



UNION COUNTY IMPROVEMENT AUTHORITY

Resolution No. 31-2021
Adoption Date February 10, 2021

No Sufficiency of Funds Required Ellis Taylor
Form and Legality David Marshall

RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY DETERMINING THE SUCCESSFUL RESPONDENT TO THE RENEWABLE ENERGY CONSULTING SERVICES REQUEST FOR QUALIFICATIONS IN CONNECTION WITH THE AUTHORITY'S RENEWABLE ENERGY PROGRAM AND AUTHORIZING THE EXECUTION OF A SERVICES CONTRACT WITH THE RESPONDENT FOR THE RENEWABLE ENERGY CONSULTING SERVICES

WHEREAS, the Authority has been duly created by ordinance of the Union County Board of County Commissioners, as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authority Law, N.J.S.A. 40:37A-44 et seq.; and

WHEREAS, the Authority developed a program (the "Renewable Energy Program") that involves the financing, design, permitting, acquisition, construction, installation, operation, and maintenance of thirty (30) photovoltaic renewable energy projects, which consists of approximately 3.337 megawatts of capacity, initially installed in or about 2011 or 2012 across a total of thirty (30) Local Unit (as hereinafter defined) sites (the "Solar Projects") throughout Union County (the "County") for and on behalf of local government units within the County, including, without limitation, municipalities, boards of education, school districts, colleges, vocational schools, and jointure commissions (collectively, the "Local Units"); and

WHEREAS, in order to carry out the stated purposes and goals for which the Authority was created, including the restructuring of the Renewable Energy Program (the "Renewable Energy Project"), the Authority will require, from time to time, consulting and professional services relating to and in furtherance of its activities; and

WHEREAS, the Authority wishes to issue a series of bonds (the "Series 2021 Solar Bonds") to (i) acquire the Solar Projects at the Local Unit sites and (ii) fund, together with other moneys if necessary, the defeasance all of the outstanding County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011 (Federally Taxable) issued May 18, 2011 in the aggregate principal amount of \$15,190,000; and

WHEREAS, the Authority is in need of a person and/or firm to provide certain renewable

Commissioner	Motion	Second	Yes/Aye	No-Nay	Abstain	Absent
David Barnett			✓			
Steve Hockaday		✓	✓			
Christopher Kolibas			✓			
Debra Marshall			✓			
Andrea Mojica	✓		✓			
Ahmed Shehata			✓			
Scott Huff, Vice Chairman			✓			
Sebastian D'Elia,			✓			

energy consulting services to help the Authority implement the Renewable Energy Project (the "Renewable Energy Consulting Services"); and

WHEREAS, the Authority issued a Request for Qualification ("RFQ/RFP") seeking proposals from such individuals to perform the Renewable Energy Consulting Services on behalf of the Authority, seeking qualifications/proposals for the provision of certain extraordinary unspecified services in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and as part of a fair and open process being undertaken by the Authority in accordance with the Pay to Play Law, N.J.S.A. 19:44A-20.4 et seq. (the "Pay to Play Law"); and

WHEREAS, the Authority pursued an extraordinary unspecified services award for such Renewable Energy Consulting Services because the scope of work for same requires particularized expertise that the Authority could not guarantee it would receive through a low bid process; and

WHEREAS, in accordance with a fair and open process pursuant to N.J.S.A. 19:44A-20.7 of the Pay to Play Law and the Authority's established and implemented procedures for a qualifications process, the Authority publicly advertised the RFQ/RFP on the official Authority website for at least ten (10) calendar days; and

WHEREAS, pursuant to the RFQ/RFP issued on December 28, 2020, the Authority received two (2) proposals on January 20, 2021, the due date for proposals pursuant to the RFQ/RFP, in response to the RFQ/RFP; and

WHEREAS, on January 25, 2021, the Authority received a letter from the second respondent notifying the Authority of its desire to withdraw its proposal from consideration by the Authority for the Renewable Energy Consulting Services; and

