

AGREEMENT BETWEEN
POWER AUTHORITY OF THE STATE OF NEW YORK
AND
Albany County

NYPA Agreement No.: _____

This Agreement, dated this **DAY** of **MONTH**, 20__, between the Power Authority of the State of New York (the "Authority"), an Authority created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law ("PAL"), having an office and place of business at 123 Main Street, White Plains, NY 10601, and **Albany County** ("Grantee"), an Authority customer within the State of New York having a place of business at **ADDRESS OF GRANTEE**. Authority and the Grantee are from time referred to in this Agreement as "Party" or collectively as "Parties".

WHEREAS, consistent with Public Authorities Law §1005(17), on December 11, 2018 the Authority's Trustees authorized funding for the Clean Distributed Energy Resource Grant Program ("DER Program") which was designed to help advance distributed energy resource projects by providing supplemental funding for innovative distributed energy resource projects including, but not limited to, solar photovoltaic ("PV"), solar plus battery storage, microgrids, standalone storage and smart inverter functionality; and

WHEREAS, Authority's Trustees authorized \$5,000,000 in non-recoverable grant funding to Authority eligible customers under Public Authorities Law §1005(17); and

WHEREAS, Grantee is an eligible entity under Public Authorities Law §1005(17) and the Authority has elected to award Grantee funding in the amount of \$_____ subject to the terms and conditions contained herein; and

WHEREAS, Grantee desires to accept the Grant subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

1. The Project

The project is described in the approved scope of work which is attached hereto as Exhibit "A," the terms and conditions of which are hereby incorporated into this Agreement (hereinafter the "Project").

The Grantee Will:

- (a) Complete the Project in accordance with the requirements set forth in this Agreement; and
- (b) comply with all reasonable directives from Authority; and
- (c) submit reports and comply with the reporting obligations set forth in this Agreement.

2. Grant Funds

Subject to Grantee's compliance with the terms and conditions of this Agreement as well as all attachments hereto, the Authority agrees to make available to the Grantee up to a maximum of \$ [REDACTED] (the "Grant"). The Grant will be paid to Grantee in accordance with the schedules and milestones, if any, set forth in Exhibit "A".

The Grant will be used solely for the payment of costs incurred by Grantee in connection with distributed energy resource ("DER") project set forth in Exhibit "A" (hereinafter "Eligible Costs"). The Eligible Costs will be subject to audit by the Authority or the Authority's representatives or designees. Grantee acknowledges and agrees that it will remain responsible for any and all costs associated with implementation of the Project that are not covered by the Grant.

Grantee agrees to participate in a case study which will be written by the Authority or its consultants. Grantee will provide assistance and feedback to aid the Authority or its consultants in evaluating the DER Program. The case study may be published on the Authority's website and in journals or websites of the Authority's choosing. The case study will include technical, contractual and financial details of the Grantee's experience in establishing a clean distributed energy resource project.

3. Term of Agreement

The term of this Agreement ("Term") shall commence upon date set first forth above and will terminate upon the earlier of the following (i) receipt of commercial operation date notice from Grantee or (ii) three years from the date set first set

forth above (the "Termination Date") unless earlier terminated in accordance with Section 10 below. No disbursements of Grant funds will be made by Authority to the Grantee after the Termination Date. Any Grant funds that were not disbursed prior to the Termination Date or any extension thereof shall revert to the Authority.

4. Disbursement of Grant Funds

Subject to the terms and conditions contained in this Agreement, the Authority will disburse Grant funds to the Grantee in accordance with the criteria and milestones, if any, set forth in Exhibit "A", in accordance with the following:

- (a) The Authority will disburse Grant funds to the Grantee for (i) eligible Project expenditures actually incurred or (ii) proposed expenditures to be incurred by the Grantee when the Authority has authorized advance disbursements as provided for in Exhibit "A". Disbursements will be made upon submittal to the Authority of a Funds Disbursement Requisition Form, together with such supporting documentation as the Authority may require, in the form attached to this Agreement as Exhibit "B".
- (b) In no event will the Authority make any payment which would cause the Authority's aggregate payment of Grant funds to exceed the Grant identified in Section 2.

Payment will be made within 30 days of the last day the Authority receives all of the documents specified in Section 4(a) and any additional documentation that the Authority may require. All payments by the Authority are subject to the rules and regulations established by the Authority under Public Authority Law § 2880.

All payments are subject to correction and adjustment upon audit or any disallowance. Grantee agrees to reimburse the Authority for Grant funds disbursed to the Grantee but subsequently disallowed under the terms of this Agreement.

The Grant, and/or any portion thereof, may be subject to recapture as provided below under the provision entitled Default, Termination and Recapture.

In the event that Grantee fails to meet the criteria or milestones set forth in Exhibit "A" for the disbursement of the Grant, and as a result the Grant funds are not fully disbursed within the times established for doing so in Exhibit "A", the remaining Grant funds will revert to the Authority. All unexpended Grant funds shall revert to the Authority upon Project completion. Receipt of Grant funds hereunder does

not guarantee that Grantee will be eligible for future grant funding from the Authority.

5. Conditions Precedent to Disbursement of Grant Funds

No Grant funds shall be disbursed to the Grantee unless it is in compliance with the provisions of this Agreement, and the following additional conditions have been satisfied:

- (a) Grantee provides documentation evidencing the satisfaction of the requirements set forth in Section 11 regarding compliance with the State Historic Preservation Office of the New York State Office of Parks, Recreation and Historic Preservation (“SHPO”), if applicable.
- (b) Grantee has complied with all reporting obligations hereunder.
- (c) Evidence of matching contributions (if applicable).
- (d) Grantee has returned a copy of the fully executed Agreement to the Authority Procurement Manager specified on the cover purchase order associated with this Agreement.

6. Reporting Obligations

Reporting is used by Authority to determine the Grantee’s compliance with the terms of this Agreement. Failure to timely submit reports, as required hereunder or as requested by the Authority, will be considered an “Event of Default” (as defined herein), and may result in the discontinuance of funding for the Project or the recapture of the Grant in the Authority’s sole discretion. The following minimum reporting criteria is expected to be included in each report:

- (a) Identifying information, including but not limited to Grantee name, Project name, Grant Program and amount of Grant. Also state whether the report is an interim report (by number) or the final report.
- (b) Describe the goals of the Project, including dates of commencement and completion, and achieved milestones, etc.
- (c) Describe the steps implemented to achieve those goals, milestones, etc.
- (d) Evaluate the Project’s overall effectiveness.
- (e) Describe any challenges or unexpected events that arose in implementing the Project.
- (f) A description of actual costs as compared to budgeted costs, and an updated budget, if necessary.

(g) An estimated completion date.

During the Term, the Authority may request additional information and documentation from Grantee detailing its activities, general use of the Grant and any other information which Authority may deem relevant concerning the Grant and the Project. The Grantee shall provide Authority with copies of all requested documentation within ten (10) business days of a request from Authority.

Interim reports for the Project are required to be submitted to the Authority: (a) with any Grant Disbursement Requisition Form; (b) as required by the PPA; and (c) as otherwise requested by the Authority.

In addition to any other report required by this Section or the PPA, the Grantee will submit a final report (the "Final Report") to the Authority demonstrating that the Grantee has met the Project's goals, including but not limited to (a) how the Project was implemented, (b) the results of the Project, (c) any challenges overcome during Project implementation, and (d) any additional information requested by the Authority. **In addition to the foregoing, the Final Report must contain a certification from the Grantee's designated representative stating that the Project has been completed in accordance with Exhibit "A".** The final disbursement of Grant funds will not be made unless or until the Final Report is approved by the Authority.

7. Authority's Review of the Project

In consideration for the Grant, the Authority may review the Project that is being performed with Grant funds, and Grantee agrees to make its employees, records and facilities associated with the Project available for interview and observation by authorized representatives of Authority. Authority, in its sole discretion, may observe the Project in such manner and at such times as it deems necessary and appropriate.

8. Project Data

Upon request, Grantee shall provide the Authority with Project-related data, including, but not limited to, energy production and usage data, Project costs, labor hours to complete the Project, relevant design drawings and specifications, energy savings, reductions in green-house gas emissions, and related data.

9. Representations, Warranties and Covenants

Grantee represents, warrants and covenants that:

- (a) It has been vested with the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) Grantee is in compliance, and shall continue to comply, in all material respects with all applicable laws, rules, regulations and orders, including those that are necessary for the Project to proceed through to completion.
- (d) The information submitted by Grantee to the Authority in connection with the Project and the Grant, including any amendments or supplements thereto that may have been made with the Authority's consent, is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in any documentation or information submitted to the Authority from the Grantee, the stricter or stringent provision as it relates to the Grantee's obligations hereunder shall govern. Grantee hereby acknowledges that, in making the award of the Grant and disbursement of the funds, the Authority and its respective designees have relied on the statements and representations made by Grantee. Grantee hereby represents and warrants that it has made no material misstatement or omission of fact to the Authority in connection with the award of the Grant and, except as otherwise disclosed in writing to Authority or its designees, there has been no adverse material change in the financial condition of Grantee and that all other information submitted to the Authority concerning the award of the Grant continues on the date hereof to be materially correct and complete.
- (e) Grantee will neither hold itself out as, nor claim to be an officer, employee, agent or representative of the Authority by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of the Authority, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- (f) Neither Grantee nor any of its elected officials or governing body or its employees have given anything of value to influence any official act or the judgment of any person in connection with the award of the Grant or the

performance of any of the terms of this Agreement.

- (g) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or alternative dispute resolution tribunal, which may, in any one case or in the aggregate, materially adversely affect (i) the financial condition, operations, properties or business of the Grantee or (ii) the Grantee's ability to perform its obligations under this Agreement, in each case except as may have been disclosed in writing to Authority or its designee.
- (h) The Grant funds shall not be used in any manner for any of the following purposes:
 - a. political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - b. religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement; or
 - c. payments to any firm, company, association, corporation or organization in which an elected official or employee of Grantee or any officer, or a member of the immediate family of any elected official or employee of Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest-bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above.
- (i) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement and will not duplicate reimbursement of costs and services received from other sources. No materials, if any, purchased with the Grant funds will be used for any purpose other than advancing the Project, as set forth in the approved PPA.

10. Default, Termination and Recapture

Events of Default

Each of the following shall constitute an “Event of Default” by Grantee under this Agreement:

- (a) Failure to perform or observe any obligation or covenant of Grantee contained herein to the reasonable satisfaction of the Authority and within the time frames established under this Agreement.
- (b) Failure to comply with any reasonable request made by the Authority, or its designees, for information (i) to determine compliance by Grantee with the terms of this Agreement, including but not limited to compliance with reporting obligations, or (ii) as otherwise reasonably requested by the Authority, in connection with the Grant.
- (c) The making by Grantee of any false statement or the omission by Grantee to state any material fact in or in connection with this Agreement or the Grant.
- (d) Failure of Grantee, for any time period, to comply with the reporting obligations set forth in Section 6 of this Agreement.
- (e) A default, beyond any applicable grace period, by Grantee, or any political subdivision that Grantee directly or indirectly controls, under any other agreement with the Authority.
- (f) Any manifestation, on the part of Agency, of an intention either: (i) to terminate and/or (ii) to restructure, under the terms of any bankruptcy or insolvency statute or law, its operations at the Project. This includes, without limitation, the announced or actual cessation of work activities at the Project, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition or arrangement with creditors, or the issuance of “closing” or “termination” notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by Agency to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.

- (g) The liquidation or dissolution of the Grantee.
- (h) Any abandonment or discontinuation of the Project.
- (i) Any material adverse change to the business, financial condition, prospects, assets or results of operation of the Grantee.

Termination and Recapture

Upon written notice to Grantee of the occurrence of an Event of Default (which notice will specify the nature of the default), the Authority has the right to terminate this Agreement, cease all future disbursements of the Grant, and recapture all prior funds disbursed under this Agreement, provided however, that if the default is pursuant to paragraph 10(a), 10(b), 10(d) or 10(e), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of written notice of default from the Authority, or if the default pursuant to paragraph 10(a), 10(b), 10(d) or 10(e) cannot reasonably be cured within such ten (10) day period, Grantee commences to cure such default within the ten (10) day cure period and cures the default within thirty (30) days after the initial written notice of default, provided further that the Authority shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraphs 10(c) and 10(f) are not subject to the cure provisions provided herein.

Upon termination of this Agreement for default, the Authority may (i) withhold any Grant funds not yet disbursed and (ii) require repayment of any funds disbursed to Grantee in accordance with this Agreement. If such funds are not repaid within five (5) business days, the amount required to be repaid shall bear interest at a rate of prime plus three (3%) percent, but in no event shall the interest payable to the Authority exceed the amount permitted by New York law. Notwithstanding the foregoing, if Authority determines that any Grant funds were previously released based upon fraudulent representations or upon other willful misconduct by the Grantee, the Authority may require repayment of all Grant funds and may refer the matter to the appropriate authorities for prosecution. The Authority shall be entitled to exercise any other rights and seek any other remedies provided by law.

11. Consultation with the State Historic Preservation Office

Grantee shall provide evidence to the Authority that it has consulted with the State Historic Preservation office of the New York SHPO, and that SHPO has determined that the Project will not or has not caused any change in the quality of any historic, architectural, archeological or cultural property that is listed on the

National Register of Historic Places or is listed, or is eligible to be listed, on the State Register of Historic Places (SHPO may be contacted at the New York State Office of Parks, Recreation and Historic Preservation, Field Services Bureau, Peebles Island, P.O. Box 189, Waterford, New York 12188-0189; telephone (518) 237-8643).

The Authority will not disburse any funds for construction or implementation of the Project, unless and until Grantee furnishes the Authority with satisfactory documentary evidence that (a) Grantee as consulted with SHPO or (b) an explanation as to why the Grantee may proceed without SHPO approval.

12. Books and Records; Project Audit

Books and Records

The Grantee shall maintain accurate records and accounts of all financial transactions entered into by the Grantee which shall show in detail all expenditures made by the Grantee. Such records and accounts shall include, without limitation, property, personnel, and financial records, cash receipts of disbursements, journals, and general subsidiary ledgers. All records and accounts shall be maintained in accordance with generally accepted accounting standards.

Project Audit

The Grantee shall permit the Authority, its authorized representatives or its designees, the Comptroller of the State of New York and other authorized representatives of the State of New York to examine all records and accounts relating to the Project, the financial transactions of the Grantee in relation to the Project, and the expenditure of the Grant funds for the Project and all other funds secured and services rendered for the benefit of the Grantee. Such inspection and audit shall be at the Grantee's place of business during normal business hours. The Grantee shall maintain all records relating to the Project and this Agreement for not less than six (6) years after the date of Project completion.

The Grantee shall notify Authority, within five (5) days of receiving information relating to the commencement of any audit by any governmental agency of any of the Grantee's activities concerning the Project. Grantee shall provide the Authority with a copy of any such audit reports received from any governmental agency which affected the Grantee's activities or finances during the Term.

13. Publicity

(a) Public Announcements. No marketing, publicity, promotion or advertising regarding this Agreement, or any project undertaken pursuant to this Agreement,

will be issued by either Party without the other Party's prior written approval, which approval will not be unreasonably withheld. Any responses to news media inquiries developed by either Party, related to the Agreement, must be coordinated with the other Party for review and approval. Letters, speeches, news and/or press releases, articles for publication, etc. related to this Agreement, or any project undertaken pursuant to this Agreement, will be coordinated among the Parties for review and approval prior to release. Any and all public communications, whether verbal or written, must be submitted for prior review and approval among the Parties. The Grantee and the Authority agree to abide by these terms regarding public announcements for a period of two (2) years following the later of the termination of this Agreement or the conclusion of any project undertaken pursuant to this Agreement. Notwithstanding the foregoing, the Authority may disclose to any third-party, without notice to or consent of Grantee, the identity of the Project (including a brief statement describing the Project), any applicable Authority program, State program or other initiative under which the Project is implemented, and the identity of the Grantee or any other party supporting the Project.

(b) Signage. The Parties agree that the Authority may, at no cost to Grantee, install and maintain appropriate publicity signage at or in the vicinity of a Project. Grantee will cooperate with the Authority, and/or any third-party vendor(s) designated by the Authority, by timely responding to any questions regarding the design, manufacture, installation, maintenance, and removal of the signage and timely notify the Authority and/or any third-party vendor(s) designated by the Authority of any damage that may occur to the signage. The signage may include the identity of the Project, including a brief statement highlighting the Project, any applicable Authority program, State program or other initiative under which the Project is implemented and the identity of the parties supporting the Project, including those parties' respective logos. The Authority has final approval of signage text and graphics. The signage is intended to be placed in an area with significant public visibility within proximity to the Project. The Authority will be responsible for removing the signage at its expense within a reasonable period of time past the conclusion of a Project, or such earlier time as the Authority deems it appropriate, unless otherwise directed by Grantee in writing in which case removal will occur at Grantee's expense.

14. Notices

All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:

- (i) by certified or registered United States mail, return receipt requested;
- (ii) by personal delivery;

- (iii) by expedited delivery service; or
- (iv) first class mail.

Such notices shall be addressed as follows or to such different addresses as the Parties may from time to time designate:

**POWER AUTHORITY OF THE
STATE OF NEW YORK:**

Contact Name:	Emilie Bolduc
Title:	VP, Distributed Energy Resources
Address:	201 Fuller Road, Albany, NY 12203
Telephone Number:	(518) 446-6211

CUSTOMER:

Contact Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Telephone Number:	Click here to enter text.

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service, first class, certified or registered United States mail, as of the date of mailing to the address provided herein.

The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving 15 days written notice to the other Party sent in accordance herewith. Additional or alternate individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. Executory Clause

This Agreement shall be deemed executory only to the extent of money available to the Authority for the performance hereto which has not been revoked, rescinded or suspended pursuant to the terms of this Agreement, and no liability on account thereof shall be incurred by the Authority beyond money made

available for the purpose thereof.

16. Liability and Indemnification

The Authority shall in no event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project. To the maximum extent permitted by law, the Grantee agrees to defend, indemnify and hold the Authority and its respective agents, employees, officers and Trustees (collectively, the “Indemnitees”) harmless from and against any and all such claims, liability, costs, damages or expenses (including counsel fees) other than that caused by the gross negligence of the Indemnitees. This Section shall survive termination of this Agreement.

17. Compliance with Laws and Regulations

Grantee will perform all Projects in accordance with all applicable federal, state and local laws, rules and requirements, including applicable environmental laws.

18. No Assignment

Grantee may not assign or transfer this Agreement or any of its rights hereunder. Any such purported assignment shall be void.

19. No Waiver

No waiver of any of the Authority’s rights arising under this Agreement, or any other source, can occur unless such waiver is in writing and signed by the Authority and such written document manifests a clear and unequivocal intent by the Authority to waive its contractual or other legal rights. The Authority may not be estopped from asserting any of its legal rights, including but not limited to its rights under this Agreement, unless the Authority has signed a written document that clearly and unequivocally states that Grantee may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against the Authority and Grantee’s alleged detrimental reliance shall be deemed to be unreasonable.

20. Modification

This Agreement may be modified only by a written instrument executed by the Parties hereto.

21. Invalid Provisions

In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein.

22. Order of Precedence

In the event of an ambiguity or conflict among or between any provision of Exhibit "A" and any provision of this Agreement, then the more strict or stringent provision as it relates to Grantee's obligations hereunder shall govern.

23. Survival of Provisions

The Parties agree that: (a) the provisions of Sections 8, 10, 12, 13, 14, 16, 24 and 25 shall survive the expiration or early termination of this Agreement and (b) such expiration or early termination shall not serve to limit, alter or modify any of Grantee's obligations or responsibilities under the aforesaid Sections, and the Authority's rights under such Sections. It is further agreed that notwithstanding the expiration or early termination of this Agreement, the Authority shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement including but not limited to the above referenced Sections 8, 10, 12, 13, 14, 16, 24 and 25 of this agreement, the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted by or on the behalf of the Authority.

24. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without the aid of any presumption or other rule of law regarding construction against the Party drafting this Agreement or any part of it. The Parties agree that any action or proceeding commenced in connection with this Agreement will be brought in a court of competent jurisdiction located in Albany County, New York.

25. Litigation Costs

In any action or proceeding that involves the enforcement of the terms and conditions of this Agreement, Grantee will pay all of the Authority's costs including, without limitation, attorneys' fees.

26. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein and supersedes any and all prior agreements, understanding and negotiations or discussions, either oral or in writing, whether express or implied, by and between the Parties hereto.

27. Counterparts and Electronic Signature

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature and shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed electronically or by signature affixed by hand by their authorized representatives and is effective on the date first written above.