration Date; this Agreement shall also terminate in all respects except for Lessee’s liabilities arising prior to, out of, or following the Event(s) of Default and the ensuing termination.

Section 27.05 No waiver by the Town of any default on the part of Lessee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Lessee shall be or be construed to be a waiver by the Town of any other or subsequent default in performance of any of the valid terms, agreements and conditions. of giving Lessee any additional notice to quit or any other further notice, with or without legal process or performing any act proceedings, and in so doing the Town may remove Lessee’s Improvements and make disposition thereof in such manner as the Town may deem to be commercially reasonable under the circumstances. If such property not so removed shall be sold, Town may receive and retain the proceeds of such sale and shall be the property of Town.

Section 27.06 Unless and until the Town shall have terminated this Agreement pursuant to Section 27.04 above, Lessee shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Agreement throughout the remainder of the Term to the early termination date.

Section 27.07 The Parties may each enforce and protect their respective rights hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including, without limitation, injunctive relief., and for recovery of all money due or to become due from Lessee under any of the provisions of this Agreement. No rights or remedy herein conferred upon or reserved to Town or Lessee shall be exclusive of any other right or remedy, but shall be cumulative and in addition to all other rights and remedies given hereunder or now or hereafter existing at law.

Section 27.08 No delay or forbearance by either Party in exercising any right or remedy hereunder, or either Party’s undertaking or matter which is not expressly required to be undertaken by that Party shall be construed, respectively, to be a waiver of that Party’s rights or to represent any agreement by that Party to undertake or perform such act or matter thereafter. Waiver by either Party of any breach by the other Party of any covenant or condition herein contained (which waiver shall be effective only if so expressed in writing) or failure by either

Party to exercise any right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the future of that Party's right to have any such covenant or condition duly performed or observed by the other Party, or of either Party's rights arising because of any subsequent breach of any such covenant or condition nor bar any right or remedy of that Party in respect of such breach or any subsequent breach. Town's receipt and acceptance of any payment from Lessee which is tendered not in conformity with the provisions of this Agreement or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter accompanying any payment) shall not operate as an accord and satisfaction or a waiver of the right of Town to recover any payments then owing by Lessee which are not paid in full.

Section 27.09 Except for the monetary obligations of either party, Town and Lessee shall not be in default of this Agreement because of such party's inability to perform the covenants and obligations set forth herein during the continuance of any period of Force Majeure, except as may otherwise be expressly specified in this Agreement.

Section 27.10 In the event Town shall fail to keep, perform, and observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) Days after receipt of written notice of default thereunder from the Lessee (except where fulfillment of its obligation requires activity over a period of time, and Town shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) Days after receipt of the written notice and continues diligently such substantial performance without interruption except for causes beyond its control), the same shall constitute a default on the part of the Town for which Lessee shall have all rights available under law. Days after receipt of written notice of default thereunder from the Lessee (except where fulfillment of its obligation requires activity over a period of time, and Town shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) Days after receipt of the written notice and continues diligently such substantial performance without interruption except for causes beyond its control), the same shall constitute a default on the part of the Town for which Lessee shall have all rights available under law.

Section 27.11 In no event shall either party be liable in any way, regardless of the form in which any legal or equitable action may be brought (whether in tort, contract, strict liability or otherwise), for any loss of use, interruption of business, lost profits, sales, data or goodwill, or any special, incidental, indirect, punitive, or consequential damages whatsoever, however caused, even if the Parties have been advised of the possibility of such loss or damage and regardless of whether these limitations cause any remedy to fail its essential purpose. The limitations of liability in this Section 27.11 are material conditions to the Parties entering into this Agreement and shall survive the termination or expiration of this Agreement.

Section 28. Force Majeure

Section 28.01 Neither Party will be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or have caused an uncured Event of Default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

Section 28.02 In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice materially prejudices the other Party.

Section 29. Notices

Any communication, notice or other submission necessary or required to be made by the parties regarding this Agreement shall be deemed given upon receipt sent by overnight mail, certified mail, return receipt requested, to the following addresses:

TOWN: Town of North Hempstead
 220 Plandome Road
 Manhasset, NY 11030
 ATTN: Town Attorney

LESSEE:

Section 30. Broker

Lessee and Town each represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. Each Party shall indemnify and save harmless the other Party of and from any claim for commission or of brokerage made by any and all persons, firms, or corporations whatsoever for services rendered to such party, whether or not such claims, demands, causes of action, liabilities, etc., are made or asserted before or after termination or expiration of this Agreement (to include reasonable attorneys and other professional fees).

Section 31. Paragraph Headings

The section and subsection headings, if any, in this Agreement, are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of intent of any provision hereof.

Section 32. Town Board Approval

This Agreement is subject to the approval of the Town Board and shall not become effective until fully executed.

Section 33. Waiver of Jury Trial

The Town and Lessee, to the extent allowed by law, hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Town and Lessee, Lessee's use or occupancy of the Premises, any claim of injury or damage, or any emergency statutory or any other statutory remedy.

Section 34. Off-set of Arrears or Default

Lessee warrants that it is not, and shall not be, during the Term of this Agreement, in arrears to the Town for taxes or upon debt or contract and is not, and shall not be during the term of this Agreement, in default as surety, contractor or otherwise on any obligation to the Town, and the Lessee agrees that the Town may withhold the amount of any such arrearage or default from amounts payable to the Lessee under this Agreement.

Section 35. Cooperation on Claims

Section 35.01 The Parties each agree to render diligently to the other any and all cooperation, without additional compensation, that may be required to defend the Party against any claims, demand, or action that may be brought against the other in connection with this Agreement.

