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Title: Annapolis Renewable Energy Park - For the purpose of approving the land lease agreement of certain City-owned property containing the closed City of Annapolis Landfill for the construction and operation of a solar photovoltaic (PV) electricity generating facility to be located at those portions of the closed City of Annapolis Landfill; and matters generally relating to said lease

Sponsors: Michael J. Pantelides

Indexes: Economic Matters Committee, Environmental Matters Committee, Finance Committee

Code sections:

Attachments: 1. O-32-15 AREP OrdinanceandLease.pdf, 2. O-32-15 AREP LeaseSynopsis.pdf, 3. O-32-15 Fiscal Impact.pdf, 4. O-32-15 Signed.pdf

Date	Ver.	Action By	Action	Result
7/27/2015	1	City Council	adopt on second reader	Pass
7/27/2015	1	City Council	adopt on third reader	Pass
7/21/2015	1	Finance Committee	recommend favorably	Pass
7/20/2015	1	Economic Matters Committee	recommend favorably	Pass
7/16/2015	1	Environmental Matters Committee	recommend favorably	Pass
7/13/2015	1	City Council		
6/22/2015	1	City Council	adopt on first reader	Pass
6/22/2015	1	City Council	refer	
6/22/2015	1	City Council	refer	
6/22/2015	1	City Council	refer	

Annapolis Renewable Energy Park - For the purpose of approving the land lease agreement of certain City-owned property containing the closed City of Annapolis Landfill for the construction and operation of a solar photovoltaic (PV) electricity generating facility to be located at those portions of the closed City of Annapolis Landfill; and matters generally relating to said lease

CITY COUNCIL OF THE
City of Annapolis

Ordinance 32-15

Sponsored by: Mayor Pantelides

Referred to
Economic Matters
Environmental Matters

Finance

AN ORDINANCE concerning

Annapolis Renewable Energy Park

FOR the purpose of approving the land lease agreement of certain City-owned property containing the closed City of Annapolis Landfill for the construction and operation of a solar photovoltaic (PV) electricity generating facility to be located at those portions of the closed City of Annapolis Landfill; and matters generally relating to said lease.

WHEREAS, the Guarantor is the parent company of Building Energy Holding U.S. LLC, a Delaware corporation, which intends to acquire Annapolis Solar Park, LLC, a Delaware limited liability company (“Lessee”); and

WHEREAS, the City and the Lessee have entered into a land-lease agreement dated _____, 20__ (“Lease”) for the lease of certain property containing the closed City of Annapolis Landfill for the construction and operation of a solar photovoltaic (PV) electricity generating facility to be located at those portions of the closed City of Annapolis Landfill, as approved by the City, and pursuant to the City Request for Proposals 15-12 and the Lessee’s response and any amendments or revisions thereto (collectively, the “RFP”) ; and

WHEREAS, pursuant to Article X of the Lease, the Lessee is obligated to provide the City with this Guarantee; and

WHEREAS, all or part of the energy generated from the Lessee’s solar PV facility may be sold by the Lessee to the City pursuant to a power purchase agreement; and

WHEREAS, the Guarantor, which soon shall be a parent of the Lessee, will benefit from the installation and operation of Lessee’s solar PV facility and is willing to enter into this Guarantee in consideration of and to satisfy the terms of the Lease.

NOW, THEREFORE,

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Land Lease Agreement, a copy of which is attached hereto and made a part hereof, between Annapolis Solar Park, LLC and the City of Annapolis for the lease of certain municipal property, is hereby approved and authorized.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that in accordance with Article III, Section 8 of the Charter of the City of Annapolis, the proposed lease of City-owned property will better serve the public need for which the property was acquired.

SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates amendments

LAND LEASE AGREEMENT

THIS LAND LEASE AGREEMENT (“Lease”) is made and entered into as of _____, 2015, by and between the City of Annapolis, a municipal corporation of the State of Maryland, whose address is 160 Duke of Gloucester Street, Annapolis, Maryland 21401 (as the “City”), and Annapolis Solar Park, LLC, a Delaware limited liability company, whose address is c/o BQ Energy, 47 S. Hamilton St., Poughkeepsie, NY 12601 (as the “Lessee”).

ARTICLE I - GRANT OF LEASE

The City, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Lessee, does hereby lease to the Lessee and the Lessee does hereby lease and take from the City the property described in **Exhibit A** attached hereto and by reference made a part hereof (the “**Leased Premises**”), together with, as part of the parcel, all improvements located thereon, for the purposes of design and construction of a solar photovoltaic generating facility together with its electric utility service infrastructure and associated wires, lines, poles, and other infrastructure necessary and convenient to support it and to interconnect it to the local electrical distribution system (collectively, the “**Facility**”) at the City-owned closed Annapolis Landfill, located in the vicinity of Interstate 97, Maryland Route 450 and Crownsville Road in Anne Arundel County, Maryland (the “**Annapolis Landfill Property**”), pursuant to the City of Annapolis Request for Proposals 15-12 and the Lessee’s response and any amendments or revisions thereto (collectively, the “RFP”).

The Lessee hereby acknowledges that the Leased Premises and the Facility are located on the Annapolis Landfill Property, and as applicable, the Lessee shall comply with any and all restrictions, laws, regulations, ordinances and requirements that govern and apply to the Annapolis Landfill Property; *provided that*, if any new restrictions, laws, regulations, ordinances and requirements are imposed after the date of this Lease which increase the Lessee’s burden of performing its obligations under this Lease, then the Lessee shall be entitled to request an equitable adjustment in the rent or other obligations as documented by the Lessee and as determined appropriate in the City’s sole discretion.

ARTICLE II - LEASE TERM

Section 1. Total Term of Lease. The term of this Lease (the “Term”) shall begin on the Commencement Date, as defined in Section 2 of this Article II, and shall terminate on the earlier of December 31, 2036 or the 20th anniversary of the Completion Date.

Section 2. Commencement Date. The “Commencement Date” shall mean the date first written above.

Section 3. Completion Date. The Facility shall be constructed in phases, currently anticipated to be six (6) in number and up to 2.8 megawatts in size, each. The Lessee shall provide written notice to the City when the construction of the last phase is fully completed. For purposes of this Lease, “Completion Date” shall mean the date on which the Commercial Operation Date for the last phase of the Facility occurs.

Section 4. Commercial Operation Date. “Commercial Operation Date” shall mean each date that the Facility begins full commercial operation (i.e., not merely operation for testing purposes) for each phase of the Facility. The Lessee shall advise the City promptly in writing when commercial operation has begun for each phase of the Facility.

ARTICLE III - EXTENSIONS; HOLD-OVER

Section 1. Extension Period. The Lessee may request to extend the Term for two (2) additional five (5) year periods by providing written notice of such election to the City no later than one hundred twenty (120) calendar days prior to the end of the Term. If the City agrees to the Lessee's request to extend, that extension shall be documented in a written amendment to this Lease signed by both parties hereto. The parties hereto may elect to further extend this Agreement upon such terms and conditions as may be agreed upon in writing and signed by the parties at the time of any such extension.

