



# CUSTOMER PROJECT COMMITMENT FOR ADVISORY SERVICES

BETWEEN

POWER AUTHORITY OF THE STATE OF NEW YORK

AND

ALBANY COUNTY

**IMPORTANT NOTE:** THIS CUSTOMER PROJECT COMMITMENT IS NOT A STAND-ALONE AGREEMENT, BUT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THE MASTER COST RECOVERY AGREEMENT DATED July 2, 2019, WHICH ARE HEREBY INCORPORATED BY REFERENCE.

## **CUSTOMER PROJECT COMMITMENT**

### **Provider** (“Authority”)

New York Power Authority  
123 Main Street  
White Plains, NY 10601

### **Customer** (“Customer”)

Albany County  
Office of the Albany County Executive  
112 State Street  
Albany, NY 12226

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The Authority will provide the Advisory Services referenced below subject to the terms and conditions set forth in the Master Cost Recovery Agreement dated July 2, 2019 (the “Master Agreement”) hereby incorporated by reference and form a part of this Customer Project Commitment (“CPC”). Terms used but not defined herein shall have the meaning set forth in the Master Agreement, as applicable.

This CPC shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Project, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this CPC nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Project.

### **General Project Description:**

Authority and Customer have worked together to develop the following list of Customer sites suitable for the installation of solar photovoltaic (“solar PV”) arrays (“Customer Sites”). These Customer Sites were identified as potential locations for ground mounted, rooftop, and carport canopy solar arrays, due to their ability to meet technical requirements, and optimal project economics. The Customer is planning the installation of about 3.5MW (DC) of distributed solar photovoltaic energy among the Customer Sites (also referred to as a “Project”) listed below. The Project also includes the potential of incorporating energy storage

- Albany County Radar Tower
- Albany County Health Complex, 260 S. Pearl Street Building
- Albany County Cornell Coop
- Albany County DPW Headquarters
- Albany County Sheriff’s Clarksville Station
- Albany County Correctional Facility
- Albany County Wendell Street Garage, 9 Wendell St. Garage

The Authority and the Customer acknowledge that the Customer is continuing to review its other facilities for inclusion in the Project. The above list of Customer Sites may be augmented. The list of Projects above in no way limits the ability of the Customer to incorporate additional sites into this project scope in the future. In the event that additional sites are added the Authority Program Cost Recovery will be increased accordingly, as set out below.

The Authority anticipates that, for budgetary purposes, Projects associated with the Customer Sites will be constructed within 36 months of the execution of this CPC, however, the Parties acknowledge that forecasting any project schedule at this preliminary stage is uncertain.

The Authority intends to provide the Advisory Services using its own forces. At all times during the Project the Authority will provide two points of contact and a dedicated implementation team that will focus on the smooth development and execution of the Projects until they are constructed.

The solicitation of developers for the Project will be conducted through a mini-bid process among the Authority's pre-qualified vendors.

The Authority will provide the Advisory Services set forth below in connection with the Customer's development, procurement and installation of commercial scale solar arrays at the aforementioned Customer Sites.

### **Authority Obligations and Advisory Services:**

#### **Project Planning:**

- Assess economic feasibility of the installation of a commercial scale solar array at each Customer Site.
- Perform a utility bill analysis and evaluate rate tariffs to evaluate economic alternatives for consumption on site and under the Value of Distributed Energy Resources, as well as identifying possible options for separate project metering and interconnection.
- Perform an energy usage analysis to understand and optimize the meter load profiles at Customer Sites and develop a load profile for all facilities within each utility and load zone to maximize potential installed capacity at each Customer Site.
- Identify permit requirements.
- Identify utility distribution requirements, including interconnection capacity where possible.
- Develop and maintain a project timeline or Gantt chart from the date of this agreement until the Customer selects a developer, after which time the

developer will be responsible for the maintenance of the Gantt chart. The Authority will then require the developer to provide a Gantt chart to assist the Customer track the Project until it is constructed.

- Obtain final approval from the Customer to develop mini-bids for the Projects at the Customer Sites.

