

AGENCY PROJECT AGREEMENT

THIS AGENCY PROJECT AGREEMENT is made as of the 23rd day of July, 2019 (the “Agreement”), by and between the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the “Agency”) and **DRYDEN – TOMPKINS SOLAR II, LLC**, a limited liability company duly formed and validly existing pursuant to the laws of the State of Delaware and duly authorized to conduct business in the State of New York and a wholly owned subsidiary of SUN8 PDC LLC, with a business address c/o Distributed Sun LLC, 601 13th Street NW, Suite 450 South, Washington DC 20005 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Section 895 of the General Municipal Law of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company previously submitted an application (as the same may be modified or supplemented from time to time, the “Application”) to the Agency, a copy of which is on file with the Agency, requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of: (i) the acquisition by the Agency of title to or a leasehold interest in certain land located at 2150 Dryden Road, Town of Dryden, Tompkins County, New York (being tax map number 38.-1-3.1), as the same may be subdivided, containing in the aggregate approximately fifty-one (51) acres after subdivision (the “Land”); (ii) the construction on the Land of 10MW_{AC} of community solar projects, which will include, but not be limited to, the removal of certain trees, the installation of PV modules on metal racks or tables with driven/screwed-in foundations, the installation of 15' by 20' concrete pads (for the installation of electrical equipment to connect to the utility), and the installation of one (1) or more seven-foot (7 ft) agricultural fences and internal project roads (collectively, the “Improvements”); and (iii) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other items of tangible personal property (the “Equipment”; and, collectively with the Land and the Improvements, the “Facility”); all to generate clean electricity to be sold to residential and commercial customers; and

WHEREAS, by Resolution dated January 10, 2018 (the “Resolution”), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Project as set forth above, subject to the Company entering into this Agreement; and

WHEREAS, the Agency approved the following financial assistance to the Company, as set forth in the Resolution: (a) a sales and use tax exempt for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a real property tax abatement structured through the PILOT Agreement (as hereinafter defined) and (c) an exemption from mortgage recording taxes imposed on the financing related to the Project by

the State (but not as to those taxes imposed on the financing related to the Project by Tompkins County, New York) ((a), (b) and (c) are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, the Agency purposes to be achieved by providing the Financial Assistance to the Company is to promote, develop, encourage and assist in the undertaking of the Project to advance job opportunities, health, general prosperity and economic welfare of the people of Tompkins County, New York, and to specifically promote, as set forth in the Resolution, the expansion and retention of employment opportunities in Tompkins County, New York and the provision of clean electricity to be sold to residential and commercial customers; and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide the Financial Assistance, that the Company enter into this Agreement for the purposes of, among other things, governing administration of and providing assurances with respect to, the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which the Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. Pursuant to the Resolution, the Agency has appointed the Company as agent to undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses (collectively, the "Subagent"). The Company shall be responsible for maintaining an accurate list of all parties acting as agent of the Agency. The Company's right to appoint subagents is expressly conditioned upon updating such list, along with the timely filing of New York State Department of Taxation and Finance Form ST-60 (non-primary) for each subagent, with such updated list and a copy of and proof of filing of such Form ST-60 (non-primary) being immediately filed with the Agency. The right of the Company to act as agent of the Agency shall expire on **January 31, 2021**, unless extended as contemplated by the Resolution.

All contracts entered into by the Company and all subagents thereof as agent for the Agency shall include the language set forth below. Failure by the Company and/or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.