WHEREAS, the Authority's Renewable Energy Special Counsel (the "Renewable Energy Special Counsel") reviewed and evaluated the proposal received from Gabel Associates, Inc. and deemed it compliant with the requirements of the RFQ/RFP, recommending the award of successful respondent to Gabel Associates, Inc.; and

WHEREAS, Gabel Associates, Inc. has proposed to provide the Renewable Energy Consulting Services at the following hourly rates: (i) Principal level shall be at \$290 per hour; (ii) Executive level shall be at \$265 per hour; (iii) Senior associate level shall be at \$235 per hour; and (iv) Associate level shall be at \$190 per hour, not to exceed \$95,000 annually. with all direct expenses incurred to be billed at cost, to be paid from the proceeds of the Series 2021 Solar Bonds for the Renewable Energy Project; and

WHEREAS, the Authority wishes to select Gabel Associates, Inc. as qualified to perform the Renewable Energy Consulting Services, pursuant to its proposal in response to the RFQ/RFP, and the Authority's acceptance of the recommendations of its Renewable Energy Special Counsel; and

WHEREAS, the Authority wishes to execute a services contract with Gabel Associates, Inc. for the Renewable Energy Consulting Services that shall incorporate the terms and conditions outlined in the RFQ/RFP (the "Services Contract"); and

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE MEMBERS OF THE UNION COUNTY IMPROVEMENT AUTHORITY AS FOLLOWS:

- 1. The foregoing recitals are incorporated herein by reference as though specifically set forth herein below.**
- 2. The Authority hereby authorizes that Gabel Associates, Inc. be and are hereby retained to provide Renewable Energy Consulting Services to the Authority for its Renewable Energy Project.**
- 3. The Authority Chairman and such other designee authorized in writing by the Authority Chairman (each, an "Authorized Officer") shall be severally authorized to execute and deliver the Services Contract with Gabel Associates, Inc. on behalf of the Authority, incorporating the terms of the RFQ/RFP, the Gabel Associates, Inc. proposal, and such other terms as the Authorized Officer, after consultation with the Authority's Renewable Energy Special Counsel, shall be necessary, desirable, or convenient to implement the transaction contemplated by the RFQ/RFP.**
- 4. That the Authority Secretary is hereby authorized and directed to cause notice of this resolution as required by N.J.S.A. 40A:11-5(1)(a) to be published in an appropriate newspaper.**
- 5. The Authorized Officer is hereby severally authorized to take such other action in connection with the Gabel Associates, Inc. proposal as such person, in their sole discretion, after consultation with the Authority's Renewable Energy Special Counsel, shall determine to be necessary, desirable, or convenient to implement the transaction contemplated by the RFQ/RFP.**
- 6. This resolution shall take effect immediately.**

**AGREEMENT
FOR RENEWABLE ENERGY CONSULTING SERVICES FOR THE
RENEWABLE ENERGY PROJECT**

THIS AGREEMENT made and entered into this _____ day of February, 2021, by and between the **UNION COUNTY IMPROVEMENT AUTHORITY**, a public body corporate and politic of the State of New Jersey, pursuant to and in accordance with the County Improvement Authorities Law, constituting chapter 183 of the Pamphlet Laws of 1960 of the State, as amended and supplemented from time to time (the "Act"), with offices located at 10 Elizabethtown Plaza 5th Floor, Elizabeth, New Jersey 07207, hereinafter referred to as the "Authority", and **GABEL ASSOCIATES, INC.**, having its principal place of business at 417 Denison Street, Highland Park, New Jersey 08904, hereinafter referred to as the "Vendor", for Renewable Energy Consulting Services for the Renewable Energy Project. The Authority and the Vendor shall collectively be referred to as the "Parties", and singularly as a "Party". Capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning given to such terms in the Request for Qualification ("RFQ/RFP") issued by the Authority seeking proposals from such individuals to perform Renewable Energy Consulting Services on behalf of the Authority, seeking qualifications/proposals for the provision of certain extraordinary unspecified services in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., specifically N.J.S.A. 40A:11-5(1)(a)(ii), and as part of a fair and open process being undertaken by the Authority in accordance with the Pay to Play Law, N.J.S.A. 19:44A-20.4 et seq. (the "Pay to Play Law").