Section 2. Holding Over. In the event that the Lessee or anyone claiming under the Lessee shall continue occupancy of the Leased Premises after the expiration of the Term of this Lease or any renewal or extension thereof without any agreement in writing between the City and the Lessee with respect thereto, such occupancy shall not be deemed to extend or renew the Term of the Lease, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. The Base Rent and Additional Rent for such hold over period shall be those rental sums in effect during the Term of this Lease as extended or renewed, prorated and payable for the period of such occupancy. Any other compensation, as described in Article IV of this Lease, shall also continue on a month to month basis in the same forms and/or same amounts as those in effect during the Term of this Lease as extended or renewed.

ARTICLE IV - RENT AND ADDITIONAL COMPENSATION

The Lessee agrees to pay the City and the City agrees to accept, during the Term hereof, at such place as the City shall from time to time direct by notice to the Lessee, rent at the following rates and times:

Section 1. Annual Base Rent. Annual base rent for the term of the Lease shall be Ten Thousand Dollars and No Cents (\$10,000.00) ("Base Rent"). The Base Rent shall escalate at a rate of two percent (2.0%) on July 1, 2016 and on each July 1st thereafter.

Section 2. Payment of Base Rent. The Base Rent shall be payable in advance in equal monthly installments of one-twelfth (1/12th) of the total Base Rent, which shall be in the first year Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$833.33), on the first (1st) day of each and every calendar month during the Term hereof, and pro rata for the fractional portion of any month, except that on the first (1st) day of the calendar month immediately following the Commencement Date, the Lessee shall also pay Base Rent at the said rate for any portion of the preceding calendar month included in the Term of this Lease.

Section 3. Reference to Yearly Rent. Reference to yearly rent hereunder shall not be implied or construed to the effect that this Lease or the obligation to pay rent hereunder is from year to year, or for any term shorter than the existing Lease Term, plus any extensions as may be agreed upon in writing.

Section 4. Late Fee/Interest. Interest in the amount of twelve percent (12%) per annum shall be assessed if any payment is not postmarked or received by City on or before the tenth (10th) day of each month.

Section 5. Additional Rent. The Lessee shall also pay, as additional annual rent (the "Additional Rent" and, with Base Rent, the "Rent"), the product of the Rate times the Capacity; as such terms are defined below. The "Rate" is Fifteen Thousand Dollars and No Cents (\$15,000.00) per megawatt of Capacity. The Rate shall escalate at a rate of two percent (2.0%) on July 1, 2016 and on each July 1st thereafter. The "Capacity" for any month is the sum of the rated maximum power (i.e. the nameplate rating) of each solar module (expressly excluding those modules that provide electricity to the City) installed at the Facility on the first (1st) day of that

month. Additional Rent shall be payable in advance on the first (1st) day of each and every calendar month during the Term hereof. The Lessee shall promptly advise the City in writing when the Capacity of the Facility increases or decreases so that Additional Rent may be determined appropriately. Additional Rent shall be adjusted on the first (1st) day of the month following the date of the increase or decrease, which date shall be specified in such notice.

Section 6. Payment. Each payment of Rent shall be made when due, without deduction, set-off (except as otherwise expressly provided for in this Lease) or counterclaim whatsoever, and without demand. All payments shall be made payable to the “City of Annapolis” and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. In the event of any nonpayment of Base Rent and/or Additional Rent, the City shall have all the rights and remedies provided in this Lease and/or by law or at equity.

Section 7. Owner’s Representatives. In relation to this Lease and the Facility, the City shall select a third party contractor(s) (the “Owner’s Representative”) to:

- (a) Monitor the Lessee’s progress in the design, construction, implementation, and operation of the Facility.
- (b) Review Facility project data, phases and plans, including the Plans as defined in Article VI.
- (c) Review electricity generation reports and data related to the Facility.
- (d) Perform any other activities related to the Facility, this Lease, and financial administration as required by the City.

The Lessee shall contract with and promptly pay all invoices to the Owner’s Representative in accordance with the statements of work and funding limitations specified by the City in writing, and expressly subject to the City’s prior written approval of any Owner’s Representative invoices. The Lessee and the City understand and agree that the Owner’s Representative shall not perform any work which exceeds the amount(s) in the City’s prior written approval, and **in no event shall the compensation paid to the Owner’s Representative exceed Fifty-Two Thousand Dollars and No Cents (\$52,000.00) during the entire Term of this Lease, including any renewals or extensions thereof, without the prior written authorization of the City.** In order to incorporate the impact of any Owner’s Representative contract on the Lessee, the Lessee has the right to set off such approved invoice payments against Rent.

Section 8. Interconnection Allowance. In responding to the RFP, the Lessee incorporated into its proposal price an “allowance” of Three Million Dollars and No Cents (\$3,000,000.00) for processing any interconnection application(s) with Baltimore Gas & Electric Company (“BGE”), designing and constructing the facilities from the boundary of the Facility to BGE’s interconnection point, and paying for upgrades, if any, to BGE’s network (collectively, the “Interconnection Costs”). After BGE approval of the Lessee’s interconnection application(s), the City and the Lessee, in good faith, shall negotiate an equitable adjustment to the Rent to reflect the difference between this “allowance” and the final Interconnection Costs. The Lessee shall maintain all of its records, invoices, and other documentation related to the Interconnection Costs in an “open book” format, and all such records, invoices, and other documentation shall be provided to the City upon its request and available for City inspection at all reasonable times. The Lessee shall competitively bid, to the extent allowed by BGE, all work related to the Interconnection Costs in order to obtain the best, possible price for all such work.

ARTICLE V - USE OF LEASED PREMISES BY LESSEE

Section 1. Use. The City grants to the Lessee the use of the Leased Premises, as follows:

a. After execution of this Lease and in compliance with **Exhibit A**, an upward facing surface of area of the Leased Premises shall be designated as “Facility Area” on **Exhibit A**, and such “Facility Area” may be occupied and used by the Lessee exclusively to construct, operate, and maintain the Facility, and to reconstruct, relocate, remove, and/or repair it and its components and infrastructure and as and for any other purposes indicated on the plans and specifications approved by the City pursuant to the provisions of Article VI, below. The extent of such area may be reduced as provided in **Exhibit A**.

b. After execution of this Lease and in compliance with **Exhibit A**, the area of the Leased Premises, which is outside the “Facility Area” shall be designated “Outside Facility Area” on **Exhibit A**, and subject to prior approval by the City, may be occupied and used by the Lessee on a non-exclusive basis for pedestrian, vehicular and equipment access to the Facility and for (i) temporary storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles and temporary construction trailers, (iv) vehicular and pedestrian access and access for Facility construction activities, (v) other facilities reasonably necessary to construct, erect, install, expand, modify or remove the Facility, and (vi) as and for any other purposes indicated on the plans and specifications approved by the City pursuant to the provisions of Article VI, below. The areas of such uses may be defined and reduced as provided in **Exhibit A**.

c. The Lessee shall have a non-exclusive easement for the Term of this Lease to install power distribution/transmission facilities along North River Road, either overhead or underground, from the Leased Premises to Maryland State Route 450 (Defense Highway), as approved in writing by the City and which shall be depicted on **Exhibit A** through a written amendment of this Lease.

d. With the prior written approval of the City, which shall not unreasonably be withheld, the Lessee may sublease, assign, or license the use of the Leased Premises to sublessees, assignees, or licensees for the Lessee’s counter-parties to net metering and other similar agreements. Nothing herein shall give the Lessee the right to use the Leased Premises for any other purpose, or to sublease, assign, or license the use of the Leased Premises to any sublessee, assignee, or licensee, which or who shall use the Leased Premises for any other use.

