

**AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
SUN EDISON**

This Agreement ("Agreement") is made by and between the **City of Saratoga Springs, NY** (hereinafter "the City") with a place of business at 474 Broadway, Saratoga Springs, NY 12866, and **Sun Edison LLC** (hereinafter "Sun Edison") with a place of business at 600 Clipper Drive, Belmont, CA 94002.

WITNESSETH THAT:

WHEREAS, the City awarded a bid to Sun Edison at its Council Meeting of May 21, 2013 for the development of a solar energy park at its Weibel Avenue Landfill, and

WHEREAS, Sun Edison now has to pursue its due diligence in determining if the Weibel Avenue Landfill site is a feasible location for a solar energy park,

NOW, THEREFORE, in consideration of the mutual promises, responsibilities and covenants set forth herein, the City and the Sun Edison hereby agree as follows:

1. LICENSE

The City does hereby grant to Sun Edison a limited license to enter its property located at the Weibel Avenue Landfill in the City, identified by the following tax parcels: 166.-2-1, 166.-2-28, 166.-2-29, and 166.-2-27. A tax map depicting these parcels is attached hereto as Exhibit 1.

Sun Edison's entry on the Weibel Avenue Landfill pursuant to its license is limited in that it is:

- a) revocable by the City at any time in the City's sole discretion, and
- b) exercisable only upon advance written notice to and with the consent of the City Engineer or his designee.

Written notice to the City Engineer may be sent to: Timothy Wales, P.E., City of Saratoga Springs, Department of Public Works, 474 Broadway, Saratoga Springs, NY 12866 or to tim.wales@saratoga-springs.org.

2. COSTS

All costs associated with Sun Edison's exercise of its limited license shall be borne by Sun Edison.

3. EFFECTIVE DATE

This limited license shall be effective upon the signature of the Mayor of the City, as authorized by the City Council.

4. CONDITION OF CITY PROPERTY

If Sun Edison engages in any testing that results in the disturbance or change in condition of City property, Sun Edison agrees to return said City property to its original condition, or as near as reasonably practicable, at no cost to the City.

5. CITY COOPERATION

The City agrees to cooperate in Sun Edison's due diligence process by providing any survey maps, deeds, or other material in its possession relevant to the feasibility of the solar energy park at the Weibel Avenue Landfill in a reasonably timely fashion after a written request from Sun Edison.

6. INSURANCE

Before commencing work under this Agreement, Sun Edison shall furnish to the City a certificate of insurance naming: the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents and employees as an **additional insured on a primary and non-contributory basis**. Failure to object to the contents of the certificate of insurance or the absence of same shall not be deemed a waiver of any and all rights held by the City. Such certificate shall be on forms acceptable to the City's Office of Risk and Safety Management showing that Sun Edison has complied with these requirements. In addition, for policies expiring on a fixed date before completion of the Project, certificates showing renewal must be filed not less than 30 days before such expiration date.

All insurance policies required under this Agreement shall be issued by insurance companies authorized to conduct business under the laws of the State of New York. They shall be written for the benefit of the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and for Sun Edison. Said policies shall be effective until all work required or contemplated by the Agreement has been completed. Policies expiring on a fixed date before completion of Sun Edison's duties under this Agreement must be renewed not less than 30 days before such expiration date. No policy shall be changed by endorsement without the knowledge and the written consent of the City and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the City. Any notice addressed to the City shall be mailed via certified or registered mail to the address set forth herein. Sun Edison acknowledges that failure to obtain such insurance on behalf of the City constitutes a material breach of contract and subjects it to liability for damages indemnification and all other legal remedies available to the City.

In the event Sun Edison utilizes a subcontractor for any portion of the services outlined within the scope of its activities, the Subcontractor shall provide insurance of the same type or types and to the same extent of coverage as that provided by Sun Edison. All insurance required of the Subcontractor shall name the City of Saratoga Springs as an **Additional Insured on a primary and non-contributory basis** for all those activities performed within its contracted activities for the contract as executed. It shall be an affirmative obligation of Sun Edison to advise the City's Office of Risk and Safety at Fax No. 518.693.4070, e-mail Marilyn.Rivers@Saratoga-Springs.org or mail via Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

Sun Edison shall procure and maintain during the term of this contract, at Sun Edison's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. Sun Edison shall be solely responsible for any self-insured retention or deductible losses under each of the required policies. Every required policy, including any required endorsements and any umbrella/excess policy shall be primary insurance. Insurance carried by the City of Saratoga Springs, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by Sun Edison. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. Sun Edison may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form). The Office of Risk & Safety Management must approve all insurance certificates. The City of Saratoga Springs reserves its right

to request certified copies of any policy or endorsement thereto. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-:VII" or better by A.M. Best (Current Rate Guide). If Sun Edison fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City of Saratoga Springs may exercise any rights it has in law or equity, including but not limited to the following: immediate termination of the contract: (1.) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR (2.) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by the City of Saratoga Springs shall be repaid upon demand, or at the City's option, may be offset against any monies due to the Sun Edison.

