County of Albany

Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207

Meeting Agenda

Wednesday, September 29, 2021

6:00 PM

Held Remotely

<u>Law Committee</u>

PREVIOUS BUSINESS:

1. APPROVING PREVIOUS MEETING MINUTES

2. REQUESTING THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO MAINTAIN PORTIONS OF MOHAWK-HUDSON BIKE-HIKE TRAIL

3. LOCAL LAW NO. "A" FOR 2021: A LOCAL LAW RELATING TO THE PROCEDURES FOR THE ESTABLISHMENT, OPERATION, MODIFICATION, AND DISESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS IN ALBANY COUNTY

4. LOCAL LAW NO. "H" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK RELATING TO THE SAFE USE OF ELECTRIC SCOOTERS AND BICYCLES WITH ELECTRIC ASSIST

CURRENT BUSINESS:

5. CREATING A SPECIAL COMMITTEE ON RULES REVIEW AND LEGISLATIVE MODERNIZATION

6. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “I” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY AMENDING LOCAL LAW NO. 1 FOR 2013, ENTITLED "AN OMNIBUS HUMAN RIGHTS LAW FOR ALBANY COUNTY”

7. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “J” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE COUNTY EXECUTIVE TO NEGOTIATE A LONG-TERM POWER PURCHASE AGREEMENT FOR PROPERTY OWNED AND MAINTAINED BY ALBANY COUNTY

8. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “K” FOR 2021 A LOCAL LAW TO PROVIDE FOR THE SAFE DISPOSAL OF OPIOID MEDICATIONS

9. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “L” FOR 2021 A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENSURING UNIVERSAL ACCESS TO COUNSEL DURING EVICTION PROCEEDINGS IN HOUSING COURTS IN ALBANY COUNTY

10. LOCAL LAW NO. “I” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY AMENDING LOCAL LAW NO. 1 FOR 2013, ENTITLED "AN OMNIBUS HUMAN RIGHTS LAW FOR ALBANY COUNTY”

11. LOCAL LAW NO. “J” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE COUNTY EXECUTIVE TO NEGOTIATE A LONG-TERM POWER PURCHASE AGREEMENT FOR PROPERTY OWNED AND MAINTAINED BY ALBANY COUNTY

12. LOCAL LAW NO. “K” FOR 2021: A LOCAL LAW TO PROVIDE FOR THE SAFE DISPOSAL OF OPIOID MEDICATIONS

13. LOCAL LAW NO. “L” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENSURING UNIVERSAL ACCESS TO COUNSEL DURING EVICTION PROCEEDINGS IN HOUSING COURTS IN ALBANY COUNTY

14. AMENDING RESOLUTION NO. 389 FOR 2018 REGARDING THE COUNSEL AT FIRST APPEARANCE GRANT AND AMENDING THE 2021 PUBLIC DEFENDER'S OFFICE BUDGET

15. AUTHORIZING THE ACCEPTANCE OF GRANT FUNDING AND AGREEMENT REGARDING THE NEW YORK STATE OFFICE OF VICTIM SERVICES CRIME VICTIM ASSISTANCE GRANT

16. AMENDING RESOLUTION NO. 185 FOR 2020 REGARDING THE CHILDREN FIRST INITIATIVE

17. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE OFFICE OF INDIGENT LEGAL SERVICES REGARDING THE UPSTATE FAMILY DEFENSE (CHILD WELFARE) QUALITY IMPROVEMENT AND CASELOAD REDUCTION GRANT

County of Albany

Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207

Meeting Minutes

Wednesday, August 25, 2021

6:00 PM

Harold L. Joyce Albany County Office Building
Cahill Room, 1st Floor

Law Committee

PREVIOUS BUSINESS:

Present: Legislator Victoria Plotsky, Dennis A. Feeney, David B. Mayo, Matthew T. Peter, Bill L. Ricard, Paul J. Burgdorf and Jennifer A. Whalen

Excused: Legislator Joanne Cunningham and Jeffrey D. Kuhn

1. APPROVING PREVIOUS MEETING MINUTES

A motion was made that the previous meeting minutes be approved. The motion carried by a unanimous vote.

2. REQUESTING THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO MAINTAIN PORTIONS OF MOHAWK-HUDSON BIKE-HIKE TRAIL

This proposal was tabled at the request of the Sponsor.

3. LOCAL LAW NO. "A" FOR 2021: A LOCAL LAW RELATING TO THE PROCEDURES FOR THE ESTABLISHMENT, OPERATION, MODIFICATION, AND DISESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS IN ALBANY COUNTY

This Local Law was tabled at the request of the Sponsor.

4. A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, AMENDING LOCAL LAW NO. 1 FOR 2001, AS AMENDED, TO PROVIDE THAT PESTICIDE APPLICATION SIGNS MADE AVAILABLE AT THE POINT OF SALE BE AVAILABLE IN MULTIPLE LANGUAGES AS REQUIRED BY ENVIRONMENTAL CONSERVATION LAW SECTION 33-1005(1)

A motion was made to move this Local Law forward with a positive recommendation. The motion carried by a unanimous vote.

CURRENT BUSINESS:

5. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “H” FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK RELATING TO THE SAFE USE OF ELECTRIC SCOOTERS AND BICYCLES WITH ELECTRIC ASSIST

A motion was made to move the proposal forward with a positive recommendation as amended. The motion amended by a unanimous vote.

6. LOCAL LAW NO. "H" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK RELATING TO THE SAFE USE OF ELECTRIC SCOOTERS AND BICYCLES WITH ELECTRIC ASSIST

This Local Law was tabled at the request of the Sponsor.

RESOLUTION NO. 168

REQUESTING THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO MAINTAIN PORTIONS OF MOHAWK-HUDSON BIKE-HIKE TRAIL

Introduced: 5/10/21
By Messrs. O'Brien, Mayo, Bruschi, Ms. Cunningham, Messrs. Ricard, A. Joyce, Beston, Cleary, Domalewicz, Ethier, Mss. Lekakis and Plotsky:

WHEREAS, the New York State Department of Transportation (NYSDOT) and Federal Highway Administration authorized the development of the land between I-787 and the Hudson River from Colonie Street in the City of Albany to the Hudson Shores Park in the City of Watervliet for recreational use and as a bikeway section of the Mohawk Hudson Greenway, thereafter designated the Mohawk-Hudson Bike-Hike Trail, and;

WHEREAS, the County of Albany and the NYSDOT thereafter entered into an agreement wherein the County would maintain the bike path, including the landscape adjacent to the asphalt path, in this section, an agreement which has since expired, and;

WHEREAS, the NYSDOT has been responsible for the maintenance of the bikeway and landscape adjacent to the asphalt path along this section of the Mohawk Hudson Bike-Hike Trail since the expiration of the prior agreement, and

WHEREAS, the bikeway has apparently fallen into disrepair and the citizens of Albany County, as well as the surrounding communities, would benefit from the recreational use of the public lands, and

WHEREAS, it would be in the interest of the general public for certain portions of the Mohawk-Hudson Bike-Hike Trial between the City of Albany at Colonie Street to the Hudson Shores Park in Watervliet to be maintained by the County of Albany, and

WHEREAS, any agreement entered into shall direct that all highway and highway related maintenance for I-787 remains the responsibility of the NYSDOT, including but not limited to the structural integrity of right-of-way fencing and highway related feature, and

WHEREAS, any agreement entered into shall direct that the asphalt surface shall remain the obligation of the NYSDOT, now, therefore, be it

RESOLVED, the County Executive is requested to enter into an agreement with the New York State Department of Transportation to allow the County of Albany maintain portions of the Mohawk-Hudson Bike-Hike Trail, on the public lands between I-787 and the Hudson River, from the northerly boundary of the City of Albany to and including the northerly terminus known as the Fourth Street parking area in the City of Watervliet, and, be it further

RESOLVED, that pursuant to any agreement, the County shall maintain the areas adjacent to the asphalt bikeway shared-use path, but not the asphalt surface itself, including pavement markings, bollards, signage, lighting, trash receptacles, benches, tables, animal carcass removal, grass and woody areas including mowing, trimming and the removal of felled trees and limbs, etc. in the area bounded by ROW fencing along I-787 to the top of the slope at the river's edge; and be it further

RESOLVED, that pursuant to any agreement, the County may acquire and maintain portable restroom facilities along the Mohawk-Hudson Bike-Hike Trail between the cities of Albany and Watervliet; and be it further

RESOLVED, that the County should endeavor to seek out any potential grant funding available to it from the state or federal governments for the purposes of further enhancing the great asset that is the Mohawk-Hudson Bike-Hike Trail; and be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Referred to Law Committee – 5/10/21

LOCAL LAW NO. "A" FOR 2021

A LOCAL LAW RELATING TO THE PROCEDURES FOR THE ESTABLISHMENT, OPERATION, MODIFICATION, AND DISESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS IN ALBANY COUNTY

Introduced: 2/8/21
By Mr. Efekoro, Mss. Cunningham, Plotsky, Messrs. Miller, Cleary and Reinhardt:

WHEREAS, it is in the public interest to promote the economic improvement of Businesses within the County in order to create jobs, attract new Businesses, increase local revenue and promote tourism; and

WHEREAS, it is of particular local benefit to allow Businesses to fund business related services through the levy of Assessments upon the Businesses that receive benefits from those services; and

WHEREAS, Assessments levied for the purpose of conferring benefits upon the tourism Businesses in a Tourism Improvement District shall be related to the costs of providing the services within the Tourism Improvement District and shall not be taxes for the general benefit of the County; and

WHEREAS, it is the desire of the Albany County Legislature to create a mechanism to allow certain Businesses to initiate the formation of Tourism Improvement Districts for the purpose of providing enhanced services for the benefit of those Businesses within the Tourism Improvement District; and

WHEREAS, the Albany County Legislature determines that the establishment, operation, modification, and disestablishment of Tourism Improvement Districts within the County of Albany is a matter of local concern.

BE IT ENACTED BY THE COUNTY LEGISLATURE OF ALBANY COUNTY AS FOLLOWS:

Section 1. Purpose.

The purpose of this law is to establish the procedure for the establishment, operation, modification, and disestablishment of Tourism Improvement Districts within the County, and to ensure that Tourism Improvement District assessments conform to all constitutional requirements and are determined and levied in accordance with the procedure set forth in this law.

Section 2. Severability.

This law is intended to be construed liberally and, if any clause, paragraph, subdivision, section, or part of this law or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 3. Definitions.

"Assessment" - means a levy for the purpose of providing Activities and Improvements that will provide benefits to Businesses located within a Tourism Improvement District that are subject to the Tourism Improvement District Assessment. Assessments may be based on a percent of gross business revenue, a fixed dollar amount per transaction, or any other reasonable method approved by the County Legislature.

"Business" - means the type or category of business that is described in the Tourism Improvement District plan and the resolution creating a Tourism Improvement District.

"Business Owner" - means any person recognized by the County as the owner of the Business. The County has no obligation to obtain other information as to the ownership of businesses, and its determination of ownership shall be final and conclusive for the purposes of this law. Wherever this law requires the signature of the Business Owner, the signature of the authorized representative of the Business Owner shall be sufficient.

"Clerk" - means the County Clerk.

"County" - means the County of Albany.

"County Legislature" - means the governing body of the County.

"Local Improvement" - means, but is not limited to, all of the following that benefit Businesses in the Tourism Improvement District:

(a) Promotion of Business activity, including but not limited to tourism, of Businesses subject to the Assessment within the Tourism Improvement District.

(b) Other services provided for the purpose of conferring benefits upon Businesses located in the Tourism Improvement District that are subject to the Tourism Improvement District Assessment including, but not limited to, transportation services.

(c) The acquisition, construction, installation, or maintenance of any tangible property.

"Owners' Association" - means a private nonprofit entity that is under contract with the County to administer the Tourism Improvement District and implement Activities and Improvements specified in the Tourism Improvement District Plan. An Owners' Association shall have full discretion to select the specific Activities and Improvements to be funded with Tourism Improvement District Assessment revenue, within the authorized parameters of the Tourism Improvement District Plan. An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity. An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

"Tourism Improvement District" - means a Tourism Improvement District established pursuant to this law.

"Tourism Improvement District Plan" - means a proposal as defined in Section 5.

Section 4. Establishment of Tourism Improvement District.

A Tourism Improvement District may be established as provided in this law.

Section 5. Contents of Tourism Improvement District Plan.

The Tourism Improvement District Plan shall include, but is not limited to, all of the following:

(a) A map that identifies the Tourism Improvement District boundaries in sufficient detail to allow a Business Owner to reasonably determine whether a Business is located within the Tourism Improvement District boundaries. The boundaries of a Tourism Improvement District may overlap with other Tourism Improvement Districts established pursuant to this law.

(b) The name of the proposed Tourism Improvement District.

(c) The Activities and Improvements proposed for each year of operation of the Tourism Improvement District and the estimated cost thereof. If the Activities and Improvements proposed for each year of operation are the same, a description of the first year's proposed Activities and Improvements and a statement that the same Activities and Improvements are proposed for subsequent years shall satisfy the requirements of this subsection.

(d) The estimated annual amount proposed to be expended for Activities and Improvements in each year of operation of the Tourism Improvement District. This amount may be estimated based upon the Assessment rate. If the estimated annual amount proposed to be expended in each year of operation of the Tourism Improvement District is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subsection.

(e) The proposed source or sources of financing, including the proposed method and basis of levying the Assessment in sufficient detail to allow each Business Owner to calculate the amount of the Assessment to be levied against his or her Business. The Tourism Improvement District Plan may set forth specific increases in assessments for each year of operation of the Tourism Improvement District.

(f) The time and manner of collecting the Assessments and any interest and/or penalties for non-payment.

(g) The specific number of years in which Assessments will be levied. In a new Tourism Improvement District, the maximum number of years shall be ten (10). In a renewed Tourism Improvement District, the maximum number of years shall be ten (10).

(h) Any proposed rules and regulations to be applicable to the Tourism Improvement District.

(i) A definition describing the type or category of Businesses to be included in the Tourism Improvement District and subject to the Tourism Improvement District Assessment.

(j) Any other item or matter required to be incorporated therein by the County Legislature.

Section 6. Initiation of Proceedings; Petition of Business Owners in Proposed Tourism Improvement District

(a) Petitions, with a signature of assessed Business Owners or their duly authorized representatives, shall be returned to the County Legislature.

(b) The County Legislature may initiate proceedings to form a Tourism Improvement District by the adoption of a resolution expressing its intention to form a Tourism Improvement District, if it determines that:

i) Assessed Businesses representing over fifty percent (50%) of the sleeping rooms in the proposed Tourism Improvement District, which also represent over fifty percent (50%) of all assessed Businesses by number within the proposed Tourism Improvement District, have submitted petitions in favor of the formation of the Tourism Improvement District; or

ii) Assessed Businesses who will pay more than fifty percent (50%) of the Assessments proposed to be levied, which also represent over fifty percent (50%) of all assessed Businesses by number within the proposed Tourism Improvement District, have submitted petitions in favor of the formation of the Tourism Improvement District.

(c) The petition of Business Owners required under subsection (a) shall include a summary of the Tourism Improvement District Plan. That summary shall include all of the following:

i) A map showing the boundaries of the Tourism Improvement District.

ii) The types or categories of Businesses that will be subject to the Assessment.

iii) The Assessment rate for each type or category of Business that will be subject to the Assessment.

iv) Information specifying where the complete Tourism Improvement District Plan can be obtained.

v) Information specifying that the complete Tourism Improvement District Plan shall be furnished upon request.

(d) The resolution of intention described in subsection (a) shall contain all of the following:

i) A brief description of the proposed Activities and Improvements, the amount of the proposed Assessment, a statement describing the Businesses within the proposed Tourism Improvement District that will be subject to the Assessment, and a description of the exterior boundaries of the proposed Tourism Improvement District, which may be made by reference to any plan or map that is on file with the Clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable a Business Owner to generally identify the nature and extent of the Activities and Improvements, and the location and extent of the proposed Tourism Improvement District.

ii) A time and place for a public hearing on the establishment of the Tourism Improvement District and the levy of Assessments, which shall be consistent with the requirements of Section 7.

Section 7. Procedure to Establish or Renew a Tourism Improvement District and Levy Assessment.

(a) If the County Legislature has adopted a resolution of intention to establish or renew a Tourism Improvement District and levy a new or increased Tourism Improvement District Assessment, it shall hold a public hearing on the establishment or renewal of the Tourism Improvement District prior to adoption of the resolution establishing or renewing the Tourism Improvement District and levying the Assessment. Notice of the public hearing shall be mailed to the owners of the Businesses proposed to be subject to the Assessment.

(b) The County Legislature shall provide at least thirty (30) days' written notice of the public hearing at which the County Legislature proposes to establish or renew the Tourism Improvement District and levy the Assessment.

(c) A protest may be made by any Business Owner that will be subject to the proposed Assessment. Every protest must be in writing and shall be filed with the Clerk at or before the time fixed for the public hearing. The County Legislature may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the Business in which the person subscribing the protest is interested sufficient to identify the Business and, if a person subscribing is not shown on the official records of the County as the owner of the Business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the Business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from Business Owners representing more than fifty percent (50%) of the same basis used to determine the petition in Section 6 (a) and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed Assessment against such Businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the County Legislature.

Section 8. Changes to Proposed Tourism Improvement District Plan

At the conclusion of the public hearing to establish or renew the Tourism Improvement District, the County Legislature may adopt, revise, change, reduce, or modify the proposed Assessments, the boundaries of the Tourism Improvement District, or the types or categories of Businesses within the Tourism Improvement District subject to the Assessment. Proposed Assessments may only be revised by reducing any or all of them. The proposed Tourism Improvement District boundary may only be revised to exclude territory that will not benefit from the proposed Activities and Improvements. The types or categories of Businesses that will be subject to the proposed Assessment may only be revised to exclude the Business types or categories that will not benefit from the proposed Activities and Improvements. Any modifications, revisions, reductions, or changes to the proposed Tourism Improvement District Plan shall be reflected in the Tourism Improvement District Plan prior to the County Legislature' adoption of the resolution creating or renewing the Tourism Improvement District.

Section 9. Resolution Establishing or Renewing a Tourism Improvement District

(a) If the County Legislature, following the public hearing, decides to establish or renew a proposed Tourism Improvement District, the County Legislature shall adopt a resolution of formation or renewal that shall include, but is not limited to, all of the following:

i) A brief description of the proposed Activities and Improvements, the amount of the proposed Assessment, a statement as to the types or categories of Businesses that will be subject to the Assessment, and a description of the exterior boundaries of the Tourism Improvement District, which may be made by reference to any plan or map that is on file with the County Clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the Activities and Improvements and the location and extent of the Tourism Improvement District.
ii) The number, date of adoption, and title of the resolution of intention.
iii) The time and place where the public hearing was held concerning the establishment or renewal of the Tourism Improvement District.
iv) A determination regarding any protests received. The County Legislature shall not establish or renew the Tourism Improvement District or levy Assessments if a majority protest was received.
v) A statement that the Businesses in the Tourism Improvement District established by the resolution shall be subject to any amendments to this law.
vi) A statement that the Activities and Improvements to be conferred on Businesses in the Tourism Improvement District will be funded by the levy of Assessments. The revenue from the levy of Assessments within a Tourism Improvement District shall not be used to for any purpose

other than the purposes specified in the Tourism Improvement District Plan, as modified by the County Legislature at the hearing concerning establishment or renewal of the Tourism Improvement District.

vii) A finding that the Businesses within the Tourism Improvement District will be benefited by the Activities and Improvements funded by the Tourism Improvement District Assessments.

(b) The adoption of the resolution of formation or renewal shall constitute the levy of Assessments in each of the fiscal years referred to in the Tourism Improvement District Plan.

Section 10. Expiration of Tourism Improvement District; Creation of new Tourism Improvement District Plan; Renewal of Tourism Improvement District.

If a Tourism Improvement District expires due to the time limit set pursuant to subsection (g) of Section 5, a new Tourism Improvement District Plan may be created and the Tourism Improvement District may be renewed pursuant to this law.

Section 11. Time and Manner of Collection of Assessments; Delinquent Payments.

The collection of the Assessments levied pursuant to this law shall be made at the time and in the manner set forth by the County Legislature in the resolution establishing or renewing the Tourism Improvement District and levying the Assessments. All delinquent payments for Assessments levied pursuant to this part may be charged interest and penalties.

Section 12. Time for Contesting Validity of Assessment.

The validity of an Assessment levied under this law shall not be contested in any action or proceeding unless the action or proceeding is commenced within thirty (30) days after the resolution establishing or renewing a Tourism Improvement District and levying the Assessment is adopted pursuant to Section 9. Any appeal from a final judgment in an action or proceeding shall be perfected within thirty (30) days after the entry of judgment.

Section 13. Certification to Establish Levels of County Services and Funding.

Prior to the establishment of a Tourism Improvement District, the County Legislature may certify the levels of County services and funding that will continue after a Tourism Improvement District has been formed.

Section 14. Request to Modify Tourism Improvement District Plan.

The owners' association may, at any time, request that the County Legislature modify the tourism improvement district plan. Any modification of the tourism improvement district plan shall be made pursuant to this law. The tourism improvement district plan shall not be modified, except by the request of the Owners' Association and only in the manner requested by the Owners' Association.

Section 15. Modification of Tourism Improvement District Plan by Resolution after Public Hearing; Adoption of Resolution of Intention.