Section 2. Access. The Lessee’s employees, agents, contractors, clients, guests, and invitees shall be entitled to the non-exclusive use, free of charge, but in common with others, of the driveways, footways and parking areas within the Leased Premises, subject to any rules and regulations as the City may, from time to time, require. The Lessee shall have the right to access the Leased Premises pursuant to North River Road, which is the City-owned road on the Annapolis Landfill Property. The City shall at all times have full and exclusive control, management and direction of all driveways, footways and parking areas. With prior reasonable notice to the Lessee (except in the case of an emergency where no such notice is required), the City may restrict access to, temporarily close, construct, adjust, reduce or perform such other acts to all or any portion of the parking areas or the Leased Premises as the City determines to be necessary or appropriate.

Section 3. Violation/Nuisance. The Lessee shall not use or occupy, or permit its employees, invitees, agents or contractors to use or occupy the Leased Premises or any part thereof, nor do or permit anything to be done in or on the Leased Premises in a manner which would in any way violate any of the terms of this Lease, or cause or create a public or private nuisance in or on the Leased Premises.

Section 4. Impairment. The Lessee shall not have the right, power, or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien, charge, or other encumbrance on the estate of the City in the Leased Premises. The Lessee shall not permit any part of the Leased Premises to be used by any person or persons or by the public at any time or times during the Term of this Lease, in such manner as might tend to impair the City’s title to or interest in the Leased Premises, or in

such manner as might make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to, or with respect to the Leased Premises. Should the Lessee fail to have any liens of its creditors, contractors, subcontractors, and other claimants against the City removed from the Leased Premises within fourteen (14) calendar days of notification to do so by the City, in addition to all other remedies available to the City, the Lessee shall indemnify and hold the City harmless for all costs and expenses, including attorney's fees, occasioned by the City in having said lien removed from the Leased Premises; and, such costs and expenses shall be billed to the Lessee monthly and shall be payable by the Lessee as Additional Rent; *provided that*, the Lessee shall have the right to contest the imposition and execution of liens on the Leased Premises as provided by law, including the provision of security as provided by law, and the Lessee shall not be required to cause such liens to be removed by payment, and the City may not exercise the foregoing right to remove them and be indemnified by the Lessee for doing so, while any such contest is timely being pursued as provided by law.

ARTICLE VI - DESIGN AND CONSTRUCTION OF THE FACILITY

Section 1. Design and Construction of the Facility by Lessee. The Lessee shall design and construct the Facility in strict compliance with the plans and specifications approved in advance and in writing by the City (the "Plans"), which approval shall not be unreasonably withheld. The Plans and all as-built drawings for the Plans, once completed, shall be attached hereto as **Exhibit B** and incorporated herein by reference. The Lessee shall obtain all certificates, permits, licenses and other authorizations of governmental bodies or authorities which are necessary to permit the design and construction of the Facility on the Leased Premises and shall keep the same in full force and effect at the Lessee's sole cost and expense. The City shall cooperate with the Lessee in obtaining such certificates, permits, licenses and other authorizations of governmental bodies or authorities as appropriate.

Section 2. Contracts for Design and Construction. The Lessee shall negotiate, let and supervise all contracts for the furnishing of services, labor, and materials for the design and construction of the Facility on the Leased Premises at its sole cost and expense. The City shall have the right to request removal of any contractor or subcontractor for reasonable cause, which request shall be acted upon immediately by the Lessee. The Lessee shall cause all contracts to be fully and completely performed in a good and workmanlike manner, all to the effect that the improvements shall be fully and completely constructed and installed in accordance with good engineering and construction practice.

Section 3. Lessee Responsibility for Design and Construction. Nothing herein shall alter the intent of the parties that the Lessee shall be fully and completely responsible for all aspects pertaining to the design and construction of the Facility on the Leased Premises and for the payment of all costs associated therewith. The City shall be under no duty to investigate or verify the Lessee's compliance with the provision herein. Moreover, neither the Lessee nor any third party may construe the permission granted the Lessee hereunder to create any responsibility on the part of the City to pay for any improvements, alterations or repairs occasioned by the Lessee. This Section shall not be deemed to limit any express obligation of the City under any other provision of this Lease.

Section 4. Ownership of Facility. The City acknowledges and the parties agree that the Facility is the personal property of the Lessee, its successors and assigns, the City shall have no interest of any kind in the Facility, and, as between the parties (even if treated otherwise under the law), the Facility shall not become a "fixture" or otherwise become real property or an improvement of the Leased Premise or any other real property, unless otherwise agreed to by the parties hereto.

ARTICLE VII - OBLIGATIONS FOR OPERATION, MAINTENANCE AND REPAIRS

Section 1. City's Maintenance/Repairs. Subject to any provisions herein to the contrary, and except for maintenance or replacement necessitated as the result of the act or omission of the Lessee, or its employers, vendors, contractors, the City shall be required to maintain and/or repair only the Annapolis Landfill Property, expressly except the Leased Premises and the Facility, but including the landfill gas collection and flaring system on the Leased Premises and including all Environmental Legal Requirements (as defined herein) pertaining to that system or the Annapolis Landfill Property generally.

Section 2. Lessee's Operation, Maintenance and Repairs; Landfills. Beginning with the commencement of construction of the Facility, the Lessee shall repair and maintain the Facility and the surface of the Leased Premises in good order and condition, and in strict compliance with this Lease, except for maintenance or replacement necessitated as the result of the act or omission of negligence by the City, its employees, agents, or contractors. The Lessee shall be responsible for the maintenance of all vegetation on the Leased Premises, including, but not limited to, mowing the grass and trimming back trees as needed for the proper operation of the Facility. Except to the extent caused by its negligence, the Lessee shall have no right or responsibility with respect to any Environmental Legal Requirements (as defined herein) imposed on the City with respect to the Annapolis Landfill Property. The City reserves the right to give written notice to the Lessee of any repairs which the Lessee is required to make pursuant to the provisions of this Article and the Lessee agrees to promptly commence such repairs and to prosecute the same to completion diligently.

Section 3. Reimbursement for Maintenance/Repairs. If the City is required to perform any maintenance or make any repairs to any portions of the Annapolis Landfill Property by reason, in whole or in part, of the negligent or willful act or failure to act by the Lessee or the Lessee's employees, agents, contractors, guests or invitees, the City may collect the cost of any and all such maintenance or repairs from the Lessee as Additional Rent.