"This contract is being entered into by **DRYDEN – TOMPKINS SOLAR II, LLC** (the "Agent"), as agent for and on behalf of the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of the Agent, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 2150 Dryden Road, Town of Dryden, Tompkins County New York (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached Agency Project Agreement, by and between the Agent and the Agency dated as of July 23, 2019 (the "Agency Agreement"). This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

2. Lease/Leaseback Agreements. The parties are contemplating that the Agency and the Company will enter into a lease agreement from the Company to the Agency (the "Lease Agreement"), a leaseback agreement from the Agency to the Company (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") by and between the Agency and the Company. The Company agrees not to take title to any property as agent for the Agency until the Leaseback Agreement and PILOT Agreement have been executed and delivered.
3. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:
 - a. The Company is a limited liability company duly formed and validly existing under the laws of the State of Delaware, is duly authorized to conduct business in the State of New York, has the authority to enter into this Agreement, and has

duly authorized the execution and delivery of this Agreement.

- b. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.
- c. The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection.
- d. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, other than that disclosed on Schedule A to this Agreement. An Adverse result related thereto will in no way diminish or adversely impact the Company's ability to fulfill its obligations under this Agreement.
- e. The Company covenants that the Project will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Project, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances at the Project or onto any other property, (iii) that no asbestos will be incorporated into or disposed of at the Project; (iv) that no underground storage tanks will be located at the Project, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorney's fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to

any of the above, or to have an environmental audit performed with respect to the Project, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

- f. Any personal property acquired by the Company in the name of the Agency shall be located in Tompkins County, New York, except for temporary periods during ordinary use.
- g. The Agency encourages the Company to (i) use an open bidding process for construction contracts; (ii) give opportunities for employment in the construction of the Project to persons residing in Tompkins County, New York; and (iii) award contracts for work in connection with the Project to eligible businesses which are located in, or owned in substantial part by persons residing in, Tompkins County, New York.
- h. The Company estimates the following investment amount: **\$17,431,772**.
- i. The Company states that it will not employ any direct or onsite employees at the Facility, but that existing employees will visit the Facility to undertake repairs and conduct maintenance and that Project will create approximately seventy-five (75) temporary construction jobs.
- j. The Company makes the following commitment regarding the use of local labor: the Company will comply with the Agency's Labor Utilization Policy.
- k. The Company shall provide a certified statement and documentation annually, containing the following information, and such other information required by the Agency:
 - i. the number of full time equivalent ("FTE") jobs retained and/or created as a result of the Financial Assistance, by category, including FTE independent contractors or employees of independent contractors that work at the Facility; and
 - ii. that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Application are still accurate, and if it is not still accurate, a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and/or jobs created.
- l. The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in amount up to **\$9,631,179** and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$770,494**.

- m. In accordance with Section 875(3) of the Act, the policies of the Agency and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or any duly appointed subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that (each a "Recapture Event Determination"):
- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or
 - (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or
 - (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
 - (4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect; or
 - (5) in the event that (i) the Company closes or sells/transfers the Facility without the consent of the Agency; (ii) the use of the Facility or contemplated business activities at the Facility are materially changed or modified; (iii) there is a material non-compliance by the Company with the Lease Agreement, the Leaseback Agreement, the PILOT Agreement or any other agreement with the Agency or any state or federal law or regulation.

If the Agency makes a Recapture Event Determination (a) the Company shall have such rights as are set forth in the Agency's Incentive Recapture Policy in effect on this date and (b) the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate Affected Tax Jurisdiction(s) (as such term is defined in the PILOT Agreement). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

If it should be determined that any State or local sales or use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

- n. The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123) and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state:

"I, DRYDEN – TOMPKINS SOLAR II, LLC [OR
SUBAGENT NAME: _____],
certify that I am a duly appointed agent of the Tompkins
County Industrial Development Agency and that I am
purchasing the tangible personal property or services for
use in the DRYDEN- TOMPKINS SOLAR II, LLC
(Dryden Road) Project located at 2150 Dryden Road, Town
of Dryden, Tompkins County, New York, being IDA OSC
Project Number 5003-17-10A".