(a) Upon the written request of the Owners' Association, the County Legislature may modify the Tourism Improvement District Plan after conducting one (1) public hearing on the proposed modifications. The County Legislature may modify the Activities and Improvements to be funded with the revenue derived from the levy of the Assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of new or increased Assessments, the County Legislature shall comply with Section 7. Notice of all other public hearings pursuant to this section shall comply with both of the following:

  i) The resolution of intention shall be published in a newspaper of general circulation in the County once at least seven (7) days before the public hearing.
  ii) A complete copy of the resolution of intention shall be mailed by first class mail, at least ten (10) days before the public hearing, to each Business Owner affected by the proposed modification.

(b) The County Legislature shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than ninety (90) days after the adoption of the resolution of intention.

Section 16. Report by Owners' Association; Approval or Modification by County Legislature.

(a) The Owners' Association shall cause to be prepared a report for each fiscal year, except the first year, for which Assessments are to be levied and collected to pay the costs of the Activities described in the report. The Owners' Association's first report shall be due ninety (90) days after the first year of operation of the Tourism Improvement District.

(b) The report shall be filed with the Clerk and shall refer to the Tourism Improvement District by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

i) The Activities and Improvements to be provided for that fiscal year.
ii) An estimate of the cost of providing the Activities and Improvements for that fiscal year.
iii) The method and basis of levying the Assessments in sufficient detail to allow each Business Owner to estimate the amount of the assessment to be levied against his or her Business for that fiscal year.
iv) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(c) The County's Department of Audit and Control shall, upon requests the Owners Association for a copy of all reports and documents provided under this Section.

Section 17. Designation of Owners' Association to Provide Activities and Improvements

The Tourism Improvement District Plan may, but is not required to, state that an Owners' Association will provide the Activities and Improvements described in the Tourism Improvement District Plan. If the Tourism Improvement District Plan designates an Owners' Association, the County Legislature shall contract with the designated nonprofit corporation to provide Activities and Improvements in the Tourism Improvement District.

Section 18. Renewal of Tourism Improvement District; Transfer or Refund of Remaining Revenues

(a) Any Tourism Improvement District previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this law.

(b) Upon renewal, any remaining revenues derived from the levy of Assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed Tourism Improvement District.

(c) There is no requirement that the boundaries, Assessments, Activities, or Improvements of a renewed Tourism Improvement District be the same as the original or prior Tourism Improvement District.

Section 19. Circumstances Permitting Disestablishment of Tourism Improvement District; Procedure.

(a) Any Tourism Improvement District established or extended pursuant to the provisions of this law, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the Tourism Improvement District, may be disestablished by resolution by the County Legislature in either of the following circumstances:

i) If the County Legislature finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the Tourism Improvement District, it shall notice a hearing on disestablishment.

ii) During the operation of the Tourism Improvement District, there shall be a thirty (30) day period in which Businesses subject to the Assessment may request disestablishment of the Tourism Improvement District. The first such period shall begin two (2) years after the date of establishment of the Tourism Improvement District and shall continue for thirty (30) days. Each successive year of operation of the Tourism Improvement District shall have such a thirty (30) day period. Upon the written petition of Business Owners representing more than fifty percent (50%) of the same bases used to determine the petition in Section 6 (a), the County Legislature shall pass a resolution of intention to disestablish the Tourism Improvement District. The County Legislature shall notice a hearing on disestablishment.

(b) The County Legislature shall adopt a resolution of intention to disestablish the Tourism Improvement District prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the Assessments levied within the Tourism Improvement District. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each Business subject to Assessments in the Tourism Improvement District. The County Legislature shall conduct the public hearing not less than thirty (30) days after mailing the notice to the Business Owners. The public hearing shall be held not more than sixty (60) days after the adoption of the resolution of intention. At the conclusion of the public hearing, the County Legislature shall adopt a resolution disestablishing the Tourism Improvement District.

Section 20. Refund of Remaining Revenues upon Disestablishment or Expiration without renewal of Tourism Improvement District; Calculation of Refund; Use of Outstanding Revenue Collected after Disestablishment of Tourism Improvement District.

Upon the disestablishment or expiration without renewal of a Tourism Improvement District, any remaining revenues, after all outstanding debts are paid, derived from the levy of Assessments, or derived from the sale of assets acquired with the revenues, shall be spent in accordance with the Tourism Improvement District Plan or shall be refunded to the owners of the Businesses then located and operating within the Tourism Improvement District in which Assessments were levied by applying the same method and basis that was used to calculate the Assessments levied in the fiscal year in which the Tourism Improvement District is disestablished or expires.

Section 21. SEQRA Compliance.

This County Legislature determines that this local law constitutes a "Type II action" pursuant to the provisions of the State Environmental Quality Review Act (SEQRA), and that no further action under SEQRA is required.

Section 22. Effective Date.

This local law shall take effect immediately.

Referred to Law and Economic Development Committees – 2/8/21
Favorable Recommendation Law Committee – 3/24/21
No Recommendation Economic Development Committee – 3/24/21
Referred to Law Committee – 4/12/21

DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE EXECUTIVE
112 STATE STREET, ROOM 1200
ALBANY, NEW YORK 12207-2021
(518) 447-7040 - FAX (518) 447-5589
WWW.ALBANYCOUNTY.COM

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

August 3, 2020

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairman Joyce:

The Office of the Albany County Executive respectfully requests that the Legislature enact a Local Law enabling the establishment of Tourism Improvement Districts (TID) in Albany County. The attached draft Local Law outlines the procedures the establishment, operation, modification, and disestablishment of these Districts. Tourism Improvement Districts, similar to Business Improvement Districts, are self-assessments on businesses in order to fund marketing efforts to increase the number of overnight visitors to an area.

The Albany County Convention and Visitors Bureau (Discover Albany), in partnership with the County Executive's Office, has worked with local hotels to develop widespread support for this supplemental funding which will provide enhanced services for the benefit of businesses within a District. These services include, but are not limited to: (1) marketing, (2) sales, (3) visitor enhancements, and (4) destination enhancements.

Hotels rely on consistent and effective marketing to increase occupancy, fill meeting space, and increase visitation during the winter season. Limited marketing funding, relative to our competition, has resulted in lost tourism opportunities for Albany County in recent years. By supplementing Hotel Occupancy Tax funding with a two percent fee on room bills, a TID will allow Discover Albany to better compete for tourism without burdening County taxpayers.

Additionally, while protecting public health remains the top priority during COVID-19, the impact of the pandemic on the tourism industry cannot be overstated. Establishing the framework for a Tourism Improvement District is an important first step in the effort to help rebuild our tourism industry in Albany County.

If you should have any questions, please do not hesitate to contact me.

Sincerely

Daniel P. McCoy

Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis Feeney, Majority Leader
Hon. Frank Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel

File #: TMP-1746, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):
Enabling the Establishment of Tourism Improvement Districts in Albany County

Date:	8/1/2020
Submitted By:	Lucas Rogers
Department:	Office of the County Executive
Title:	Senior Policy Analyst
Phone:	518-447-7040
Department Rep.	
Attending Meeting:	Lucas Rogers/Michael McLaughlin

Purpose of Request:

☒ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☐ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel

☐ Personnel Non-Individual
☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant
Choose an item.
Submission Date Deadline Click or tap to enter a date.
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):
Click or tap here to enter text.

Additional Parties (Names/addresses):
Click or tap here to enter text.

Amount/Raise Schedule/Fee: Click or tap here to enter text.
Scope of Services: Click or tap here to enter text.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☐ No ☐

<u>County Budget Accounts:</u>

Revenue Account and Line:	Click or tap here to enter text.
Revenue Amount:	Click or tap here to enter text.
Appropriation Account and Line:	Click or tap here to enter text.
Appropriation Amount:	Click or tap here to enter text.

<u>Source of Funding - (Percentages)</u>

Federal:	Click or tap here to enter text.
State:	Click or tap here to enter text.
County:	Click or tap here to enter text.
Local:	Click or tap here to enter text.

<u>Term</u>

Term: (Start and end date)	Click or tap here to enter text.
Length of Contract:	Click or tap here to enter text.

<u>Impact on Pending Litigation</u>	Yes ☐ No ☒
If yes, explain:	Click or tap here to enter text.

<u>Previous requests for Identical or Similar Action:</u>

Resolution/Law Number:	Click or tap here to enter text.
Date of Adoption:	Click or tap here to enter text.

<u>Justification</u>: (state briefly why legislative action is requested)

The Office of the Albany County Executive respectfully requests that the Legislature enact a Local Law enabling the establishment of Tourism Improvement Districts (TID) in Albany County. The attached draft Local Law outlines the procedures the establishment, operation, modification, and disestablishment of these Districts. Tourism Improvement Districts, similar to Business Improvement Districts, are self-assessments on businesses in order to fund marketing efforts to increase the number of overnight visitors to an area.

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Additionally, while protecting public health remains the top priority during COVID-19, the impact of the pandemic on the tourism industry cannot be overstated. Establishing the framework for a Tourism Improvement District is an important first step in the effort to help rebuild our tourism industry in Albany County.

DISCOVER ALBANY

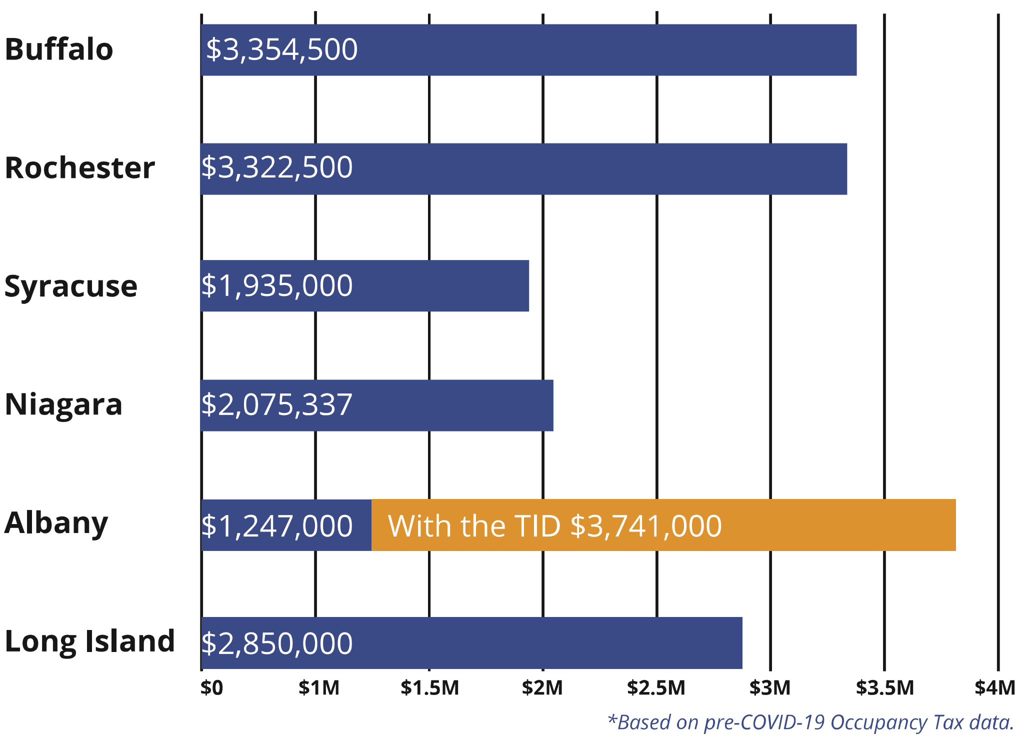
Albany County

TOURISM IMPROVEMENT DISTRICT (TID)

What is a TID?

A TID, or Tourism Improvement District, much like a Business Improvement District is a self-assessment on a business in order to fund marketing efforts which would increase the number of overnight visitors to the area.

Discover Albany is not asking the County for more money. They are asking the County to **allow them to raise their own additional funds**. This is how they will catch up to – and ultimately surpass – their competition.



**Based on pre-COVID-19 Occupancy Tax data.*

Why is this in addition to the current HOT tax and not a replacement?

This is supplemental funding - the hotels are self-imposing this assessment via a 2% fee on room bills in order to enhance the work that their current Occupancy Tax collections support. If you take away one, the remaining funds will be insufficient to achieve the goals of the destination. In addition, hotels will not be willing to self-assess without continuation to receive existing funding at the current rate which is their responsibility to collect.

How Discover Albany will use the TID to invest in Albany County Tourism?

SALES

Sports

Bid Fees

MARKETING

TV/Social Videos

Discover Albany Brand Awareness

Enhanced Ad Campaigns to Bring International Travelers

VISITOR ENHANCEMENT

Mobile Visitors Center for County-Wide Events

Adopt technology to enhance visitor experience

DESTINATION ENHANCEMENTS

Invest Money into Destination to Improve Visitor Experience

COVID-19 RECOVERY

Events lost due to lack of funding:

United Church Pentecost International	U.S. National Jump Rope Championships
New York State Association of Fire Chiefs	New York State Association of Professional Land Surveyors
Future Business Leaders of America	National Grange of the Order of the Patrons of Husbandry
Association of Food and Drug Officials	Drum Corp Championships
NYS Rural Water Association	Lions Club of New York

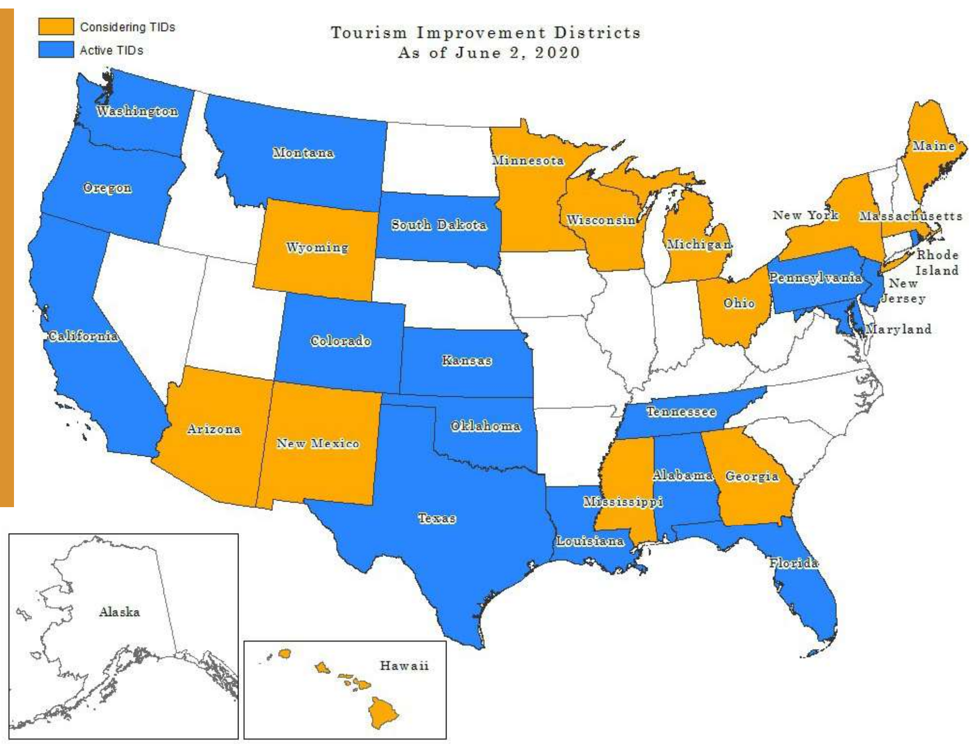
With the lack of marketing funds and focus, we have lost these events totaling over 22,000 room nights and $17 million in economic impact to Albany County and local hotels. These hotels rely on consistent and creative marketing to:

- Increase Occupancy
- Fill Meeting Space
- Increase visitation during the winter season
- Increase annual REVPAR

It is Discover Albany's responsibility to ensure that hoteliers continue to see an increase in occupancy and ADR making this a viable destination for the investment for years to come.

Who else is doing it?

Each year, more than 180 tourism improvement districts throughout the United States raise more than $430 million for destination marketing. There are currently active TIDs in 17 states, with the latest formation happening in Mobile, AL in May 2020.



LOCAL LAW NO. "H" FOR 2021

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK RELATING TO THE SAFE USE OF ELECTRIC SCOOTERS AND BICYCLES WITH ELECTRIC ASSIST

Introduced: 8/9/21
By Messrs. Domalewicz, Feeney, Bruschi, Commisso, Ricard and Miller:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Title

This local law shall be known as the "Albany County Electric Scooter and E-Bike Helmet Law."

Section 2. Legislative Intent

The Albany County Legislature hereby finds and determines that electric scooters and bicycles with electric assist contain motors which can rapidly increase the speed of such devices up to twenty miles an hour.

The Legislature further finds and determines that individuals operating electric scooters or riding on bicycles with electric assist are vulnerable to injury when riding at increased speeds.

The Legislature further finds and determines that, to protect the safety of operators and passengers, all individuals operating electric scooters or riding on bicycles with electric assist should be required to wear protective helmets.

Section 3. Definitions

As used in this local law, the following terms shall have the meanings indicated:

(a) "Electric Scooter" shall have the same meaning as set forth in Section 114-E of the New York Vehicle and Traffic Law.

(b) "Bicycle with Electric Assist" shall have the same meaning as set forth in Section 102-C of the New York Vehicle and Traffic Law.

Section 4. Helmet Requirements for Certain Electric Assisted Devices

(a) Any individual operating an electric scooter shall wear a helmet.

(b) Any individual operating or riding as a passenger on a bicycle with electric assist shall wear a helmet.

(c) Any helmet worn to comply with this local law shall conform to the requirements established by the Commissioner of the New York State Department of Motor Vehicles.

(d) For purposes of this section, wearing a helmet means having a helmet of good fit fastened securely upon the head with the helmet straps.

Section 5. Penalties

(a) Any person who violates Section 4 of this local law shall be guilty of a violation and subject to a fine not to exceed one hundred (100) dollars.

(b) The court shall wave any fine for which a person who violates the provisions of Section 4 of this local law would be liable if such person supplies the court with proof that between the date of violation and the appearance date for such violation such person purchased or rented a helmet which meets the requirements established by the Commissioner of the New York State Department of Motor Vehicles prior to the time of the offense. Such waiver of a fine shall not apply to a second or subsequent violation of Section 4 of this local law.

(c) The court may waive any fine for which a person who violates the provisions of Section 4 would be liable if the court finds that, due to reasons of economic hardship, such person was unable to purchase a helmet or, due to such economic hardship, such person was unable to obtain a helmet from the statewide in-line skate and bicycle helmet distribution program, as established in New York Public Health Law Section 206, or a local distribution program. Such waiver of a fine shall not apply to a second or subsequent violation of Section 4 of this local law.

Section 6. Contributory Negligence and Assumption of Risk

The failure of any person to comply with the provisions of Section 4 of this local law shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

Section 7. Applicability

This law shall apply to all actions occurring on or after the effective date of this local law.

Section 8. Reverse Preemption

This local law shall be null and void on the day that federal or statewide legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The County Legislature may determine via resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 9. Severability

If any clause, sentence, paragraph, section, subdivision, or any other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgement shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited by such order or judgment.

Section 10. Effective Date

This local law shall take effect immediately following its filing with the Office of the Secretary of State.

Referred to Law and Mass Transit Committees – 8/9/21

RESOLUTION NO. 319

CREATING A SPECIAL COMMITTEE ON RULES REVIEW AND LEGISLATIVE MODERNIZATION

Introduced: 9/13/21

By Messrs. A. Joyce, Feeney, Mss. Willingham, Lekakis, Messrs. Kuhn, Perlee, Grimm and Miller:

WHEREAS, Since March of 2020, the Albany County Legislature, as well as the world, has been forced to adapt to a changing landscape when it comes to the organization of it meetings, and

WHEREAS, While the Albany County Legislature succeeded in its adjustment to remote meetings during the Governor's Emergency Declaration and temporary suspension of certain provisions of the Open Meetings Law, the body never formally modified its rules to comply with the new landscape, and

WHEREAS, On September 1, 2021, the State Legislature passed a temporary suspension of certain provisions of the Open Meetings lasting until January 15, 2022, and

WHEREAS, The Rules of the Legislature should be amended to address the ability to hold remote meetings consistent with state law, and

WHEREAS, The Albany County Legislature has adopted measures and committed resources towards the modernization of our processes, improving communication between legislative staff and county departments, reducing the amount of paper being used, and

WHEREAS, A Special Committee should be impaneled to evaluate and make recommendations to this Honorable Body concerning the numerous issues involved in handling meetings in a remote setting, and how the Rules of Legislative Order should be amended to account for the recent modernization of our processes, now, therefore be it

RESOLVED, By This Honorable Body that a Special Rules Review and Legislative Modernization Committee is created to evaluate and make recommendations regarding all aspects of our modernization efforts and establish policies consistent with State law related to remote meetings, and be it further

RESOLVED, That said Committee shall consist of nine members, and the Chairperson of the County Legislature shall fill such appointments from the membership of the Legislature as recommended by the Majority and Minority leaders, and, be it further

RESOLVED, That the Clerk of the County Legislature is hereby directed to forward certified copies of this resolution to the appropriate County officials.

Referred to Law Committee – 9/13/21

RESOLUTION NO. 320

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "I" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY AMENDING LOCAL LAW NO. 1 FOR 2013, ENTITLED "AN OMNIBUS HUMAN RIGHTS LAW FOR ALBANY COUNTY"

Introduced: 9/13/21
By Ms. Chapman, Messrs. Feeney, A. Joyce, Beston, Bruschi, Ms. Chapman, Messrs. Clay, Cleary, Commisso, Domalewicz, Efekoro, Ethier, Fein, R. Joyce, Kuhn, Ms. Lekakis, Mr. Mayo, Mss. McLaughlin, Mclean Lane, Messrs. Miller, Reidy, Reinhardt, Ricard, Simpson and Smith:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "I" for 2021: A Local Law of the County of Albany Amending Local Law No. 1 for 2013, Entitled "An Omnibus Human Rights Law for Albany County" will be held by the County Legislature in the William J. Conboy II Legislative Chambers, Albany County Courthouse, Albany, New York, at 7:15 p.m. on Tuesday, October 26, 2021, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Personnel Committees – 9/13/21

RESOLUTION NO. 321

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "J" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE COUNTY EXECUTIVE TO NEGOTIATE A LONG-TERM POWER PURCHASE AGREEMENT FOR PROPERTY OWNED AND MAINTAINED BY ALBANY COUNTY

Introduced: 9/13/21
By Messrs. Reinhardt and Feeney:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "J" for 2021: "A Local Law of the County of Albany, New York, Authorizing the County Executive to Negotiate a Long-Term Power Purchase Agreement for property owned and maintained by Albany County" will be held by the County Legislature in the William J. Conboy II Legislative Chambers, Albany County Courthouse, Albany, New York, at 7:15 p.m. on Tuesday, October 26, 2021, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Conservation, Sustainability and Green Initiatives and Law Committees – 9/13/21

RESOLUTION NO. 322

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "K" FOR 2021 A LOCAL LAW TO PROVIDE FOR THE SAFE DISPOSAL OF OPIOID MEDICATIONS

Introduced: 9/13/21
By Messrs. A. Joyce, Feeney and Domalewicz:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "K" for 2021, "A LOCAL LAW TO PROVIDE FOR THE SAFE DISPOSAL OF OPIOID MEDICATIONS" to be held remotely by the Albany County Legislature at 7:15 p.m. on Tuesday, October 26, 2021, with participation information to be made available on the Albany County website, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Health Committees – 9/13/21

RESOLUTION NO. 323

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "L" FOR 2021 A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENSURING UNIVERSAL ACCESS TO COUNSEL DURING EVICTION PROCEEDINGS IN HOUSING COURTS IN ALBANY COUNTY

Introduced: 9/13/21
By Mr. Fein:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "L" for 2021, "A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENSURING UNIVERSAL ACCESS TO COUNSEL DURING EVICTION PROCEEDINGS IN HOUSING COURTS IN ALBANY COUNTY" to be held remotely by the Albany County Legislature at 7:15 p.m. on Tuesday, October 26, 2021, with participation information to be made available on the Albany County website, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Audit and Finance Committees – 9/13/21

LOCAL LAW "I" FOR 2021

A LOCAL LAW OF THE COUNTY OF ALBANY AMENDING LOCAL LAW NO. 1 FOR 2013, ENTITLED "AN OMNIBUS HUMAN RIGHTS LAW FOR ALBANY COUNTY"

Introduced: 9/13/21
By Ms. Chapman, Messrs. Feeney and A. Joyce:

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF ALBANY AS FOLLOWS:

SECTION 1. Title

This Local Law shall be known as the "CROWN (Creating a Respectful and Open Workplace for Natural Hair) Amendment" for Albany County.

SECTION 2. Legislative Intent

The purpose of this Local Law is to prevent employment discrimination based on natural hair texture and/or the use of protective hairstyles in Albany County.

Albany County is dedicated to protecting the rights of its residents and eliminating discrimination and bias in the workplace.

This Legislature hereby finds and determines that the history of our nation is riddled with laws and societal norms that subject those with certain visible characteristics, including natural hair texture and/or the use of protective hairstyles, to separate and unequal treatment in professional settings.

This Legislature further finds that, despite the efforts to reverse racist ideologies, natural hairstyles including braids, locs, cornrows, twists, Bantu knots, poufs, and Afros continue to be a source of prejudice that have serious professional and economic consequences for individuals in Albany County.

Therefore, the purpose of this law is to amend the Albany County Omnibus Human Rights Law (Local Law No. 1 for 2013, as amended) to ban discrimination against the use of protective hairstyles and the wearing of natural hair textures.

SECTION 3. Prohibitions

Section 7, subsection 1. of Local Law No. 1 for 2013, "An Omnibus Human Rights Law for Albany County," as amended, is further amended by the addition of a new subdivision (j) as follows:

(j) It shall be an unlawful discriminatory practice for an employer, employment agency, or licensing agency to deny any license, employment, or promotion to any individual by reason of the person's natural hair texture or use of protective hairstyles. The term "protective hairstyles" shall include styles such as braids, locs, cornrows, twists, Bantu knots, poufs, and similar styles meant to protect natural hair.

SECTION 4. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm, or corporation, or circumstance, shall be adjusted by any court of competent, jurisdiction to be invalid or unconstitutional, such order or judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm, or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

SECTION 5. Effective Date

This law shall take effect immediately upon its filing with the Secretary of State.

DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE EXECUTIVE
112 STATE STREET, ROOM 1200
ALBANY, NEW YORK 12207-2021
(518) 447-7040 - FAX (518) 447-5589
WWW.ALBANYCOUNTY.COM

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

August 20, 2021

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairman Joyce:

The Office of the County Executive has been working with the New York Power Authority (NYPA) and Siemens Inc. to develop solar installations on appropriate County-owned land. After review of multiple sites it was determined that the County-owned site at 897 Watervliet Shaker Road, "the Radar Tower Site", provides the most physically and economically feasible site for solar development. The attached maps show the maximum proposed layout as submitted to National Grid for interconnection purposes. This layout maximizes system size (3.54 MW DC) and includes removal of invasive black locust trees south of the radar facility while avoiding any disturbance to the native forest north of the array. The current proposal will incorporate native pollinator-friendly plants throughout the array area.

Siemens, NYPA, and the County are currently advancing the project through several approval processes including SEQR, SHPO, FAA 7460-1, and utility interconnection. In addition, we are seeking passage of a local law that will be necessary for the County to enter into a long-term power purchase agreement with Siemens to be the sole off-taker of power produced by this array. Power Purchase Agreements are a financial agreement where a developer designs, finances, and constructs a solar energy system on a customer's property and then sells the power generated to the host customer at a fixed rate, typically for 20 or 25 years. They are financially advantageous for projects because they allow developers to take advantage of sizable federal tax credits that municipalities cannot utilize. If constructed in the footprint outline above, the array would account for between one quarter and one-half of the County's electricity consumption.

Due to the long-term nature of PPA agreements, a Local Law is requested to allow the County to enter into an agreement not to exceed 30 years. An RLA for the PPA will be submitted in the future; however, due to the deadlines associated with the interconnection process, it is important to begin the local law process now in order to align the approval processes.

If you should have any questions, please do not hesitate to contact me.

Sincerely

Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis Feeney, Majority Leader
Hon. Frank Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

File #: TMP-2671, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):
Request for a Local Law allowing a long-term Power Purchase Agreement

Date:	8/20/2021
Submitted By:	Lucas Rogers
Department:	County Executive
Title:	Senior Policy Analyst
Phone:	518-447-5566
Department Rep.	
Attending Meeting:	Lucas Rogers

Purpose of Request:

☒ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☐ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed)   Click or tap here to enter text.

<u>CONCERNING BUDGET AMENDMENTS</u>

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel

☐ Personnel Non-Individual
☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

<u>CONCERNING CONTRACT AUTHORIZATIONS</u>

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant
Choose an item.
Submission Date Deadline Click or tap to enter a date.
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):
Click or tap here to enter text.

Additional Parties (Names/addresses):
Click or tap here to enter text.

Amount/Raise Schedule/Fee: Click or tap here to enter text.
Scope of Services: Click or tap here to enter text.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

<u>CONCERNING ALL REQUESTS</u>

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☐ No ☐

County Budget Accounts:

Revenue Account and Line:	Click or tap here to enter text.
Revenue Amount:	Click or tap here to enter text.
Appropriation Account and Line:	Click or tap here to enter text.
Appropriation Amount:	Click or tap here to enter text.

Source of Funding - (Percentages)

Federal:	Click or tap here to enter text.
State:	Click or tap here to enter text.
County:	Click or tap here to enter text.
Local:	Click or tap here to enter text.

Term

Term: (Start and end date)	Not to Exceed 30 Years
Length of Contract:	Click or tap here to enter text.

Impact on Pending Litigation	Yes ☐ No ☒
If yes, explain:	Click or tap here to enter text.

Previous requests for Identical or Similar Action:

Resolution/Law Number:	Click or tap here to enter text.
Date of Adoption:	Click or tap here to enter text.

Justification: (state briefly why legislative action is requested)

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Siemens, NYPA, and the County are currently working on advancing this project through several approval processes including SEQR, SHPO, FAA 7460-1, and utility interconnection. In addition, we are seeking authorization to enter into a long-term power purchase agreement with Siemens to be the sole off-taker of the power produced by this array. Power Purchase Agreements are a financial agreement where a developer designs, finances, and constructs a solar energy system on a customer’s property and then sells the power generated to the host customer at a fixed rate, typically for 20 or 25 years. They are financially advantageous for projects because they allow developers to take advantage of sizable federal tax credits that municipalities cannot utilize. If constructed in the footprint outline above, the array would account for between one quarter and one-half of the County’s electricity consumption.

Due to the long-term nature of PPA agreements, a Local Law is requested to allow the County to enter into an agreement not to exceed 30 years. An RLA for the PPA will be submitted in the future; however, due to the deadlines associated with the interconnection process it is important to begin the local law process now in order to align the approval processes.

1
C201
CONCEPT PLAN - 2 FENCES
SCALE: 1" = 60'

0' 60' 120' 180'

LaBella
Powered by partnership.

25 Delaware Avenue
Delmar, NY 12054
518-439-8235
labellapc.com

NOT FOR CONSTRUCTION

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SIEMENS
6 BRITISH AMERICAN BLVD
LATHAM, NY 12110

SIEMENS

ALBANY RADAR TOWER SOLAR
925 WATERVLIET SHAKER ROAD

NO.	DATE:	DESCRIPTION:
Revisions		

PROJECT NUMBER: 2212336
DRAWN BY: CEC
REVIEWED BY: RFH
ISSUED FOR: REVIEW
DATE: 06/29/2021
DRAWING NAME: CONCEPT PLAN - 2 FENCES
DRAWING NUMBER: C201

VERSION 19.0
6/3/2010 8:47:56 AM

ALBANY RADAR TOWER SOLAR

ALBANY COUNTY, NEW YORK

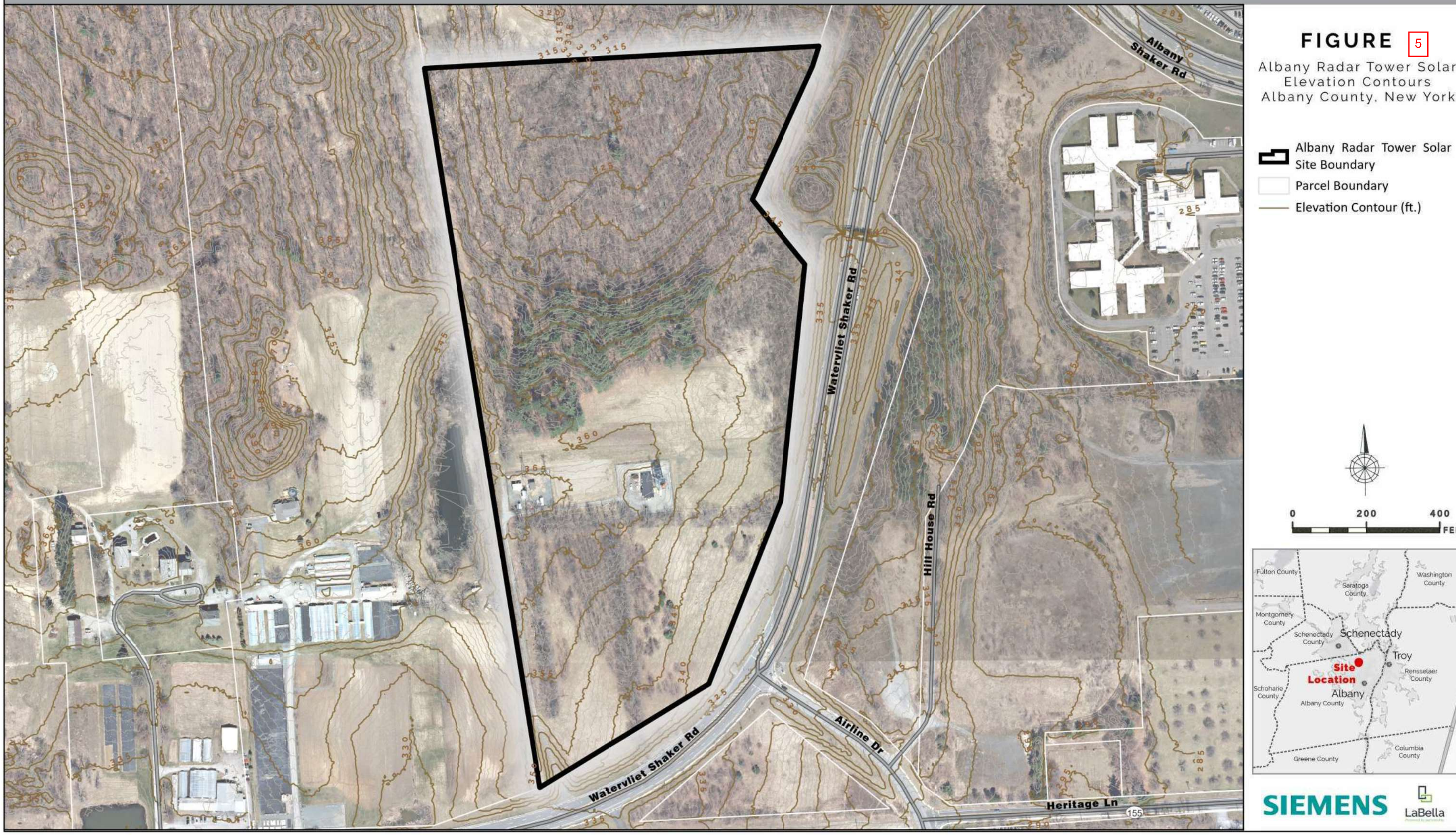


FIGURE 5

Albany Radar Tower Solar
Elevation Contours
Albany County, New York

- Albany Radar Tower Solar Site Boundary
- Parcel Boundary
- Elevation Contour (ft.)

SIEMENS

LaBella

ESRI, HERE, GARMIN, USGS, EPA, NPS

PATH: J:\SIEMENS SMART INFRASTRUCTURE\2212336 - ALBANY RADAR TOWER

ALBANY RADAR TOWER SOLAR

ALBANY COUNTY, NEW YORK

NEW YORK STATE, MAXAR, ESRI, HERE, GARMIN, USGS, EPA, NPS

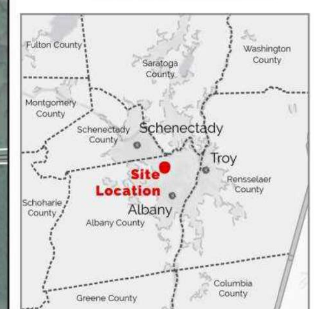
PATH: J:\SIEMENS SMART INFRASTRUCTURE\2212336 - ALBANY RADAR TOWER

FIGURE 7

Albany Radar Tower Solar
Existing Vegetation
Albany County, New York

- Albany Radar Tower Solar Site Boundary
- Parcel Boundary
- Bike trail to Watervliet Shaker Road
- Multi-use path
- White Pine Area

0 250 500 FEET



SIEMENS LaBella

POWER PURCHASE AGREEMENT

This Agreement ("Agreement" as further defined in Section 1.1) is made and entered into as of this ("Effective Date") and is witnessed and acknowledged by <u>(Insert Company with its principal office at Insert Address)</u> ("Provider") and <u>(Insert Authorized User with its principal office at Insert Address)</u> (the "Purchaser"), as evidenced by their signature on the last page of this document. Purchaser and Provider are referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system and the ancillary equipment associated therewith at the Premises, as defined herein, (the "System") for the purpose of providing Services, as defined herein; and

WHEREAS, Provider is willing and has agreed to provide the System under the terms and conditions of this Agreement, subject to any revisions agreed to by the Purchaser and Provider; and

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of Energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means this Power Purchase Agreement, including the General Conditions and the Exhibits and Schedules attached hereto.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof, in a publicly available and duly issued document, by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

"Business Day" means any day other than Saturday, Sunday or a Federal Reserve Bank holiday.

"Commercial Operation Date" has the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, license, or easement, or other document related to use or occupancy, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2.

“Energy” means electric energy measured in kilowatt-hours (“kWh”) or in megawatt-hours (“MWh”).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“Environmental Incentives” means any and all credits, rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means this Power Purchase Agreement, excluding the Exhibits and Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Persons” means the Purchaser Indemnified Parties.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 payable for the services to be provided hereunder including Energy and heat.

“Liens” has the meaning set forth in Section 7.1(e).

“Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from Standard & Poor’s Rating Group and A3 from Moody’s Investor Service, and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means the day that occurs on the date that is the sixth (6^{th}) anniversary, the tenth (10^{th}) anniversary, and the fifteenth (15^{th}) anniversary of the Commercial Operation Date, provided that if such day is not a Business Day, the Purchase Date shall be the next Business Day to occur after such day.

“Purchaser” has the meaning set forth in the Special Conditions.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Renewal Term” has the meaning set forth in Section 2.1.

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance the requirements herein.

“Tax Credits” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

“Term” has the meaning set forth in Section 2.1.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

1.3 Entire Agreement and Order of Precedence. This Agreement forms the entire agreement between the parties and supersedes all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. In case of a conflict or discrepancy among the elements of this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the document elements in the following order: (1) Exhibit A, Standard Clauses for New York State Contracts; (2) Exhibit B; (3) the Schedules; (4) the General Conditions of this Agreement; [Note – this clause may be different for municipalities or other authorized users.]

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (25) years from the Commercial Operations Date ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. The Initial Term is referred to collectively as the "Term."

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. In such event, Purchaser shall pay, as liquidated damages, an amount equal to (i) the Early Termination Fee set forth on Schedule 3, (ii) any and all other amounts previously owed to Provider under this Agreement, and (iii) the cost of removing the System provided that Provider shall use all commercially reasonable efforts to obtain the lowest cost of System removal, subject to reasonable business and safety concerns. Upon such payment, Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser's payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically without further liability to either Party with respect to the Agreement.

2.3 Determination of Fair Market Value. If or when required, Fair Market Value of the System will be determined by Provider in a commercially reasonable manner. If Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the commercial-scale photovoltaic industry. Such appraiser shall subject to applicable Internal Revenue Service processes and requirements act in a commercially reasonable manner and in good faith to determine the Fair Market Value of the System as of the applicable Purchase Date and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to this Section; otherwise, the Parties shall equally share such cost.

2.4 Removal of System at Expiration. Upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than one hundred and twenty (120) days after the Expiration Date. The Premises shall be returned to its original condition. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System and dispose at Provider's cost.

2.5 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination: (a) the Provider determines that the Premises, as is, is insufficient to accommodate the System; (b) there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed; (c) there is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors; (d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it; (e) Provider has not received a fully executed (i) license substantially in the form of Exhibit B from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d) (ii) to ensure that Provider will have access to the Premises throughout the Term; (f) there has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises; (g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available pursuant to the scheduled in-service date of the System agreed to herein with respect to Energy generated by the System under a net-metering arrangement mutually agreeable to the Parties, subject to applicable law and the utility's requirements; or (h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

3. PURCHASER RIGHT TO REVIEW CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1, Applicable Law, and consistent with generally accepted utility practices. Purchaser shall have the right to review and comment on all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise agreed to in writing by the owner of the Premises. Installation Work shall be conducted in a manner that minimizes inconvenience to and interference with the use of the Premises to the maximum extent commercially practical. Provider shall consult with the issuer of any warranty on the roof at the Premises, if applicable, and shall construct the System in a way that does not invalidate any such warranty.

3.2 Approvals; Permits. Provider shall secure and maintain, at its own expense, all permits, including but not limited to environmental permits, licenses, and those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR. If Purchaser is a New York State Agency, OGS Design & Construction division, or other State construction-permitting agency as defined in 19 NYCRR 1204.3(e), shall provide all Uniform Code services which shall include (i) the issuances of all permits and certificates, (ii) inspections, and (iii) reporting.

3.3 System Acceptance Testing. (a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by commercial solar photovoltaic energy system integrators and operators in the United States. (b) If the results of such testing indicate that the System is capable of generating Energy for at least four (4) consecutive hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility and any other Governmental Authority from whom approval is required to operate the System, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the “Commercial Operation Date.”

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider’s Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result Purchaser’s negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider’s negligence, willful misconduct, or breach of its obligations hereunder or as otherwise provided for in this Agreement, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar capability to accommodate the System, or (ii) terminate the Agreement pursuant to Section 2.2. In connection with such substitution, Purchaser and Provider shall amend this Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider’s Financing Party in connection with the substitute premises. If Purchaser is unable to obtain such consents and releases for a substitute premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all reasonable costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider's Financing Party in the System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, at the Purchaser's expense, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Services as if Provider was capable of operating the System during any transfer or construction time period (the "Transfer Time") and shall reimburse Provider for any actual, documented lost or recaptured revenue associated with lost production of Environmental Attributes during the Transfer Time. For the purpose of calculating Services Payments that would have otherwise been due and Environmental Attributes that would have been generated during such Transfer Time, Services shall be deemed to have been produced during the Transfer Time at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Transfer Time.

(b) System Disruptions. In the event that (1) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (2) any act or omission of Purchaser or Purchaser's employees, Affiliates, or agents (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Services during such period of System disruption (the "Disruption Period") as if Provider was capable of operating the System during such Disruption Period, and (iii) reimburse Provider for any actual, documented lost or recaptured revenue associated with lost production of Environmental Attributes during the Disruption Period. For the purpose of calculating Services Payments that would otherwise have been due for such Disruption Period, Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Disruption Period.

5. DELIVERY OF SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100 %) of the Energy generated by the System during each relevant month of the Term at the kWh Rate specified in Schedule 2. The Energy delivered by Provider to Purchaser hereunder shall be referred to as “Services”.

5.2 Estimated Annual Production. The annual estimate of Energy generation with respect to the System for any given year as determined pursuant to this Section shall be the “Estimated Annual Production.” The Estimated Annual Production for each year of the Term is set as forth in Schedule 4.

5.3 Title to System. Throughout the Term, Provider or Provider’s Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider’s Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider’s request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser agrees to file, at the request of Provider and at Provider’ sole expense a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner Purchaser will, at Provider’s request, use commercially reasonable efforts to obtain such agreement to file from such owner or consent of such owner to have Provider make such filing on its behalf; provided that such filing will be made at Provider’s request and at Provider’s sole expense.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment for the Services provided during each month in an amount equal to the Energy generated by the System and delivered to Purchaser in such month, multiplied by the kWh Rate stated in Schedule 2 for the applicable contract year in which such month occurs ("Services Payment").

In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser shall terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider. Interest for any unpaid balance will accrue pursuant to Section 179 (G) of New York State Finance Law that is 30 days past due. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges.

6.5 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, provided that Purchaser shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue on such amount pursuant to Section 179 (G) of New York State Finance Law from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:
(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Purchaser if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement; and (iii) within 10 calendar days, provide Purchaser with a remedial action

plan to repair, replace, cure, or correct the damage, loss, event, or circumstance, as the case may be, in order to restore the System to its normal operating state.
(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Services at a commercially reasonable continuous rate.
(c) Governmental Approvals. While providing the Installation Work, Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider, and to enable Provider to perform such obligations, including without limitation, Uniform Code permits and approvals.
(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Services, and System Operations and shall comply with all applicable laws and site specific requirements pertaining to the health and safety of persons and real and personal property.
(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:
(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.
(b) Liens. Other than as provided for in this Agreement, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein.
(c) Consents and Approvals. Purchaser or Provider shall ensure that any authorizations required of Purchaser or Provider under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall reasonably cooperate with Provider, at Provider's request, to obtain such approvals, permits, rebates or other financial incentives.
(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider a commercial license (the "License") commencing on the Effective Date and, subject to Purchaser's right to revoke the License as described herein, continuing until the date that is one hundred and twenty (120) days after the expiration or termination of this Agreement (the "License Term"), containing all the rights necessary for Provider to use and occupy portions of the Premises (the "License Area") for the installation, operation

and maintenance of the System pursuant to the terms and conditions of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. During the License Term Purchaser shall ensure that Provider's rights under the License and Provider's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (i) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (ii) neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider (except in cases of emergency); provided, however, that Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal. Notwithstanding anything to the contrary in this Agreement, Purchaser may, at any time during the Term, upon 60 days' prior written notice to Provider, revoke the License, provided that any such revocation of the License, except for a revocation for a Provider Default, shall act as an early termination of this Agreement pursuant to Section 2.2.
(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement for sufficient space at the Premises 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 Work, System Operations or System removal, and access for rigging and material handling.
(f) Insolation. Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Provider's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation relative to the conditions at the time of installation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Provider immediately and shall cooperate with Provider in preserving the System's existing Insolation levels.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:
(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and shall maintain such right and authority throughout the Term;
(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable

bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i)any contract or agreement to which it or, in the case of Provider, any of its Affiliates is a party or by which it or, in the case of Provider, any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) to Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement or security agreement affecting the Premises;

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein;

(c) to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement. Any Financing Party shall be an intended third party of this Section 8.2.

8.3 EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

9. Reserved

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means and includes, but is not limited to, any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (provided that the claiming Party shall not be required to suffer prejudice or use commercially unreasonable measures to remedy a Force Majeure event). Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Provider or the Purchaser in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented. A Force Majeure Event shall not be based on the economic hardship or financial condition of either Party. Force Majeure shall not be based on (i) Purchaser's inability economically to use or resell the Services purchased hereunder; or (ii) the loss or failure of Provider's equipment, supplies, or products.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall: (i) promptly notify the other Party in writing of the existence of, and details regarding, the Force Majeure Event; (ii) exercise all reasonable efforts necessary to cure or correct the Force Majeure Event and to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not affected by Force Majeure shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the affected Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.
(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"): (i) A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within ten (10) Business Days from receipt of notice from Purchaser of such past due amount; (iii) Provider breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.1 as a separate Provider Default) and such breach or failure is not cured within thirty (30) days after Purchaser's written notice of such breach or failure; (iv) any representation or warranty made in this Agreement by Provider is not true and complete in any material respect when given or at any time during the Term; (v) INTENTIONALLY OMITTED; and (vi) Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Purchaser.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, between the Fair Market Value of the Services anticipated to be provided over the remaining Term, as determined by Purchaser in a commercially reasonable manner, and the Services Payments associated with such Services ("Termination Amount"). Upon termination of this Agreement in accordance with this Section, Purchaser shall promptly calculate the Termination Amount, if any, owed by Provider and submit an invoice to Provider for such amount. Provider shall pay such Termination Amount within ten (10) Business Days after receipt of such invoice in accordance with the payment directions specified by Purchaser ("Termination Amount Payment Date"). In the event Provider, in good faith, disputes Purchaser's calculation of the Termination Amount, the Parties shall then act in good faith to resolve any such dispute, including but not limited to, utilizing a procedure substantially similar to that provided for in Section 2.3 above, in the event that the Parties are unable to resolve such dispute; provided, however, that if through such procedures the Termination Amount is determined to be equal to or greater than that calculated by Purchaser, Provider shall pay all costs associated with such procedure, or otherwise the Parties shall share such costs equally.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Provider's Remedies.
(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"): (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.2 as a separate Purchaser Default) and such breach or failure is not cured within thirty (30) days after Provider's written notice of such breach or failure; (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within ten (10) days from receipt of notice from Provider of such past due amount; (iv) any representation or warranty made in this Agreement by Purchaser is not true and complete in any material respect when given or at any time during the Term; and (v) Purchaser consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Purchaser under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Provider.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, and Provider shall be entitled to receive from Purchaser, as liquidated damages, an amount equal to the sum of (i) the Early Termination Fee pursuant to

Section 2.2, (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider, and (iii) removal costs as provided in Section 11.3.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.4 hereof at the expense of the defaulting Party.

12. LIMITATIONS OF LIABILITY.

12.1 The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive damages. Unless expressly herein provided, neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract or otherwise. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Notwithstanding the foregoing, Provider shall remain liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of the provider, its officers, employees or agents.

13. ASSIGNMENT.

13.1 Assignment by Provider. Pursuant to section 138 of the New York State Finance Law, the Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider; (ii) assign, mortgage, pledge or otherwise collaterally assign this Agreement in connection with any financing of the System (including pursuant to a sale-leaseback transaction), (iii) assign this Agreement to any entity through which Provider is obtaining financing or capital for the System, and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Provider (provided that Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Provider's obligations hereunder by the assignee); provided, however, that in each case, any assignee shall agree in writing to be bound by the terms and conditions of this Agreement and so long as the Provider, or the successor by way of merger of Provider, delivers such tax and enforceability assurance as Purchaser may reasonably request. In the event that Provider identifies such secured Financing Party in Schedule 5, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Purchaser shall not release Provider of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5, or in a subsequent notice to Purchaser, then Purchaser hereby: (a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement; (b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement within the timeframes specified herein with respect to Provider; (c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System. Any Financing Party shall be an intended third party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser may assign or transfer this Agreement to any other New York State agency, authority, or public benefit corporation that is the successor in interest of the Purchaser and that is backed by the full faith and credit of the State of New York without the Provider's prior consent, provided that (a) Purchaser shall promptly notify Provider of any such assignment in writing, (b) such assignee shall assume all of Purchaser's obligations under the Agreement in writing; and (c) such assignment shall in no event compromise the tax treatment of this Agreement or the Provider. Any assignment that does not comply with the forgoing shall be invalid. Purchaser shall not sell, transfer or assign the Agreement or any interest therein to any entity other than a New York State agency, authority, or public benefit corporation, as set forth in this section, without the prior written consent of Provider, which shall not be unreasonably withheld, conditioned or delayed.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted electronically or by facsimile, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above if received during normal business hours on a

Business Day or otherwise such notice shall be deemed delivered on the next Business Day.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. **CONFIDENTIALITY.** *(This Article may be replaced or supplemented by a Non-disclosure agreement agreed to by the Parties.)*

15.1 Confidentiality Obligation. If either Party provides confidential information, plainly marked as such on the subject document(s), including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of its performance of this Agreement, or if in the course of negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, and said information is identified by the disclosing party as Confidential, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may with the consent of the other Party (such consent not to be unreasonably conditioned, delayed or withheld), provide such Confidential Information to its officers, directors, members, managers, employees, agents, attorneys, accountants and consultants, Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case, whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by its Representatives. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (a) becomes publicly available other than through the receiving Party or its Representatives; (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (c) is independently developed by the receiving Party; or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. The Parties acknowledge that this Agreement is subject to the New York

State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law, and that only Provider's proprietary information that satisfies the requirements of § 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, the Parties agree that either Party may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser's prior written authorization. Purchaser may share or publicly display photographs of the System or performance data.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party is entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Article 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim by a third party for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or (b) any claim by a third party regarding any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System

Operations, and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Purchaser or of its officers or employees when acting within the course and scope of their employment. This Agreement shall be deemed executory only to the extent monies are appropriated and available for the purpose of the contract, and no liability on account hereof shall be incurred beyond the amount of such monies. It is understood that neither this contract 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 contract.

17. INSURANCE.

17.1 Generally. Provider shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) A professional liability policy (errors and omissions) in the amount of Five Million Dollars ($5,000,000) which shall be maintained for a period of three (3) years after completion of this contract. If said policy is issued on a claims-made policy form, the policy shall be purchased with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed; (b) Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board, (c) General Liability Insurance with limits no less than One Million Dollars ($1,000,000) per claim and Five Million Dollars ($5,000,000 in the aggregate. Such policy shall name the Purchaser as an additional insured and shall designate the Purchaser as the loss payee, and shall contain a provision that the Purchaser shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy, and (d) Business Automobile Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least One Million Dollars ($1,000,000) and shall name the Purchaser as additional insured. The limits may be provided through a combination of umbrella/excess liability policies. Additionally, Provider shall carry adequate property loss insurance on the System. The amount and terms of insurance coverage will be determined at Provider's sole discretion.

17.2 Certificates of Insurance. Upon Purchaser's request, Provider shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. The insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the Purchaser thirty (30) days' written notice before the insurance is cancelled or materially altered, ten (10) days' notice in case of a termination or cancellation due to non-payment of premium. Purchaser is self-insured for its general liability exposure, workers compensation and automobile liability. In accordance with Article II of the New York Court of Claims Act, it shall be liable for damage or injury arising from negligent actions caused by an officer of the Purchaser or its employees acting within the scope of their respective employment, Purchaser's self-insured funds could be drawn down if: (a) a judgment of liability is made under the provisions of the New York Court Claims Act, or in the case of small claims, an acknowledgement of liability has been made by the Attorney General and the Comptroller of the State of New York. The State's obligation with respect to any such claims are subject to the availability of lawful appropriations, as required by Section 41 of the New York State Finance Law. Purchaser agrees to notify Provider of any material change of the status of Purchaser's self-insurance with at least thirty (30) days' prior written notice.

17.3 Additional Insureds. Provider's Commercial General Liability insurance policy shall be written on an occurrence basis and shall include the Purchaser as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies authorized by the New York Department of Financial Services to issue insurance in the State of New York ("admitted carriers) with an A.M. Best Company rating of "A-" or better, or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Intentionally Omitted.

18.2 Intentionally Omitted.

18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Intentionally Omitted

18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Sections 2.2 (Early Termination), 2.4 (Removal of System), Article 7 (General Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 17 (Insurance), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law § 5-1401. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in New York.

18.8 Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Purchaser and Provider, or between either or both of them and any other Party.

18.9 Third-Party Beneficiaries. Except as expressly provided herein to the contrary, this Agreement is intended solely for the benefit of the Parties thereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party thereto.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18.11 Forward Contract; Service Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. The payment of the Termination Amount or Early Termination Fee made or to be made by one Party to the other Party under this Agreement constitutes a “settlement payment” and/or a “transfer” under the United States Bankruptcy Code. This agreement constitutes a “master netting agreement” and each party is a “master netting agreement participant” within the meaning of the United States Bankruptcy Code. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

18.12 Iran Divestment. By entering into this Agreement, Provider certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The

New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York Office of General Services website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf and further certifies that in the performance of this Agreement, it will not utilize any subcontractor that is identified on the Prohibited Entities List. Provider agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time of renewal or extension. Provider also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before Purchaser may approve any request for assignment of this Agreement. During the term of the Agreement, should Purchaser receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Purchaser will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Purchaser shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Provider in default. Purchaser reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of this Agreement, and to pursue a responsibility review with Provider should it appear on the Prohibited Entities List hereafter. (Note – this clause may be different for municipalities or other authorized users.)

18.13 Grounds to Termination for Provider's Responsibility**.**

(a) General Responsibility. Provider shall at all times during the Term remain responsible, as that term is defined in section 163 of the State Finance Law or article 5-a of the General Municipal Law. Provider agrees, if requested by Purchaser or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance and organizational and financial capacity.

(b) Termination (for Non-Responsibility). Upon written notice to Provider, and a reasonable opportunity to be heard before appropriate officers or employees of the Purchaser, this Agreement may be terminated by the Purchaser at Provider's expense, where Provider is determined by the Purchaser to be non-responsible. In such event, the Purchaser may complete the scope of work or contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

18.14 Non-Appropriation Event: It is the present intention and expectation of the Purchaser that the applicable budgetary entity, within the limits of available funds and revenues, will make an appropriation of a sufficient amount to fund Purchaser's obligations hereunder during each fiscal year of the Term; provided, however, this declaration of intent shall not be binding upon any future applicable budgetary entity in any future fiscal year, except to the extent of any previously appropriated funds.

Purchaser shall use reasonable good faith efforts to have funds properly budgeted, appropriated, allotted, or otherwise made available for this Agreement (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner. All payments made by Purchaser under this Agreement shall constitute currently budgeted expenditures and shall not constitute or give rise to a general obligation debt, an indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of any constitutional or statutory provisions or limitation.

(a) If an appropriation for this Agreement is not made for Purchaser by the applicable budgetary entity for any fiscal year of Purchaser during the Term (a "Non-Appropriation Event"), Purchaser shall promptly give notice of such Non-Appropriation Event (the "NAE Notice"). Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of the NAE Notice, Purchaser will not interrupt or impair the delivery of Energy or jeopardize Provider's sale, transfer or other monetization of Environmental Incentives or Tax Credits.

(b) Following receipt by Provider of an NAE Notice, Provider, in its sole discretion, (i) may terminate this Agreement and remove the System, or (ii) may continue to operate the System and deliver the Energy to Purchaser or to a third party or utility company without payment by Purchaser therefore during the applicable fiscal year (and each fiscal year thereafter until an appropriation of made). Under the circumstances of (ii), other than with respect to the obligation to make payment for energy delivered, all obligations of Purchaser under this Agreement shall remain in full force and effect. Should Purchaser receive an appropriation for this Agreement during the continuation of the Non-Appropriation Event, before termination under option (i) has been exercised, Purchaser shall pay such monies to Provider as to make Provider whole for any amounts due and owing under this Agreement to the extent practicable, and upon payment such Non-Appropriation event shall be nullified.

(c) Within 30 days of Provider's receipt of the NAE Notice, Provider shall give notice to Purchaser of Provider's election among options (i) and (ii) under subsection (b) above. If Provider does not provide notice to Purchaser of Provider's election under this subsection (c) within such period, Provider shall be deemed to have elected option (ii) under subsection (b) above, provided that, if Provider elects or is deemed to have elected option (ii) it may subsequently change its election at any time upon prior written notice to Purchaser.

(d) If Provider elects option (i) under subsection (b) above, Provider shall cause the System to be disconnected and removed from the Site and Purchaser shall pay to Provider all reasonable removal costs within 30 days after receiving Provider's invoice for such removal costs.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

PROVIDER: ___________

By: ____

Name: ____

Title: ____

Date: ____

PURCHASER: ______________

By: ____

Name: ____

Title: ____

Date: ____

STATE OF NEW YORK)

COUNTY OF________________) ss.:

On the______day of_____________in the year 2020, 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 individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

____
Notary Public

STATE OF NEW YORK)

COUNTY OF________________) ss.:

On the______day of_____________in the year 2020, 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 individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

____
Notary Public

Exhibit A

[Document to follow this introductory page.]

Insert: Appendix A – Standard Clauses for New York State Contracts

Exhibit B

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. Any such financing shall be conducted in accordance with the terms and conditions of the Agreement. In order to facilitate such necessary sale, conveyance or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement, with such sale or conveyance to be conducted in accordance with Section 13.1 of the Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default.

(c) Rights upon Event of Default. Notwithstanding any contrary term of this Agreement:

(i) the Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the Agreement in accordance with the terms of the Agreement as if the Financing Party were the Provider and only in the event of a Provider Default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the System;

(ii) the Financing Party shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreement as if such Financing Party were Provider; and

(iii) upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of the Agreement, which shall be conducted in accordance with Section 13.1 of the Agreement as if the

Financing Party were the Provider. Any such exercise of remedies shall not constitute a default under this Agreement.

(d) Right to Cure.

(i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right. As provided for in Section (c) of this Exhibit B, the Financing Party shall have the right to cure any Provider Default within the time periods specified within the Agreement as if the Financing Party were the Provider.

(ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i) of this Exhibit B above, cure all defaults under the Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under the Agreement, and the Agreement shall continue in full force and effect.

EXHIBIT C

Schedule 1: Description of Premises and System

System Premises:

Anticipated Rebate or Subsidy:

- New York State Energy Research and Development Authority's PON #___
- Incentive Amount =

System Size(kW):

Equipment:

- Racking:
- Modules:
- Inverter:
- Monitoring:

Scope:

Provider Responsibilities

a) **Design Preparation:** Inspect the proposed System mounting site to assure long-term safety and stability, including any structural analysis or geotechnical analysis as appropriate.

b) **Rebate:** Prepare all rebate documentation and communicate with all relevant agencies, if applicable.

c) **Design:** Produce and provide CAD single-line electrical and layout drawings of the System. Drawings will consist of a complete site plan showing the location of the array, inverters, and routing of conduits, an elevation showing panel visibility from the street, and any details necessary for the plan check and permitting.

d) **Pre-installation Conference:** Before System installation, conduct a pre-installation conference at the project site to review procedures, schedules, safety, and coordination of the installation. Several conferences may be needed if the complexities and construction schedules so require.

e) **Procurement, Installation:** Furnish all necessary mounting hardware, photovoltaic modules, electrical equipment, and labor for installation of the System up to the utility grid interconnection point[s] as indicated in this Agreement.

f) **Permits:** Obtain all permits required to perform the Work.

g) **Interconnection:** Obtain interconnection agreement and include any necessary interconnection equipment.

h) **Inspections:** Serve as the owner's representative for applicable System inspections.

i) **Site Safety:** Jobsite safety meetings once per week during Installation Work, or upon addition of new personnel to the jobsite.

j) **Site Access:** During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider's Work.

k) Acceptance Testing and System Commissioning: Provider shall:

i. Conduct an inspection, test and commissioning procedure to insure that the System is installed in a professional manner and consistent with prudent industry practices. A record of the installation and the major components including modules, inverters, transformers and source circuit combiners will be documented in a test and commissioning report.

ii. Test and verify that all non-current-carrying metal parts are solidly grounded and all equipment and System grounding is installed and functional per NEC 2008 or most current version.

iii. Test and verify that phase sequencing, fuse continuity, and open circuit voltage are within the manufacturers recommended range at the DC disconnect.

iv. Test and verify that the inverter is operating effectively within the typical start up time and record the DC operating voltage, phase currents and inverter power.

v. Provide complete operation and maintenance manual for the System (two printed copies and one electronic copy). The manual will include: (i) as-built drawings, (ii) as-built shop drawings, (iii) a copy of any required submittals or filing, (iv) product cut sheets, (v) product operation manuals, (vi) a copy of the photo record, (vii) written Utility approval, (viii) product warranties; and (ix) supplier and installer contact information.

l) **Solar Monitoring System:** Every Provider's System comes standard with MONITORING DEVICE_______proprietary solar monitoring service. MONITORING DEVICE enables Provider to continuously monitor the key performance variables of the System and transmit this data to Provider's servers through the Internet. All systems will be accessible through a single data access including system-level and aggregated system data. Any additional third-party monitoring, network access or data feed will be cost and responsibility of Purchaser. Provider will allow for integration of additional monitoring to enable purchaser to assess and display data for educational purposes as needed.

2. Purchaser Responsibilities

a) **Site Preparation:** Responsible for pre-installation site clean-up including removal of all debris and obstacles that may impede System installation.

b) **Site Access:** Responsible for security access to the System after installation. During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider's Work.

c) **Existing Facilities:** Provide all available design and as-built drawings of the existing facilities to facilitate System design and installation.

d) **System Management:** Provide a single point of contact for each installation. Purchaser point of contact shall have authority for all written requests for project changes and shall be available on 24 hours' notice. In the event that Provider is providing its services as a subcontractor and its work is part of a larger program, Purchaser will keep Provider informed about the overall progress of the program for which Provider's work is a part, and coordinate Provider's work with the work being performed by Purchaser's other contractors, including giving Provider sufficient advance notice (at least 5 business days) of when Provider is to perform the work under this Agreement. The foregoing shall not limit Purchaser's obligations under the terms and conditions of this agreement.

3. Clarifications

a) **Work Hours:** Provider's standard work hours are Monday through Friday 7am to 5:30pm unless otherwise agreed and approved by Provider's System Manager.

b) **Included in pricing:** Provider's Performance Warranty or Guarantee, if applicable, Installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system). Payment of prevailing wage labor.

c) **Exclude in pricing:** Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to Purchaser or utility electrical infrastructure, payment bonds, performance bonds, tree removal, tree trimming, the payment of special labor wages (i.e. union wages not required).

Schedule 2 - kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate ($/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Schedule 3 – Early Termination Fee & Option Price

The Early termination Fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2 of the General Conditions shall be equal to the sum of (i) reasonable compensation, on a net after tax basis assuming a tax rate of 35%, for the loss or recapture of (A) the investment tax credit equal to thirty percent (30%) of the System value; and (B) MSCRS accelerated depreciation equal to eighty five percent (85%) of the System value, (C) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Provider pursuant to the terms of this Agreement (Provider shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (D) other financing and associated costs not included in (A), (B) and (C), (ii) the net present value of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (iii) removal costs and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider.

Schedule 4 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

The values set forth in this table are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

Schedule 5 – Identification of Provider's Financing Party

Provider shall provide Purchaser with notice information for any Financing Party within a reasonable time after such Financing Party assumes any interest in the System.

Schedule 6 – Notice Information

Purchaser:

With a copy to:

Provider:
COMPANY
ADDRESS
CITY STATE ZIP CODE
PHONE
FAX EMAIL

With a copy to:

Financing Party:

[To be provided by Provider if applicable and when known]

Performance Guarantee

This Performance Guarantee Agreement (this "**Performance Warranty**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:		**Seller:**	
Name and Address		Name and Address	
Phone		Phone	
Fax		Fax	
E-mail		E-mail	

This Performance Warranty sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Power Purchase Agreement by and between Seller and Purchaser dated of even date herewith (the "**PPA**"). All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Performance Warranty shall be concurrent with the term of the PPA.

1. **Warranty.** Seller guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) ("**Guaranteed kWh**") of energy under usual weather conditions set forth as follows:

A. Commencing on the fifth anniversary of the Commercial Operation Date, if at the end of each successive sixty (60) month anniversary thereof, the cumulative Actual kWh (defined below) generated by the System is ***less*** than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. Commencing on the fifth anniversary of the Commercial Operation Date, if at the end of each successive sixty (60) month anniversary thereof the Actual kWh is ***greater*** than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. "Guaranteed kWh"

True Up Term Years	Guaranteed kWh
Years 1-5	
Years 6-10	
Years 11-15	
Years 16 -20	
Years 21-25	

D. "**Actual kWh**" means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive sixty (60) month anniversary of the Commercial Operation Date and divided by the **"Insolation Adjustment Factor."** The Insolation Factor shall be calculated as follows:

Insolation Adjustment Factor = X/Y, with

X = Estimated insolation for the applicable measuring period calculated as the sum of estimated monthly insolation levels in the global horizontal plane for the System in units of kWh/m2 for the System configuration based on historical data; and

Y = Actual insolation for the applicable measuring period calculated as the sum of actual monthly insolation levels measured in the global horizontal plane in units of kWh/m2 for the System configuration.

For purposes of measuring the Actual kWh and determining the Insolation Adjustment Factor, Seller shall use an industry-standard monitoring service, data acquisition system and/or modelling tool, or, to the extent such services, systems and/or tools are not available, Seller shall make estimates by reasonable means.

E. "**Guaranteed Energy Price per kWh**" means the dollar value per kWh as calculated in the table below:

True Up Term	Utility/ kWh (X)	Solar/kWh (Y)	**Guaranteed Energy Price per kWh** (X - Y)
Years 1-5	$		**$**
Years 6-10	$		**$**
Years 11-15	$		**$**
Years 16 - 20	$		**$**
Years 21-25	$		$

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

A. someone other than Seller or its approved service providers installed, removed, re- installed or repaired the System;

B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);

C. Purchaser's failure to perform, or breach of, Purchaser's obligations under the PPA (such as if Purchaser modifies or alters the System);

D. Purchaser's breach of this Performance Warranty including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;

E. any Force Majeure Event (as defined below);

F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;

G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or

H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Performance Warranty hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Performance Warranty because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;

B. Seller's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and

C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by Seller's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not used by Seller or under its control.

4. **Notices.** All notices under this Performance Warranty shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Performance Warranty at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law.** This Performance Warranty and the respective rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of New York, except where the federal supremacy clause requires otherwise. Venue for any actions or disputes arising out of this Performance Warranty shall be proper in a court of competent jurisdiction within the State of New York.

6. Assignment and Transfer of this Performance Warranty.

A. Assignment by Seller. Pursuant to section 138 of the New York State Finance Law, the Seller shall not sell, transfer or assign (collectively, an "Assignment") the Performance Warranty or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Seller may (i) assign this Agreement to an Affiliate of Seller; (ii) assign, mortgage, pledge or otherwise collaterally assign this Performance Warranty in connection with any financing of the Solar PV System (including pursuant to a sale-leaseback transaction), (iii) assign this Performance Warranty to any entity through which Seller is obtaining financing or capital for the Solar PV System, and (iv) assign this Performance Warranty to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee); provided, however, that in each case, any assignee shall agree in writing to be bound by the terms and conditions of this Performance Warranty and so long as the Seller, or the successor by way of merger of Seller, delivers such tax and enforceability assurance as Purchaser may reasonably request. In the event that Seller identifies such secured Financing Party in Schedule 5 of the PPA, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of the PPA. Any Financing Party shall be an intended third party beneficiary of this Section 6.A. Any assignment by Seller without any required prior written consent of Purchaser shall not release Seller of its obligations hereunder.

B. Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Financing Party in Schedule 5 of the PPA, or in a subsequent notice to Purchaser, then Purchaser hereby: (a) acknowledges the collateral assignment by Seller to the Financing Party, of Seller's right, title and interest in, to and under the Performance Warranty, as consented to under Section 6.A of the Performance Warranty; (b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Seller's interests in this Performance Warranty within the timeframes specified herein with respect to Seller; (c) acknowledges that it has been advised that Seller has granted a first priority perfected security interest in the Solar PV System to the Financing Party and that the Financing Party has relied upon the characterization of the Solar PV System as personal property, as agreed in this Performance Warranty in accepting such security interest as collateral for its financing of the Solar PV System. Any Financing Party shall be an intended third party beneficiary of this Section 6.B.

C. Assignment by Purchaser. Purchaser may assign or transfer this Performance Warranty to any other New York State agency, authority, or public benefit corporation that is the successor in interest of the Purchaser and that is backed by the full faith and credit of the State of New York without the Seller's prior consent, provided that (a) Purchaser shall promptly notify Seller of any such assignment in writing, (b) such assignee shall assume all of Purchaser's obligations under the Performance Warranty in writing; and (c) such assignment shall in no event compromise the tax treatment of this Performance Warranty or the Seller. Any assignment that does not comply with the forgoing shall be invalid. Purchaser shall not sell, transfer or assign the Performance Warranty or any interest therein to any entity other than a New York State agency, authority, or public benefit corporation, as set forth in this section, without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed.

7. **Entire Agreement, Changes.** This Performance Warranty contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Performance Warranty are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Performance Warranty shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of Seller's obligations under this Performance Warranty. Any change to this Performance Warranty must be in writing and signed by both Parties. If any portion of this Performance Warranty is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Performance Warranty shall survive.

[Purchaser]	**[Seller]**
Signature:__________________	Signature:______________________________________
Printed Name: ______________	Printed Name: ________________________________
Title: ______________________	Title: ____
Date: ______________________	Date: ____

LOCAL LAW NO. “J” FOR 2021

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, AUTHORIZING THE COUNTY EXECUTIVE TO NEGOTIATE A LONG-TERM POWER PURCHASE AGREEMENT FOR PROPERTY OWNED AND MAINTAINED BY ALBANY COUNTY

Introduced: 9/13/21
By Messrs. Reinhardt, Feeney, A Joyce and Miller:

BE IT ENACTED by the County Legislature of the County of Albany, pursuant to Section 33 of the Municipal Home Rule Law, as follows:

SECTION 1. Direct Power Purchase Agreement

Notwithstanding Section 215 of the New York State County Law, the County Executive of Albany County is hereby authorized to negotiate long-term Power Purchase Agreement(s) for real and personal property owned and maintained by Albany County located at 897 Watervliet Shaker Road for an original term not to exceed twenty-five (25) years, subject to the approval by the Albany County Legislature.

SECTION 2. Severability

If any article, section, subsection, paragraph, phrase or sentence of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3. Effective Date

This Local Law is adopted subject to permissive referendum pursuant to Section 24 of the New York State Municipal Home Rule Law.

LOCAL LAW NO. "K" FOR 2021

A LOCAL LAW TO PROVIDE FOR THE SAFE DISPOSAL OF OPIOID MEDICATIONS

Introduced: 9/13/21
By: Messrs. A. Joyce, Feeney and Domalewicz, Beston, Bruschi, Ms. Chapman, Messrs. Clay, Cleary, Commisso, Efekoro, Ethier, Fein, R. Joyce, Kuhn, Ms. Lekakis, Mr. Mayo, Mss. McLaughlin, Mclean Lane, Messrs. Miller, Reidy, Reinhardt, Ricard, Simpson and Smith:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

SECTION 1: TITLE

This Local Law shall be known as "The Albany County Prescription Opioid Safe Disposal Law."

SECTION 2: PURPOSE AND INTENT

In 2017, this honorable body authorized the County Attorney to join litigation against major drug manufacturers to recover current and future damages to the County taxpayers from abuse of opioid pharmaceuticals. Since then, the onset of the COVID-19 pandemic has contributed to an increase in drug-related overdoses in the County. Any reduction in the availability of opioid medications by persons for which the drugs were not prescribed will assist the efforts of ending the opioid epidemic. Proper safe disposal of unused opioids is essential to being certain the drugs do not end up in the wrong hands, or in our environment.

Portable personal use pharmaceutical disposal systems enable the safe and environmentally friendly deactivation of the harmful chemical compounds in opioids. These inexpensive devices can assist in the proper disposal of opioids if provided to wherever a prescription is filled. Under the Albany County Prescription Opioid Safe Disposal Law, points of distribution for prescription opioids within the County will be required to provide each patient with a portable personal use pharmaceutical disposal system with each opioid prescription. Placing prescription opioid disposal systems directly in the hands of patients when the prescription is delivered will provide a more immediate and efficient opportunity for patients to deactivate and properly dispose of prescribed opioids thereby further mitigating the adverse effects of opioids on our County residents and the community.

SECTION 3: DEFINITIONS

3.1 “Controlled opioid” means each opioid-related drug and other substance listed in paragraphs (b) and (c) of Schedule II of Section 1308.12 of Part 1308-Schedules of Controlled Substances of Title 21 of the code of Federal Regulations.

3.2 “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of a prescribed opioid, whether or not there is an agency relationship.

3.3 “Dispense” means to deliver a prescribed opioid to an ultimate user, including by means of the internet, and includes the packaging, labelling, or compounding necessary to prepare the substance for delivery.

3.4 “Internet” means, collectively, computer and telecommunications facilities which comprise the worldwide network of networks that employ a set of industry standards and protocols, or any predecessor or successor protocol to such protocol, to exchange information of all kinds. “Internet,” as used in this Local Law, also includes other networks, whether private or public, used to transmit information by electronic means.

3.5 “Non-retrievable” means the condition or state to which an Opioid shall be rendered following a process that permanently alters that Opioid’s physical or chemical condition or state through irreversible means and thereby renders the Opioid unavailable and unusable for all practical purposes. An Opioid is considered “Non-retrievable” when it cannot be transformed to a physical or chemical condition or state as a controlled substance, as defined in 21 C.F.R. 802(6), or controlled substance analogue, as defined in 21 C.F.R. 802(32)(A).

3.6 “Opioid” means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversation into a drug having such addiction-forming or addiction-sustaining liability.

3.7 “Person” means individual, institution, corporation, business trust, estate, trust, partnership or association, or any other legal entity.

3.8 “Pharmaceutical disposal system” means a portable product designed for personal use by the ultimate user for the purpose of allowing the ultimate user of a prescribed opioid to deactivate the prescribed opioid to a non-retrievable condition or state.

3.8 “Practitioner” means a physician, dentist, podiatrist, or other person licensed or otherwise permitted under law to dispense a prescribed opioid. Such person shall be deemed a “practitioner” only as to such substances, or conduct relating to such substances, as is permitted by his or her license, permit or otherwise permitted by law.

3.9 “Prescribed opioid” means any controlled opioid dispensed pursuant to a prescription by a practitioner.

3.10 “Prescription” shall mean an official New York state prescription, an electronic prescription, an oral prescription, an out-of-state prescription, or any one of the foregoing.

3.11 “Ultimate user” means a person who has lawfully obtained, and who possesses, a prescribed opioid for his or her own use or for the use of a member of his or her household.

SECTION 4: PHARMACEUTICAL DISPOSAL SYSTEM REQUIREMENT

4.1 Simultaneously with the delivery of a prescribed opioid in the County to an ultimate user, the person authorized by law to dispense such prescribed opioid must also simultaneously deliver to the ultimate user a pharmaceutical disposal system.

4.2 No person delivering a pharmaceutical disposal system to an ultimate user pursuant to Section 4.1 of this Local Law may charge the ultimate user a fee or other monetary amount for the pharmaceutical disposal system itself, the delivery of the pharmaceutical disposal system to the ultimate user, or any other cost incurred by such person with respect to his, her or its compliance with Section 4.1 of this Local Law.

SECTION 5: ENFORCEMENT

The County Department of Health is hereby granted and shall have the authority to enforce this Local Law on behalf of the County. The County Department of Health may coordinate enforcement with the County Department of Consumer Affairs.

SECTION 6: PENALTIES

Upon a violation of this Local Law the County Department of Health is hereby authorized to enforce this Local Law by exercise of any one or more of its powers granted to it under the New York State Public Health Law and regulations thereunder, including, without limitation, imposition of a civil penalty not to exceed two thousand dollars ($2,000) upon a person for any and each and every violation of, or failure to comply with, any provision of this Local Law.

SECTION 7: AUTHORITY TO PROMULGATE RULES AND REGULATIONS

7.1 The Commissioner of the Albany County Department of Health (“Commissioner”) is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this law.

7.2 Any rules and regulations promulgated by the Commissioner shall provide a mechanism for covering the costs associated with the pharmaceutical disposal systems, with such costs being covered out of any settlement related to the lawsuit against pharmaceutical companies.

SECTION 8: ADDITIONAL PROVISIONS

8.1 In adopting and implementing this Local Law, the County assumes an undertaking only to promote the general welfare. The County does not assume or impose upon its officials and employees an obligation by which any one or more of them could be liable in money damages to any person or entity who claims that a breach proximately caused injury.

8.2 This Local Law shall be construed so as not to conflict with applicable federal or state laws, rules or regulations. Nothing in this Local Law shall authorize any County bureau or department to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such bureau or department action is taken. The County shall suspend enforcement of this Local Law to the extent that said enforcement would conflict with any preemptive state or federal legislation subsequently adopted.

8.3 Nothing in this Local Law is intended to protect anticompetitive or collusive conduct nor shall this Local Law be construed to modify, impair, or supersede the operation of any antitrust law or unfair competition law of the State of New York or the United States.

8.4 This Local Law shall be construed in accordance with New York State law, including, without limitation, Title 15 (Storage, Treatment, Disposal and Transportation of Regulated Medical Waste) of Article 27 of the New York State Environmental Conservation Law, and shall not be construed in any way that would result in conflict with or preemption by any state law.

8.5 This Local Law shall be null and void on the date that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Local Law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County. The County Legislature may determine by resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this Section 6.5.

SECTION 9: STATE ENVIRONMENTAL QUALITY REVIEW ACT COMPLIANCE

The County Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this Local Law constitutes a Type II action pursuant to Section 617.5(c)(20), (21) and/or (27) of Title 6 of the New York Code of Rules and Regulations and within the meaning of Section 8-0109(2) of the New York Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection.

SECTION 10: SEVERABILITY

If any clause, sentence, paragraph, subdivision, section, or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its specific application.

SECTION 11: EFFECTIVE DATE

This Local Law shall become effective as provided in Municipal Home Rule Law §27.

LOCAL LAW NO. "L" FOR 2021

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENSURING UNIVERSAL ACCESS TO COUNSEL DURING EVICTION PROCEEDINGS IN HOUSING COURTS IN ALBANY COUNTY

Introduced: 9/13/21
By: Messrs. Fein and Efekoro

BE IT ENACTED by the County Legislature of the County of Albany as follows:

SECTION 1. TITLE

This local law shall be known as the "Albany County Right to Counsel Act"

SECTION 2. LEGISLATIVE INTENT

While those facing criminal prosecution have a legal right to an attorney, as determined in the Supreme Court case *Gideon v. Wainwright*, those facing eviction are not guaranteed representation. Right to counsel legislation would address a significant imbalance in representation in housing court. In 2018, in landlord tenant cases in Albany City Court, only 2.4% of defendants had counsel while 85.7% of plaintiffs had counsel.

Rent is a significant burden for many individuals in Albany County. The COVID pandemic has exacerbated already deep problems of housing insecurity and has highlighted the struggles many families face. In the City of Albany, 49% of families of color are rent-burdened and 35% of white families are rent burdened (meaning they spent more than 30% of their income on rent).

Right to counsel would strengthen protections for individuals facing eviction, ensuring that they are adequately represented in court. When someone is at risk of losing their housing, they deserve the full hearing in court which only a lawyer is capable of advocating for.

SECTION 3. DEFINITIONS

(a) Brief legal assistance. The term "brief legal assistance" means individualized legal assistance provided in a single consultation by a designated organization to a covered individual in connection with a covered proceeding.

(b) Coordinator. The term "coordinator" means the County Attorney.

(c) Covered individual. The term "covered individual" means a tenant of a rental dwelling unit located in Albany County, including any tenant in a building operated by any housing authority located in Albany County, who is a respondent in a covered proceeding.

(d) Covered proceeding. The term “covered proceeding” means any summary proceeding in housing court to evict a covered individual, including a summary proceeding to seek possession for the non-payment of rent or a holdover, or an administrative proceeding of any housing authority located in the Albany County for termination of tenancy.

(e) Designated organization. The term “designated organization” means a not-for-profit organization or association that has the capacity to provide legal services and is designated by the coordinator pursuant to this chapter.

(f) Full legal representation. The term “full legal representation” means ongoing legal representation provided by a designated organization to an income-eligible individual and all legal advice, advocacy, and assistance associated with such representation. Full legal representation includes, but is not limited to, the filing of a notice of appearance on behalf of the income-eligible individual in a covered proceeding.

(g) Housing court. The term “housing court” means the housing part of any city, town, or village court located in Albany County.

(h) Income-eligible individual. The term “income-eligible individual” means a covered individual whose annual gross household income is not in excess of 200 percent of the federal poverty guidelines as updated periodically in the federal register by the United States department of health and human services pursuant to subsection (2) of section 9902 of title 42 of the United States code.

(i) Legal services. The term “legal services” means brief legal assistance or full legal representation.

SECTION 4. PROVISION OF LEGAL SERVICES

(a) Subject to appropriation, the coordinator shall establish a program to provide access to legal services for covered individuals in covered proceedings and shall ensure that, no later than January 1, 2022:
    a. all covered individuals receive access to brief legal assistance no later than their first scheduled appearance in a covered proceeding, or as soon thereafter as is practicable; and
    b. all income-eligible individuals receive access to full legal representation no later than their first scheduled appearance in a covered proceeding, or as soon thereafter as is practicable.

(b) The coordinator shall estimate annually the expenditures required for each year of implementation of the programs described by this section. Beginning October 1, 2022 and no later than each October 1 thereafter, the coordinator shall publish a summary of any changes to such estimates for expenditures.

(c) The coordinator shall annually review the performance of designated organizations.

(d) The coordinator shall require each designated organization to identify the geographic areas for which such organization will provide legal services. For each such geographic area, the coordinator shall maintain a list of such organizations that provide such legal services.

(e) Any legal services performed by a designated organization pursuant to this chapter shall not supplant, replace, or satisfy any obligations or responsibilities of such designated organization pursuant to any other program, agreement, or contract.

(f) Nothing in this chapter or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the city or any agency, official, or employee thereof.

SECTION 5. NOTICE AND OUTREACH

(a) The Sheriff's Office shall provide notice of a covered individual's right to counsel in all eviction notices.

(b) The coordinator shall set up a hotline to connect covered individuals with legal services and answer questions.

SECTION 6. PUBLIC HEARING

(a) Following the establishment of the programs described by Section 4, the coordinator shall hold one public hearing each year to receive recommendations and feedback about such programs.

(b) Such hearing shall be open to the public, and the coordinator shall provide notice of such hearing, no less than 30 days before such hearing, by:
   a. posting in the housing court in English, Spanish, and any other languages determined by the coordinator;
   b. posting in public offices of the Department of Social Services in English, Spanish, and any other languages determined by the coordinator; and

c. outreach through local media and to each designated organization, local elected officials, the supervising judges of housing courts, and community-based organizations.

(c) At such hearing, written and oral testimony may be provided.

(d) The coordinator shall cause a transcript of such hearing to be produced and shall post such transcript online no later than 45 days after the meeting.

SECTION 7. REPORTING

No later than January 1, 2022 and annually by each January 1 thereafter, the coordinator shall submit to the county executive and the chairperson of the county legislature, and post online, a review of the program established pursuant to subdivision a of Section 4 and information regarding its implementation, to the extent such information is available, including, but not limited to:

(a) the estimated number of covered individuals;

(b) the number of individuals receiving legal services, disaggregated by the following characteristics of such individuals:
   a. city, town, or village and postal code of residence;
   b. age of head of household;
   c. household size;
   d. estimated length of tenancy;
   e. approximate household income;
   f. receipt of ongoing public assistance at the time such legal services were initiated;
   g. tenancy in housing operated by any housing authority located in Albany County;

(c) outcomes immediately following the provision of full legal representation, as applicable and available, including, but not limited to, the number of:
   a. case dispositions allowing individuals to remain in their residence;
   b. case dispositions requiring individuals to be displaced from their residence; and
   c. instances where the attorney was discharged or withdrew.

(d) non-payment and holdover petitions filed in housing court, warrants of eviction issued in housing court, and residential evictions conducted by county sheriff deputies, disaggregated by city or town.

SECTION 8. RULES

The coordinator may promulgate such rules as may be necessary to carry out the purposes of this local law.

SECTION 9. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or other portion of this law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

SECTION 10. EFFECTIVE DATE

This local law shall take effect upon filing with the Secretary of State.

Referred to Law and Audit and Finance Committees – 9/13/21

HON. DANIEL P. MCCOY
ALBANY COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE ALTERNATE PUBLIC DEFENDER
112 STATE STREET, SUITE 720
ALBANY, NEW YORK 12207
(518) 447-5532 FAX: (518) 447-7416
WWW.ALBANYCOUNTY.COM

TINA K. SODHI, ESQ.
ALTERNATE PUBLIC DEFENDER

August 2, 2021

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairman Joyce:

The Alternate Public Defender's Office, on behalf of the Public Defender and the Alternate Public Defender, requests an extension of a previously authorized grant, ILS Second Counsel at First Appearance (CAFA 2) contract to December 31, 2021. The Counsel at First Appearance (CAFA) program provides counsel at arraignment to every indigent individual arrested in Albany County. The request to extend the term of the CAFA2 contract has been approved by ILS. The extension permits us to provide continued representation to our clients and allows us to better utilize the current funding. The extension does not negatively impact our program or any funding associated with the program.

Please don't hesitate to contact me with any questions.

Sincerely,

Tina K. Sodhi, Esq.
Alternate Public Defender

cc: Hon. Dennis A. Feeney, Majority Leader
Hon. Frank A. Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Armis Zilgme, Minority Counsel

Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207

File #: TMP-2641, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):
Authorization to extend NYS Office of Indigent Legal Services (ILS) Counsel at First Appearance (CAFA 2) Grant and amend 2021 Budget

Date:	August 2, 2021
Submitted By:	Stephen Herrick
Department:	Office of the Public Defender
Title:	Public Defender
Phone:	518-447-7150
Department Rep. Attending Meeting:	Tina K. Sodhi, Esq.

Purpose of Request:

☐ Adopting of Local Law
☒ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☒ Budget Amendment
☒ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel

☒ Personnel Non-Individual
☒ Revenue

Increase Account/Line No.: Increase A1170-03337 to $256,495 (Counsel at 1st Appearance revenue). Increase A1170-19954 to $229,095 (Enhanced Pay appropriation).
Source of Funds: NYS ILS' Second Counsel at First Appearance grant
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:
☒ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant
Choose an item.
Submission Date Deadline Click or tap to enter a date.
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):
NYS Office of Indigent Legal Services
A.E. Smith Office Bldg., 11th Floor
80 South Swan St.
Albany, NY 12210

Additional Parties (Names/addresses):
Click or tap here to enter text.

Amount/Raise Schedule/Fee: $749,700.00
Scope of Services: CAFA provides counsel at arraignment 24/7 to every indigent individual arrested in Albany County.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☐

If Mandated Cite Authority:	Click or tap here to enter text.
Is there a Fiscal Impact:	Yes ☒ No ☐
Anticipated in Current Budget:	Yes ☐ No ☒

<u>County Budget Accounts:</u>

Revenue Account and Line:	A1170-03337 (Counsel at First Appearance)
Revenue Amount:	Increase $61,095 to $256,495
Appropriation Account and Line:	A1170-19954 (Enhanced Pay)
Appropriation Amount:	Increase $61,095 to $229,095

<u>Source of Funding - (Percentages)</u>

Federal:	Click or tap here to enter text.
State:	100%
County:	Click or tap here to enter text.
Local:	Click or tap here to enter text.

<u>Term</u>

Term: (Start and end date)	January 1, 2017-December 31, 2021
Length of Contract:	5 years

<u>Impact on Pending Litigation</u>	Yes ☐ No ☒
If yes, explain:	Click or tap here to enter text.

<u>Previous requests for Identical or Similar Action:</u>

Resolution/Law Number:	2019-558; 2018-389
Date of Adoption:	12/5/2019; 9/12/2018

<u>Justification</u>: (state briefly why legislative action is requested)

The Public Defender and the Alternate Public Defender Offices request approval to extend a previously authorized, NYS Office of Indigent Legal Services (ILS) Second Counsel at First Appearance Grant (CAFA2) contract to December 31, 2021. The extension of the CAFA2 from January 1, 2021 until December 31, 2021 will permit both Offices to continue providing the services to indigent clients and to utilize the remaining funds in the grant. Due to the delay in start of CAFA1 and subsequently CAFA2, the contract previously had to be extended. Furthermore, the request to extend the term of CAFA2 contract to December 31, 2021 has been approved by ILS.

Sodhi, Tina

From: Colvin, Jennifer (ILS) <Jennifer.Colvin@ils.ny.gov>
Sent: Tuesday, July 6, 2021 3:27 PM
To: Sodhi, Tina
Cc: Sill, Mary; Cadrette, Patricia (ILS); Bush, Marian (ILS); O'Hara, Hannah (ILS); Coleman, Lisa (ILS)
Subject: Extension FORM to 12-31-2021 for Second Counsel at First Appearance (2nd CAFA) grant – Albany County
Attachments: Extension FORM to 12-31-2021-Albany-2nd CAFA.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Tina,

Your request to extend the term of the ILS Second Counsel at First Appearance (2nd CAFA) contract to December 31, 2021 (12 months) has been approved by ILS.

Attached is the required contract Amendment form. As with the original contract executed by the county, please:

- Print **two (2) copies** of the form
- Have a duly authorized county official sign and notarize each copy (page 3)
- Mail the two (2) signed copies to me at your earliest convenience to the address listed below:

Jennifer Colvin
Manager of Grant Solicitation and Distribution
Office of Indigent Legal Services
A. E. Smith Office Bldg., 11th Floor
80 South Swan St.
Albany, NY 12210

The extension will then be forwarded to the Office of the State Comptroller for final review and approval.

If you have any questions, please feel free to contact me.

Thank you,
Jennifer

Jennifer Colvin
Manager of Grants Solicitation and Distribution
NYS Office of Indigent Legal Services (www.ils.ny.gov)
A.E. Smith Office Bldg., 11th Floor
80 South Swan Street
Albany, NY 12210
Phone: (518) 486-9713
Email: Jennifer.Colvin@ils.ny.gov

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<table>
<tr><td>STATE AGENCY (Name & Address):

NYS Office of Indigent Legal Services
A. E. Smith Building, 11th Floor
80 South Swan Street
Albany, NY 12210</td><td>BUSINESS UNIT/DEPT. ID: OLS01
1350200

CONTRACT NUMBER: CAFA201

CONTRACT TYPE:
☒ Multi-Year Agreement
☐ Simplified Renewal Agreement
☐ Fixed Term Agreement</td></tr>
<tr><td>CONTRACTOR SFS PAYEE NAME:

Albany, County of</td><td>TRANSACTION TYPE:
☐ New
☐ Renewal
☒ Amendment</td></tr>
<tr><td>CONTRACTOR DOS INCORPORATED NAME:</td><td>PROJECT NAME:

Second Counsel at First Appearance</td></tr>
<tr><td>CONTRACTOR IDENTIFICATION NUMBERS:

NYS Vendor ID Number: 1000002428
Federal Tax ID Number: 14-6002563
DUNS Number (if applicable):</td><td>AGENCY IDENTIFIER:

CFDA NUMBER (Federally funded grants only):</td></tr>
<tr><td>CONTRACTOR PRIMARY MAILING ADDRESS:

County of Albany
Public Defender's Office
60 South Pearl Street, 4th Floor
Albany, NY 12207

CONTRACTOR PAYMENT ADDRESS:
☐ Check if same as primary mailing address

County of Albany
Dept. of Management and Budget
112 State St., Room 900
Albany, NY 12207

CONTRACTOR MAILING ADDRESS:
☒ Check if same as primary mailing address</td><td>CONTRACTOR STATUS:

☐ For Profit
☒ Municipality, Code: 10100000000
☐ Tribal Nation
☐ Individual
☐ Not-for-Profit

Charities Registration Number:

Exemption Status/Code:

☐ Sectarian Entity</td></tr>
</table>

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<table>
<tr>
<td>
CURRENT CONTRACT TERM:

From: January 1, 2017
To: December 31, 2020

CURRENT CONTRACT PERIOD:

AMENDED TERM:

From: January 1, 2017 To: December 31, 2021

AMENDED PERIOD:

From: January 1, 2021 To: December 31, 2021
</td>
<td>
CONTRACT FUNDING AMOUNT
(Multi-year – enter total projected amount of the contract; Fixed Term/Simplified Renewal – enter current period amount):

CURRENT: $749,700.00

AMENDED:

FUNDING SOURCE(S):

☒ State
☐ Federal
☐ Other
</td>
</tr>
</table>

FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT:
(Out years represent projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

ATTACHMENTS PART OF THIS AGREEMENT:

☐ Attachment A:
- ☐ A-1 Program-Specific Terms and Conditions
- ☐ A-2 Federally Funded Grants and Requirement Mandated by Federal Laws

☐ Attachment B:
- ☐ B-1 Expenditure Based Budget
- ☐ B-2 Performance Based Budget
- ☐ B-3 Capital Budget
- ☐ B-4-Net Deficit Budget
- ☐ B-1(A) Expenditure Based Budget (Amendment)
- ☐ B-2(A) Performance Based Budget (Amendment)
- ☐ B-3(A) Capital Budget (Amendment)
- ☐ B-4(A) Net Deficit Budget (Amendment)

☐ Attachment C: Work Plan

☐ Attachment D: Payment and Reporting Schedule

☐ Other:

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.	
CONTRACTOR: ______________________________________ ______________________________________ By:___________________________________ ______________________________________ Printed Name Title: _________________________________ Date:_________________________________	STATE AGENCY: __NYS Office of Indigent Legal Services_____ ______________________________________ By: __________________________________ ____William J. Leahy_____________________ Printed Name Title:_Director-Office of Indigent Legal Services__ Date:_________________________________

STATE OF NEW YORK

County of ____________________________

On the ______ day of ____________________, _______, before me personally appeared ______________________________________, to me known, who being by me duly sworn, did depose and say that he/she resides at ____________________________________, that he/she is the ____________________________ of the __________________________________, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) ____

ATTORNEY GENERAL'S SIGNATURE	STATE COMPTROLLER'S SIGNATURE
_____________(N/A)______________________	______________________________________
______________________________________ Printed Name	______________________________________ Printed Name
Title:__________________________________	Title:__________________________________
Date:__________________________________	Date:__________________________________

RESOLUTION NO. 558

AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE OFFICE OF INDIGENT LEGAL SERVICES REGARDING AN EXTENSION OF THE COUNSEL AT FIRST APPEARANCE GRANT

Introduced: 12/5/19
By Law Committee:

WHEREAS, By Resolution 389 for 2018, this Honorable Body authorized an agreement with the NYS Office of Indigent Legal Services in the amount of $749,700 regarding the Counsel at First Appearance Grant, and

WHEREAS, The Public Defender has been notified by the NYS OILS that a no-cost extension to the term is available, and has requested authorization to extend the grant term through May 31, 2020 in order to utilize the remainder of the program funding, and

WHEREAS, The Counsel at First Appearance Grant will continue and expand upon the Counsel at First Appearance programs practices currently in place as an effort to improve the quality and provision of indigent defense at first appearance and give provision of direct and continuous representation to eligible persons, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized enter into an agreement with the NYS Office of Indigent Legal Services regarding the extension of the Counsel at First Appearance Grant for the period ending May 31, 2020 and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreements as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote – 12/5/19

RESOLUTION NO. 389

AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE OFFICE OF INDIGENT LEGAL SERVICES REGARDING THE COUNSEL AT FIRST APPEARANCE GRANT AND AMENDING THE 2018 PUBLIC DEFENDER BUDGET

Introduced: 9/12/18
By Law and Audit and Finance Committees:

WHEREAS, By Resolution 15 for 2017, this Honorable Body authorized the submission of a grant application to the NYS Office of Indigent Legal Services (NYS OILS) regarding the Counsel at First Appearance Grant, and

WHEREAS, The Public Defender has been notified by the NYS OILS that funds are available regarding Counsel at First Appearance Grant, in the amount of $749,700 for a three year period commencing June 1, 2017 and ending May 31, 2020, and

WHEREAS, The Counsel at First Appearance Grant will continue and expand upon the Counsel at First Appearance programs practices currently in place as an effort to improve the quality and provision of indigent defense at first appearance and give provision of direct and continuous representation to eligible persons, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized enter into an agreement with the NYS Office of Indigent Legal Services in the amount of $749,700 for the period commencing June 1, 2017 and ending May 31, 2020 and, be it further

RESOLVED, That the 2018 Public Defender Budget is amended as follows:

Increase Revenue Account A3025 Indigent Legal Services fund by $62,475

Increase Appropriation Account A1170.1 by $55,725 by increasing the following line items:
Increase Line Item A1170 1 9954 Enhanced Pay by $43,225
Increase Line Item A1170 1 2030 Arraignment Attorney by $12,500 for balance of fiscal year 2018 with an annual salary of $50,000

Increase Appropriation Account A1170.8 by $6,750 by increasing the following line items:
Increase Line Item A1170 8 9010 State Retirement by $2,522
Increase Line Item A1170 8 9030 Social Security by $966
Increase Line Item A1170 8 9060 Hospital & Medical by $3,262

and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote – 9/12/18

Budget Amendment Spreadsheet - 2021

ACCOUNT NO.	RESOLUTION DESCRIPTION	ORIGINAL BUDGET	INCREASE	DECREASE	REVISED BUDGET	DEPARTMENT NAME
A 1170 19954	Enhanced Pay	$168,000.00	$77,000.00	$0.00	$245,000.00	Public Defender
A 1170 12030 001-150135	Arraignment Attorney	$ 67,626.00	$0.00	$50,000.00	$17,626.00	Public Defender
A 1170 89010	State Retirement	$ 618,147.00	$0.00	$10,061.45	$608,085.55	Public Defender
A 1170 89030	Social Security	$ 439,902.00	$0.00	$4,094.15	$435,807.85	Public Defender
A 1170 89060	Hospital and Medical Insurance	$ 998,467.00	$0.00	$12,844.40	$985,622.60	Public Defender
	TOTAL APPROPRATIONS		$77,000.00	$77,000.00		

ACCOUNT NO.	RESOLUTION DESCRIPTION	DECREASE	INCREASE	REVISED BUDGET	DEPARTMENT NAME
	TOTAL ESTIMATED REVENUES	$0.00	$0.00		
	GRAND TOTALS	$77,000.00	$77,000.00		

P. DAVID SOARES
DISTRICT ATTORNEY

COUNTY OF ALBANY
OFFICE OF THE DISTRICT ATTORNEY
COUNTY COURT HOUSE
ALBANY, NEW YORK 12207
(518) 487-5460
(518) 487-5093 - FAX

DAVID M. ROSSI
CHIEF ASSISTANT DISTRICT ATTORNEY

CHERYL K. FOWLER
DEPUTY CHIEF ASSISTANT DISTRICT ATTORENY

September 14, 2021

Brandon Russell, Majority Counsel
Albany County Legislature
112 State Street, Rm. 700
Albany, N.Y. 12207

Arnis Zilgme, Minority Counsel
Albany County Legislature
112 State Street, Rm. 1360
Albany, N.Y. 12207

Dear Sirs:

I am requesting legislative action to further the mission of the Office of the Albany County District Attorney. The attached resolution seeks permission to:

- Accept funding from NYS OVS for the Crime Victim Assistance Grant and
- Amend our budget to account for an Union Contract Agreement.

Attached is the request for legislative action and supporting documents. If you have any questions, please feel free to contact me at 275-4706.

Thank you for your assistance.

Sincerely,

P. David Soares
Albany County District Attorney

FOR COUNSEL USE ONLY

Date Received: ____________
Received By: ____________
Method: Hand: ____________
Courier: ____________
Mail: ____________

REQUEST FOR LEGISLATIVE ACTION

DATE: **September 14, 2021**
DEPARTMENT: Office of the District Attorney
Contact Person: Heather Orth
Telephone: 275 4704
Dept. Representative Attending
Committee Meeting: Heather Orth and/or David Soares, District Attorney

PURPOSE OF REQUEST:

Adoption of Local Law	___
Amendment of Prior Legislation	___
Approval/Adoption of Plan/Procedure	___
Bond Approval	___
Budget Amendment (See below)	___
Contract Authorization (See below)	_X_
Environmental Impact	___
Home Rule Request	___
Property Conveyance	___

Other: (State briefly if not listed above) Authorization to submit an application and enter into a contract with the NYS Office of Victim Services to expand the Victim/Witness Advocate Program.

CONCERNING CONTRACT AUTHORIZATION (Cont'd)
STATE THE FOLLOWING:

Contract Terms/Conditions:
Party (Name/Address):
NYS Office of Victim Services
AE Smith Building 80 S. Swan Street, 2nd FL
Albany, NY 12210
Amount/Rate Schedule/Fee:
$144,942.24
Term: 10/1/21– 9/30/22
Scope of Services: The funds required will be used to support victims of crime in Albany County.

Contract Funding:
Anticipated in Current Budget: Yes _X_ No ___
Funding Source: State Funds
County Budget Accounts:
Revenue: A9116503496
Appropriation: A91165 12237; 12262; 44038; 89010; 89030; 89060

NEW YORK STATE | Office of Victim Services

ANDREW M. CUOMO
Governor

ELIZABETH CRONIN
Director

July 8, 2021

Albany County Of (District Attorney)
6 LODGE STREET
ALBANY, NY 12207

RE: Contract Number: C10902GG

Year 3 Contract Period: 10/1/21-9/30/22

Funding Source: 2019-V2-GX-0040

Dear Colleague:

The Office of Victim Services (OVS) previously awarded your program a grant for the period October 1, 2019 through September 30, 2022. It is now time to submit and finalize your budget for the 2021-22 contract year.

Your award amount for the 2021-22 contract year is: $144,942.24

All budget submissions need to be completed in the Grants Gateway. Paper submissions will not be accepted. Since data entered into the budget for year 2 expenses will automatically be carried over in the Grants Gateway to year 3, this should be modified accordingly. Please submit the following items in the "Grantee Document Folder", located in the "Forms Menu" of the Grants Gateway:

- Civil Rights Compliance Form
- Special Conditions Attestation
- Position Description Form
- Program Information Form
- SAR Questionnaire
- Attachment C- Performance Measurement Tool
- Proof of Workers Comp Insurance (for subcontractors if applicable)
- Proof of Disability Insurance (for subcontractors if applicable)
- Fringe, Space, and Phone Form (if applicable)
- Lease (if applicable)
- De Minimis Form or Indirect Cost Rate Agreement (if applicable)
- Consultant Agreements (if applicable)

Please enter your 2021-22 budget in the "expenditure budget" section of the Forms Menu.

Please submit all of the necessary documents in the Grants Gateway by the close of business on August 8, 2021.

DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
CRIME VICTIM AND SEXUAL VIOLENCE CENTER
112 STATE STREET, ROOM 1010
ALBANY, NEW YORK 12207-2077
(518) 447-7100 FAX: (518) 447-7102
SEXUAL ASSAULT CRISIS HOTLINE: (518) 447-7716
www.albanycounty.com
e-mail: cvsvc@albanycounty.com

KAREN ZIEGLER
DIRECTOR

Hon. Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, NY 12207

August 27, 2021

Dear Chairman Joyce:

I am submitting the enclosed Request for Legislative Action to extend the contract between The New York Society for the Prevention of Cruelty to Children and the Albany County Crime Victim and Sexual Violence Center. The Coronavirus pandemic significantly impacted the implementation of the New York Society for the Prevention of Cruelty to Children *Children First* Initiative. The partnership between The New York Society for the Prevention of Cruelty to Children (NYSPCC) and the Athlete Assistance Fund (AAF) is committed to working with CVSVC to provide this critical training between September 1, 2021 to August 31, 2022. This effort seeks to prevent child sexual abuse in the sport of gymnastics. This pilot project will connect CVSVC with gymnastics clubs across the Capital Region to provide training and education on child sexual abuse prevention and serve as local child protection experts to gymnastics clubs staff. CVSVC will receive free training and technical assistance on a child sexual abuse prevention curriculum. The funding is based on the number of trainings provided to the clubs and is capped at $10,000.

I appreciate your consideration this matter.

Respectfully Submitted,

Karen Ziegler
Director

Cc: Dennis A. Feeney, Majority Leader
Frank A. Mauriello, Minority Leader
Rebekkah Kennedy, Majority Counsel
Arnis Zilgme, Esq. Minority Counsel

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

File #: TMP-2688, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):
Extend Contract with NY Society for the Prevention of Cruelty to Children with CVSVC

Date:	8/27/2021
Submitted By:	kziegler
Department:	CVSVC
Title:	Director
Phone:	518-447-7100
Department Rep.	
Attending Meeting:	kziegler

Purpose of Request:

☐ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☒ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel
☐ Personnel Non-Individual

☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☒ Grant
Renewal
Submission Date Deadline 9/1/2021
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):
NY Society for the Prevention of Cruelty to Children
161 William Street - 9th Floor
New York, NY 10038

Additional Parties (Names/addresses):
Click or tap here to enter text.

Amount/Raise Schedule/Fee: 10000
Scope of Services: CVSVC will connect with gymnastics clubs across the Capital Region to provide training and education on child sexual abuse prevention and serve as local child protection experts to gymnastics clubs staff.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☒ No ☐

County Budget Accounts:
Revenue Account and Line: A4610 03495
Revenue Amount: 10000

Appropriation Account and Line: A4610 44046
Appropriation Amount: 10000

Source of Funding - (Percentages)
Federal: 100%
State: Click or tap here to enter text.
County: Click or tap here to enter text.
Local: Click or tap here to enter text.

Term
Term: (Start and end date) 9/1/2021 to 8/31/2022
Length of Contract: 12 months

Impact on Pending Litigation Yes ☐ No ☒
If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:
Resolution/Law Number: 185
Date of Adoption: 5/11/2020

Justification: (state briefly why legislative action is requested)

This pilot project will connect CVSVC with gymnastics clubs across the Capital Region to provide training and education on child sexual abuse prevention and serve as local child protection experts to gymnastics clubs staff. CVSVC will receive free training and technical assistance on a child sexual abuse prevention curriculum. The funding is based on the number of trainings provided to the clubs and is capped at $10,000. There is no cost to the County for this project.

ATHLETE ASSISTANCE FUND AND THE NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN LAUNCH *ATHLETES ARE CHILDREN FIRST* INITIATIVE FOR GYMNASTICS CLUBS NATIONWIDE

The initiative will provide virtual sexual abuse prevention trainings in New York State and across the U.S. to gymnastic club coaches and staff

New York, NY — February 9, 2021 — The **Athlete Assistance Fund** (AAF) has launched the ***Athletes are Children First*** initiative, an innovative sexual abuse prevention program with **The New York Society for the Prevention of Cruelty to Children** (The NYSPCC). Specific to gymnastics, and in response to previous prominent instances of sexual abuse occurring within the sport, this program provides sexual abuse prevention training workshops to gym owners and coaches to equip them with the knowledge and tools they need to keep child athletes safe. ***Athletes are Children First*** will debut with a pilot program in New York State connecting gymnastics clubs with local child protection experts to deliver child sexual abuse awareness and prevention workshops virtually to coaches and staff. Simultaneously, The NYSPCC will provide bi-monthly virtual training sessions for gymnastics club coaches and staff nationally, to ensure comprehensive child sexual abuse prevention education is available nationwide.

Developed by The NYSPCC, the *Athletes are Children First* trainings are tailored specifically to the sport of gymnastics with input from athletes, club owners, coaches, and staff, and further refined through feedback from sessions conducted at two gymnastics regional congresses and one national congress.

“Having the expertise of The NYSPCC alongside the Athlete Assistance Fund as we embark on this pilot program and national rollout is an invaluable asset as we work to protect and assist our athletes,” said Tina Ferriola, AAF Board Chair, CEO of NYC Elite Gymnastics, and former competitive gymnast. “*Athletes are Children First* is a concrete advancement in our sport’s training protocols and strategy to prevent sexual abuse in the future. Together, our organizations are committed to making gymnastics safe and to holding our gyms to the highest standards, for the safety of the children.”

After a rigorous Request for Proposals process and agency evaluation for the pilot project, The AAF and The NYSPCC have selected seven child advocacy centers and child welfare agencies in New York State to spearhead the program. The following agencies were chosen to connect with, educate, and provide ongoing support to gymnastics clubs in their communities: **Child**

Advocacy Center at BestSelf Behavioral Health, Inc., **Child Advocacy Center of the Finger Lakes**, **Albany County Crime Victim and Sexual Violence Center, The Center for the Prevention of Child Abuse**, the **Suffolk County Child Advocacy Center**, and the **Child Advocacy Center of Putnam County,** which will work in collaboration with the **Child Advocacy Center at the Westchester Institute for Human Development**.

“The selection of these seven exceptional child protection agencies in New York State is an exciting step forward in our efforts to safeguard our child athletes from sexual abuse” said Dr. Mary L. Pulido, Executive Director of The NYSPCC. “The AAF, The NYSPCC’s staff, and the selected agencies have worked tirelessly to ensure that children are always put first. The NYSPCC is the world’s first child protection agency, and we are grateful to be able to continue spreading our mission and helping those in need.”

In addition to the New York State trainings, beginning today through November 2021, The NYSPCC will hold two national virtual training sessions per month for gymnastics clubs. These sessions will support club owners and coaches across the country in recognizing signs and symptoms of abuse. The trainings will also help club owners and coaches understand appropriate athlete-coach boundaries, create child safety policies and report practices that will safeguard gymnasts and foster a culture that promotes athletes’ wellbeing. Participants in this initiative will have access to the *Athletes are Children First* Initiative Policy Handbook, as well as Gymnast and Parent E-Learning Workshops, which will launch later this year.

Each of these participating agencies and The NYSPCC will be funded for one year by The AAF to provide training to gymnastics club staff in New York State and support clubs in implementing best practices in child protection. Staff from each agency have been trained as NYSPCC-certified Child Sexual Abuse Prevention Trainers using The NYSPCC’s training curriculum, Child Sexual Abuse Prevention Education for Club Owners, Coaches and Staff, and Facilitator’s Guide, as well as The NYSPCC/AAF *Athletes are Children First* Initiative Policy Handbook, which outlines best practice policies for gymnastics clubs. These co-created materials will support efforts to ensure all New York State gymnastics clubs and coaches adhere to the same best practice standards for child protection. Staff from these agencies will also receive free support and technical assistance from The NYSPCC.

The *Athletes are Children First* initiative furthers both the AAF’s mission to make gymnastics a safe sport in which children can thrive and succeed, as well as The NYSPCC’s mission to eradicate child sexual abuse in all its forms. In 2019, the AAF selected The NYSPCC to develop a multi-pronged approach to combating child sexual abuse in gymnastics. The NYSPCC conducted background research, site visits, information gathering sessions, and focus groups with key stakeholders, athletes, parents, coaches, and club owners to assess areas of need and identify gaps in child safety practices. The *Athletes are Children First* Initiative is informed by their findings.

For additional information on this initiative, please visit athleteassistancefund.org/training/.

About The Athlete Assistance Fund

The Athlete Assistance Fund (AAF) seeks to eradicate all forms of abuse in the sport of gymnastics through a combination of critical abuse prevention education and counseling services. An independent, not-for-profit, the AAF delivers comprehensive abuse prevention education for gymnasts, parents, coaches and gym owners and provides free counseling services to any current or former USA Gymnastics member or gymnast who suffered sexual abuse within the sport of gymnastics.The AAF is not affiliated with USA Gymnastics. Read more about The AAF at http://www.athleteassistancefund.org.

About The NYSPCC

The New York Society for the Prevention of Cruelty to Children (NYSPCC) is one of the most highly respected child protective agencies in the world. Founded in 1875, The NYSPCC helps the most vulnerable children of our community recover from trauma. And, more importantly, it helps prevent child abuse through its work with parents, teachers, children and foster care agencies. The NYSPCC's amazing work is used as a model for child welfare agencies across the nation. The NYSPCC has investigated more than 650,000 cases on behalf of over two million children and has educated over 53,000 professionals working with children on child abuse and neglect issues. Read more about The NYSPCC at http://www.nyspcc.org

Media Contacts:

Erin Freilich on behalf of The NYSPCC
erin.f@high10media.com

NY SPCC
THE NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN

General Updates

- Pause in initiative implementation
  - COVID-19 pandemic & re-openings of gyms
- New timeline
  - September 1, 2021 to August 31, 2022
- 2021 Tokyo Olympics
- eLearning modules

RESOLUTION NO. 185

AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND AGREEMENT WITH THE NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN REGARDING THE CHILDREN FIRST INITIATIVE AND AMENDING THE 2020 CRIME VICTIM AND SEXUAL VIOLENCE CENTER BUDGET

Introduced: 5/11/20
By Audit and Finance Committee:

WHEREAS, The Director of the Albany County Crime Victim and Sexual Violence Center has requested authorization to submit a grant application and enter into an agreement with the New York Society for the Prevention in an amount of $10,000 for a term commencing May 15, 2020 and ending July 31, 2021 regarding the Children First Initiative New York State pilot project, and

WHEREAS, The Director has indicated that the Children First Initiative will provide the Crime Victim and Sexual Violence Center with training and a curriculum regarding child sexual abuse prevention and connect them with gymnastics programs across the capital region to serve as local child protection experts for local gymnastics program staff, and

WHEREAS, The Director has further indicated that a budget amendment is necessary in order to accept the funding and support the Children First Initiative, now, therefore, be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to submit a grant application to and enter into an agreement with the New York Society for the Prevention in an amount of $10,000 for a term commencing May 15, 2020 and ending July 31, 2021 regarding the Children First Initiative New York State pilot project, and, be it further

RESOLVED, The 2020 Crime Victim and Sexual Violence Center Budget is amended as follows:

Increase Revenue Account A3495 NY Society for the Prevention of Cruelty to Children by $10,000

Decrease Appropriation Account A4610.1 by $31,569 by Decreasing and Deleting line item A4610 1 2239 Prevention Educator by $31,569

Increase Appropriation Account A4601.1 by $31,569 by Creating and Increasing line item A4610 1 2243 Community Education Coordinator by $31,569 with an annual salary of $49,442

Increase Appropriation Account A4610.4 by $10,000 by increasing line item A 4610 4 4046 Fees for Services by $10,000

and, be it further

RESOLVED, That the County Attorney is authorized to approve said grant application and agreement as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote – 5/11/20

DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE EXECUTIVE
112 STATE STREET, ROOM 1200
ALBANY, NEW YORK 12207-2021
(518) 447-7040 - FAX (518) 447-5589
WWW.ALBANYCOUNTY.COM

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

September 7, 2021

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairman Joyce:

The County Executive's Office, on behalf of the Public Defender, Alternate Public Defender, and Assigned Counsel Program, requests authorization to apply for the NYS Office of Indigent Legal Services (ILS)' Upstate Family Defense (Child Welfare) Quality Improvement & Caseload Reduction grant. This grant would provide funding to improve the quality of representation to parents accused of child maltreatment who cannot afford to retain counsel by developing a program/practice including pre-petition access to counsel, integration of non-attorney professionals such as social workers and parent advocates, and other specialized training opportunities. Should the application be successful, the maximum amount to be awarded to any county is $500,000.00 ($166,666.66 per year for three years). There is no funding match or any other cost to the county to participate in this project.

Please don't hesitate to contact me with any questions.

Sincerely,

Daniel P. McCoy

Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis A. Feeney, Majority Leader
Hon. Frank A. Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

File #: TMP-2718, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):
Request to apply for NYS Office of Indigent Legal Services Upstate Family Defense (Child Welfare) Quality Improvement & Caseload Reduction grant

Date:	9/7/2021
Submitted By:	Patrick Alderson
Department:	County Executive’s Office
Title:	Policy Analyst
Phone:	518-477-7040
Department Rep.	
Attending Meeting:	Patrick Alderson

Purpose of Request:

☐ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☒ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel

☐ Personnel Non-Individual
☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

<u>CONCERNING CONTRACT AUTHORIZATIONS</u>

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☒ Grant
New
Submission Date Deadline 9/17/2021
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):
NYS Office of Indigent Legal Services
Alfred E. Smith Building, 11th Floor
80 S Swan St, Suite # 1147
Albany, NY 12210

Additional Parties (Names/addresses):
Click or tap here to enter text.

Amount/Raise Schedule/Fee: The maximum amount to be awarded is $500,000.00 ($166,666.66 per year for three years).
Scope of Services: Improve the quality of indigent parental representation in child maltreatment cases by developing a program/practice including pre-petition access to counsel, integration of non-attorney professionals such as social workers and parent advocates, and other specialized training opportunities.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

<u>CONCERNING ALL REQUESTS</u>

Mandated Program/Service: Yes ☐ No ☐
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☐ No ☒

County Budget Accounts:
Revenue Account and Line: Click or tap here to enter text.
Revenue Amount: Click or tap here to enter text.

Appropriation Account and Line: Click or tap here to enter text.
Appropriation Amount: Click or tap here to enter text.

Source of Funding - (Percentages)
Federal: Click or tap here to enter text.
State: 100%
County: Click or tap here to enter text.
Local: Click or tap here to enter text.

Term
Term: (Start and end date) 12/2021-11/2024 (anticipated)
Length of Contract: 3 years or 36 months

Impact on Pending Litigation Yes ☐ No ☒
If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:
Resolution/Law Number: n/a
Date of Adoption: n/a

Justification: (state briefly why legislative action is requested)
The County Executive's Office, on behalf of the Public Defender, Alternate Public Defender, and Assigned Counsel Program, requests authorization to apply for the NYS Office of Indigent Legal Services (ILS)' Upstate Family Defense (Child Welfare) Quality Improvement & Caseload Reduction grant. This grant would provide funding to improve the quality of representation to parents accused of child maltreatment who cannot afford to retain counsel by developing a program/practice including pre-petition access to counsel, integration of non-attorney professionals such as social workers and parent advocates, and other specialized training opportunities. Should the application be successful, the maximum amount to be awarded to any county is $500,000.00 ($166,666.66 per year for three years). There is no funding match or any other cost to the county to participate in this project.

New York State
Office of Indigent Legal Services

Funding Announcement

Upstate Family Defense (Child Welfare) Quality Improvement & Caseload Reduction Grant

NYS Office of Indigent Legal Services
Request for Proposals

The New York State Office of Indigent Legal Services (Office) and nine-member Indigent Legal Services Board (Board) were created by legislation enacted in 2010, found in Executive Law Article 30, sections 832 and 833. As part of its statutory mission "to monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the county law," the Office, operating under the direction and pursuant to policies established by the Board, assists county governments in the exercise of their responsibility to provide effective and meaningful representation of persons who are legally entitled to counsel but cannot afford to hire an attorney. The assistance provided by the Office and Board includes distributing state funds and targeting grants to counties in support of innovative and cost-effective solutions to enhance the quality of indigent legal services.

Timelines for This Request for Proposals

RFP Release Date	**Thursday, August 12, 2021**
Questions Due By	**Monday, August 23, 2021 5:00 p.m. EST (Q & A period closed)**
Answers Posted By	**Tuesday, August 31, 2021**
Proposal Due Date	**Friday, September 17, 2021 5:00 p.m. EST**
Award Announcement	**October 2021**
Tentative Contract Start Date	**December 2021**

Intent of this Request for Proposals

The Office is announcing the availability of funds and soliciting proposals from New York State **counties** to develop new, innovative programs or practices to improve the quality of representation to parents[1] accused of child maltreatment who cannot afford to retain counsel, including reduced attorney caseloads, pre-petition access to counsel, practice integration of non-attorney professionals such as social workers and parent advocates, and high-caliber training opportunities.

The intent of this Request for Proposals (RFP) is to support local initiatives aimed at improving the quality of legal representation provided to parents in child protective matters as defined in Family Court Act Article 10.[2] Quality legal representation for parents in these proceedings is of heightened importance since the individuals targeted are disproportionately poor, Black and Indigenous, and typically lack the information, resources, and social capital necessary to respond effectively to government action which often includes temporary or permanent removal of a child from the parent. Improvements in this area will also promote better Family Court decision-making, reduce the needless separation of children from their families, save foster care costs, diminish disparate racial impacts, and reduce long-term costs to the state and to counties.

Initiatives that promote compliance with ILS' *Standards for Parental Representation in State Intervention Matters*[3] by reducing attorney caseloads, representing clients during CPS investigations prior to court intervention, introducing or enhancing multidisciplinary family defense practice, increasing access to specialized services, and prioritizing access to high-caliber training for staff are strongly encouraged.

Additionally, because the Office can supplement and increase the funding for this initiative via federal title IV-E funding, see 21-OCFS-INF-05,[4] the applicants are encouraged to demonstrate the ability to provide the Office the information needed to claim federal title IV-E funding.[5]

Section I: Background

Parents' interest in their child's care and custody is one of the oldest and most fundamental liberty interests recognized by law.[6] Depriving a parent of the right to raise one's child is "often . . .the more grievous" compared to a prison sentence.[7] The United States Supreme Court has

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[1] For ease of reference, in this RFP the term "parent" refers to a biological parent or other "legally responsible" person who is eligible for assigned counsel under New York Family Court Act § 262.
[2] In this RFP, the terms "child welfare," "child protective" and "State intervention" are used interchangeably and refer generally to abuse and/or neglect proceedings pursuant to Article 10 of the Family Court Act, as well as foster care placement, termination of parental rights, surrender, destitute minor, and permanency planning proceedings. Child protective services agencies are referred to as "CPS" or "DSS" agencies.

[3] *Standards for Parental Representation in State Intervention Matters,* New York State Office of Indigent Legal Services (2015), https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf.

[4] *Title IV-E Reimbursement for Legal Representation Services for Children and Parents in Child Welfare Proceedings*, https://ocfs.ny.gov/main/policies/external/#INF

[5] See Attachment B of 21-OCFS-INF-05.

[6] *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

[7] *Lassister v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting).

emphasized that parents' fundamental liberty interest in associating with and raising their children "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life."[8] Moreover, children have their own legal interest and right to be raised by their parent.[9]

Recognizing the need for due process protection of the fundamental liberty interests of family integrity and family autonomy, in 1972 the New York State Court of Appeals held that poor parents accused by the government of child maltreatment (Family Court Act Article 10) have a constitutional right to publicly-funded legal representation.[10] Citing the "gross inherent imbalance of experience and expertise" between the State and an unrepresented parent, the *Ella B*. Court reasoned that "[a] parent's concern for the liberty of the child, as well as for his care and control, involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer."[11] In 1975, this decision was codified in §§ 261 and 262 of the New York Family Court Act. Family Court Act § 261 emphasizes that parents have a constitutional right to assigned counsel to protect the "fundamental interests and rights" implicated in various types of family law cases. Accordingly, our courts have made it clear that the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings under the New York State Constitution is equally applicable in state intervention cases.[12]

Despite these well-established constitutional and statutory mandates, attorneys representing parents in Article 10 matters face multiple challenges in providing meaningful representation. These challenges are detailed in the February 2019 *Interim Report of the Commission on Parental Representation*. Convened by Chief Judge Janet DiFiore, the Commission's mandate is "to examine the current state of representation for indigent parents in constitutionally and statutorily mandated family-related matters, and to develop a plan to ensure the future delivery of quality, cost-effective parental representation across the state."[13] The Commission found that the

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[8] *Santosky v. Kramer,* 455 U.S. 745, 753 (1982).

[9] Assessing the private interests at stake in the fact-finding stage of a child protective case, the *Santosky* Court observed that "the State cannot presume that a child and his parents are adversaries," and that, until the State proves parental unfitness, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760.

[10] *Matter of Ella B*., 30 N.Y.2d 352 (1972).

[11] *Id*. at 356-357 (cites omitted).

[12] *Brown v. Gandy*, 3 N.Y.S.3d 486 (4th Dept. 2015) (". . . because the potential consequences are so drastic, the Family Court Act affords protections equivalent to the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings;" previous decisions requiring a showing of "actual prejudice to prevail on a claim of ineffective assistance of counsel under the New York Constitution" are no longer to be followed); *see also Matter of Jaikob O.,* 931 N.Y.S.2d 156 (3rd Dept. 2011); *Matter of Eileen R*., 912 N.Y.S.2d 350 (3rd Dep't 2010); *Matter of Alfred C.*, 655 N.Y.S.2d 589 (2d Dept. 1997).

[13] *Commission on Parental Legal Representation: Interim Report to Chief Judge DiFiore*, at 4. This report is available at: http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf.

most prominent challenges providers face are overwhelming attorney caseloads, insufficient access to essential supports and resources, and failure to provide parents with timely access to counsel.

ILS' *Standards for Parental Representation in State Intervention Matters* call for, "…sufficient time and resources necessary to provide high quality representation to each client."[14] Establishment of and compliance with caseload standards is an effective means of ensuring sufficient time and resources, and in fact, there are existing caseload caps for attorneys representing children[15] and for attorneys representing indigent criminal defendants.[16] In its 2019 Interim Report, the DiFiore Commission acknowledged that there are no existing caseload standards for attorneys representing parents in Family Court matters, and recommended an initial client cap of 50 to 60 clients in child welfare/family defense matters.[17] This temporary cap was recommended as a stopgap measure to mitigate the difficulty of providing effective representation with existing caseloads; the Commission further called for a study of caseloads to inform what final caseload standards should be adopted. Per this Recommendation, ILS, in cooperation with the Office of Court Administration, undertook an exhaustive and informed study and at its June 11, 2021 meeting, the ILS Board approved the *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases* ("ILS caseload standards"), available at https://www.ils.ny.gov/node/231/caseload-standards-parental-representation. The ILS Board approval of these standards was made contingent on the availability of state funding to enforce them.

State funding has been made available to effectuate caseload standards in criminal cases. But while New York has "made significant strides in improving the representation of indigent criminal defendants in recent years"[18] as a result of the *Hurrell-Harring v. State of New York* settlement and subsequent state funding to expand those improvements statewide, mandated representation of parents in Article 10 matters continues to be under-funded and under-resourced.[19] Notably, the federal government has stepped in to assist States and local municipalities in their efforts to improve the quality of family defense: in 2019 the federal Children's Bureau issued revised and new policies that allow State Title IV-E agencies (in New York, the Office of Children and Family Services (OCFS)) to obtain federal subsidy for certain

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[14] New York State Office of Indigent Legal Services *Standards for Parental Representation in State Intervention Matters, See D-2.* https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf

[15] 22 NYCRR § 127.5.

[16] Executive Law § 832 (4); ILS, A Determination of Caseload Standards, ILS, A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v State of New York Settlement (Dec. 2016), available at https://www.ils.ny.gov/files/Caseload%20Standards%20Report%20Final%20120816.pdf.

[17] *Commission on Parental Legal Representation: Interim Report to Chief Judge DiFiore,* at 34.

[18] *Commission on Parental Legal Representation: Interim Report to Chief Judge DiFiore,* at 9. http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf

[19] *Memorandum in Support of State Funding for Mandated Parental Representation,* New York State Bar Association, Committee on Families and the Law (January 2018), https://nysba.org/app/uploads/2020/02/CORRECTED-FINAL-4-17-2018.pdf

expenses related to representation of parents in all stages of child protective matters, from CPS investigations through terminations of parental rights and appeal proceedings.[20] For these reasons, this RFP is targeted specifically for caseload reduction and quality improvement initiatives for the representation of assigned counsel eligible parents in child welfare/family defense matters.

Specifically, the Office encourages counties to submit proposals to reduce attorney caseloads, enhance access to supports and training, or both. This may take the form of hiring or designating attorneys who focus their practice on child welfare matters, hiring or contracting with social workers or parent advocates, hiring or contracting for administrative support such as a legal secretary or paralegal dedicated to supporting family defense, making funding available for training, or a combination of these initiatives. With this funding opportunity, the Office intends not only to tackle some of the systemic issues that frustrate the provision of effective family defense, but also to assess the extent of the benefits that accrue to parents and their children when those conditions are ameliorated.

Section II: Project Description – What is this RFP seeking to achieve?

The Office has therefore established this RFP to assist counties to implement initiatives that improve the quality of legal representation provided to parents in child protective matters as defined in Family Court Act Article 10. This RFP funding may also be used to represent parents on other Family Court petition types that occur during the representation of the parent on the Article 10 matter.[21]

Proposals must be developed in consultation with representatives of each County Law Article 18-B Family Court mandated representation provider in the applicant's county, including the person with administrative responsibility for overseeing the county's Assigned Counsel Plan.

No county may submit more than one proposal.

Proposals that rely on statutory changes for their implementation will not be funded.

Proposed projects must comply with New York County Law 18-B, Section 722.

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[20] *Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being*, ACYF-CB-IM-21-06 , U.S. Dep't of Health and Human Services, Administration for Children and Families, Children's Bureau, (January 14, 2021), https://www.acf.hhs.gov/cb/policy-guidance/im-21-06 ; *see also* Mark Hardin, *Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview*, Child Law Practice Today, American Bar Association (February 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/

[21] ILS understands that clients facing Family Court Article 10 matters often face other Family Court petition types during the pendency of the Article 10 matter. To promote comprehensive and holistic representation of clients, the funding from this RFP can be used for representation on these other petition types that arise during the representation of a client on an Article 10 matter.

Funding of this proposal is limited to the representation of clients pursuant to County Law Article 18-B in Family Court Article 10 matters and other Family Court petition types that occur during the representation of the client at all stages of the Article 10 matter, including during a CPS investigation before court action is initiated. Specifically, proposals are sought for the provision of mandated representation in such matters that would enhance existing services, create new and innovative approaches which address the quality of representation, or both, including:

- *Reduced caseloads*: Proposals that will seek to reduce attorney caseloads to enhance the quality of representation in Family Court Article 10 proceedings are strongly encouraged. In addition to describing quality enhancements to be achieved, applicants are encouraged to identify any protocols to be implemented (in addition to reduced caseloads) that will effectuate quality enhancements. Examples of caseload relief-related quality enhancements include: opportunities for pre-petition, CPS investigation representation; better attorney-client communication; more vigorous litigation, motion, and appellate practice; more time for legal research and case fact investigation; more time to strategize, prepare for, and engage in negotiation where appropriate; more time devoted to accessing and effectively using specialized services on cases; and fewer continuances due to attorney scheduling conflicts.

- *Increased access to and use of specialized services*: As set forth in the ILS *Standards for Parental Representation in State Intervention Matters,* a multi-disciplinary approach is foundational to quality representation in Article 10 cases, and attorneys "must work with professionals trained to understand, analyze, and address non-legal aspects of a client's life that impact the legal case." Additionally, the "assistance of experts and other ancillary services are among the basic tools needed for high quality representation in state intervention cases."[22] Thus, proposals that involve increased access to and utilization of specialized resources including social workers, parent advocates, or administrative resources are also encouraged.

- *Increased opportunities for high quality practical, skills, and theoretical trainings*. As set forth in ILS *Standards for Parental Representation in State Intervention Matters,* because of the gravity of Family Court Article 10 matters, attorneys representing clients in such matters "must possess sufficient experience, training, knowledge, and skills necessary to provide high quality representation…."[23] Accordingly, proposals that enhance access to high-caliber trainings, including legal content and skills-based trainings, are encouraged.

Because the purpose of this RFP is to improve the quality of representation provided to parents who cannot afford to retain counsel in Family Court Article 10 matters, applicants need not propose solutions that cover a provider's entire program of providing mandated representation.

Applicants should state the bases upon which the determination was made to select the approach or approaches chosen to be included in the proposal, such as current caseloads of attorneys

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[22] *See* Standard G and Commentary

[23] *See* Standards B and C

providing representation in Family Court matters, the efficacy of having one or more attorneys specialize in Family Court Article 10 matters, the best means for the particular applicant to ensure access to specialized supports (i.e., hiring, contracting, or both), geographic considerations, or amenability to collaboration among the entities involved in the proposal. No one specific basis is required to secure an award nor do the bases noted here constitute an exclusive list.

Section III: Funding and Contract Period

The total available funds for awards are $2,500,000.00 ($833,333.33 per year for each of three years). The total available funds will not necessarily be divided equally, nor will selected applicants be guaranteed the entire amount requested.

The maximum amount to be awarded to any one county is $500,000.00 ($166,666.66 per year for three years). Counties may submit proposals either at or less than the maximum amount. If additional funds become available, the Office reserves the right to approve additional projects under the authority of this funding announcement or restore funding.

Grants will be issued for a period of three years.

Section IV: Who Is Eligible to Apply for This Request for Proposals

Only New York State counties, other than counties wholly encompassed within New York City, are eligible to apply. Proposals must be submitted by an authorized county official or designated employee of the governing body of the applicant county. There is no funding match or any other cost to the county to participate in this project.

Section V: Instructions for Completing This Request for Proposals

The RFP is available online at **https://www.ils.ny.gov/node/224/pending-rfps** (hit: Ctrl + (right) Click to follow link or copy and paste link into your web browser). Requests for the RFP may be made by e-mail to **Jessica.Bogran@ils.ny.gov** or by telephone at (518) 935-7868.

No responses will be provided to inquiries made by telephone other than to request a copy of this RFP.

RFP Questions and Updates

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section, by **Monday, August 23, 2021** by 5:00 pm Eastern Standard Time (EST) to **QA@ils.ny.gov** (hit: Ctrl + (right) Click to follow link in Outlook).

No responses will be provided to inquiries made by telephone other than to request a copy of this RFP.

Questions will not be accepted orally.

Questions received after 5:00 pm EST the date of the deadline will not be answered.

When corresponding by e-mail, clearly indicate the subject as: "Upstate Family Defense (Child Welfare) Quality Improvement and Caseload Reduction RFP." The name of the party submitting the question will not be posted.

Questions and answers will be posted on the "*Questions Posted By*" date as stated on the cover of this RFP (August 31, 2021) at the following URL webpage address: **https://www.ils.ny.gov/node/224/pending-rfps** (hit: Ctrl + (right) Click to follow link or copy and paste link into your web browser).

Instructions for Completing this Request for Proposals

Application Submission (*mail, email, or hand delivery*):

All submissions must contain the complete application.

All applications must be received by Friday, September 17, 2021 by 5:00 p.m. EST. Late applications will not be considered.

If submitting an application by mail or hand delivery, this RFP requires the submission of **one (1) original, and four (4) copies (for a total of five).**

Applications must be delivered to:

By mail: Jennifer Colvin, Grants Manager
Office of Indigent Legal Services
Alfred E. Smith Bldg., 11th Floor
80 South Swan Street
Albany, NY 12210

Hand delivery: *Please call the Office of Indigent Legal Services in advance to arrange for building security clearance (518-486-2028 or 518-486-9713).*

Office of Indigent Legal Services
Alfred E. Smith Building (*directly behind the State Capitol Building*)
11th Floor, Suite 1147
80 South Swan Street
Albany, NY 12210

Electronic applications: Electronic applications will be accepted.

Electronically submitted proposal applications must be submitted to **RFP@ils.ny.gov** (hit: Ctrl + (right) Click to follow link in Outlook). All required documents or attachments must be included in the electronic submission.

Indicate in the *Subject* area of the electronic transmission that the submission is for the "Upstate Family Defense (Child Welfare) Quality Improvement and Caseload Reduction RFP."

After you submit your application at **RFP@ils.ny.gov** (hit: Ctrl + (right) Click to follow link in Outlook), you will receive an e-mail confirming receipt of the application. If you do not receive an e-mail confirming receipt, contact Jennifer Colvin at (518) 486-9713.

Application Format:

The following components must be included in the application for the submission to be complete:

1. Project Summary (not more than two (2) pages in length)
2. Proposal Narrative (not more than ten (10) pages in length)
3. Budget (see Attachment A of this RFP) and Justification (not be more than two (2) pages in length).

Applications must be received by Friday, September 17, 2021 by 5:00 p.m. Eastern Standard (EST). Late applications will not be considered.

Only complete applications will be reviewed and evaluated.

Section VI: Proposal Application

I. PROJECT SUMMARY (not scored)

Provide a summary of your proposal which includes the information listed below. **To ensure uniformity, please limit the length of this summary to no more than two (2) double-spaced pages, with margins of 1 inch on all sides, using no less than a 12-point font.**

The Project Summary should include the following information:

- Identification of the county requesting funds;
- The authorized county official or designated employee of the applicant county's governing body to whom notification of a grant award shall be sent. Please include contact information: name, title, phone number, address, and email address.
- Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project);
- Amount of funding requested; and
- A concise description of the proposed project.

II. PROPOSAL NARRATIVE

A. Plan of Action (54 points)

Please address the questions listed below and do so in the order and format in which they are presented, i.e., responses should be made in the same order as requested and each response should identify the specific item being addressed. Applicants will be evaluated on the information they provide. The Proposal Narrative should not be more than ten (10) pages in length (double-spaced pages, with margins of 1 inch on all sides, using no less than a 12-point font). *Please do not submit any information that was not specifically requested*.

Problem Statement

1. Describe the issue or problem in providing quality representation in Family Court Article 10 matters that your plan is intended to improve or correct, including, but not limited to, the impact of excessive caseloads in providing quality representation.

2. Document the nature and extent of the problem to be addressed, including any data collection or analysis related to the problem.

3. State the bases upon which the determination was made to select the approach or approaches chosen to be included in your proposal.

Plan Implementation

4. Describe how you will implement a plan to address these obstacles to providing quality representation. The plan must specify the particular problem(s) being addressed (e.g., excessive caseloads, insufficient access to specialized services that allow for multi-disciplinary approach to representation, insufficient access to expert services, insufficient access to trainings, etc.).

5. Please describe how you will structure your professional and non-professional staffing to implement your plan, including whether existing staff will perform tasks, or if new staff will need to be hired.

6. Identify any training or mentoring you may need to accomplish your plan objectives, how you intend to acquire or provide such training/mentoring, and which positions, including supervisory staff, will receive the training/mentoring.

7. Describe how you will assure the program is feasible and will monitor the program such that obstacles to implementation can be identified and necessary adjustments made.

Plan Objectives

8. Specify how the project will improve the quality of representation that clients receive and achieve greater compliance with ILS standards, particularly ILS *Standards for Parental Representation in State Intervention Matters*.

B. Data Collection, Performance Measurement, and Evaluation (20 points)

This section will discuss how you will measure the impact of your project. Descriptions of what data will be collected and how data will be collected are required in this section.

Implementation

9. Describe how you will demonstrate that your plan has been successfully implemented. For example, if your plan will reduce caseloads, specify how you will measure caseloads in a way that is appropriate to gauge the success of your plan.[24] If your plan will increase support staff or other resources for attorneys, specify how you will show that these resources, or attorney access to them, were increased. Please also provide 'baseline' information on any quantitative measures you propose and a narrative account describing relevant features of your program as it stands at present.

Evaluation and Impact

10. Describe the expected improvements in quality of representation that will result from your plan, and how these will also be measured. Such measures should reflect attorney behaviors that you expect will change when your plan is implemented. Examples include: engaging in representation during the CPS investigation stage; the average number of attorney visits with clients or client families per case; the average number of hours attorneys spend preparing cases; attorney use of specialized services such as social workers, parent advocates, etc.; the average number of motions, by type, filed per case; the rate at which attorneys are present at a client's first appearance in court; and any other measures as appropriate to the quality goals of your plan. Please also provide 'baseline' figures for the measures you will use which reflect the situation in your program as it stands at present if such measures are available.

Infrastructure

11. Describe how you plan to track relevant data in relation to points 9 and 10 above for every case in ways that are valid, accurate and reliable and who will input the data, including, but not limited to the type of case management system that will be used to track data.

12. Describe any changes you would need to make to track required data and how these would be accomplished, including implementation of office protocols for collecting information and changes to your case management system or other systems for maintaining and reporting data.

[24] ILS recognizes that for many counties, the funding made available in this RFP will not be sufficient for compliance with the ILS *Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases.* Nonetheless, applicants seeking to reduce attorney caseloads should refer to these standards both for a sense of the optimum attorney caseloads in Family Court matters and for information about measuring caseloads.

C. Applicant Capability and Personnel (6 points)

13. Identify who will be the lead person(s) responsible for project implementation, and their qualifications.

14. Describe how and to what extent you consulted with the leader of each provider of Family Court representation under Article 18-B of the County Law. If applicable, describe the willingness of other agencies to cooperate in the implementation of the program.

III. Budget and Cost (20 points)

Grant applications will be evaluated and rated on consistency with the proposed action plan, efficient use of funds and overall cost-effectiveness, and clarity. Complete the attached Budget Form and return with the proposal, being sure to address the following:

15. *Budget*: Provide a detailed, **annualized** **three-year** **budget** containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.

16. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract.

17. *Budget Justification*: Include a brief narrative for each budget line explaining the budget line, justifying the budget request, and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget. The *Budget Justification* must also describe how the County will monitor expenditures during the life of the grant to ensure that the project stays within the budget.

Complete the attached Budget Form (Attachment A) and return with the proposal.

Section VII: Review and Selection Process

The Office will conduct a two-level review process for all submitted proposals:

The first level entails a Pass/Fail review, conducted by Office staff, to ensure that the application is responsive to the conditions set forth in the RFP. The Office will reject any applications that do not clearly and specifically address the purposes of this funding opportunity and/or fail to meet any of the following criteria:

1. The RFP was submitted within the designated time frames
2. The RFP was submitted consistent with the format requested by the Office
3. The applicant is an eligible entity as specified within the RFP

4. The proposal purpose is for that intended by the RFP
5. The proposal included a budget submission

The second level consists of a scored comprehensive proposal review that involves a thorough review of the submitted proposal specifically related to the project work plan, performance measurement and evaluation, organizational capability, overall strength of plan, and the budget and corresponding budget narrative. The proposal review and rating will be conducted using the criteria stated in this Funding Announcement. The Office will typically use staff, and others with expertise in the RFP topic area, to comprise the proposal review team. Each reviewer will assign a score up to a maximum of 100 points to each application; individual scores will be averaged to determine the applicant's score. Applicants' scores will be ranked order. The Office reserves the right to conduct follow-up discussions with applicants to clarify information in the submitted proposal. In the event of a tie (identical scores), the Office will look at the highest scores of these sections of the proposals to determine an award: first, the "Budget and Cost" portion of the proposal, and if these scores are the same, next the "Plan of Action" portion of the proposal. In addition, in the event there are any remaining funds after making awards in accordance with the Review and Selection Process, the Office reserves the right to allocate the grant funds in a manner that best suits program needs as determined by the Office. Such a plan will be subject to review and approval by the Office of the State Comptroller.

Awarding of Grants

Contract Development Process

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions in October 2021. All commitments are subject to the availability of state funds. The proposal review team will recommend to the Office the highest ranked proposal(s) that fully meet the terms of the RFP. The funds will be awarded in rank order from the highest to the lowest proposal scores. The final total applicant score will be the cumulative total of the second level review.

The contract process and final contracts are subject to the approval of the State Attorney General and the Office of State Comptroller (OSC). Upon such approvals, the grant process will begin, and all terms of the contract become public information.

As part of the grant award process, the grantee and the Office will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

As part of the contract with the Office, grantees will be required to submit annual progress reports to the office. These reports should include a narrative of obstacles encountered during implementation, and efforts to overcome these obstacles. Additionally, applicants should anticipate that data collected by the program in accordance with the requirements of section II of the proposal will be required to be reported in aggregate form to the Office as a means of understanding the impact of the program, its successes, and the challenges that remain. ILS staff will be available to assist grant recipients with how to best collect these data in ways that are convenient to the program's capabilities, clearly assess the goals of the project, and assure the collection of information that is of the highest possible quality. The Office may suggest the use of a specific data collection protocol, or work with programs to employ existing, in-house case tracking software to produce data.

The Office reserves the right to:

- Negotiate with applicants, prior to award, regarding work plans, budget line levels, and other issues raised within the RFP review to achieve maximum impact from the grant award, and serve the best interests of New York State and ensure that budgets are consistent with proposed action plans; and
- If unable to negotiate the contract with the selected applicants within 60 days, the Office may begin contract negotiations with the next highest scoring qualified applicant(s).

Debriefings

Unsuccessful applicants may, within ten (10) business days of notification of non-selection, request a debriefing with the Office to discuss the evaluation of their proposal. Such request may be submitted in writing to QA@ils.ny.gov (hit: Ctrl + (right) Click to follow link in Outlook).

Payment

Each county will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and approved by the State Attorney General and the State Comptroller.

Funding Requirements

Funding for this RFP has been appropriated to improve the quality of mandated parental representation and is intended to supplement (add to, not replace) county resources for supplying such representation.

***Supplanting is prohibited*:** Any funds awarded to a county pursuant to this RFP shall be used to supplement and not supplant any local funds, as defined in paragraph (c) of subdivision 2 of section 98-b of the State Finance Law, or state funds, including any funds distributed by the Office of Indigent Legal Services, which such County would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to Article 18-B of the County Law.

The issuance of this request for proposals does not obligate the Office of Indigent Legal Services to award grants.

Attachment A: Budget Form

County	
Budget Contact Person's Name	
Phone	
E-mail address	

Line Item	Year 1	Year 2	Year 3
Personal Service: Position (specify) Salary: Fringe Benefits:			
Personal Service Subtotal			
Contractual Services			
Contractual Subtotal			
Equipment (specify)			
Equipment Subtotal			
Other Than Personal Service (OTPS) (specify)			
OTPS Subtotal			
Miscellaneous			
Miscellaneous Subtotal			
TOTAL			
TOTAL THREE-YEAR BUDGET			