Section 4. No Liability for City Maintenance/Repairs. Except as provided in this Section and/or Article VIII, Section 4, the City shall have no liability to the Lessee by reason of any inconvenience, annoyance, interruption, or injury to business or other use or occupancy arising from performing any maintenance or making any repairs or changes that the City is required or permitted to make in or to any portion of the Annapolis Landfill Property or the Leased Premises by law or this Lease. The City may, and shall if required to do so, perform any maintenance or make any repairs or changes that the City is required or permitted to make in or to any portion of the Leased Premises by law or this Lease. If such actions result in the reduction of electricity generation by the Facility either for more than eight (8) consecutive hours in a single day or for more than twenty-four (24) cumulative hours in a single year, the City will pay the Lessee an amount equal to the sum of payments that the Lessee would have received with respect to the electricity that would otherwise have been produced plus the amount of any out-of-pocket expenses incurred by the Lessee as a consequence of such actions by the City. Such amounts may include (without limitation by their specification), lost revenues from the sale of electricity and environmental attributes (e.g., solar renewable energy credits, or "SRECs"). Determination of the amount of electricity that would have been produced during the period of a partial or complete shutdown shall be based, during the first year of operations, on estimated levels of production and, after the first year of operations, based on actual operation of the Facility during the same period in the previous year, unless the Lessee and the City agree to an alternative methodology. Such amounts shall be presented to the City by invoice from the Lessee and the Lessee may offset such amounts against Rent owed to the City. In such events, the Lessee shall provide the City with reasonable evidence (e.g., power purchase agreements, broker quotes) of the prices (e.g., \$/kWh, \$/SREC) at which lost sales would have been made.

ARTICLE VIII - SECURITY, PROPERTY LOSS DAMAGE

Section 1. Security of the Facility. Upon the commencement of construction of the Facility, the Lessee shall be solely responsible for the security of the “Facility Area” as depicted in **Exhibit A**, including as may be required by the National Electric Code and all other applicable laws and regulations. The Lessee shall police and maintain the “Facility Area” as depicted in **Exhibit A** in a clean, safe and secure manner. In addition to any other measures, the Lessee shall fence in the Facility, and shall provide the City with a key to any lock or gate for that fence.

Section 2. Security of Annapolis Landfill Property. The City shall be solely responsible for the security of the Annapolis Landfill Property, expressly except the Leased Premises and the Facility, but including the landfill gas collection and flaring system on the Leased Premises.

Section 3. City Not Liable. Except to the extent caused by its or their negligence, the City, its elected officials, appointees, directors, employees, agents, contractors and representatives shall not be liable for any damage to property of the Lessee or of others located on the Leased Premises or entrusted to its or their employees nor for the loss of any property by theft or otherwise, nor for any injury or damage to persons or property resulting from theft, casualty, acts of God, fire of every nature and type, the accumulation of snow or ice, explosion, steam, gas, electricity, wind, water, rain or snow which may overflow or leak or be discharged from the street or subsurface or from any other place, from any other cause whatsoever; nor shall the City be liable for any damage caused by operations in the construction, maintenance or repair of any public or quasi-public works, improvements or facilities; and all property of the Lessee kept or stored on the Leased Premises shall be so kept at the risk of the Lessee only, and the Lessee shall indemnify, defend and hold the City harmless from any claims arising out of damage to the same, including subrogation claims by the Lessee's insurance carrier(s).

Section 4. Damage by City. If the City shall in the exercise of its rights of entry and performance of its obligations under this Lease (including Articles VII and XII) or under any applicable law, including Environmental Legal Requirements, cause damage to the Facility, the City, at its sole option, shall either repair the Facility to its prior condition or reimburse the Lessee for doing so within thirty (30) calendar days of invoicing, which invoicing shall include sufficient documentation to support the requested reimbursement cost.

ARTICLE IX - PERMITS; COMPLIANCE WITH LAWS

Section 1. Permits and Expenses. The Lessee shall keep in force all licenses, consents and permits necessary for the lawful use of the Leased Premises for the purposes of this Lease, including, but not limited to, for the design, construction, operation, maintenance, and making of any repairs, alterations, or other improvements to the Leased Premises or the Facility. The Lessee, at its sole cost and expense, shall promptly comply with and do all things required by any lawful notice served upon it in relation to the Leased Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Lessee's use of the Leased Premises or the design, construction, operation or maintenance of the Facility. The Lessee shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Lessee to comply.

Section 2. Environmental Legal Requirements. Subject to Article VII of this Lease, the Lessee shall use and operate the Facility and the Leased Premises in compliance with all “Environmental Legal Requirements”, which shall mean any applicable law relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls (“PCB’s”), asbestos or asbestos containing products, to the disposal, treatment, storage or management of solid or other hazardous or harmful wastes or to exposure to toxic, hazardous or other harmful materials (collectively “Hazardous Substances”), to the handling, transportation, discharge or release of gaseous or liquid substance, and any regulation or final

order or directive issued pursuant to such statute or ordinance, in each case applicable to the Leased Premises, or its operation, construction or modification, including without limitation the following: Titles 7 and 9 of the Environment Article of the Maryland Annotated Code, Title 26 of the Code of Maryland Regulations, The Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, all as may be amended, and any federal, state or local statutes addressing similar matters, and any federal, state or local statute providing for financial responsibility for clean-up or other actions with respect to the release or threatened release of any of the above referenced substances or providing for regulation of solid waste, landfills or closed landfills.

ARTICLE X - LEASE SECURITY

The Lessee has deposited with the City a corporate/parent guarantee as security (the "Lease Security") for the full and faithful performance of all the terms of this Lease required to be performed by the Lessee, as further evidenced by Exhibit C. The Lease Security shall only be released by the City after the expiration of this Lease, and expressly provided that the Lessee has fully and faithfully carried out all of its obligations under this Lease. The Lessee may substitute other security as Lease Security which is reasonably acceptable to the City, as further described in Exhibit C.

ARTICLE XI - INSURANCE

Section 1. Insurance Requirements. The Lessee shall maintain or cause to be maintained, with respect to the Leased Premises, Commercial General Liability insurance with limits (including those from excess umbrella liability insurance) of not less than One Million Dollars (\$1,000,000) for injury or death from one (1) accident and Five Million Dollars (\$5,000,000) in the aggregate, insuring the City and the Lessee against injury to persons or damage to property on or about the Leased Premises. On all insurance policies, the City, its elected officials, appointees, directors, employees, agents, contractors and representatives shall be named as additional insureds, which shall be shown on insurance certificates furnished to the City. A copy of the policy or a certificate of insurance shall be delivered to the City on or before the Commencement Date and no such policy shall be cancellable without thirty (30) days prior written notice to the City. The Lessee's insurance policy or policies shall not relieve the Lessee of any of its responsibilities or obligations under this Lease or for which the Lessee may be liable by law or otherwise. The Lessee shall require its applicable subcontractor to carry reasonably sufficient Professional Liability, Errors and Omissions Insurance to cover all Facility tasks and activities by that subcontractor related to this Lease.

Section 2. Insurance Proceeds. In the event of any damage to or destruction of the Leased Premises, the Lessee shall adjust the loss and settle all claims with the insurance companies issuing such policies. The Lessee shall utilize any and all proceeds from such insurance policies for the purpose of the commercially reasonable restoration and/or repair of the Facility and the Leased Premises, which proceeds and restoration/repair shall be documented in a written report to the City within thirty (30) calendar days from any such restoration/repair.

Section 3. Subrogation. The City and the Lessee hereby release each other, to the extent of the insurance coverage provided hereunder, from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss to or damage of the property covered by the fire and extended coverage insurance policies insuring the Leased Premises and any of the Lessee's property, even if such loss or damage shall have been caused by the fault or negligence of the other party.