Section 35.02 The Town shall reasonably support and cooperate with Lessee in the conduct of its operations and the exercise of its rights under this Agreement including with Lessee's efforts to (a) obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights or (b) sell any portion

of the Solar Energy System, assign or otherwise transfer all or any part of or interest under this Agreement or obtain any financing in accordance with the provisions of this Agreement, and the Town shall perform all such acts including executing and delivering maps, instruments and documents within twenty (20) Days after receipt of a written request made from time to time by Lessee, as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of the Agreement. Subject to the approval of the Town Board, within ten (10) Days after receipt of a written request made from time to time by either Party to the other, the Parties shall: enter into any reasonable amendment hereto: (aa) to correct an error in this Agreement; (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's surveyor or title company. Within Ten (10) Days after receipt of a written request made from time to time by the Lessee, the Town shall: (i) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or Lessee; or (ii) enter into any reasonable consent and subordination and nondisturbance agreement with any Lender, or deliver any estoppel reasonably requested by such Lender,. Without limiting the generality of the foregoing, the Town shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement submitted in accordance with the terms and conditions of this Agreement at any administrative, judicial, legislative or other level.

Section 36. Not a Co-Partnership or Joint Venture

Nothing herein contained shall create or be construed as creating a co-partnership, Joint Venture or any other association between the Town and Lessee other than the relationship of landlord and tenant.

Section 37. Independent Contractor

It is expressly agreed that Lessee's status hereunder is that of an independent contractor. Neither Lessee nor any person authorized by Lessee to use the Premises shall be considered employees of the Town for any purpose. The relationship of the Town to Lessee is that of landlord-tenant and Lessee, in accordance with its status as such, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, agent, or employee of the Town by reason hereof, and that Lessee, its owners and employees, shall not, by reason hereof, make any claims, demands or application to or for any right of privilege including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership of credit as officers, employees or agents of the Town.

Section 38. Town Representative

It is expressly understood and agreed by and between the Parties hereto that the officers, officials, employees, and agents of the Town and its officers and agents are acting in a representative capacity for the Town and not for their own benefit, and that neither Lessee nor

its officers, employees agents or representatives shall have any claim against them or any of them as individuals in any event whatsoever.

Section 39. No Credit

Lessee agrees that this Agreement shall not be pledged, hypothecated, or put up as security for a loan, credit or for any reason whatsoever, except as may otherwise be permitted in this Agreement.

Section 40. No Implied Waiver

No waiver shall be inferred from any failures or forbearance of either Party to enforce any provisions of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

Section 41. Certification

The Parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the Town, there is no known relationship within the third degree of consanguinity, life partner or business, commercial, economic, or financial relationship between the Parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any Party to this Agreement.

Section 42. Conflicts of Interest

Lessee agrees that it will not, during the term of this Agreement, engage in any activity that is contrary to and/or in conflict with the goals and purposes of the Town. Section 42.02 Lessee is charged with the duty to disclose to the Town the existence of any such adverse interests, whether existing or potential. This duty shall continue during the term of this Agreement. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the Town Attorney after full disclosure is obtained.

Section 43. Lawful Hiring of Employees

This Agreement is subject to Town Code requiring completion and submission by Lessee and Lessee's contractors' Affidavits certifying compliance with the requirements of Federal Code Section 1324a and any amendments thereto, with respect to lawful alien status of employees, owners, principals, partners, officers or members.

Section 44. Town Requirements

The Parties agree to be bound by the terms of the Town's Requirements, attached hereto as Exhibit E, and made a part hereof.

Section 45. Lease Fee Renegotiation

If during the term of the Host Site Lease Agreement, additional electrical energy is produced by the solar energy system greater the PV electric generating facility expected rated capacity

specified in the PPA with LIPA, Third Paragraph of the Recitals (for example through replacement or expansion of the system with LIPA's approval), the Town reserves the right to renegotiate the Host Site Lease Fee.

Section 46. Governing Law

This Agreement shall be governed by the laws of the State of New York. In the event of any dispute or litigation, the venue of any proceeding to determine the rights and liabilities of the respective parties arising under this Agreement shall be in State Supreme Court, Nassau County; or in the event of a proceeding in the federal courts, in the District Court for the Eastern District of New York.

Section 47. Severability

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or application of such terms or provision to persons or circumstances other than those as to which is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Section 48. Interpretation

Each Party has reviewed this Agreement and has been given an opportunity to obtain the assistance of counsel, and any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement.

Section 49. Memorandum

The Town and Lessee shall execute in recordable form and Lessee shall record, a memorandum of this Agreement substantially in the form of Exhibit F. The Town consents to the recordation of the interest of any Lender or assignee of Lessee's interest in this Agreement. References contained herein to Sections, Exhibits, and/or Schedules shall be deemed to be references to the Sections, Exhibits, and/or Schedules of and to this Agreement unless specified to the contrary.

Section 50. Execution in Counterparts

This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument, and each of which shall be deemed an original.

Section 51. Entire Agreement

Section 51.01 This Agreement consists of the following: Sections 1 through 51 inclusive. The foregoing constitutes the entire Agreement of the Parties on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed by the Town and Lessee.

Section 51.02

References contained herein to Sections, Exhibits and/or Schedules shall be deemed to be references to the Sections, Exhibits and/or Schedules of and to this Agreement unless specified to the contrary.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

[LESSEE]

TOWN OF NORTH HEMPSTEAD

By: _____

By : _____

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF NASSAU}

On the ____ day of _____ in the year 2013 before me, the undersigned, personally appeared _____ [name], _____ [Title] personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK}

SS:

COUNTY OF NASSAU}

On the ____ day of _____ in the year 2013 before me, the undersigned, personally appeared _____ [Name], _____ [Title], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____)
SS
STATE OF _____)

On _____, 2013, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature

[Notary Seal]

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

APPROVED SITE PLAN

EXHIBIT C

FORM OF LETTER OF CREDIT/BOND

EXHIBIT D

LIENS AND ENCUMBRANCES

EXHIBIT E
TOWN REQUIREMENTS

EXHIBIT F
FORM OF MEMORANDUM OF LEASE

Recording Requested By and When Recorded Return To:

@

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated as of the day of , 2013, between, TOWN OF NORTH HEMPSTEAD, a municipal corporation with its principal offices at 220 Plandome Road , Manhasset, New York 11030 (hereinafter “Landlord”), and _____, with an address at _____ (hereinafter “Tenant”).

1. DEFINITIONS. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to such terms in the Lease (as hereinafter defined).

2. DEMISED PREMISES. Landlord and Tenant have entered into a Lease dated as of, 2013 (the “Lease”), pursuant to which Tenant has leased from Landlord certain land _____, in the Town of North Hempstead, County of Nassau, State of New York (the “Premises”) and further described on the legal description attached hereto and made a part hereof as Exhibit A.