The City as an Additional Insured on a primary and non-contributory basis requires the following insurance per the terms and conditions of this Agreement:

- Commercial General Liability Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence Two Million Dollars Aggregate
- Commercial Automobile Insurance: One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles
- Excess Liability Insurance: Ten Million Dollars per Occurrence Aggregate
- Professional Liability Insurance: One Million per Claims with Two Million Aggregate
- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

7. LIABILITY AND INDEMNIFICATION

Sun Edison assumes all risks in the performance of all its activities authorized by this Agreement. Sun Edison hereby covenants and agrees to defend, indemnify and hold harmless the City; its elected and/or appointed officials, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. Sun Edison shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by Sun Edison, subcontractors, agents, or employees. Sun Edison's responsibility under this section shall not be limited to the required or available insurance coverage.

8. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.

9. BINDING AGREEMENT

The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees and assigns. The rights or obligations granted or allocated to Sun Edison herein may not be assigned without the prior written consent of the City.

10. ASSIGNMENT

Sun Edison shall not, without the prior written consent of the City, assign, transfer, convey, or otherwise dispose of this Agreement, or any part thereof, or of its right, title, or interest therein or its power to execute this Agreement or any amendment or modifications hereto to any other person, company, or corporation.

11. SEVERABILITY

In the event any provision of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Agreement or any other term or condition hereof.

12. EXECUTION

This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

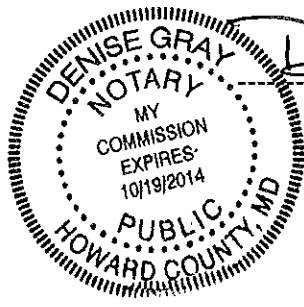
CITY	SUN EDISON LLC
Signature: _____	Signature: _____
Date: _____	Date: <u>6/13/13</u>
Print Name: _____	Print Name: <u>Sujay Parikh</u>
Title: _____	Title: <u>Vice President, Legal</u>

City Council Approval Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF Maryland)
)
 COUNTY OF Howard) SS:

ON THIS 13th DAY OF June 20 13 BEFORE ME PERSONALLY CAME Sujay Parikh TO ME KNOWN, WHO BEING DULY SWORN, DID DEPOSE AND SAY THAT HE/SHE RESIDES IN Washington, DC, THAT HE/SHE IS THE Vice President, Legal OF SUN EDISON LLC, THE ENTITY DESCRIBED IN AND WHICH EXECUTED THE FOREGOING INSTRUMENT; THAT HE/SHE KNEW THE SEAL OF SAID ENTITY; THAT THE SEAL AFFIXED TO SAID INSTRUMENT WAS SUCH ENTITY'S SEAL; THAT IT WAS SO AFFIXED BY THE ORDER OF THE BOARD OF DIRECTORS OF SAID ENTITY, AND THAT HE/SHE SIGNED HIS NAME THERETO BY LIKE ORDER.

 Denise Gray
 NOTARY PUBLIC



CITY OF SARATOGA SPRINGS, NEW YORK VENDOR/SUPPLIER CODE OF CONDUCT

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral manner. The City requires that all vendors/suppliers abide by this Code of Conduct. Failure to comply with this Code may be sufficient cause for the City to exercise its rights to terminate its business relationship with vendors/suppliers. Vendors/suppliers agree to provide all information requested which is necessary to demonstrate compliance with this Code. At a minimum, the City requires that all vendors/suppliers meet the following standards:

- **Legal:** Vendors/suppliers and their subcontractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- The City expects vendors/suppliers to respect the City's rules and procedures.
- **Wages & Benefits:** Vendors/suppliers will set working hours, wages, NYS statutory benefits and overtime pay in compliance with all applicable laws and regulations. Where applicable, as defined by NYS Labor Law, the vendor/supplier must comply with prevailing wage rates.
- **Health & Safety:** Vendors/suppliers and their subcontractors shall provide workers with a safe and healthy work environment that complies with local, state and federal health and safety laws.
- **Discrimination:** No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, party affiliation or social ethnic origin.
- **Working conditions:** Vendors/suppliers must treat all workers with respect and dignity and provide them with a safe and healthy environment.
- **Right to organize:** Employees of the vendor/supplier should have the right to decide whether they want collective bargaining.
- **Subcontractors:** Vendors/suppliers shall ensure that subcontractors shall operate in a manner consistent with this Code.
- **Protection of the Environment:** Vendors/suppliers shall comply with all applicable environmental laws and regulations. Vendors/suppliers shall ensure that the resources and material they use are sustainable, are capable of being recycled and are used effectively and a minimum of waste. Where practicable, vendors/suppliers are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

Vendor Acknowledgment

The undersigned vendor/supplier hereby acknowledges that it has received the City of Saratoga Springs Vendor/Supplier Code of Conduct and agrees that any and all of its facilities and subcontractors doing business with the City will receive the Code and will abide by each and every term therein. Vendor/supplier acknowledges that its failure to comply with any condition, requirement, policy or procedure may result in the termination of the business relationship. Vendor/supplier reserves the right to terminate its agreement to abide by the Code of Conduct at any time for any reason upon ninety (90) days prior written notice to the City.

Officer: _____
Signature: _____
Printed Name: _____
Title: _____
Date: _____