ARTICLE XII - CITY'S RIGHTS

Section 1. Right to Use. The City shall have the right to use all or any part of the Leased Premises for its purposes, as long as such use does not preclude the Lessee's reasonable design, construction, operation and maintenance of the Facility, or reasonable use of the Leased Premises as described in this Lease. Use by the City may include maintenance and repair, and environmental investigation, sampling, testing, treatment and remediation at the Leased Premises.

Section 2. Right to Enter. The City, the U.S. Environmental Protection Agency, the Maryland Department of the Environment, the Maryland Department of Natural Resources, Anne Arundel County, and their respective employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Lessee (except in the case of an emergency where no such notice is required), to enter the Leased Premises for any of the following purposes: (a) to inspect the Leased Premises; (b) to make such repairs, changes and/or other construction efforts to the Leased Premises as the City may deem necessary or proper; (c) to enforce and carry out any provision of this Lease; (d) for any purpose relating to the safety, protection or preservation of the Leased Premises; (e) for any purpose as may be required by the federal government, the State of Maryland, Anne Arundel County, or other law; or (f) for any other purpose related to the enforcement of this Lease.

Section 3. Minimize Interference. The City shall use reasonable efforts to minimize interference to the Lessee's use of the Leased Premises or the Facility when making inspections or repairs or undertaking other construction efforts, but the City shall not be required to perform the inspections, repairs or construction at any time other than during normal working hours.

Section 4. Governmental Authority. The City reserves the right at all times to exercise full governmental control and regulation with respect to all matters connected with this Lease not inconsistent with the terms of this Lease.

ARTICLE XIII - INDEMNIFICATION

Section 1. Injuries and Damages. The Lessee shall be solely responsible for any and all injuries and damages to persons and property resulting from any breach or default of this Lease by the Lessee, or any negligent or intentional act or omission by the Lessee in carrying out the terms of this Lease or otherwise arising from this Lease.

Section 2. General Indemnification by Lessee. The Lessee shall indemnify, defend and hold the City, its elected officials, appointees, directors, employees, agents, contractors and representatives (together, the "City's Indemnified Parties") harmless from and against all liability for injuries to persons, including death, and damage to the Leased Premises arising from acts or omissions of the Lessee, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees resulting in connection with this Lease.

Section 3. Intellectual Property Indemnification by Lessee. The Lessee shall also indemnify, defend and hold the City's Indemnified Parties harmless from and against any and all liabilities, claims, suits, or demands which may be made against the City's Indemnified Parties by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or other intellectual property rights, or from the alleged violation of unfair competition, defamation, invasion of privacy, anti-discrimination laws or regulations, or any other right of any person or entity in connection with the Lessee's use

of the Leased Premises under this Lease.

Section 4. Environmental Indemnification by Lessee. The Lessee shall indemnify, defend and hold the City's Indemnified Parties harmless from and against all liability for injuries to persons, including death, and damage to the Leased Premises arising from the failure of or by the Lessee, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees to comply with Article IX, Section 2 of this Lease. The Lessee hereby acknowledges and agrees that this Lease and the Lessee's obligations pursuant to this Lease shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the City if resulting from any negligent act or omission by the Lessee.

Section 5. Environmental Indemnification by City. To the extent permitted by the laws of the State of Maryland, existing appropriations, and/or available insurance coverage, and expressly subject to provisions of Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as may be amended, also known as the Local Government Tort Claims Act, and except in the event of the Lessee's negligence or willful misconduct, the City shall indemnify, defend and hold the Lessee its directors, employees, agents, contractors and representatives (together, the "Lessee's Indemnified Parties") harmless from and against all liability with respect to the Annapolis Landfill Property not arising out of actions or inactions of the Lessee (e.g., such liabilities as, without limitation, introduction of Hazardous Substances, expenses of landfill maintenance, remediation, and closure) and liability for injuries to persons, including death, and damage to property arising from the failure of or by the City, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees to comply with requirements of law relating to the Annapolis Landfill Property. The City hereby acknowledges and agrees that such indemnity shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the City only if resulting from any negligent act or omission by the City.

Section 6. Attorney Fees. The Lessee's indemnifications include reasonable attorney fees and costs incurred by the City in defending any claims, complaints, causes of action, lawsuits, or other such actions. The Lessee shall pay such legal fees as and when incurred by the City.

Section 7. Handling of Defense. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The Lessee's indemnification for attorney fees applies whether or not the City Attorney or other attorney handles the defense.

Section 8. Immunities. Lessee indemnification does not limit any immunity which the City is entitled to assert against third parties, and includes all costs and expenses, including attorney's fees, whether or not related to administrative or judicial proceedings.

Section 9. Reimbursement for Damages. The Lessee shall reimburse the City, within thirty (30) calendar days after invoicing for such reimbursement, for any damage to the Leased Premises caused by the negligence or willful misconduct of the other party, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees; provided, however, that nothing in this Section shall be deemed to replace, override or supersede Article XI.

ARTICLE XIV - TERMINATION

Section 1. Default or Breach. The occurrence of any one (1) of the following events shall constitute a Default or Breach under the terms of this Lease:

a. Failure by the Lessee to make any payment of Base Rent, Additional Rent, or any other payment required to be made by the Lessee under this Lease, and the Lessee fails to remedy such default within ten (10) business days after receipt of written notice that such payment is due and payable.

b. Failure by the Lessee to observe or perform any of the covenants, conditions or provisions of this Lease and failure to remedy such default within ten (10) business days after receipt of written notice thereof.

c. Subject to the provisions of Article V, Section 4 of this Lease, the Lessee has caused a lien to be filed against the Leased Premises and said lien is not removed within thirty (30) calendar days of receipt of written notice thereof.

d. The Lessee's any general assignment or general arrangement for the benefit of creditors, the filing by or against the Lessee of a petition to have the Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against the Lessee, the same is dismissed within sixty (60) calendar days), the appointment of a trustee or receiver to take possession of substantially all of the Lessee's property located in the Leased Premises and/or the Facility or the Lessee's interest in this Lease where such seizure is not discharged or bonded within ten (10) business days, the attachment, execution or other judicial seizure of substantially all of the Lessee's interest in this Lease, where such seizure is not discharged or bonded within ten (10) business days.

e. Vacating or abandonment of the Leased Premises by the Lessee.

f. Any material misrepresentation by the Lessee to the City in connection with the negotiation or execution of this Lease.

Section 2. City's Remedies. Subject to Article XVII, upon the occurrence of a default or breach, the City may, after giving the Lessee and its financing parties thirty (30) calendar days (or such other period as they may agree) written notice and opportunity to cure such default or breach, proceed in the following manner:

a. Terminate this Lease and the Lessee's right to possession of the Leased Premises and with or without legal process, re-enter and take possession of the Leased Premises, remove the Lessee, without being guilty of trespass or being liable to any suit, action or prosecution therefore, and without relinquishing any rights of the City against the Lessee. Notwithstanding such re-entry and termination of this Lease, the Lessee shall remain liable to the City for any payments or damages, including, but not limited to, outstanding Base Rent and Additional Rent and attorneys' fees, due or sustained prior thereto; or

b. Maintain the Lessee's right to possession, in which case this Lease shall continue in effect, whether or not the Lessee shall have abandoned the Leased Premises. In such event, the City shall be entitled to enforce all of the City's rights and remedies under this Lease, including the right to recover the Base Rent and Additional Rent as it becomes due hereunder.