- o. The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent of the Agency.
- p. The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

- q. The Company covenants and agrees that it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State of New York and either organized under the laws of the State of New York, or organized under the laws of any other state of the United States and duly qualified to do business in the State of New York, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency, provided however, that such assignment will be permitted to an affiliate for financing purposes.
- r. The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this subsection. In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.
- s. The Company agrees, that as agent for the Agency or otherwise, to the extent that such provisions of law are in factor applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with the requirements of Section 220 of the Labor Law of the State, as amended.
- t. The Company agrees to (i) cooperate with the Agency to (1) ensure compliance with Section 858-b of the Act and prepare reports required to be prepared by the Agency pursuant to Section 859 of the Act and (ii) annually file statements with the State Department of Taxation and Finance, on forms and in such manners as prescribed by the Commissioner of Taxation and Finance, as to the value of all sales and use tax exemptions claimed by the Company and its agents, including but not limited to, operators of the Facility and consultants and subcontractors of the Company, under the authority granted pursuant to Section 874(8) of the Act. The penalty for failing to cooperate and/or file such statements shall include,

without limitation, removal by the Agency of the Company's authority to act as an agent of the Agency.

4. Mortgage Tax Abatement and Payments In Lieu Thereof. The Company will receive an abatement of a portion of the mortgage recording tax in an amount equal to one-quarter of one percent (.25%) of the total amount of the mortgage. The Company will make a payment at closing in lieu of the remaining portion of the mortgage recording tax in an amount equal to of three-quarters of one percent (.75%) of the total amount of the mortgage.
5. Payments-In-Lieu-Of-Taxes ("PILOT" Payments): The Company will make PILOT payments as set forth in the PILOT Agreement to be executed by the parties. The estimated dates when PILOT payments are to be made and the estimated amounts to be paid to each affected taxing jurisdiction, or a formula by which the amounts will be calculated, are as follows: for a term of thirty (30) years, the Company will make a fixed annual PILOT payment of \$6,000 per MW_{AC}, increasing annually by two percent (2%), after which the Project will be subject to full real property taxes.
6. Suspension or Discontinuance of Financial Assistance; Return of all or Part of Financial Assistance: The Company shall be subject to discontinuance of Financial Assistance and the return of all or part of the Financial Assistance provided by the Agency as set forth herein and in the Agency Incentive Recapture Policy. The Company agrees to be bound by the Agency's Incentive Recapture Policy, which Policy is incorporated herein by reference.
7. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, renovation, equipping, owning and leasing of the Project, including without limitation the generality of the foregoing, all causes of action and reasonable attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove (or bond the same if acceptable to the Agency and its

counsel), any mechanics' or other liens against the Facility for labor or materials furnished in connection with the acquisition, construction and equipping of the Facility. The Company shall forever defend, indemnify and hold the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on labor, services, materials and supplies, including equipment, order or used in connection with the acquisition, construction and equipping of the Facility or arising out of any contract or other arrangement therefor (and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this Agreement or otherwise. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

The defense and indemnities provided for in this Section shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, any under the direction and control of any of them (together, the Agency's "affiliates"), or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

8. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:
 - a. Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or as an alternative to the above requirements (including the requirements of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.
 - b. Worker's Compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of

employees of the Company who are located at or assigned to the Project.

- c. Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence on account of personal injury, including death resulting therefrom, and **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

9. Additional Provisions Regarding Insurance.

- a. All insurance required by Section 8(a) hereof shall name the Agency as a named insured and all other insurance required by Section 8 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.
- b. All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency prior to the commencement of the Project. Prior to the expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

10. Errors and Omissions; Compliance. In consideration for the assistance provided to the Company by the Agency, the Company agrees, if requested by Agency, to fully cooperate and execute and/or re-execute any document that should have been signed at or before the closing of the transaction described in this Agreement, or a corrected or modified version of any such documents, where the document was inadvertently not executed at or before the closing, or the version executed at or before the closing contained any typographical, clerical or mathematical error, or erroneously contained or omitted any provision that does not conform with the statutory authority and established policies of the Agency.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but which together shall constitute a single instrument

12. Notices. All notices, claims and other communications hereunder shall be in writing and

shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Tompkins County Industrial Development Agency
401 East State Street, Suite 402B
Ithaca, New York 14850
Attn.: Administrative Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Russell E. Gaenzle, Esq.

To the Company: Dryden – Tompkins Solar II, LLC
c/o Distributed Sun LLC
601 13th Street NW, Suite 450 South
Washington DC 20005
Attn.: Bharath Srinivasan

With a copy to: Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn.: Richard Cook, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

12. Governing Law; Jurisdiction. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein, and the parties hereby agree to submit to the personal jurisdiction of the federal or state courts located in Tompkins County, New York.
13. Obligations Unconditional. The warranties, representations, obligations and covenants of the Company under this Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agreement to the Agency, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement.
14. Agency Fees, Costs and Expenses. The Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) an Agency fee equal to one half of one

percent (0.5%) of the total value of expenses that are positively impacted by the Agency Financial Assistance, (b) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (c) other consultants retained by the Agency, if any, in connection with the Project; and (d) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Agreement (including reasonable attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

[Signature Page to Agency Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Tompkins County Industrial
Development Agency

By: 

Name: Heather D. McDaniel

Title: Administrative Director

DRYDEN – TOMPKINS SOLAR II, LLC

By: _____

Name: Jeff Weiss

Title: Co-Manager

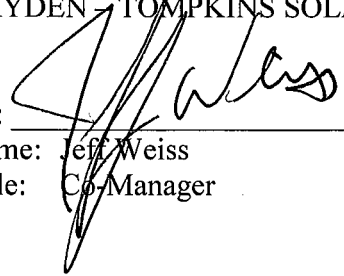
[Signature Page to Agency Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Tompkins County Industrial
Development Agency

By: _____
Name: Heather D. McDaniel
Title: Administrative Director

DRYDEN - TOMPKINS SOLAR II, LLC

By:  _____
Name: Jeff Weiss
Title: Co-Manager

CERTIFICATION

I, Jeff Weiss, the Co-Manager of Dryden – Tompkins Solar II, LLC (the “Company”) hereby certify under penalty of perjury that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

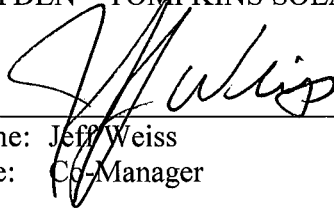
Date: July 12, 2019

DRYDEN – TOMPKINS SOLAR II, LLC

By: _____

Name: Jeff Weiss

Title: Co-Manager

A handwritten signature in black ink, appearing to read "J. Weiss", is written over a horizontal line. The signature is cursive and somewhat stylized.

SCHEDULE A

Dryden-Tompkins Solar II, LLC hereby notifies the Tompkins County Industrial Development Agency that as of the date of this agreement, it is party to two (2) legal actions:

1. Index EF2017-0241 for the case of SUN8 PDC LLC vs. Pinney et al filed on November 27, 2017 in the Tompkins Supreme Court.
2. Two cases that are being heard concurrently:
 - a. Index EF2017-0208 (CI2018-01228) for the case of Willow Glen Cemetery Association and Sarah Jane Osmeloski vs. Dryden Town Board, Town of Dryden Planning Board, Town of Dryden, Scott Pinney, SUN8 PDC LLC, Distributed Sun LLC, and David Sprout, in his capacity as Code Enforcement Officer of the Town of Dryden filed January 21, 2018
 - b. Index EF2017-0213 (CI2018-0122) for the case of Willow Glen Cemetery Association and Sarah Osmeloski vs. Town of Dryden Planning Board, Dryden Town Board, Town of Dryden, Scott Pinney, SUN8 PDC LLC, Distributed Sun LLC, David Sprout, in his capacity as Code Enforcement Officer of the Town of Dryden; and Cassandra Petrillose filed January 21, 2018