WITNESSETH that the Authority and the Vendor, for the consideration hereinafter mentioned, mutually covenant and agree as follows:

1. SCOPE OF WORK

The Authority shall enter into this Agreement with the Vendor, who shall be compensated at as follows:

(i) Principal level, which includes Steven Gabel and Robert Chilton, shall be at \$290 per hour; (ii) Executive level shall be at \$265 per hour; (iii) Senior level shall be at \$235 per hour; and (iv) Associate level shall be at \$190 per hour, not to exceed \$95,000 annually. All direct expenses incurred will be billed at cost, with such direct expenses to include travel, overnight expenses, Federal Express, and bulk copying, as well as other expenses approved in advance by the

Authority. In addition, the Vendor has agreed for its fees to be paid at the closing of the Series 2021 Solar Bonds refinancing.

The Vendor's scope of work shall include, but shall not be limited to, providing Renewable Energy Consulting Services, as further described in **Exhibit A** attached hereto.

Further, the Vendor agrees to comply with all federal, New Jersey, and local laws applicable to this Agreement.

2. DATES OF AGREEMENT

This Agreement shall commence upon its execution and shall terminate as of midnight on December 31, 2021, or as otherwise determined by the Authority or as mutually agreed upon by the Parties (the "Term").

3. CONFIDENTIALITY OF DOCUMENTS

In the course of its performance under this Agreement, each party may acquire certain confidential information from the other in regard to the nature of the services performed. All such confidential information shall not be disclosed or revealed by the Authority or Vendor, as applicable, to any other person or entity, nor shall any such information be utilized in any way in the performance of any work for any other person or entity, without prior written approval from the other party or by order of a government agency with jurisdiction. This confidentiality paragraph will survive termination of this Agreement.

All data and documentation arising out of the performance of this Agreement are the property of the Authority and Union County (the "County"). Any data or documentation whose premature disclosure would be detrimental to the Authority shall remain confidential and shall only be released to authorized personnel, in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA").

4. INSURANCE

On or before commencing the Renewable Energy Consulting Services, the Vendor shall file with the Authority evidence of insurance coverage. Such policy shall state "All bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions is to be considered as arising out of one occurrence". Coverage shall be effective and continuous for the Term of this Agreement. The Authority shall be named as additional insured on the policy.

The Authority requires all vendors to be able to comply with the following insurance requirements. The Vendor must accept the applicable insurance requirements, as set forth below, as part of this Agreement.

INSURANCE REQUIREMENTS APPLICABLE TO ALL VENDORS:

A Certificate of Insurance shall be filed with the Authority prior to commencement of the work. This Certificate shall contain a provision that insurance afforded under the policies will not be canceled without at least 30 days' prior written notice being given to the Authority and shall name the Authority as additional insured.

1. Automobile Liability Insurance in an amount of not less than \$1,000,000.00 combined single limit for bodily injury and property damage liability. A certificate of such current insurance shall be provided to the Authority and shall reflect the provision of at least 30 - day notice to the Authority before any major cancellation or major change may be made in the policy.

2. Workers Compensation Insurance insuring the obligation of the Vendor and all subcontractors under the New Jersey Workers Compensation and Occupational Disease Laws as respects work performed under this Agreement. Insurance shall be extended to include any obligations under "the United States Longshoremen's and Harbor Workers Act" or any maritime Act, when applicable.