No act or omission by the City shall be deemed to be an acceptance of a surrender of the Leased Premises or a termination of the Lessee's liabilities under this Lease, unless the City shall execute a written release of the Lessee. The Lessee's liability under this Lease shall not be terminated by the execution by the City of any new lease for all or any portion of the Leased Premises or the acceptance of rent from any assignee

or subtenant.

Section 3. Surrender of Leased Premises. Upon the termination of this Lease, the Lessee shall, at its sole cost and expense, remove the Facility, including any fencing and solar panels, and return the Leased Premises to its pre-installation condition, except for normal wear and tear. The Lessee shall complete all such removal and related work within sixty (60) calendar days after the end of the Lease. In the event the Lessee shall be in default under its financing for the Facility, the City will permit the Lessee's lender to remove the Facility as provided in this Section 3 or to take such other action as deemed reasonably appropriate.

ARTICLE XV - TITLE

Section 1. Quiet Enjoyment. The City covenants and agrees that upon the Lessee paying the Base Rent, and any Additional Rent, and observing and performing all of the terms, covenants and conditions of this Lease, that the Lessee may peaceably and quietly have, hold, occupy and enjoy the Leased Premises in accordance with the terms of this Lease without hindrance or molestation from the City or any persons lawfully claiming through the City.

Section 2. Zoning and Good Title. The City warrants and represents that City is the owner of the Leased Premises, free and clear of all encumbrances, except for the easements, covenants and restrictions of record as of the date of this Lease. Such exceptions shall not impede or interfere with the quiet use and enjoyment of the Leased Premises by the Lessee. The City further warrants and covenants that City has full right and lawful authority to execute this Lease for the Term, in the manner, and upon the conditions and provisions herein contained. If any changes in zoning are necessary to permit the construction and operation of the Facility as contemplated by this Lease, the Lessee at its sole cost and expense shall cause them to be made.

ARTICLE XVI - DISPUTES

It is agreed that, if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and shall survive the right on the part of the said party to institute suit for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the costs thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and shall survive the right on the part of the said party to institute suit for the recovery of the costs of such work. If it shall be adjudged that there was no legal obligation on the part of the said party to perform the same or any part thereof, said party shall be entitled to recover the costs of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease and the amount so paid by the Lessee may be withheld or deducted by the Lessee from any Rents herein reserved.

ARTICLE XVII - DISPUTE RESOLUTION

Section 1. Negotiation. Subject to Article XVI, the parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out or relating to this Lease (a "Dispute") promptly and, in any event, within thirty (30) calendar days after the date that a party gives written notice of such Dispute to the other party. In the event that the parties are unable to reach agreement within such thirty (30) calendar day period (or such

longer period as the parties may mutually agree) then either party may pursue the matter through litigation in accordance with Section 2, following.

Section 2. Litigation. Any Dispute that is not settled to the mutual satisfaction of the parties pursuant to Section 1 shall be resolved by the Anne Arundel County Circuit Court.

ARTICLE XVIII - LESSEE FINANCING

Section 1. Lessee's Right to Encumber. Upon the prior written consent of the City (which consent shall not be unreasonably withheld), the Lessee shall have the right and privilege of mortgaging or otherwise encumbering the Lessee's leasehold interest in the Leased Premises by executing a leasehold mortgage, and may, without consent, pledge the Facility to a lender, in whole or in part, by executing a security instrument (any such mortgage or instrument, a "Security Instrument") as security for the performance of the Lessee's obligations to its lender.

Section 2. Lender's Cure Rights.

a. Any lender holding a Security Instrument from Lessee shall have the right to become the legal owner and holder of the Lessee's interest in this Lease by (a) foreclosure of its Security Instrument, (b) as a result of the assignment of this Lease in lieu of foreclosure, or (c) as a result of termination by the City and re-letting to the lender or a designated third party under the terms hereof, which the City agrees to do if so requested by the lender following a default hereunder, whereupon such lender or third party shall immediately become and remain liable as Lessee under this Lease so long as, but no longer than, such lender or third party is in possession or is entitled to possession of the Premises.

b. If a Default or Breach occurs under Article XIV, Section 1 of this Lease, before taking action to terminate the Lease the City shall offer the lender (i) an opportunity to cure the Default or Breach and (ii) the option to either assume the rights, obligations, and interests of the Lessee hereunder or, to assign the Lease to a third party satisfactory to and approved in writing by the City. The lender may either (i) cure the Default or Breach within one hundred eighty (180) calendar days of the date of the offer, or (ii) exercise the option to assume the Lease or assign the Lease (with lender or a third party) by delivering written notice to the City within one hundred eighty (180) calendar days of the date of the offer or such longer period of time as may be reasonably needed to effect the assignment of this Lease, in the event of foreclosure under the applicable Security Instrument, to complete the foreclosure in accordance with applicable law.

c. If a lender cures a Default or Breach, such cure shall constitute cure by the Lessee.

d. If a lender exercises the option to assume the Lease, it shall assume all of the rights, obligations, and interests of the Lessee under this Lease without modification, except as agreed to in writing by the City, and all of the terms and conditions of this Lease shall remain in full force and effect.

Section 3. No Waiver. Nothing herein shall be construed to waive any of the City's rights and remedies against the Lessee for the Default or Breach, except that the City's right to terminate shall be subject to the offer process set forth in Section 2 of this Article XVIII. Further, notwithstanding the lender's rights in Article XVIII, Section 2 above, the Lease Security executed by Building Energy S.p.A. and attached hereto as **Exhibit C** shall remain in effect at all times during the Term of this Lease including any assignment thereof.

ARTICLE XIX - FORCE MAJEURE

In the event that the City or the Lessee shall be delayed or hindered in or prevented from the performance of any act other than the Lessee's obligation to make payments of Base Rent, Additional Rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

ARTICLE XX - ACCESS TO RECORDS

Section 1. Inspection of Records. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Lessee shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Lessee related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits, but expressly excluding the following records: any confidential and proprietary records not related to the subject matter of this Lease.

Section 2. Maintenance of Records. The Lessee shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Lessee shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

ARTICLE XXI - MISCELLANEOUS

Section 1. Estoppel Certificates. At any time and from time to time, the City and the Lessee each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default or breach in the performance of its covenants hereunder, or if there have been such defaults or breaches, specifying the same, and the dates to which the Rent and other charges have been paid.

Section 2. Brokerage. No party has acted as, by or through a broker in the effectuation of this Lease.

Section 3. Subleases. With the prior written approval of the City, which shall not unreasonably be withheld, the Lessee may sublet portions of the Leased Premises in connection with the sale of electricity and related attributes produced by the Facility. Such subleases may be recorded. The City will cooperate reasonably with Lessee in making such arrangements.

