

**Key Provisions of the proposed Land Lease Agreement of the Annapolis Landfill
for the Solar Segment of the Annapolis Renewable Energy Park (AREP)**

ARTICLE	SYNOPSIS OF KEY PROVISIONS
II - Lease Term	Approximately twenty (20) years, ending December 31, 2036.
III – Extensions; Hold-Over	Lessee may request to extend the Term for up to two (2) additional five (5) year extensions, subject to prior notice and City approval. Lessee may hold-over on a month-to-month basis.
IV - Rent, Revenue Sharing, and Additional Compensation	<p>Base Rent of \$10,000.00 annually with a two percent (2%) escalation per year starting July 1, 2016.</p> <p>Additional Rent of \$15,000.00 per megawatt of capacity (excluding capacity used by City) with a two percent (2%) escalation per year starting July 1, 2016. This amounts to approximately \$260,000.00 average annual payment to the City over the 20 year term.</p> <p>Lessee is allowed to set-off its rent obligations to cover payment (on the City’s behalf) of the City-chosen Owner's Representative. The total cost for the Owner’s Representative is approximately \$52,000.00. The purpose of the Owner’s Representative is to ensure that the City’s assets, including the landfill cap and all installed equipment on the landfill, are protected during the installation of the solar equipment.</p> <p>The City estimated a \$3,000,000.00 allowance for the BGE distribution/transmission tie-in, which the Lessee is required to cover at its own cost. If such allowance does not cover all actual costs for this tie-in, then the Lessee is allowed to negotiate an equitable adjustment for any costs above the allowance.</p> <p>All late rent payments are subject to twelve percent (12%) late fee.</p>
V - Use of Leased Premises By Lessee	<p>Defines the area for installation of the solar facility, including necessary easements for power distribution/transmission facilities and access rights.</p> <p>Generally provides conditions of use.</p> <p>See Exhibit A for additional details.</p>
VI – Design And Construction Of The Facility	<p>Plans and specifications approved in advance and in writing by the City, and will eventually be attached to Lease as an Exhibit B.</p> <p>Lessee, at its cost, obtains all certificates, permits, licenses and other authorizations for the Solar Facility.</p> <p>Lessee, at its cost, awards and administers all design and construction contracts for the Solar Facility.</p> <p>Acknowledgment that the Solar Facility is the personal property of the Lessee.</p>
VII - Obligations For Operation, Maintenance And	The City to maintain/repair only the Annapolis Landfill Property outside of the Leased Premises, and the landfill gas collection and flaring system on the Leased

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Repairs	<p>Premises. The City also responsible for any environmental requirements imposed on the Annapolis Landfill by the Federal or State governments.</p> <p>The Lessee to maintain/repair the Solar Facility, the surface of the Leased Premises (i.e. not the landfill materials underneath), and vegetation.</p> <p>The City has the right to make required maintenance/repairs to the Leased Premises, and recover costs for repairs due to Lessee negligence. If any City maintenance/repair results in a reduction in the generation of electricity for more than eight (8) consecutive hours in a day or twenty-four (24) cumulative hours in one year, the City will be liable to compensate the Lessee for lost electricity revenue and related costs.</p>
VIII - Security, Property Loss Damage	<p>Once construction begins, the Lessee is responsible for the security of the entire Leased Premises, including its Solar Facility and fencing, but not including the landfill gas collection and flaring system.</p> <p>The City is responsible for the security of the Annapolis Landfill Property outside of the Leased Premises and for the landfill gas collection and flaring system on the Leased Premises.</p> <p>The City is not generally liable for any damages to the Leased Premises or the Solar Facility, except due to City negligence, in which case the City must repair or reimburse for costs to repair.</p>
IX – Permits; Compliance With Laws	<p>The Lessee is required to keep in force and comply with all licenses, consents and permits necessary, including any environmental legal requirements that relate to the construction and operation of the Solar Facility.</p>
X – Lease Security	<p>A corporate/parent guarantee will be executed by Building Energy S.p.A. (Italy), as security for the full and faithful performance by the Lessee of all the terms of this Lease required to be performed by the Lessee up to \$100,000.00 until the date construction begins, and then after construction begins up to \$50,000.00 per megawatt installed (or approximately \$750,000.00) for a three (3) year period.</p> <p>Note: Building Energy S.p.A. is an independent power producer from renewable energy sources which is currently developing 1,000 MW internationally (i.e. approximately 60 times the size of the proposed AREP).</p>
XI – Insurance	<p>Lessee to provide Commercial General Liability Insurance: \$1,000,000.00 for injury or death from one accident and \$5,000,000.00 in the aggregate. Lessee to require its subcontractor to provide Professional Liability, Errors and Omissions Insurance in reasonably sufficient amounts.</p> <p>For damage to or destruction of the Leased Premises, the Lessee is required to utilize the proceeds of such insurance for commercially reasonable restoration and/or repair of the Lease Premises with documentation of such repairs to the City within thirty (30) days.</p>
XII – City’s Rights	<p>The City may use all or any part of the Leased Premises for its purposes, including maintenance and repair, and environmental investigation, sampling,</p>

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	<p>testing, treatment and remediation.</p> <p>The City and various Federal, State, and local agencies may also enter the Leased Premises for inspection or other official purposes.</p> <p>The City is required to minimize its interference with the “Leased Premises” when exercising these rights.</p>
<p>XIII - Indemnification</p>	<p>The Lessee is responsible for any injuries and damages it causes, and is required to reimburse the City for damage to City property. The Lessee is required to indemnify the City for (a) any injuries and damages, generally, (b) for any alleged violation of intellectual property rights, and (c) for any alleged failure to comply with environmental legal requirements.</p> <p>The City is required to indemnify the Lessee, to the extent permitted by law and appropriations and insurance coverage, for any liability with respect to the Annapolis Landfill Property not arising out of actions or inactions of the Lessee</p>
<p>XIV - Termination</p>	<p>For default or breach by the City, which includes:</p> <ul style="list-style-type: none"> a) Failure to make any payment; b) Failure to observe or perform any of the covenants, conditions or provisions of the Lease; c) A lien filed against the “Leased Premises” and not removed within thirty (30) days; d) Assignment or general arrangement for the benefit of creditors, or bankruptcy filing; e) Vacating or abandonment of the Leased Premises; or f) Material misrepresentation to the City. <p>The Lessee is provided with a cure period, after which the City may terminate, take possession, or call upon the Lease Security. Upon the termination of the Lease, the Lessee is required to remove the Solar Facility within sixty (60) days after termination of the Lease.</p> <p>The Lessee’s lender, upon default concerning financing of the Solar Facility, is allowed to remove the Solar Facility or take other action. The City maintains its rights, generally, including using the Lease Security.</p>
<p>XVIII – Lessee Financing</p>	<p>The Lessee may mortgage or otherwise encumber its leasehold interest in the Leased Premises via a leasehold mortgage, and may, without consent, pledge the Solar Facility to a lender.</p> <p>The Lessee’s lender is entitled to a period to cure a default or breach by the Lessee, including assuming and/all obligations under the Lease or assigning the Lease to a third party with City approval.</p> <p>The Lease Security from the Lessee’s parent corporation, Building Energy S.p.A., would remain in effect regardless.</p>

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XXI, Section 16 – Conditions Subsequent; Lessee Right to Terminate	<p>The Lessee may unilaterally terminate this Lease by November 30, 2015 (with no penalty) if: (a) the City and the Lessee do not enter into a power purchase agreement and (b) planning elements of the Solar Facility are not sufficiently advanced with good faith efforts by that date.</p> <p>The Lessee may unilaterally terminate this Lease between December 1, 2015 and December 31, 2016 for the same reasons, but the Lessee will be required to pay the City \$100,000.00 as estimated damages.</p>

Prepared by Ashley Leonard, Assistant City Attorney, Office of Law.