3. TERM The term of the Lease (the “Term”) shall begin on the Commencement Date and shall remain in effect until the later to occur of (a) the twenty-first (21st) anniversary of the Operations Date, or (b) the date which is three (3) months following the expiration of Lessee’s Power Purchase Agreement with LIPA, unless earlier terminated as provided in the Lease.

4. PURPOSE. The purpose of this instrument is to give notice of the Lease and all of its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This instrument shall in no way amend or be used to interpret the Lease, and in the or inconsistency between any of the terms and conditions of this Memorandum of Lease and any term and/or condition of the Lease, the term and/or condition of the Lease shall govern and control.

5. EASEMENT. Tenant has any easement to enter upon and construct certain improvements in the Premises in accordance with the provisions of the Lease.

6. COUNTERPARTS. This Memorandum of Lease may be executed in counterparts, each of which shall be deemed to be and required and all of which, when taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first above written.

TOWN OF NORTH HEMPSTEAD

By _____:
Name:
Title:

TENANT:

By: _____
Name:
Title:

SOLAR ENERGY FACILITY ELECTRIC INTERCONNECTION EASEMENT

THIS INDENTURE, made this ____ day of _____ 2013, by and between Town of North Hempstead, a municipal corporation with its principal offices at 220 Plandome Road, Manhasset, New York 11030 (hereinafter referred to as “Grantor”); and the Long Island Lighting Company d/b/a Long Island power Authority (hereinafter referred to as “LIPA”) having its principal office at 333 Earl Ovington Boulevard, Suite 403, Uniondale, New York 11533 (hereinafter referred to “Grantee”). (Grantor and Grantee are collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the Grantor is the owner in fee simple absolute of certain parcels of land and all the estate therein, which parcels are located in the Town of North Hempstead, County of Nassau, State of New York and are designated on the Nassau County Tax Map as set forth in “Exhibit A” which is attached hereto and made a part hereof (collectively, the “Town Property”);

WHEREAS, Grantee is willing to accept an easement over the Town Property (the “Easement”) for the uses and purposes and on the terms and conditions herein set forth;

WHEREAS, Grantee, and _____ (“Lessee”) are parties to a certain Contract for the Purchase and Sale of Renewable Energy, Renewable Energy Certificates and Capacity dated as of _____, 2013 as same may be amended, restated or otherwise modified from time to time (the “PPA”), pursuant to which Lessee is to construct solar energy generating facilities (“SEGFs”) related electrical transmission lines on the Town’s Property;

WHEREAS, pursuant to the PPA, Grantee is to construct, install and maintain electrical interconnection lines between Lessee’s SEGFs and Grantee’s electrical system to be located on the parcels identified in Exhibit A and in accordance with the terms and conditions set forth in that certain Lease between Lessee and Grantor, dated as of _____, 2013 (the “Renewable Energy Lease”).

NOW, THEREFORE, for and in consideration of the premises and the sum of _____ AND NO/100 DOLLARS (\$ _____ .00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant and convey to the Grantee, and its successors and assigns, an easement in, on, under, over, upon, across and through a portion of Grantor’s Property described in Schedule “A” (hereinafter referred to as the "Easement Area"), attached hereto and made a part hereof, of which a map or survey is also attached herein and made a part hereof as Schedule "B".

1. Recitals. The Parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. Grant of Easement. Grantor does hereby grant and convey to the Grantee and its agents, successors and assigns, a non-exclusive easement in, on, under, over, upon, across and through the Easement Area for utility purposes including, but not limited to constructing, reconstructing, relocating, operating, repairing, maintaining and, at their pleasure removing overhead, underground or grade level electric interconnection systems, including but not limited to interconnection structures, poles, wires, cables, guys, anchors, switchgear and transformers together with the necessary manholes, conduits, appurtenances and accessories (collectively, the “Utility Facilities”) as said Grantee may now and from time to time deem necessary, all within the Easement Area, as well as ingress and egress in, over, under, upon, across and through the Easement Area, with full rights and authority to enter upon and excavate the Easement Area.

3. Grantee shall have the right to do all things necessary, useful or convenient for the purpose outlined in Section 2 hereof. Grantor hereby covenants with Grantee that Grantee shall have quiet and peaceful possession, use and enjoyment of the easement granted herein. The Grantee agrees to reasonably restore any Easement Area or other areas of the Grantor’s Property disturbed by the Grantee to a condition reasonably similar to that which existed prior to the disturbance.

4. Access From Street. The privilege of such access from the street to the Easement Area as is necessary for the enjoyment of the easements and right-of-ways herein granted.

5. Ownership of Utility Facilities. The Utility Facilities from time to time installed, constructed and maintained by Grantee in the Easement Area shall at all times be and remain the property of Grantee, and be maintained and serviced exclusively by Grantee.

6. Warranty of Title. Grantor covenants that it is seized of the Property and, for itself, its successors and assigns, forever warrants its title thereto and will defend the easements and right-of-ways herein granted, forever, against all lawful claims and demands.

7. Indemnification. Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors shall indemnify and hold harmless Grantor and their respective officials, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors (collectively, the “Indemnified Parties”) from and against all liabilities, penalties, losses, costs, damages, claims, proceedings, suits, judgments, liens, encumbrances, or expenses of whatever form or nature, including reasonable attorneys’ fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result

of, arising out of or in any way connected with Grantee's activities under this Agreement, whenever made or incurred. Grantor shall have the right to demand that Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors undertake to defend any and all suits and to investigate and defend any and all claims, against Grantor, and the Indemnified Parties related to Grantee's activities under this Agreement. This Section shall survive the termination or expiration of this Agreement.