Section 4. Assignment.

a. Consent to Assignment. Except as provided below, this Lease may not be assigned by either party without the prior written consent of the other party, which consent may not be unreasonably withheld. When assigned, this Lease shall be binding upon, shall inure to the benefit of, and shall be performed by, the successors and assignees of the applicable party.

b. Assignment to Lender. With prior written notice to the City, the Lessee may pledge or assign this Lease and the Facility to a lender or other investor only as security for the financing of the Facility. Any

pledge or assignment made pursuant to this Section without prior written notice to the City shall automatically be deemed null and void, and at the City's sole option, may be considered a breach of this Lease pursuant to Article XIV.

c. Assignment to Affiliates, Etc. With the City's prior written consent, which shall not unreasonably be withheld, the Lessee may assign this Lease and the Facility (1) to an affiliate and/or (2) in connection with any merger or consolidation of the Lessee with or into another entity or any exchange of all of the common stock or other equity interests of the Lessee or the Lessee's parent for cash, securities or other property or any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, the Lessee. Any assignment made pursuant to this Section without the prior written consent of the City shall automatically be deemed null and void, and at the City's sole option, may be considered a breach of this Lease pursuant to Article XIV.

Section 5. Entire Agreement; Modification. This Lease sets forth the entire agreement between the parties relative to the subject matter of this Lease. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Lease. No act by any representative or agent of the City, other than such a written agreement and acceptance by the City, shall constitute an acceptance thereof.

Section 6. Amendments. This Lease may be amended or modified in writing, signed by the authorized representative(s) of both parties, at any time.

Section 7. Remedies Cumulative and Concurrent. No remedy provided by this Lease or reserved to the City is intended to be exclusive of any other remedies provided for in this Lease, and each such remedy shall be cumulative, and shall be in addition to every other remedy given under this Lease, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the City shall be concurrent and may be pursued separately, successively or together against the Lessee, and every right, power and remedy given to the City may be exercised from time to time as often as may be deemed expedient by the City.

Section 8. Waiver of Remedies for Breach. No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Lease, or to exercise any right, power or remedy consequent upon a breach or default thereof, shall constitute a waiver of any such term, condition or covenant or of any such breach or default, or preclude such party from exercising any such right, power or remedy at any later time or times.

Section 9. Independent Contractor Status. The Lessee shall be an independent contractor, and nothing contained in this Lease shall be construed to constitute the Lessee as an agent, representative or employee of the City, or to create any relationship between the parties other than landlord and tenant.

Section 10. Binding Effect. The terms of this Lease shall be binding on and enforceable against the parties and their respective successors and assigns.

Section 11. Governing Law. In all actions arising from this Lease, the laws of the State of Maryland shall govern, and the venue for all actions initiated pursuant to this Lease shall be exclusively the Courts of Anne Arundel County, Maryland. The parties waive jury trial in all actions initiated pursuant to this Lease.

Section 12. Extraordinary Remedies. To the extent recognizable at law, the parties hereto, in the event of breach and in addition to any and all other remedies available thereto, may obtain injunctive relief, regardless of whether the injured party can demonstrate that no adequate remedy exists at law.

Section 13. Severability. If any of the provisions of this Lease are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

Section 14. Reliance. The Lessee hereby represents and warrants that all the information contained in this Lease is complete, true, and correct. The Lessee understands that the City is relying upon the accuracy of the information contained in this Lease.

Section 15. Notice. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the City: Director, Department of Public Works
145 Gorman Street, 2nd Floor
Annapolis, Maryland 21401

With a Copy to: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401

To the Lessee: Annapolis Solar Park, LLC
47 S. Hamilton St.
Poughkeepsie, NY 12601

With Copies to: Building Energy
505 9th Street NW, Suite 800
Washington DC 20004

BQ Energy, LLC
47 S. Hamilton St.
Poughkeepsie, NY 12601

McCauley Lyman LLC
617 Shore Drive
Edgewater MD 21037

Section 16. Conditions Subsequent; Lessee Right to Terminate. This Lease is conditional upon the occurrence of the following events to Lessee's reasonable satisfaction by November 30, 2015, and if such occurrences have not occurred or been waived by Lessee by such time, the Lessee may terminate this Lease, without penalty, upon written notice to the City:

- a. The City and the Lessee shall have entered into a power purchase agreement in connection with power/energy to be produced by the Facility; and
- b. Planning elements of the Facility (such as permits and approvals, interconnection, design, and construction arrangements) are sufficiently advanced through the good faith efforts of the Lessee such that adequate financing for the Facility is and/or may be secured.

The Lessee’s right to terminate pursuant to this Section shall not based on, influenced, or affected by whether or not the Lessee has entered into any power purchase agreements with any third parties in connection with power/energy to be produced by the Facility.

If the Lessee shall not exercise this right to terminate by the end of business on November 30, 2015, the Lessee may still exercise this right to terminate until the end of business on December 31, 2016 but the Lessee shall be required to pay the City the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) as a reasonable estimate of the City’s damages incurred for such later termination of this Lease.

Section 17. No Third Party Beneficiaries. No person not a party to this Lease shall have any rights or benefits hereunder, it being the intent of the parties that there shall be no third party beneficiaries.

Section 18. Memorandum of Lease. The parties shall cause a memorandum of this Lease to be prepared and duly recorded among the land records of Anne Arundel County, at the Lessee’s sole cost and expense. Any transfer taxes and recording fees incurred upon such recordation shall be paid by Lessee.

Section 19. Authorization. This Lease is authorized by the City Council pursuant to O-32-15.

IN WITNESS WHEREOF, it is the intent of the parties that the Lessee has signed this Lease under seal and, further, that the parties have executed this Lease the day and year first written above.

WITNESS:

Annapolis Solar Park, LLC

By: _____

Name: (Seal)

Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____

Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

**EXHIBIT A
LEASED PREMISES**

Description of the Leased Premises:

Generally the Leased Premises includes the following outlined property, which shall be further labeled as “Facility Area” and “Outside Facility Area” pursuant to Article V, Section 1 of the Lease and in compliance with “Modification of Descriptions of Leased Premises” below.



Easements:

Unless modified as an amendment to this **Exhibit A**, the Leased Premises shall include only those easements specified in Article V of the Lease.

Surface Rights:

Unless and only to the extent necessary, and approved in writing by the City, to install underground materials and equipment for the Facility (such as conduits and supports), the Lessee is only granted the right to hold the upward facing surface of the area of the Leased Premises, and not its subsurface.

Modification of Descriptions of Leased Premises:

After the date on which the Lessee submits a building permit application to Anne Arundel County, Maryland for the Leased Premises/Facility, but no later than the Commercial Operation Date, the Lessee shall cause a recordable survey of the Leased Premises to be performed, at its sole cost and expense, to determine (a) the land actually needed for the Facility and (b) the easements required for the Facility’s operation and maintenance. Such survey shall replace this description of the Leased Premises, through a written amendment and as a new **Exhibit A** to the Lease. The parties shall cause the new **Exhibit A** to the Lease to be duly recorded in the Anne Arundel County land records, at the sole cost and expense of the Lessee. Within thirty (30) calendar days of the completion of the recordable survey, the Lessee shall be required to relinquish all

rights, control and use of any of the Annapolis Landfill Property no longer needed for the Leased Premises or the Facility, as documented in the recorded new Exhibit A to the Lease.

**EXHIBIT B
PLANS**

(To be added when approved by the City per Article VI, Section 1 of the Lease.)