#### Project Mini-bid and Evaluation:

- Form an evaluation committee which may include members from the Customer, and the Authority engineering, business development, procurement, finance, and integrated grid, who will develop evaluation criteria and a scoring matrix designed to identify the best value proposal.
- Based on Customer requirements as well as the information and analysis gathered from the Project planning stage, prepare a mini-bid solicitation in accordance with NYPA's Strategic Supply Management requirements. The goal of the mini-bid is to select the best value proposal (or proposals) from a developer(s). The developer(s) will install, own, operate and maintain a solar power generating system for each of the Customer Sites under a solar Power Purchase Agreement ("Solar PPA") between the Customer and the selected solar developer.
- Provide general technical support in connection with the Customer's negotiation of the Solar PPA. This may include providing Customer with sample Solar PPAs used in the solar industry, reviewing and providing commentary on the template Solar PPA provided to address any unique Project issues. No such support, review or commentary will constitute legal advice. All Solar PPAs should be reviewed by the Customer's legal counsel and the Customer prior to inclusion in the mini-bid solicitation.
- Assist the Customer in responding to questions arising from the mini-bid, preparing bid addenda, and hosting any pre-bid conference(s) with potential solar developers (where necessary).
- Tabulate the proposals received from solar developers and if necessary, conduct interviews among selected solar developers.
- Issue a memorandum to the Customer setting forth the compiled bid results and evaluation team findings.
- Provide continued technical support and advice to the Customer during contract negotiations between the Customer and solar developer. No advice provided during negotiations will constitute legal advice.

#### Post Mini-bid and Project Execution:

After the solar developer has been identified by the evaluation committee and approved by the Customer, the project will enter the execution stage. The Authority will continue to provide ongoing support to the Customer during this phase including:

- Review of project documentation (e.g., developers' schedules, progress reports, contract amendments) as requested by the Customer.
- Provide industry-specific guidance and technical advice related to the Customer's interconnection obligation.
- Provide solar-related advice to the Customer for each solar array installation.
- Facilitate and assist where required with permitting application information.
- Work with the Customer, selected developer and relevant utility to develop the interconnection applications and resolve issues.
- Undertake detailed reviews of the final designs, drawings and calculations for each Customer Site to confirm that the designs are compliant with the elements set out in the mini-bid solicitation.
- Provide periodic on-site observations and reporting for all construction phases of the Project. Assist the Customer with confirming the solar developer is adhering to all specifications and timelines set for in their proposal response.

### **Customer Obligations:**

#### **Project Planning:**

- Identify approved site locations for the solar array installation; identify known site constraints; provide details regarding electrical loads, billing data and other site specific project data, including available land, and any access restrictions.
- Provide authorization to proceed with mini-bids for the Projects at the Customer Sites.
- Provide safe access to the Authority (and the Authority's consultants, if applicable) to all Customer Sites.
- Collaborate with the Customer and selected developer to obtain information regarding the relevant permitting applications.

#### **Project Mini-bid and Evaluation:**

- Participate on the mini-bid evaluation committee, pre-bid conferences and attend interviews with potential solar developers (if required).
- Furnish information requested by the Authority to prepare the mini-bid solicitation including, but not limited to, specific site requirements, required contract provisions, and any other regulations that must be addressed in the Solar PPA.
- Review and approve the mini-bid solicitation, including the Solar PPA and any other project-related data requested by the Authority.
- Work with the selected developer and the Authority to facilitate the development of applications for all historical and environmental reviews as well as any other

documentation required to comply with applicable regulations governing the solar array installation(s).

- Enter into a Solar PPA directly with the selected solar developer to the extent the installation of solar generating equipment under a Solar PPA is economically feasible.

#### Post Mini-bid and Project Execution:

- Customer will do all things necessary to assist in timely and smooth Project implementation, including but not limited to reviewing all documents, providing required authorizations to the developer (including site access) and coordinating with other third parties as required.
- Include the Authority as a project participant on any promotional signage installed in connection with the Project.

#### Compensation:

##### Authority Program Fee:

The Authority's Program Fee (the "Authority Program Fee" or "APF") for performing the Advisory Services identified above is a base cost of \$80,000 for the first megawatt (MW) of installed capacity with an additional \$0.025/Wdc cost for any capacity installed over 1 MWdc. The APF is inclusive of all costs that may be incurred by the Authority on behalf of the Customer for the Project(s). The APF will be paid on a milestone basis as articulated in the Solar PPA between the Customer and the solar developer (see Authority Program Fee below). Any project under this scope of work may trigger a milestone payment.

Except under the circumstances set forth in the termination provision below, the APF will be paid directly by the solar developer to the Authority under the terms of the Solar PPA. The Customer agrees to include reasonable payment terms in the Solar PPAs as will most expeditiously and fully compensate the Authority. At a minimum, the PPA between the Customer and the developer will require (i) the APF to be paid in full within 30 business days of the Customer receiving electricity from the first completed project and (ii) provides for a direct right of action by the Authority against the solar developer to recover the APF. The relevant language is as follows:

**Authority Program Fee.** *The Authority Program Fee ("APF") is payable by the Seller to the New York Power Authority ("Authority") for providing support services to the Purchase during the solicitation period, i.e., assessing the solar PV project sites, developing and issuing the mini-bid solicitation and evaluating proposals received in response to the mini-bid solicitation, and during the construction period.*

*The APF is equal to a base cost of \$80,000, for the first megawatt (MW) of installed capacity with an additional \$0.025/Wdc cost for any capacity over 1 MW.*

*The APF is payable as follows, (a) within 30 business days of vendor selection, the Seller will pay to the Authority a sum equal to 25% of the APF, (b) within 30 business days of PPA execution, the Seller will pay to the Authority a sum equal to 25% of the APF, (c) within 30 business days of commencing construction of the system, the Seller will pay to the Authority a sum equal to 50% of the APF.*

*The Parties agree that the Authority is a third party beneficiary of this PPA, with all rights and remedies afforded herein, for the express purpose of enforcing the Seller's obligation to make payment of the APF.*

*A failure, for any reason, by the Seller to adequately incorporate the APF costs into the Contract Price in Exhibit 1 does not relieve the Seller of any obligation to pay the APF to the Authority pursuant to this PPA.*

*If for any reason whatsoever the Seller fails to pay the APF to the Authority by the due dates set out above, then for as long as any portion of the APF remains unpaid the Purchaser shall not be required to pay for any electric energy generated by the System during that period. The Seller must continue to provide all electric energy generated by the System to the Purchaser during this time and does not relive the Seller of any of its obligations under this PPA.*

The total amount of the APF shall be paid within 30 days of the date the first electricity from the first project is received by the Customer. This requirement is premised on full recovery of the APF from the first Solar PPA developed without causing a negative cash flow to the Customer. Where full recovery of the APF from the first Solar PPA developed cannot be achieved due to Project economics, the Authority may allocate one or more milestone payments of the APF to the next Project, and so on, until full recovery of the APF is achieved. The Authority has sole discretion in determining if a Solar PPA will result in negative cash flow to the Customer. Allocation of the APF to subsequent Solar PPAs will be determined by the Authority based on factors, including but not limited, to the relevant utility and load zone.

If Customer and Authority agree to adding or modifying the list of approved Customer, the APF will be increased according to the capacity DC of the additional array(s); the APF will increase by \$0.025/W for every Watt DC of installed capacity above the 1MWdc. All additional projects will be considered additional capacity for the purposes of determining an increase to the APF. If a Customer Site identified is not installed the APF will not be modified.

Customer agrees to provide cooperation and support to the Authority in the event that the developer fails to make timely payment to the Authority, and agrees to execute all further and additional documentation necessary for the Authority to recover full payment of the APF under the Solar PPA.

Termination:

In the event that (i) eighteen (18) months after the selection of the solar developer(s) no project has received permits sufficient for the selected developer to begin construction; (ii) the Customer notifies the Authority that the Customer no longer wishes to proceed with developing any Projects under this CPC; or (iii) the Authority is unable to fully recover the APF under the Solar PPA, then the Customer agrees to pay the Authority the maximum amount of \$35,000.00 (or such lesser portion thereof that will result in the Authority's full recovery of the APF). Payment shall be made by Customer within sixty (60) days of Customer's receipt of an invoice from the Authority.

**Acceptance**

This Customer Project Commitment shall become binding upon the parties hereto upon signature below by an authorized representative of Authority and Customer.

**Accepted by:**

New York Power Authority

Albany County

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

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*Name Printed*

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*Name Printed*

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*Title*

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*Date:*

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*Date:*

The proposed terms of this Customer Project Commitment are valid for 30 days, unless executed.