8. Insurance. Grantee shall procure and maintain the following minimum insurance coverages with insurance companies reasonably acceptable to Grantor, and Town of North Hempstead must be added to and be insured under such policies:

(i) New York State Worker's Compensation Insurance and Employer's Liability Insurance as required by law;

(ii) Commercial General Liability Insurance including Personal Injury, Death, Contractual, Contingent, Products/Completed Operations, Independent Contractors, Broad Form Property Damage, and coverage for damage caused by explosion, collapse, or structural injury or damage to electric utilities, and such policy must not contain any "x, c, and u" exclusions;

(iii) Commercial Automobile Liability Insurance covering all automobiles, trucks, and other vehicles utilized at the Site, including, without limitation, all hired and non-owned vehicles; and

Each of (ii) and (iii) above shall afford protection in an amount of not less than five million (\$5,000,000.00) dollars combined single limit coverage arising out of any one occurrence and five million (\$5,000,000.00) dollars in the aggregate.

Prior to the commencement of any construction activities, Grantee shall provide Grantor with Certificates of Insurance indicating the coverages noted above. Grantee will not be permitted to access the Site until Grantor receives acceptable Certificates of Insurance. The Certificate Holder of Insurance shall be "Town of North Hempstead." Such policies shall contain a provision whereby Grantor shall receive not less than thirty- (30) days written notice prior to the cancellation or material modification of such policies. In the event that such insurance is available only on a claims-made basis, then the dates of coverage, including the retroactive date and the time period within which any claim can be filed, shall be stated in the Certificate of Insurance, and Grantee shall be obligated to ensure that no gaps in coverage occur.

Such insurance shall not relieve or release Grantee or its employees, affiliates, agents, licensees, invitees, representatives, contractors and subcontractors from, or limit their respective liability as to, any and all obligations arising under this Agreement. Grantee shall immediately notify Grantor, initially by telephone, and thereafter in writing, of any and all accidents arising out of the activities performed by Grantee or its employees, affiliates, agents, licensees, invitees,

representatives, contractors and subcontractors on the Site. Such notice shall not relieve nor release Grantee from any of their obligations arising under this Agreement. This Section shall survive the termination or expiration of this Agreement.

9. Covenants Running with the Land. This Easement, and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the Parties hereto and their respective successors and assigns.

10. Approvals/Effect and Duration of Easement. This Easement shall become effective when executed by both Parties and in accordance with Section 112 of the New York State Finance Law, shall not be valid, effective or binding upon the Parties until the approval of the Comptroller of the State of New York, the New York State Attorney General and the approval of the Grantor have been received and the Parties agree to be bound by the clauses in Appendix A hereto, which is made a part of this Agreement. This Easement shall remain in full force and effect until the later to occur of: (i) the twenty-first (21st) anniversary of the first date on which electricity is generated, delivered and sold (excluding start-up and testing) by to Grantee for the last SEGF to be installed, in accordance with the terms and conditions set forth in the PPA or, (ii) the date which is three (3) months after the expiration of the PPA.

11. Rights Reserved. The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. Grantor shall have the right to use the Easement Area, or any portion thereof, or any property of Grantor adjoining the Easement Area for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of Grantee. Grantor agrees not to erect or maintain within the Easement Area any permanent buildings, structures or physical obstructions of any kind, including trees and shrubbery, or permit the same to be so erected or maintained, except such as Grantee may specifically consent to in writing, which consent shall not be unreasonably withheld or delayed.

12. Compliance with Requirements. Grantee covenants, warrants and represents that it shall, at all times, comply with any and all orders, directives, requests and rules and regulations of the Grantor and of each and every municipality, department and/or agency having jurisdiction of any work to be performed in the Easement Area.

13. No Gratuities. Grantor represents and warrants that neither the Grantor nor any official, officer, or employee of Grantor, has offered or given any gratuity to any official, employee or agent of Grantee, New York State or any political party with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of an agreement.

14. Execution. The Parties warrant and represent that their execution of this Easement has been properly authorized.

15. No Waiver. This Easement is not a waiver of any claim for damage or for use of any property not restored promptly to Grantor, nor a waiver of any claim for personal injury.

16. Miscellaneous. No modification or amendment of this Easement shall be of any force or effect unless in writing executed by both Grantor and Grantee and recorded in the Nassau County Clerk's Office. This Easement sets forth the entire agreement between Grantor and Grantee relating to the easement and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties.

IN WITNESS WHEREOF, the Grantor and Grantee have duly executed this Easement as of the date first above written.

Long Island Lighting Company d/b/a LIPA

By: _____

Name:

Title:

Date:

Town of North Hempstead

By: _____

Name:

Title:

Date:

STATE OF NEW YORK}
SS:
COUNTY OF NASSAU}

in the year 2013 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the

Signature and Office of individual taking acknowledgement

STATE OF NEW YORK}
SS:
COUNTY OF }

in the year 2013 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the

Signature and Office of individual taking acknowledgement)

EXHIBIT A

SCHEDULE A
[Description of Easement Area]

SCHEDULE B

[Map/Survey of Easement Area]

APPENDIX A

Appendix 4

Division of Responsibilities

DIVISION OF RESPONSIBILITIES
Private Ownership Option

SOLAR ENERGY FACILITY PROJECT ACTIVITY	TOWN	PROJECT DEVELOPER	LIPA
Project Development & Management			
Approvals, Certifications & Permitting		X	
Host Site Lease Agreements	X	X	
Project Surety		X	
Insurances		X	
Power Purchase & Utility Interconnection Agreement		X	X
Engineering, Procurement & Construction (EPC) Agreement(s)		X	
Engineering, Procurement & Construction		X	
Financing		X	
Project Master Schedule		X	
Individual Host Site Schedules		X	
EPC Schedules		X	
Project Quality Assurance/Quality Control		X	
Project Safety & Security		X	
Project Status Reports		X	
Solar Energy Facility Performance Tests & Reports		X	
Solar Energy Facility Operation & Maintenance		X	
Approvals, Certification & Permits			
SEQRA Environmental Assessment		X	
Federal Permits, Licenses and Approval		X	
State Permits, Licenses and Approvals		X	
Town Approvals and Permits		X	
Coordination of Town Building Inspectors Inspection	X	X	
Transmission Interconnection Request & Studies		X	X
Water Supply		X	
Engineering and Design Services			
Plot Plan & Arrangement Drawings		X	
Solar Energy Optimization		X	
One-Line Drawings		X	
Drawing Schedule		X	
Commissioning, Start-up & Operating Manuals		X	
Maintenance		X	
Spare Parts		X	
Design Criteria		X	
Construction Support Services, Resident Engineering		X	
Functional Specification of Major Equipment		X	
Corrosion Protection		X	
Fire Protection		X	
Design Plant		X	
Calculations Plant/Drawings Plant/NYS PE Stamp		X	
As-Built Drawings		X	