**EXHIBIT C
LEASE SECURITY**

ANNAPOLIS RENEWABLE ENERGY PARK GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT (this “Guarantee”) is made as of the ___ day of _____ 2015, by Building Energy S.p.A., an Italian company authorized to do business in Maryland (“Guarantor”), for the benefit of the City of Annapolis, a municipal corporation of the State of Maryland (“City”). The Guarantor and the City are individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Guarantor is the parent company of Building Energy Holding U.S. LLC, a Delaware corporation, which intends to acquire Annapolis Solar Park, LLC, a Delaware limited liability company (“Lessee”); and

WHEREAS, the City and the Lessee have entered into a land-lease agreement dated____, 20__ (“Lease”) for the lease of certain property containing the closed City of Annapolis Landfill for the construction and operation of a solar photovoltaic (PV) electricity generating facility to be located at those portions of the closed City of Annapolis Landfill, as approved by the City, and pursuant to the City Request for Proposals 15-12 and the Lessee’s response and any amendments or revisions thereto (collectively, the “RFP”) ; and

WHEREAS, pursuant to Article X of the Lease, the Lessee is obligated to provide the City with this Guarantee; and

WHEREAS, all or part of the energy generated from the Lessee’s solar PV facility may be sold by the Lessee to the City pursuant to a power purchase agreement; and

WHEREAS, the Guarantor, which soon shall be a parent of the Lessee, will benefit from the installation and operation of Lessee’s solar PV facility and is willing to enter into this Guarantee in consideration of and to satisfy the terms of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties

hereto agree as follows:

1. In consideration of the award of the Lease by the City to the Lessee, the Guarantor hereby guarantees to and for the benefit of City the full and timely performance and fulfillment of the undertakings, covenants, terms, conditions, and obligations of the Lessee under the Lease (collectively, the “Obligations”) when and if such Obligations become due according to the terms of the Lease.
2. The Guarantor shall not be required to cause such Obligations to be performed unless and until it receives the City’s written demand for performance hereunder following the occurrence of breach or default of the Lease (an “Event of Default”). The Guarantor shall have ten (10) business days after notice of an Event of Default to commence its performance of the Obligations.
3. The Guarantor has read and consents to the signing of the Lease. The Guarantor further agrees that the Lessee and the City shall have the full right, without any notice to or consent from the Guarantor, to make any and all modifications or amendments to the Lease without affecting, impairing, or discharging in whole or in part, the liability of the Guarantor under this Guarantee.
4. The Guarantor undertakes to provide a guarantee for the City, under the terms and conditions set forth in this Guarantee, and shall guarantee the payment of all sums due from the Lessee to the City in principal, interests, charges and accessories under the payment obligations set out in Article IV of the Lease, up to the maximum amount specified in Paragraph 10, below.
5. The Guarantor further agrees and acknowledges that its liability under this Guarantee shall be continuing, absolute, primary and direct, and that the City shall not be required to pursue any right or remedy it may have against the Lessee or other guarantors under the Lease, or any modifications or amendments thereto, or to any other document(s) or instrument(s) executed by the Lessee, the performance of which by the Lessee is guaranteed under this Guarantee.
6. The Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Guarantee shall be valid and unconditionally binding upon the Guarantor, regardless of (i) the reorganization, merger or consolidation of the Lessee into or with another entity, corporate or otherwise, or the liquidation or dissolution of the Lessee, or the sale or other disposition of all or substantially all of the capital stock, business or assets of the Lessee to any persons or party, or (iii) institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against the Lessee, or adjudication of the Lessee as bankrupt, or (iii) the assertion by the City against the Lessee of any of the City’s rights and remedies provided under the Lease, including any modifications or amendments thereto, or under any other document(s) or instrument(s) by the Lessee, or existing in the City’s favor in law, equity or bankruptcy.
7. This Guarantee has no time period. It shall continue until all of the Obligations of the Lessee to the City under the Lease have been completely performed to the satisfaction of the City, and the Guarantor shall not be released of any obligation or liability, including, but not limited to, the Obligations, until any outstanding claim by the City against the Lessee has been settled in full.
8. The Guarantor hereby acknowledges that the Lease involves and the Facility is located on the Annapolis Landfill Property, as those terms are defined in the Lease, and that the Obligations expressly include compliance with any and all restrictions, laws, regulations, ordinances and requirements that govern and apply to the Annapolis Landfill Property. The Guarantor further acknowledges and agrees that this Guarantee and the

Obligations shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the City if resulting from any negligent act or omission by the Lessee.

9. Any modification or amendment of any of the Obligations in accordance with the terms of the Lease shall not affect the liability of the Guarantor under this Guarantee.

10. Notwithstanding anything to the contrary herein, the Guarantor's liability under this Guarantee shall not exceed One Hundred Thousand Dollars and No Cents (\$100,000.00) up to the date that the Lessee commences construction of the Facility pursuant to the Lease. After such date, and notwithstanding anything to the contrary herein, the Guarantor's liability under this Guarantee shall not exceed Fifty Thousand Dollars and No Cents (\$50,000.00) per megawatt installed at the Facility pursuant to the Lessee's building permit.

11. This Guarantee shall continue in full force and effect until all of the Obligations have been discharged by the Lessee and/or the Guarantor to the satisfaction of the City.

12. This Guarantee shall be governed by the laws of the State of Maryland, excluding its principles of choice of laws, and the venue for all actions initiated pursuant to this Guarantee shall be exclusively the Courts of Anne Arundel County, Maryland.

13. There are no third-party beneficiaries of this Guarantee.

14. This Guarantee may not be assigned by the City without the Guarantor's prior written consent.

15. This Guarantee represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. This Guarantee may not be modified, amended or waived, except in writing signed by the Parties.

16. If any of the provisions of this Guarantee are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

17. Unless the Guarantor is released as provided in Paragraph 18, all persons succeeding to the rights of the Guarantor with respect to the Lessee for any reason or claim (such as in the case of a merger or division) shall be bound jointly and severally to the City to fulfill this Guarantee and the Obligations under the same conditions as the Guarantor, as further described in Paragraph 1 of this Guarantee. The City shall be able to demand payment from any of these persons of all amounts, obligations and liabilities, including, but not limited to, the Obligations, that the City would have been entitled to demand of the Guarantor, without any division of recourse among these persons being imposed on the City.

18. The Guarantor may propose to the City to substitute another person or entity as guarantor hereunder, or an alternate form of security, to secure the Lessee's performance of the Lease. If such proposal shall, in the City's sole discretion, propose security which is of equal or greater value than the security provided by this Guarantee, then the City may accept the proposal and, only if accepted, the Guarantor shall be relieved of further liability under this Guarantee when that proposal is implemented.

19. The Recitals are hereby incorporated into this Guarantee.

20. All notices, requests, demands, and other communications under this Guarantee shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To Guarantor:
Building Energy S.p.A.
Address:

Phone:
E-mail:
Attn:

To City:
Department of Public Works
145 Gorman Street, 2nd Floor
Annapolis, Maryland 21401
Phone: 410-263-7949
E-mail: pubworks@annapolis.gov
Attn: Director

With a Copy to:
BQ Energy, LLC
47 S. Hamilton St.
Poughkeepsie, NY 12601
McCauley Lyman, LLC
617 Shore Drive
Edgewater, MD 21037

With a Copy to:
City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401

This Guarantee has been duly executed by authorized representatives of each of the Parties, on the day and year first written above, as follows:

WITNESS:

GUARANTOR:
Building Energy S.p.A.

By:
Name: (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS:

Regina C. Watkins-Eldridge, MMC,
City Clerk

By:
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY:

REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY