

**City of Buffalo**  
**Request for Proposal 1906**  
**Onsite Solar Power Purchase Agreement**

**Attachment D: Term Sheet**

The following should be treated as expectations of the Vendor for the terms and conditions of the Power Purchase Agreement (“PPA”). Bidders must fill in the applicable information in bracketed.

Seller:	[Company or Project Co LLC]																
Buyer:	City of Buffalo																
System:	A solar energy generation facility located on Buyer’s facilities in Buffalo, NY.																
Nameplate Capacity:	Aggregate System nameplate capacity of [XX] kW(ac) comprising the following subsystems (“Subsystems”): <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">SITE:</th> <th style="text-align: left;">kW(ac)</th> </tr> </thead> <tbody> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Subsystem X]</td> <td>[ ]</td> </tr> <tr> <td>[Etc.... ]</td> <td>[ ]</td> </tr> </tbody> </table>	SITE:	kW(ac)	[Subsystem X]	[ ]	[Subsystem X]	[ ]	[Subsystem X]	[ ]	[Subsystem X]	[ ]	[Subsystem X]	[ ]	[Subsystem X]	[ ]	[Etc.... ]	[ ]
SITE:	kW(ac)																
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[Subsystem X]	[ ]																
[Subsystem X]	[ ]																
[Subsystem X]	[ ]																
[Etc.... ]	[ ]																
Interconnection Point:	Each Subsystem will interconnect to the building electrical system (“BES”) for each site and will have a revenue-grade meter and systems for reporting 15-minute interval data to the relevant settlement authority. Electricity delivered to each BES will be metered at the respective BES. Seller will be responsible for ensuring that each BES is capable of accepting electricity from the respective Subsystem and for maintenance of the System interconnection facilities during the term of the PPA. All costs associated with installation, operations, maintenance and data transmission shall be borne by the Seller for the duration of the Term.																
Term:	20 years from the Commencement Date.																
Commencement Date:	Shall be the date that is five business days following notice by Seller to Buyer demonstrating completion of successful commissioning and testing of the System.																
Anticipated COD:	[XX]																
Guaranteed COD:	[XX], provided that such date shall be extended on a day-for-day basis to the extent that COD is delayed as a result of force majeure; provided further, however, that such date shall not be extended more than 180 days.																
Fixed Price:	[\$XX]/kWh																
Products	Energy and Environmental Attributes																
Energy	Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours, generated by the System as measured by each Subsystem meter at each BES.																
Environmental Attributes:	Any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the Facility’s benefits to the environment and capable of being measured, verified or calculated, including renewable energy credits (including RECs) and the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or																

	<p>otherwise to a federal or state agency or any other Person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Seller shall be responsible for transferring Environmental Attributes requested by Buyer via a tracking system or other method of delivery designated by Buyer. The Environmental Attributes delivered by Seller must be from the Facility. Seller is not allowed to substitute Environmental Attributes from any other source. Notwithstanding the foregoing, Environmental Attributes do not include federal, state or local tax credits, grants or other tax incentives or other incentives. If Buyer is unable to receive any Environmental Attribute, Seller will monetize such Environmental Attribute and pay to Buyer the net revenues received for the Environmental Attribute.</p>
RECs	<p>Tier 1 RECs issued by NYSERDA (The New York Energy Research and Development Authority) or the successor REC product.</p> <p>(If the developer is using NYSERDA funding for the System, which means that Tier 1 RECs cannot be provided to the Buyer, Seller must clearly state that in the offer for the Buyer's consideration.)</p>
NYGATS	<p>Seller shall be responsible for reporting all production to NYGATS and for transferring the relevant RECs to Buyer's account. Buyer and Seller shall independently maintain and pay for their respective NYGATS accounts.</p>
Invoicing:	Monthly
Invoicing Process:	Seller to issue invoice within 15 days of end of each Month.
Buyer Payment Due Date:	30 days after Buyer's receipt of Seller's invoice.
Net Metering:	<p>Prior to the Commencement Date, Seller shall have made arrangements for the delivery and resale of electricity generation in excess of Buyer's use from the System to the Interconnecting Utility in accordance with the Interconnecting Utility's requirements. This shall include, but not be limited to, any required upgrades of Buyer's interconnection with the Interconnecting Utility's distribution system and the installation of a bi-directional meter at the Interconnecting Utility's interconnection point with Buyer's facilities.</p>
Delay Damages:	<p>For every day after the Guaranteed COD that the System has not achieved commercial operation, Seller would pay an amount equal to the Maximum Delay Damages divided by one hundred eighty (180).</p>
Maximum Delay Damages:	\$75/kW(ac)
Early Termination Right:	<p>If the System has not achieved commercial operation within 180 days of the Guaranteed Commercial Operation Date (the "Outside Commercial Operation Date"), either Party would have the option to terminate without further liability to either Party. For the avoidance of doubt, Buyer shall be entitled to retain all delay damages accrued, the Maximum Delay Damages, as a liquidated damage payment for Seller's failure to achieve commercial operation.</p>
Production-Based Availability Guarantee:	<p>The Parties shall negotiate an annual availability guarantee using the actual System production and the measured solar resource during each calculation interval ("Production-Based Availability Guarantee"). The Production-Based Availability Guarantee shall be 90% in the first contract year, and 95% in each subsequent contract year. If Seller fails to meet the Production-Based Availability Guarantee in a given contract year, for each kWh the System fails to deliver, Seller would pay Buyer the cost-to-cover ("Availability Damages"), calculated as the positive difference between (i) the weighted average Energy cost for each kWh purchased from Buyer's load serving entity or other energy supplier during such contract year – (ii) the Fixed Price, for the applicable contract year, provided that Availability Damages would never be less than zero; and provided further that the Availability Damages paid during the Term would not exceed the Maximum Availability Damages.</p> <p>If over any three consecutive contract years the System fails to meet eighty-five percent (85%) of the expected generation based on the measured solar resource</p>

	<p>during each calculation interval and 100% availability, then Buyer may terminate the Agreement (“Availability Termination Right”). Notwithstanding the foregoing, Buyer’s right to exercise its Availability Termination Right in any contract year will expire (and no longer apply) ninety (90) days after Seller provides the report for the preceding contract year. For the avoidance of doubt, Buyer’s first opportunity to exercise the Availability Termination Right shall be following Seller’s delivery of the report for the fourth Contract Year (which report must be delivered within 45 days of the close of the relevant Contract Year) and will thereafter continue to be available to Buyer on an annual basis. In the event that Buyer terminates the Agreement, Seller shall pay to Buyer liquidated damages in an amount equal to the Maximum Availability Damages less any Availability Damages paid by Seller prior to such termination.</p>
Maximum Availability Damages:	\$75/kW(ac)
Buyer Credit:	<p>Beginning ten (10) days after the execution of the Agreement, Buyer must maintain an Investment Grade Credit rating (BBB- or better from S&amp;P and Baa3 from Moody’s), or post security in the form of (i) cash collateral, (ii) a letter of credit, (iii) a guaranty (from an entity that directly or indirectly controls Buyer, which has an Investment Grade Credit rating and is acceptable to Seller in its sole discretion), or (iv) any combination thereof, as determined by Buyer in its sole discretion, taking into account the requirements of subsection (iii) above, in an agreed amount to equal the expected Replacement Contract Losses due to Seller in an Event of Default of the Buyer.</p>
Seller Credit:	<p>Beginning ten (10) days after the execution of the Agreement, Seller must post security in the form of (i) cash collateral, (ii) a letter of credit, (iii) a guaranty (from an entity that directly or indirectly controls Seller, which has an Investment Grade Credit rating and is acceptable to Buyer in its sole discretion), or (iv) any combination thereof, as determined by Seller in its sole discretion, taking into account the requirements of subsection (iii) above, in the amount of \$75/kW(ac) of System capacity prior to commercial operation and \$75/kW(ac) of System capacity after the Commercial Operation Date. If Buyer draws on Seller Performance Assurance for Delay Damages, Seller will replenish the security to \$75/kW(ac) of installed capacity upon the Commercial Operation Date.</p>
Seller Covenants:	<p>Seller covenants would be customary including the following, without limitation: (i) Seller would maintain the Seller Credit in effect as required in the PPA; (ii) Seller would comply (and would ensure that its contractors comply) at all times with the health, safety and security policies of Buyer and prudent industry practices; (iii) Seller would own or lease all personal property constituting the System and would be responsible for any taxes assessed on the System or on sales of the output of the System (other than to the extent of sales of Environmental Attributes by Buyer); (iv) Seller would operate the System in accordance with prudent industry practices; (v) Seller would obtain and maintain in effect all permits and approvals required for the construction, operation and maintenance of the System; and (vi) Seller would not allow any liens to be attached to Buyer’s property.</p>
Purchase Option:	<p>Buyer would have the option to purchase the System at the end of the Term for its fair market value.</p>
Assignment	<p>Buyer or Seller may transfer or assign all of its rights and obligations under the PPA to any person succeeding to all or substantially all of its assets, which person’s ability to perform the relevant obligations of the PPA and creditworthiness are equal to or greater than that of such Party at the time of assignment. With respect to a Seller assignment, a Person’s ability to perform the relevant obligations of the PPA shall be deemed satisfied if (A) (i) such person owns solar electricity generating assets with a nameplate capacity of not less than 100 MW in the aggregate or (ii) such person has contracted with a third party operator with experience operating solar electricity generating assets with a nameplate capacity of not less than 100 MW in the aggregate and (B) such person</p>

	or third party operator has a safety record equal to or greater than that of Seller at the time of assignment.
System Removal at Contract Termination:	Upon termination or expiration of the PPA, and in the event Buyer does not elect the Purchase Option, then Seller shall be responsible for the removal of the System at Seller's expense. In performing the System removal, Seller shall remove its equipment and structures, return the installation site to its original condition except ordinary wear and tear, and coordinate an inspection of the roof with Buyer's roof warranty holder. Seller shall repair and remedy any deficiencies in any roof arising from System removal in order to maintain such roof warranty in effect.
Local Impact	Seller shall indicate its diversity practices as well as propose a plan to meet the City's MWBE, minority/female, city resident workforce goals and apprentice labor requirements.
Brokerage Fees	Neither it nor any of its related persons has, directly or indirectly, employed any broker, finder or intermediary that might be entitled to a brokerage, finders' or similar fee or commission in connection with the execution, delivery or performance of or the transactions contemplated by this power purchase agreement, except, in the case of Buyer as the representing Party, Altenex, the fees of which shall be paid by Seller as outlined in the Request for Proposal 18DSL0029.

Altenex will collect a success fee from the project developer upon the completion of a renewable energy transaction. To operate in a transparent manner and without bias, Altenex maintains a uniform fee structure with every project developer participating in this RFP. For onsite and community solar projects, the fee is \$35/kW of contracted capacity, plus 1% of the contracted amount paid to the renewable energy provider during the term of the definitive agreement, excluding any netting of payments owed to the Buyer. The Project Fee will be due in full contemporaneously with the first funding of debt or equity (including tax equity) financing for construction of the Project. If the construction costs of the Project are not being financed by third party debt or equity, then the Project Fee shall be due and payable on the earlier of the full notice to proceed or the start of construction. To establish this fee structure, Seller and Altenex will enter into a separate Market Access Agreement.