SOLAR ENERGY FACILITY PROJECT ACTIVITY	TOWN	PROJECT DEVELOPER	LIPA
Purchasing Support/Equipment & Material Specification		X	
Review and Approval of Vendor Drawings		X	
Procurement Schedule		X	
Design Reviews		X	
Site Work			
Site Survey/Access Right of Way & Easement		X	
Geotechnical Study and Recommendation		X	
Clearing and Grubbing		X	
Earthwork		X	
Paving/Surfacing/All Required Surfaces		X	
Fencing/Gates		X	
Final Landscaping		X	
Grading and Drainage		X	
Sedimentation and Erosion Control Plan		X	
Civil Work			
Foundations		X	
Infrastructure		X	
Trenches, Duct Banks & Manholes		X	
Piers		X	
Footings		X	
Pads		X	
Rack Mounts/Tracking			
Steel Support Posts		X	
All Tracking System Equipment (Motors, Mounting, Drives, etc)		X	
Wiring and Associated Controls for Tracker Motors and Drives		X	
Equipment Procurement & Supply			
Solar Modules		X	
DC Wiring		X	
Combiner Boxes (includes DC Fuses, Ground Lugs, Lightning Arresters, etc.)		X	
DC Disconnect Switches		X	
Master Fuse Boxes for Collection of Main DC Source Circuits to Enter Inverters		X	
Inverters		X	
AC Wiring		X	
Tracker Interconnection		X	
Cable, Conduit, Bus, Tray & Grounding		X	
Main Step-up Transformer(s)		X	
Auxiliary Transformer(s)		X	
Substation/Switchyard		X	
Transmission Line from Substation/Switchyard to Grid		X	
Low Voltage Switchgear		X	
Station Grounding system		X	
Outdoor Lighting		X	
UPS System		X	

SOLAR ENERGY FACILITY PROJECT ACTIVITY	TOWN	PROJECT DEVELOPER	LIPA
DC Station Battery		X	
Station Battery Charge		X	
Cathodic Protection		X	
Ground Fault Protection System		X	
Revenue Metering		X	
System Protection - Relays		X	
Grid Interconnection		X	
Control/Data Acquisition			
Array Data Acquisition and SCADA		X	
Tracking Control		X	
BOP Data Acquisition		X	
Quality Assurance/Quality Control		X	
Miscellaneous			
Security System		X	
Painting, Color Coding & Identification			
Prime Coating of Equipment		X	
Prime Coating of BOP		X	
Final Painting		X	
Spare Parts			
Commissioning Spares		X	
Operational Spares		X	
Temporary Facilities			
Construction Facilities for Labor such as Toilets, Shelters, Change Rooms, etc.		X	
Laydown Area, (Establish, Control & Restore)		X	
Site Construction Office, including All Furniture, Supplies, etc.		X	
First Aid Station, Safety and Health Facilities		X	
Site Security		X	
Fire Prevention and Fighting		X	
Temporary Water and Electric Supply & Distribution		X	
Temporary Site Telephone/Communications Facilities		X	
Temporary Sewage Collection, Treatment & Disposal		X	
Dirt & Mud Control (Temporary Graveling of Site Area)		X	
Housekeeping for On-Site Facilities		X	
Clean-up and Removal of Temporary Facilities		X	
Training Facilities (On site or Off Site)		X	
Site Warehouse & Storage for All Equipment and Material		X	
Logistics			
Transportation of Equipment to Construction Site		X	
Preparation & Arrangement for Receiving Unloaded Equipment & Materials (including Warehouse Craneage, etc.		X	
Local Registration Fees, Licenses, etc., If Required		X	
Rights of Ways/Clearance for Special Shipments		X	
Equipment Unloading & Handling		X	
Equipment & Materials Receiving, Inspection,		X	

SOLAR ENERGY FACILITY PROJECT ACTIVITY	TOWN	PROJECT DEVELOPER	LIPA
Inventorizing, Shipment Damage Claim Processing			
Comprehensive General Liability Insurance (Vehicles)		X	
Automobile Insurance		X	
Insurance of Temporary Facilities, Tools, Construction Equipment, etc.		X	
Builder's All Risk (BAR) Insurance Coverage		X	
Bonding		X	
Construction Equipment, Tools, Instruments & Aids		X	
Construction & Erection Tests		X	
Technical Advisors		X	
Supervision & Labor Reports		X	
Start-up and Commissioning			
Lead Organization		X	
Start-up & Initial Operations Meeting & Scheduling		X	
Start-up Advisor		X	
Consumables		X	
Craft Labor		X	
Reports		X	
Standard Test Instruments, Tools & Equipment		X	
Special Test Instruments, Tools & Equipment		X	
Documentation, Test and Data Records		X	
Equipment, Component, System Walk-throughs		X	

Appendix 5

Required Insurance Policies and Coverages

INSURANCE REQUIREMENTS

The selected firm(s) shall procure and maintain at its own cost and expense professional errors and omissions insurance and such public liability and other insurance as will protect the Town of North Hempstead (Town), its officers, employees and the people of the Town from any claim or claims for damages to property and for bodily injury and personal injury, including death, which may arise from or relate to the terms and conditions of this agreement. Said policies or certificates of insurance shall be delivered to the Town with full premiums paid, and shall be subject to the approval of the Town Attorney for adequacy and form of protection. Said policies and certificates (other than the professional errors and omissions insurance) shall name the Town of North Hempstead, the Town Board, its officers and as additional insureds. The selected firm(s) shall be held liable for the work and services provided by all subcontractors. The insurance provided shall include the following:

1. Comprehensive general liability:
 - a) Per occurrence, \$5,000,000; General aggregate - \$5,000,000
 - b) Products completed, operations aggregate - \$5,000,000
 - c) Personal and advertising injury - \$5,000,000
 - d) Each occurrence - \$5,000,000
 - e) Fire damage - \$100,000
 - f) Medical expense (any one person) \$10,000

The foregoing aggregate limits shall apply on a per project basis.

2. Automobile liability:
 - a) Any auto coverage - \$5,000,000
 - b) Hired autos - \$5,000,000
 - c) Non-owned auto coverage - \$5,000,000
3. Workers' Compensation Insurance and Employer Liability Liability (Statutory requirements)
4. Disability Benefits - Liability (Statutory requirements)
5. Professional Errors and Omissions Insurance coverage of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.

The Town may modify the insurance requirements, prior to the commencement of services, if the selected firm(s) can demonstrate that the scope of services to be performed does not warrant such coverage. The Town Attorney of the Town of North Hempstead shall be the stipulated recipient of said Certificate of Insurance. Insurance certificates shall be subject to the review and approval of the Town. It shall be further stipulated thereon that the Town Attorney shall be given at least thirty (30) days notice of cancellation of said coverage, which shall be remitted to the Town Attorney, 220 Plandome Road, Manhasset, NY 11030. In the event that selected firm(s)'s insurance covers the actions of its special consultants, those special consultants will not be required to meet the insurance requirements of this Agreement.

Appendix 6

Certification of Insurance Form

INSURANCE CERTIFICATION

TO BE COMPLETED BY AN AUTHORIZED INSURANCE AGENT

INSTRUCTIONS:

Please complete this Insurance Certification and attach copies of proof of insurance as follows:

- (a) **Commercial General Liability/Automobile Liability:** ACCORD-25 FORM.
- (b) **Worker's Compensation:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 57 (2) evidencing proof of workers' compensation insurance *or* proof of Bidder not being required to secure same.
- (c) **Disability Benefits Insurance:** Certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law § 220 evidencing proof of disability benefits insurance *or* proof of Bidder not being required to secure same.

This form and all supporting documentation must be submitted with this Bid/Proposal even if said information is on-file with the Town in connection with another bid, project or contract.

(Name and Address of Bidder)

Name of Bid: _____ Bid Number: _____

(1) Commercial General Liability with completed operations (plus X.C.U. when applicable), to which the Town of North Hempstead has been added as additional insured, and Automobile Liability: \$ 5,000,000.00 Combined single limit (bodily and personal injury/property damage).

Insurance Carrier (Commercial General Liability): _____

Policy Number(s): _____

(2) Worker's Compensation:

Insurance Carrier: _____ Policy Number(s): _____

(3) The above insurance is effective with New York State admitted insurance companies, and is A rated or equivalent to A rated.

(4) Policy cancellation or non-renewal shall be effective only upon thirty (30) days prior notice by certified mail to:

Town of North Hempstead, Office of the Town Attorney, 220 Plandome Road, P.O.B. 3000, Manhasset, New York 11030

Authorized Insurance Agent's Signature and Title:

Name, Insurance Affiliation and Address:

_____ DATED: _____

Appendix 7

Proposer Qualifications Form

PROPOSER QUALIFICATIONS

Describe the principal and any secondary nature of your current business:

Indicate the length of time the firm has been in that business under your present name and identify all other names under which you have done business:

List office locations and number of staff at each location, and identify the principal office/firm's headquarters and the office from which this project will be managed:

List the names, addresses, and telephone numbers of New York municipalities and other public agencies which have utilized the firm's services in Appendix 11, Reference Facilities Description. Use one page for each reference.

List the names and addresses of all officers and directors of the firm and the nature of any financial interest such officer or director has in the firm.

Appendix 8

Proposer's Reference Facilities Description Form

REFERENCE FACILITIES DESCRIPTION

Photocopy this form for each reference as necessary.

REFERENCE

➤ Name _____

Address _____

➤ Principal Contact Person _____

Address _____

Telephone _____

➤ Briefly describe the project: _____

➤ Briefly describe the services provided by your firm: _____

➤ Number of years services provided _____

➤ Annual Operating Cost _____

Appendix 9

Solar Energy Facility Technical Specifications

SOLAR ENERGY FACILITY TECHNICAL SPECIFICATIONS

Developer is the sole entity responsible for all Project design and engineering; Solar Energy Facility installation including Host Site pre-construction studies and preparation, interconnections, start-up commissioning and testing. All Developer-prepared Project drawings, specifications, and calculations shall be: a) signed and sealed by a professional engineer (PE) of record registered in the State of New York (NY); and b) submitted to the Town for review and approval before construction is to begin. Only Developer drawings and specifications that are: 1) Developer and New York PE signed, sealed, and issued for Construction; and 2) stamped approved by the Town, may be utilized for Solar Energy Facility construction.

For the Host Site, the selected Developer shall prepare and submit a detailed set of Site Plans and Solar Energy Facility descriptions not later than forty-five (45) days after contract execution that include, at a minimum the following information:

1. Area map indicating Host Site location, including Town, Hamlet and adjacent roads; and
 2. Set of dimensioned planimetric and topometric Host Site Plan that includes the following:
 - Existing Host Site with existing facilities and surface and subsurface infrastructure;
 - Demolition, removals and grubbing Plan;
 - Solar Energy Facility array including;
 - General arrangement plan and elevations;
 - Solar access and shadow/shading diagrams;
 - Loading (including dead, live, wind, snow and seismic) diagrams;
 - Specify equipment to be used by model, brand and vendor specification sheets;
 - Proposed mounting system components (ballast, foundations, posts, columns, beams, purlins, racking system);
 - PV module dimensions and row-to-row spacing;
 - Inverters;
 - Electric cabling (for Carports and Ground Mounts include trenching Cross-sections for wiring from combiner boxes to inverter);
 - Switchgear, breakers, AC and DC disconnects, lightning protection and grounding ;
 - Proposed electrical interconnections to LIPA's grid – consistent with LIPA's interconnection requirements ;
 - Night lighting; and
 - All communications hardware and software required for Solar Energy Facility system protection, remote monitoring, and control.
 - Developer's required Construction Phase laydown and craft labor parking areas;
 - Construction Phase fencing and storm water management and erosion control controls; and
- Landscaping restoration/replacement plan

3. Guaranteed Solar Energy Facility Performance
4. Quality Assurance and Quality Control Plan. The Project shall be managed in accordance with the Developer's QA/QC program.

Engineering and Construction

1. In every manner and form, the Project shall comply with applicable State regulations and permits, as well as Town Zoning and Building Codes and Building Permits.
2. Each Solar Energy Facility installation shall have a minimum service life equal to the terms of a) the Host Site Lease Agreement; b) and the LIPA PPA.
3. All Solar Energy Facility protection equipment used throughout the system shall be sized and specified to reduce damage to all components and to the interconnection point in the event of electrical failure.

Appendix 10

Solar Energy Facility Operating/Performance Characteristics

Operation and Maintenance Period Plan

Documentation

Proposers shall provide the Town with all documentation necessary to enable the successful operation and maintenance of the generating unit.

Document should include (but not limited to the following):

- A system-wide operations and maintenance manuals or other documents produced by the Proposer that encompasses all generating unit components, interconnections and site facilities, and
- All individual operations and maintenance manuals or other documents produced by equipment providers for discreet components of the generating unit.

Equipment Warranty

Proposer is to provide equipment and system warranties for major components including PV panels, inverters, tracking systems, switchgears, and other major components.

The warranty descriptions shall identify the term of the warranty, what is covered by the warranty, provisions for transfer or assignment of the warranty and any special conditions that are unique to the specific equipment.

For PV modules, it is anticipated the warranty will cover a term of at least 25 years with no less than 80% performance degradation.

For inverters it is anticipated the warranty will cover a term of at least 10 years.

For racking or tracking systems it is anticipated the warranty will cover a term of at least ten (10) years.

Other equipment shall carry a warranty of at least two (2) years.

Appendix 11

Solar Energy Facility AC Energy Production Schedule

AC Energy Schedule

BID SUMMARY – POWER PURCHASE AGREEMENT

Project Name _____

Unique Bid Name (i.e., ACME-1, etc.) _____

Estimated Commercial Operation Date (dd/mm/yy) _____

Net Capacity (at 95 F, 20% Relative Humidity, and at Site Conditions) _____ MW_{AC}

Expected Gross Annual Energy Production (net of station load) _____ MWH_{AC} /yr

Expected Net¹ Annual Energy Production _____

Minimum Guaranteed Annual Energy Production _____

Number of Years of on-site data relied on for the above projections _____

Software used to evaluate solar performance _____

Name of firm who prepared the energy analysis _____

Note 1: Net means as delivered to the point of interconnection with the transmission provider.

Expected On Peak Monthly Energy Production

“On Peak” means all hours ending 700 through 2200 Eastern Time, Monday through Saturday, excluding NERC designated holidays.

Month	MWH_{AC}/Month	Maximum MW_{AC}/hour
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Expected Off Peak Monthly Energy Production

“Off Peak” means all hours that are not On Peak.

Month	MWH _{AC} /Month	Maximum MW _{AC} /hour
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Expected annual availability (% of hours able to produce max/hour): _____

Guaranteed annual availability (% of hours able to produce max/hour): _____

Appendix 12

Statement of Understanding

STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies, under penalty of perjury, as follows:

1. I am duly authorized to submit this Bid/Proposal on behalf of the below listed sole proprietorship/company/partnership/corporation.
2. That he/she has read and understands all terms and conditions pursuant to this bid, including but not limited to the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
2. That he/she will furnish any and all items upon which prices are bid at the price set forth for each item bid with a **CASH DISCOUNT OF _____%, IF ANY.**
3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this bid, including but not limited to the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
4. That he/she agrees to accept payment in accordance with the requirements of the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto; and
5. That **DELIVERY** to the destination stated in the Bid Documents will be made within 30 days after the receipt of the order.
6. That he/she will, if his/her Bid/Proposal is accepted, enter into a Contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the Bid Documents, Bid Specifications, General Conditions, and bid prices hereto.
7. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.
8. Is the response that you are providing compliant with the instructions set forth in this solicitation for bids?
 Yes No

The undersigned further stipulates that the information in this Proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Bidder

Title of Person Signing

Sworn to and subscribed on
this _____ day of _____, 20____

(Notary Public)

Appendix 13

Disclosure Form

DISCLOSURE FORM

The signatory of this questionnaire certifies under oath the truth and correctness of all statements and of all answers to interrogatories hereinafter made.

Provide answers to each of the following and supporting documentation, where necessary:

1. **Adverse Equal Opportunity Determinations:** Identify all adverse determinations against your Company/Corporation/Partnership, or its employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of federal, state or municipal equal opportunity laws or regulations.

2. **Convictions and Unscrupulous Practice:** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever been cited for unscrupulous practice, or been convicted of any crime or offense arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business, or has any of your Company/Corporation/Partnership's officers, director or persons exercising substantial policy discretion ever been convicted of any crime or offense involving business/financial misconduct or fraud? If so, describe the convictions and surrounding circumstances in detail.

3. **Pending or Threatened Actions/Suits:** Describe any past or present action, suit, proceeding or investigation pending or threatened against your Company/Corporation/Partnership including, without limitation, any proceeding known to be contemplated by government authorities, private parties, or current or former clients.

4. **Criminal Misconduct:** Has your Company/Corporation/Partnership, or any of its employees, or anyone acting on its behalf, been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business which is still pending, or has any of the Company/Corporation/Partnership's officers, directors or persons exercising substantial policy discretion been indicted or otherwise charged in connection with any criminal matter involving business or financial misconduct or fraud which is still pending? If so, describe the indictments or charges and surrounding circumstances in detail.

5. **Survey Forgery (If applicable):** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever signed and sealed surveys for which your Company/Corporation/Partnership has not actively participated in the production thereof; or been investigated by the New York Department of State for such activity? If so, describe the circumstances in detail.

6. **Conflicts of Interest:** disclose any of the following, and describe any procedures your Company/Corporation/Partnership has, or would adopt, to assure the Town that a conflict of interest would not exist in the future):
 - (a) Any material financial relationships that your Company/Corporation/Partnership or any Company/Corporation/Partnership employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.
 - (b) Any family relationship that any employee of your Company/Corporation/Partnership has with a member, employee, or official of the Town or that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.
 - (c) Any other matter that your Company/Corporation/Partnership believes may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

7. **Financial Disclosure:** Submit with this Disclosure Statement Form, any one of the following three items:
- (a) a financial statement, prepared on an accrual basis, in a form which clearly indicates: Bidder's (1) assets, liabilities and net worth; (2) date of financial statement; and (3) name of firm preparing statement.
 - (b) a letter of credit reference from a recognized bank or financial institution; or
 - (c) a certified copy of a credit report from a recognized credit bureau, such as Dun and Bradstreet or TRW.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY BID/PROPOSAL THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT FORM.

Dated at _____, this _____

day of _____, 20_____.

(Signature, if Individual)

By: _____
(Seal, if corporation)
(Signature)

Print Name: _____
(Legal Business Name of Company/Partnership/Corporation)

Print Title: _____

[MANDATORY AFFIDAVIT(S) AND ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]

----- (Affidavit for Individual)-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is an authorized representative of the Bidder/Proposer; b) he/she has read all statements and answers to this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) the attached letter of credit/certified copy of credit report or financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

----- (Affidavit for Partnership)-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is a member of the partnership of _____, b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said partnership showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete and accurate.

----- (Affidavit for Corporation)-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is _____ of _____ (Full Legal Name of Corporation); b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said corporation showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete and accurate.

----- (Acknowledgement)-----

_____ being duly sworn, deposes and says, under penalty of perjury, that he/she is _____ of _____ (Name of Bidder) that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself; () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20_____, in the County of _____, State of _____.

(Notary Public)

My commissioner expires: _____

Appendix 14

Statement of Non-Collusion Certificate

STATEMENT OF NON-COLLUSION

Representations and Certifications of Proposer

All proposals and contracts awarded or accepted by a municipality must contain a statement of non-collusion. By submission of this Proposal, the Proposer certifies that:

- This Proposal has been independently arrived at without collusion with any other Proposer or with any competitor or potential competitor.
- This Proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the opening of Proposals for this project to any other Proposer, competitor or potential competitor.
- No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a Proposal.
- The person signing this Proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification under the penalties of perjury, affirms the truth thereof of such penalties being applicable to the Proposer as well as to the person signing on its behalf;
- The attached hereto (if a corporation Proposer) is a certified copy of resolution authorizing the execution of this certificate by the signature of this Proposal in behalf of the Proposer.

Resolved that _____ be authorized to sign and submit the
Name of Individual

proposal of _____
Company Name

and to certify as to non-collusion as the act and deed of such corporation/partnership and for any inaccuracies or misstatements in such certificates this corporate proposer shall be liable under the penalties of perjury.

SIGNATURE AND TITLE

Subscribed and sworn to before me this _____ day of _____

Appendix 15

Affidavit if Proposer is a Corporation

Appendix 16

Affidavit of Compliance with Respect to the Hiring of Employees in Accordance with Federal Law

Appendix 17

Acknowledgement of Receipt of Addenda Form

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

The bidder hereby acknowledges that he/she has received and that he/she has considered in the preparation of his/her bids, all requirements in the following Addenda to this Bid/Proposal/Contract:

Note: This acknowledgement shall be signed by the person executing the Statement of Understanding.
Insert additional pages, as necessary.

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS BID/PROPOSAL/CONTRACT.

ACKNOWLEDGEMENT: _____

IMPORTANT NOTICE:

THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL BIDDERS. IF NO ADDENDA ARE RECEIVED, CHECK THE “NO ADDENDUM” BOX ABOVE AND SIGN THE ACKNOWLEDGMENT.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT AND BID/PROPOSAL THAT FAILS TO INCLUDE THIS ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM.

Appendix 18

Proposal Checklist Form

PROPOSAL CHECKLIST FORM

The following is a checklist of items that each Proposer must submit with their Proposal in order for their Proposal to be considered by the Town in accordance with the provisions of this RFP. Note that this checklist is to assist the Proposer in completion of its Proposal. It does not relieve the Proposer from fulfilling any of the requirements set forth in the RFP that are not included on this checklist.

- Cover Letter (see Section 5B)
- Table of Contents and Executive Summary (see Section 5C)
- Qualifications and Experience (see Section 5D including Completed Proposer Qualifications Form (Form provided in Appendix 7) and Completed Proposer Reference Facility Experience Form (Form provided in Appendix 8))
- Organizational Chart and Resumes of Key Personnel (and any subcontractors) that would be assigned to the Project (see Section 5D)
- Project Description/Technical Services and Project Plans (see Section 5D) including Local Resource Utilization Plan (see Section 5J)
- Financial Qualifications (see Section 5E)
- Financial Proposal and Project Financing Plan (see Section 5E) (**Submitted Separately from Technical Proposal**)
- Completed Solar Energy Facility Technical Specifications, Operating/Performance Characteristics and AC Energy Production Schedule Information/Forms (see Appendices 9, 10 and 11)
- Completed and Signed Certification of Insurance Form (Form provided in Appendix 6)
- Completed and Signed Statement of Understanding Form (Form provided in Appendix 12)
- Completed and Signed Proposer Disclosure Statement Form (Form provided in Appendix 13)
- Completed and Signed Statement of Non-Collusion Certificate (Certificate provided in Appendix 14)

- Completed and Signed Affidavit of Corporation, if applicable (Form provided in Appendix 15)
- Completed and Signed Affidavit of Compliance with Hiring of Employees in Accordance with Federal Law (Form provided in Appendix 16)
- Completed and Signed Acknowledgement of Receipt of Addenda Form (Form provided in Appendix 17)
- Completed and Signed Prevailing Wage Certificate (Form provided in Appendix 19)

A marked copy of the Solar Energy Host Site Lease Agreement (Model Agreement is provided in Appendix 3) is to be provided in the Proposer's Proposal. The finalized Host Site Lease Agreement is to be completed and signed and by the selected firm prior to award of contract by the Town.

- Marked Host Site Lease Agreement
- Proposal Bond and Surety Company Power of Attorney