

ATTACHMENT C – REQUIRED CONTRACT AGREEMENT

SUPPLIER AND

POWER AUTHORITY OF THE STATE OF NEW YORK

ENVIRONMENTAL ATTRIBUTE PURCHASE AGREEMENT

This Agreement (“Agreement”) is entered into this ____ day of _____ 2011, by and between SUPPLIER, with a principal place of business at FULL ADDRESS (“Seller”), and Power Authority of the State of New York, a corporate municipal instrumentality of the State of New York, with a principal place of business at 30 South Pearl Street, Albany, New York 12207 (“NYPA”). Hereinafter, Seller and NYPA shall each be referred to individually as a “Party” and, collectively, as the “Parties”.

WHEREAS, the State of New York has established a renewable portfolio standards program intended to increase electricity production from sources that are naturally replenished; and

WHEREAS, NYPA is a major component of the State’s energy market; and

WHEREAS, in support of the State’s efforts to promote the use of renewable energy NYPA has established a program for the purchase and sale of “Environmental Attributes” (defined below); and

WHEREAS, Seller has access to Environmental Attributes associated with “Renewable Energy Source(s)” (defined below); and

WHEREAS, some of NYPA’s customers have requested NYPA to procure for them Environmental Attributes; and

WHEREAS, to assist such customers, NYPA desires to purchase Environmental Attributes from Seller for resale to its customers, on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and obligations contained herein, the Parties hereto agree as follows:

Definitions

“*Conversion Transaction.*” This Agreement references the Environmental Disclosure Rules and Procedures for Conversion Transactions set forth by the New York State Department of Public Service (“NYS PSC”). A Conversion Transaction documents the sale of qualifying renewable

energy into the NYISO Spot Market by an eligible generating facility and the purchase from the NYISO Spot Market of a like amount of energy by an eligible entity during the same settlement period. Conversion Transaction procedures are described in more detail on the Department of Public Service website at: www.dps.state.ny.us/EnvDisclosureLabel.html.

“*Environmental Attributes*” or “*Attributes*” means all environmental characteristics, claims, credits, including RECs, benefits, emissions reductions, offsets, allowances, allocations, however characterized, denominated, measured or entitled, attributable to the generation of actual production by a Renewable Generator. Environmental Attributes include but are not limited to: (i) any avoided direct emissions of pollutants to the air, soil or water; (ii) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (iii) any avoided emissions of carbon or carbon compounds, carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (iv) all set-aside allowances and/or allocations from emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 243, 244 and 245; and (v) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. For avoidance of doubt, “Environmental Attributes” include both RECs and any and all credits or other forms of recognition or accounting for carbon emissions or carbon offsets, however designated, associated with the ownership and operation of a Renewable Generator including reservation, diversion, transportation, delivery, receipt, acceptance, inventory, processing and consumption of feedstock for operation of the Renewable Generator, including GHG Offsets.

“*EO 111*” means the Executive Order signed June 10, 2001 by Governor Pataki, and continued by Governors Spitzer, Paterson, and Cuomo. EO 111 requires, among other things, that New York State agencies and other affected entities must seek to increase their purchases of energy generated from Renewable Energy Sources so that by 2005, 10% of their energy requirements will be served by Renewable Energy Sources, increasing to 20% by 2010.

“*Green-e Eligible Renewable Energy Product*” means a product generated by a Renewable Generator that conforms to the standards established under the Green-e Energy National Standard for Renewable Electricity Products (http://www.green-e.org/docs/energy/Appendix%20D_Green-e%20Energy%20National%20Standard.pdf).

“*NYISO*” means New York Independent System Operator.

“*Renewable Energy Credits*” or “*RECs*” means the title to and claim for all the Environmental Attributes associated with one (1) megawatt hour (MWh) of generation from a Renewable Energy Source. Renewable Energy Credits are also referred to as “*Green Tags*.”

“*Renewable Energy Source*” means one of the technologies for the generation of energy described in EO 111, namely: wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells. For purposes of this Agreement, the Renewable Energy Source must be eligible for Conversion Transaction treatment.

“*Renewable Generator*” means an energy generating facility that generates electricity through the use of a Renewable Energy Source.

“*Specified Attributes*” means Attributes associated with a particular type of specification or requirement (e.g., Green-e eligible).

“*Term*” has the meaning set forth in Section 9.1 hereof.

1. Purchase and Sale of Environmental Attributes

1.1 Seller agrees to sell to NYPA and NYPA agrees to purchase from Seller Environmental Attributes derived from Renewable Energy Source(s) in the quantities, for the Purchase Price, and according to the schedule set forth on Exhibit A. Where “Specified Attributes” is indicated on Exhibit A, Seller agrees to sell to NYPA the quantity (MWh) of Specified Attributes indicated on such Exhibit.

1.2 NYPA shall have the exclusive, unencumbered, undiluted and irrevocable legal and contractual right to own, assign, sell or otherwise dispose of all Environmental Attributes purchased hereunder.

2. Purchase Price

2.1 The Purchase Price shall have the meaning set forth in Exhibit A. The Purchase Price shall include all customs duties and charges. The Purchase Price shall be fixed firm and shall represent the cost to NYPA to procure the Environmental Attributes. The Purchase Price does not include charges for other related products (i.e., energy, capacity, transmission and ancillary services) which are not being procured by NYPA under this Agreement. The Purchase Price shall be in US dollars per MWh.

2.2 Seller shall be responsible for payment of all taxes, fees and expenses, costs, transaction costs, and other costs or expenses of any nature whatsoever in performing this Agreement.

2.3 All Renewable Energy Credits, to the extent such credits exist or arise, resulting from or associated with the Environmental Attributes purchased hereunder, shall be provided to NYPA.

3. Delivery

3.1 Seller will ensure that the electrical energy output equivalent to that of the Renewable Energy Generator(s) associated with the Environmental Attributes sold to NYPA hereunder is delivered into the Spot Market administered by the NYISO.

3.2 Seller shall deliver the Environmental Attributes to NYPA in the quantity(ies) and at the times set forth on Exhibit A.

3.3 Seller's obligation to provide Environmental Attributes is on a commercially reasonable efforts basis. Seller shall not be liable for damages if, notwithstanding its commercially reasonable efforts, Seller fails to deliver all the Environmental Attributes set forth on Exhibit A, *provided that* at least six (6) months prior to the applicable Conversion Transaction Date shown on Exhibit A, Seller has given NYPA notice that there will be a deficiency.

4. Representation and Warranty

4.1 Seller represents and warrants that it has the exclusive right to provide the Environmental Attributes to be provided to NYPA under this Agreement; that it has the right to arrange the transfer of ownership of such Environmental Attributes to NYPA free and clear of all claims, liens, security interests and encumbrances; and that after transfer of ownership to NYPA, NYPA shall have the unrestricted right to transfer ownership of the Environmental Attributes to a third party.

4.2 If Specified Attributes are sold hereunder: Seller further represents and warrants that the Environmental Attributes sold from Renewable Energy Generator(s) meet the requirements of the Specified Attributes indicated in Exhibit A, as applicable.

5. Verification of Rights to Environmental Attributes

5.1 Seller shall be required to certify and verify delivery of all rights to the Environmental Attributes contracted for hereunder as follows:

(a) Each invoice submitted and requesting payment for the delivery of the rights to Environmental Attributes pursuant to this Agreement shall be accompanied by a certification substantially in the form included in Exhibit B from Seller which will identify the number and vintage of all Environmental Attributes sold to NYPA as set forth in such invoice. The certification shall be accompanied by a representation and warranty substantially in the form included in Exhibit B to the invoiced Environmental Attributes.

(b) Should the New York Public Service Commission or the New York State Department of Public Service create, sanction, adopt or begin participation in a REC registry or an Attribute accounting or tracking system, each REC associated with each applicable Attribute purchased hereunder must be delivered to an account designated by NYPA.

(c) For Environmental Attributes provided hereunder from Renewable Generator(s) located outside the New York Control Area, but located in a control area with compatible environmental attribute accounting system such as NE-GIS or PJM GATS, Seller shall provide verification and transfer to NYPA through the export provisions of such control area and New York Public Service Commission rules for Conversion Transaction(s).

5.2 Seller shall take any and all steps required or advisable to assure that during the Term:

(a) the Renewable Energy Generator is operated, registered with NYISO and remains qualified to deliver and sell energy into NYISO markets;

(b) the Renewable Energy Generator remains eligible as a Renewable Energy Source, qualified to claim and receive Environmental Attributes, with respect to energy deliveries into NYISO Markets; and

(c) Seller completes all tasks and documentation necessary to claim and transfer the Environmental Attributes as required under this Agreement, including completion of Conversion Transactions, as the NYS PSC's rules may change from time to time.

6. Invoicing

Seller shall submit its invoice(s) for payment to NYPA at the address set forth below. Invoices shall be payable by NYPA in accordance with the provisions of its Prompt Payment Policy (Appendix 1) attached hereto. NYPA shall not be required to pay Seller unless and until NYPA has received the certification(s) described in Section 5.1 above.

The original and two (2) copies of all invoices shall be submitted to:

New York Power Authority
P.O. Box 437
White Plains, NY 10602-0437
Attn: Accounts Payable

Copy: Jill Anderson
New York Power Authority
123 Main Street
White Plains, NY 10602

Seller shall not invoice NYPA for Environmental Attributes before delivery into the Spot Market administered by the NYISO. The Parties agree that payment may be made by NYPA prior to the actual completion of the Conversion Transaction for the applicable period. In the event the New York Public Service Commission determines that Seller did not successfully complete Conversion Transactions associated with Environmental Attributes previously invoiced, Seller shall, within fifteen(15) days of notification, complete Conversion Transactions from a Renewable Energy Source(s) or provide a refund of the invoice amount to NYPA.

7. Limitation of Liability

NO PARTY SHALL BE RESPONSIBLE TO ANOTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND. THE FOREGOING SHALL BE BINDING UPON ANY SUCCESSOR IN TITLE, ASSIGNS AND TRANSFEREES. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

8. Notices

8.1 All notices permitted or required hereunder shall be in writing and shall be transmitted either certified or registered United States mail, return receipt requested; by facsimile transmission; by personal delivery; by expedited delivery service; or by e-mail.

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

SUPPLIER
ADDRESS
Attn: _____
Tel: _____
Fax: _____
E-Mail: _____

copy: Power Authority of the State of New York
123 Main Street
White Plains, New York 10601
Attn: Jill Anderson
Tel: 914-681-6403
Fax: 914-390-8156
E-Mail: Jill.Anderson@nypa.gov

8.2 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 or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

8.3 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 fifteen (15) days written notice to the other Party sent in accordance herewith. Additional 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.

9. Term and Termination

9.1 This Agreement shall be effective as of the date first written above and, unless extended in writing by mutual agreement of the Parties, shall terminate when the last Environmental Attribute(s) scheduled to be sold hereunder are transferred to NYPA and the Conversion Transaction process for such sale is complete (such period, the "Term"). Notwithstanding termination, those obligations intended to survive termination, including but not limited to Sections 1.2, 4, 6, 7, and 12 shall survive termination.

9.2 (a) If either Party defaults in its obligations under this Agreement and such default continues uncured for a period of 15 days after the defaulting Party receives notice of the default, the non-defaulting Party may terminate this Agreement by providing written notice to the defaulting Party. Termination shall be effective upon receipt of such notice.

(b) NYPA may terminate this Agreement by written notice to Seller if Seller fails to deliver the Environmental Attributes to NYPA in the manner and time set forth herein and does not cure such failure within thirty (30) days following notice from NYPA of such failure, notwithstanding that Seller has used commercially reasonable efforts to fulfill the requirements of the Agreement with respect to such deliveries, provided in the event of such termination, neither Party shall be obligated to pay the other Party any Termination Payment.

10. Entire Agreement

This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof. All other letters, agreements or communications whatsoever, whether oral or written with respect to the subject matter contained herein are superseded by the Agreement and will be without effect. Exhibits A and B are incorporated into and form a part of this Agreement. Exhibit C is attached hereto for illustrative purposes only.

11. Governing Law/Venue

This Agreement shall be governed by and construed under the laws of the State of New York without reference to its conflicts of law principles. Any action at law or in equity, or other judicial proceeding, for the enforcement of this Agreement or any of its provisions must be brought in and maintained only in a State court located in Westchester County, New York.

12. Confidentiality

Each Party will treat and hold as confidential all of the information received from the other Party that is marked “confidential,” and shall refrain from using any of such confidential information (“Confidential Information”) except in connection with this Agreement undertaken hereunder or except as set forth below.

- i. In the event that the Party receiving the information (the “Receiving Party”) is requested or required (by oral question or request for information or documents in any legal proceeding or arbitration, legislative hearing, interrogatory, subpoena, civil investigative demand, or similar process or pursuant to applicable law, rule or regulation, including the New York Freedom of Information Law and the Open Meeting Law) to disclose any Confidential Information, the Receiving Party will notify the Party which provided the Confidential Information (the “Disclosing Party”) promptly of the request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Section 12. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is, on the advice of counsel, required to disclose any Confidential Information to any tribunal or to disclose any Confidential Information to any third party in compliance with any applicable freedom of information or open meeting law or other applicable law or regulation, the Receiving Party may disclose the Confidential Information to such tribunal or such third party; provided, however, that the Receiving Party shall use its commercially reasonable efforts to obtain, at the request of the Disclosing Party and at the Disclosing Party’s cost, an order or other assurance that confidential

treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Disclosing Party shall designate.

- ii. The obligations set forth in subsection i above shall not apply to any Confidential Information with respect to which the Receiving Party can demonstrate was:
 - (a) in its possession prior to the time of disclosure by the Disclosing Party and was not, to the knowledge of the Receiving Party, subject to a confidentiality obligation;
 - (b) in the public domain at the time of disclosure, or subsequently became part of the public domain through no fault of the Receiving Party; or
 - (c) received from a third party who, to the Receiving Party's knowledge, was not subject to a confidentiality agreement or other confidentiality or fiduciary obligation regarding the information.
- iii. NYPA may provide Confidential Information to any of its customers intended by NYPA to receive any of the Renewable Energy Environmental Attributes, provided that such customers agree in writing to protect the Confidential Information from unwarranted disclosure to third parties as provided in this Section 12.
- iv. Notwithstanding anything set forth herein, nothing in this Agreement shall be interpreted as precluding either Party from reporting or disclosing any information with the prior written consent of the Disclosing Party, or to its Affiliates, attorneys, financial advisors and accountants who are assisting either Party in connection with this Agreement or its operations, financing or reporting obligations.

SIGNATURE PAGE FOLLOWS

IN WITNESS HEREOF, the Parties, agreeing to be bound, have executed this Agreement by their authorized representatives as of the date first set forth above.

SELLER

Name: _____

Title: _____

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

Name: _____

Title: _____

EXHIBIT B

Certification

Number of Environmental Attributes (MWh)

Renewable Energy Source(s) of such Environmental Attributes

Name of Renewable Generator(s) per MWh producing the Environmental Attributes

Representation and Warranty

_____ [name of Seller] represents and warrants that it has the exclusive right, title and ownership in the above-mentioned Environmental Attributes; that it has the right to transfer ownership of the Environmental Attributes to NYPA; and that it hereby transfers all right, title and ownership to the Environmental Attributes to NYPA, free and clear of all claims, liens and encumbrances. Furthermore, _____ [name of Seller] represents and warrants that NYPA shall have the unrestricted right to transfer ownership of the Environmental Attributes to a third party.

By:
Title:

EXHIBIT C [For Illustrative Purposes Only]

Conversion Transaction Form

1) Name of the Reporting Entity

2) Name of Seller

3) Name of Buyer

New York Power Authority

4) Generating Station (and Unit) Name

5) Fuel Type

6) Amount of Energy Converted by Transaction (Mwhr)

7) Calendar Year

8) Contact Person

Telephone Number –

E-Mail Address –

APPENDIX "1"

NYPA's Prompt Payment Policy

A. GENERAL

1. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law describing the policy of the Power Authority of the State of New York (the "Authority") to promptly pay all proper invoices submitted by any Contractor. Subject to the conditions and exceptions set forth in Section 2880 and herein, in the event any proper invoice is not paid promptly, the Authority shall be liable for the payment of interest on late payments. This policy shall apply to all Contracts entered into on or after April 30, 1988.

B. DEFINITIONS

1. "CONTRACT" means an enforceable agreement entered into between the Authority and a Contractor.
2. "CONTRACTOR" means any person, partnership, private corporation or association; a) selling materials, equipment or supplies or leasing property or equipment to the Authority; b) constructing, reconstructing or repairing buildings, highways or other improvements for or on behalf of the Authority; or c) rendering or providing services to the Authority pursuant to a Contract.
3. "DESIGNATED PAYMENT OFFICE" means the office designated by the Authority to which a proper invoice is to be submitted by a Contractor.
4. "PROPER INVOICE" means a written request for a Contract Payment that is submitted by a Contractor to the Authority's designated payment office setting forth the description, price and quantity of goods, property or services delivered or rendered in accordance with the terms of the Contract, in such form and supported by such other substantiating documentation as the Authority may reasonably require.
5. "RECEIPT OF AN INVOICE" and "INVOICE RECEIVED DATE" mean (a) the date on which proper invoice is actually received in the designated payment office, or (b) the date on which the Authority receives the purchased goods, property or services covered by the proper invoice, whichever is later. With regard to final payments on construction contracts, (b) shall mean the date on which all the Contract Work has been accepted as completed by the Authority in accordance with the Contract terms.
6. "SET-OFF" means the reduction by the Authority of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

C. RESPONSIBILITY FOR PROMPT PAYMENT

1. The Authority's Controller shall have the responsibility for the implementation of the Prompt Payment Policy and the prompt payment of all proper invoices under the general guidance and supervision of the Executive Vice President for Finance and Administration.

D. PROMPT PAYMENT PROCEDURE

1. A Contractor shall request payment under a Contract by submitting a proper invoice to the Authority at its designated payment office at the time and in the manner specified in the Contract.
2. The Authority shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of certain facts and conditions, including but not limited to those listed below, which, in the opinion of the Authority's Controller, justify extension of the statutory payment period.
 - a) there is a defect in the delivered goods, property or services;
 - b) there is a defect in the invoice;
 - c) there are suspected defects or improprieties of any kind the existence of which prevent the commencement of the statutory payment period;
 - d) prior to payment, a statutory or contractual provision requires an inspection period or an audit to determine the resources applied or used by the Contractor in fulfilling the contract terms;
 - e) a proper invoice must be examined by the federal government prior to payment;
 - f) the Authority is prevented from making payment by reason of the filing of a lien, attachment, other legal process or requirement of law.

Any time taken to satisfy or rectify any such facts or conditions shall extend the date by which contract payment must be made in order for the Authority not to become liable for interest payments by an equal period of time.

3. Should the Authority fail to notify a Contractor of such facts and conditions within fifteen calendar days of the invoice received date, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. Should the Authority, in such situations, fail to provide reasonable grounds for its contention that a fact or condition justifying a time extension exists, the date by which contract payment must be made in order for the Authority not to become liable for interest payment shall be calculated from the invoice received date.
4. The Authority shall make payment within forty five (45) calendar days after the invoice received date. Effective July 1, 1989, the Authority shall make payment within thirty (30) calendar days, excluding legal holidays, after invoice received dates occurring after that date.
5. Except for the payments described in Paragraph E, every payment by the Authority to a Contractor pursuant to a Contract is eligible for interest should the Authority fail to make such payment within forty five (45) days after the invoice received date for contracts entered into between April 30, 1988 and June 30, 1989 and within thirty (30) days for contracts entered into on or after July 1, 1989.
6. The Authority shall not be liable for interest on any retention amounts withheld by the Authority in accordance with the terms of the Contract.
7. Interest shall be computed at the rate set by the state tax commission for corporate taxes pursuant to paragraph one of subsection (e) of section 1096 of the tax law, but the Authority shall not be liable for payment of interest when such interest is less than ten dollars.
8. The Authority has available funds in its custody to pay all interest penalties.

E. EXCEPTIONS

1. Payments are not eligible for interest when they are due and owing by the Authority:
 - a) under the eminent domain procedure law;
 - b) as interest allowed on a judgment by a court pursuant to any provision of law other than section 2880 of the Public Authorities Law;
 - c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including but not limited to, counties, cities, towns, villages, school districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - d) in situations where the Authority exercises a legally authorized set-off against all or part of the payment due the Contractor.