3. General Liability Insurance shall be provided on a Comprehensive General Liability Form with a Combined Single Limit of \$1,000,000.00 per Occurrence for Bodily Injury Liability and Property Damage Liability and shall include the interest of the Authority with respect to work emanating from this Agreement with the Authority. This instance shall include the following:

- (a) Personal Injury Liability,
- (b) Blanket Contractual Liability applying to assumption of liability under any written, Contract,
- (c) Products and/or Completed Operations Liability

5. INDEMNIFICATION

The Vendor's liability to the Authority and its employees in third party suits shall be as follows:

- a. Indemnification for Third Party Claims - The Vendor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the Authority and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith

which shall arise from or result directly or indirectly from the work and/or materials supplied under this Agreement.

- b. The Vendor further agrees that this indemnification includes: claims and damage to property and bodily injury, sickness, disease, or death to persons or injury to or destruction of tangible property, including the work itself, and the loss of use resulting therefrom, or the loss of use of tangible property which has not been physically injured or destroyed, which may arise out of or be caused by the actions, activities, or omissions of the Vendor's employees, subcontractors, and agents in connection with the performance of the work as outlined in this Agreement.
- c. The Vendor's indemnification and liability under subsection (a) is not limited by, but is in addition to, the insurance obligations herein.

6. INDEPENDENT VENDOR STATUS

The Vendor and its employees, vendors, subcontractors, agents, and representatives are, for all purposes arising out of this Agreement, independent contractors and not employees of the Authority. It is expressly understood and agreed that the Vendor and its employees, vendors, subcontractors, agents, and representatives shall in no event, as a result of this Agreement, be entitled to any benefit to which the Authority's employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

7. TERMINATION OF AGREEMENT FOR CAUSE

The Authority may, by written notice of default to the Vendor, and without prejudice to any other right or remedy, terminate this Agreement under any one of the following circumstances if the Vendor does not cure such default within a period of ten (10) days (or such longer periods as the County may authorize in writing) after providing notice to the Vendor specifying such failure:

- a. If the Vendor refuses or fails to supply the Renewable Energy Consulting Services called for in this Agreement or fails to meet any criteria defined in this Agreement
- b. If the Vendor disregards laws, ordinances, rules, regulations, or orders;
- c. If the Vendor fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms;
- d. If the Vendor files a petition in bankruptcy, becomes insolvent, ceases its operation, makes an assignment for

the benefit of creditors or any similar action that affects the rights, affairs, or property of the County.

In the event this Agreement is terminated, all finished and unfinished documents, data, studies, and reports prepared by the Vendor under this Agreement shall, at the option of the Authority, become the Authority's property and the Vendor shall be entitled to reimbursement for any satisfactory work completed.

8. TERMINATION OF AGREEMENT WITHOUT CAUSE

This Agreement may be terminated without cause at any time upon thirty (30) days' prior written notice from the Authority. In no event, however, shall the Vendor be paid for loss of anticipated profits or consequential damages.

In the event this Agreement is terminated, all finished and unfinished documents, data, studies, and reports prepared by the Vendor under this Agreement shall, at the option of the Authority, become the Authority's property and the Vendor shall be entitled to reimbursement for any work completed.

9. CHANGES AND MODIFICATIONS

The Parties may from time to time during the Term of this Agreement make changes, extensions of time, or other modifications to this Agreement. Such modifications shall only be made in writing and by mutual agreement. Any such changes shall be agreed to by the Director of the applicable department. Change orders shall comply with N.J.A.C. 5:30-11 titled Change Orders and Open-End Agreements and subsequent articles of the New Jersey Administrative Code.

10. SEVERABILITY

If any provision of this Agreement, or application thereof to any person or circumstance, is held invalid or unenforceable, such invalidity will not void the entire Agreement or affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application ; rather, the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced accordingly.

Notwithstanding the above, the Vendor shall not be relieved of liability to the Authority for damages sustained by the Authority by virtue of any breach of this Agreement.

11. PAYMENT

Renewable Energy Consulting Services provided by the Vendor, whether directly or indirectly related to the Series 2021 Solar Bonds refinancing, prior to the closing of the Series 2021 Solar Bonds refinancing shall be paid by

the Authority at the closing of the Series 2021 Solar Bonds refinancing ("Solar Bond Payment"). The Solar Bond Payment shall be due in full within thirty (30) days of the Authority's receipt of the Vendor's invoice after such closing. Renewable Energy Consulting Services provided by the Vendor after the closing of the Series 2021 Solar Bonds refinancing shall be due in full within thirty (30) days of the Authority's receipt of the Vendor's invoice.

12. FORCE MAJEURE

Neither Party shall be liable for any damages for failure to perform its obligations under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of either Party. Such causes may include, but are not restricted to, terrorist acts, acts of God, acts of the Authority solely in its sovereign or contractual capacity, fires, floods, war, riot, insurrection, accidents, epidemics, quarantine restrictions, freight embargoes, industrial disturbances, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of either the Vendor or its subcontractor(s). When such a cause arises, either Party shall notify the other immediately in writing of its failure to perform, describing the cause of failure and how it affects performance, and the anticipated duration of the inability to perform.

13. DISCRIMINATION

The Vendor acknowledges that it has a copy of the New Jersey Law Against Discrimination and of the Rules and Regulations thereon issued by the Division of Civil Rights, and shall fully comply therewith as applicable.

14. AFFIRMATIVE ACTION

(REVISED 4/10)

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C.17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or

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expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. I 0:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27 5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative

Code at NJ.AC. 17:27.

15. BUSINESS REGISTRATION CERTIFICATE

In accordance with P.L. 2004, Chapter 2004, no contract shall be entered into by the Authority unless the Vendor provides a copy of its business registration in accordance with the following schedule:

- (1) In response to a request for bids or a request for proposals, at the time a bid or proposal is submitted; or
- (2) For all other transactions, before the issuance of a purchase order or other contracting document. In its sole discretion, the contracting unit may waive this requirement if a business registration has been previously provided to the contracting agency.

Further, a subcontractor shall provide a copy of its business registration to the Vendor who shall forward it to the contracting agency. No agreement with a subcontractor shall be entered into by any contractor under any agreement with a contracting agency unless the contractor first provides proof of valid business registration. The contracting agency shall file all business registrations received by the contracting agency with other procurement documents related to this Agreement.

The Vendor shall maintain and submit to the Authority a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. A complete and accurate list shall be submitted before final payment is made for goods provided or services rendered or for construction of a construction project under the contract.

16. COMPLIANCE WITH STATUTE

It is understood and agreed that should N.J.S.A. 10:2-1 et seq; N.J.S.A 24:10-57.1; and N.J.S.A 57.2; 34:11-56.25; N.J.S.A 40A:11-18 or N.J.S.A 52:33-1, together with any amendment or supplement thereto, be applicable to this Agreement and should said statute not be complied with, then this Agreement shall be voidable at the option of the Authority.

17. OPEN PUBLIC RECORDS ACT

Pursuant to OPRA, all information and documentation received in response to the RFP/RFQ will become the property of the Authority. As such, the Vendor's contract documents will be considered public information and will be available for review by individuals or agencies who request same from the Authority unless the Vendor affirmatively

allege an exception to OPRA applies. It will be the Vendor's responsibility to defend its position in the appropriate agency or court. Redaction, as a means of preventing disclosure of sensitive information may be available if the Vendor's contract documents are requested pursuant to OPRA.

18. INSPECTIONS AND RECORDS

The Vendor shall maintain accounting records in a manner so as to enable the Authority to easily audit and examine any books, documents, papers, and records maintained in support of this Agreement. Such records shall consist of sufficient documentation to support all invoices and shall adhere to customary and accepted accounting practices. The Vendor agrees that the Authority shall have the right to examine any of the Vendor's records that are directly related to this Agreement. All such documents shall be made available to the Authority for inspection and/or copying at its request and upon not less than three (3) business days and shall be clearly identifiable as pertaining to this Agreement. The Authority may, at its option, retain at its expense, a certified public accounting firm of its own choice to conduct periodic audits. Pursuant to N.J.A.C. 17:44-2.2, "the Vendor shall maintain all documentation related to products, transactions or services under this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller or the County upon request."

If requested, the Vendor shall deliver to the Authority all background material prepared or obtained by the Vendor relating to the performance of this Agreement. Background material is defined as original work papers, notes, and drafts prepared by the Vendor and all, data related to the services being rendered, including electronic data processing forms, computer programs, computer files, pamphlets, and other literature.

19. GENERAL NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the Parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. Notices as provided herein do not waive service of summons or process.

20. LIABILITY

Vendor is acting in a consulting capacity and any opinions, advice or analysis presented, or activities undertaken, by Vendor are based on its professional judgment and do not constitute a guarantee. IN NO EVENT

SHALL VENDOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE GREATER OF THE AMOUNTS PAID TO VENDOR PURSUANT TO THIS AGREEMENT OR VENDOR'S INSURANCE LIMITS. NEITHER PARTY (OR ITS AFFILIATES, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES), UNDER ANY CIRCUMSTANCES, WILL BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES, OWNERS, DIRECTORS, MANAGERS, OFFICERS, AGENTS OR EMPLOYEES) FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, OR LOST OR IMPUTED PROFITS AND/OR SALES, OR FOR DAMAGES BASED UPON ANY TYPE OF MULTIPLE ARISING OUT OF THIS AGREEMENT OR ITS TERMINATION OR EXPIRATION, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT AND IRRESPECTIVE OF WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. EACH PARTY HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF ANY ADEQUATE REMEDY.

21. WORK PRODUCT

For avoidance of doubt, the results of the modeling associated with any services will be provided to and owned by the Authority, however, the underlying tools, methodologies, datasets, and modeling systems will remain proprietary, confidential, and the property of the Vendor.

UNION COUNTY IMPROVEMENT AUTHORITY:

UCIA
Office of the Project Manager
10 Elizabethtown Plaza
Elizabeth, NJ 07207

VENDOR:

Gabel Associates, Inc.
417 Denison Street
Highland Park, NJ 08904
Attn: Steven Gabel

22. GOVERNING LAWS AND JURISDICTION

This Agreement shall be governed by and construed under the laws of the State of New Jersey. The Vendor irrevocably agrees that, subject to the Authority's sole and absolute election, any action or proceeding in any way, manner, or respect arising out of this Agreement, or arising from any dispute or controversy arising in connection with or related to this Agreement, shall be litigated only in the courts having status within the State of New Jersey, and the Vendor consents and submits to the jurisdiction of any local, state or federal court located within such city, County and State.

23. WAIVER

No term or provision hereof shall be deemed waived and no breach excused by the Authority unless such waivers shall be in writing and signed by the party claimed to have waived or consented to the term or provision.

Any consent by the Authority to, or waiver by the Authority of, a breach by the Vendor, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

24. ENTIRE AGREEMENT

It is expressly agreed that the terms and conditions of this Agreement shall constitute the full and complete understanding of the Parties hereto and supersedes any prior understandings, representations, or oral or written agreements between the Parties.

25. ASSIGNMENT

The Vendor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of any of its responsibilities under this Agreement, in whole or in part, to any other person, company, or corporation, and this Agreement may not be involuntarily assigned or assigned by operation of law without prior written consent of the Authority, which consent shall not be unreasonably withheld. If such a transfer without consent occurs, the Authority may refuse to carry out this Agreement with either the assignor or assignee, and reserves all rights of action for breach of this Agreement.

The Authority reserves the right to assign or transfer this Agreement to any person, office or entity as it deems appropriate.

26. SUBCONTRACTING

Unless otherwise specified in the Authority's specifications the subcontracting of any of the Vendor's responsibilities under this Agreement is not permitted without the expressed written consent of the Authority.

27. PRICE CHANGES

All prices shall be firm and not subject to increase during the period of this Agreement.

28. COOPERATION WITH OTHER VENDORS

The Vendor shall fully cooperate with other vendors and contractors of the Authority, the Authority's employees, and/or the employees of others as may be required by circumstances or directed by the Authority.

29. LICENSES AND PERMITS

The Vendor shall be responsible to apply for and obtain all necessary permits and licenses unless the specifications provide for the Authority to obtain such permits and licenses.

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IN WITNESS WHEREOF, the Parties hereto have, either individually or by their duly authorized representative, set their hands and seals the day and year first above written.

ATTEST:

UNION COUNTY IMPROVEMENT AUTHORITY

UCIA

SEBASTIAN D'ELIA
Chairman, UCIA

APPROVED AS TO FORM:

STEPHEN B. PEARLMAN, ESQ.
UCIA Renewable Energy Counsel

ATTEST:

GABEL ASSOCIATES, INC.

Corporate Secretary/Notary Public

Authorized Signatory

Steven Gabel
Print Name

President
Print Title

EXHIBIT A

SCOPE OF WORK

A. Provide Renewable Energy Consulting Services as requested by the Authority, including but not be limited to, the following for the Authority's Solar Program. The original developer for the Solar Projects at the Local Unit Sites has been replaced by a receiver. The Authority is looking to acquire the Solar Projects, funded by the proceeds of the Series 2021 Solar Bonds, a portion of which will pay off the Series 2011 Solar Bonds. The receiver (acting as a middleman) will be eliminated. A new Solar Project operations and maintenance firm must be procured, as the Authority will not undertake those responsibilities. There is no apparent provision for end of license term removal, which will become the obligation of the Authority upon acquisition of the Solar Projects, unless an alternative arrangement can be devised. Prior tax considerations should not be relevant, as the recapture period has passed, the developer is gone, and the Authority, a government, will be the owner. The condition of the Solar Projects is not presently known by the Authority, and the Local Units may be approached about an extension of their respective license agreements, if so desired by them, and if the facilities warrant an extension, and if any such extension can be integrated into the overall plan being devised for the Solar Projects. Any such extension may, but need not, be synchronized with the issuance of the Series 2021 Solar Bonds, although the acquisition of the Solar Projects should be. Sale of the Solar Projects to the Local Units is also a possibility to be considered to be in effect after the final maturity of the Series 2021 Bonds. Specifically, in connection with this plan, the Vendor shall provide services involving, at a minimum, the following:

- i) *Assist with all of the foregoing plan of the Authority regarding the Solar Projects, the Local Units, and the Local Unit Sites;*
- ii) *Reviewing the condition of the Solar Projects for needed repair, maintenance, and capital improvement or replacement (including inverters), projecting likely future capital needs, and, if necessary, procuring same or overseeing the procurement of same;*
- iii) *Projecting future costs to remove each Solar Project from the Local Unit Sites at the end of the license term, and as necessary, overseeing same;*
- iv) *Estimating costs to operate and maintain the Solar Projects on an ongoing basis, including insurance, and as necessary, overseeing same;*
- v) *Assisting in the procurement of an operating and maintenance party, with assistance in writing the scope of such procurement document;*
- vi) *Estimating future revenues to be generated by the Solar Program, including, without limitation, revenue from the sale of solar renewable energy credits ("SRECs") and the sale of energy under existing power purchase agreements and the legacy SREC New Jersey SREC program;*
- vii) *Consulting with the Authority in connection with the issuance of the Series 2021 Solar Bonds, and the redemption of the Series 2011 Solar Bonds;*
- viii) *Analyzing the feasibility of continuing to operate the Solar Program beyond the initial 15 year SREC term, including, without limitation, analysis of the useful life of the PV solar equipment, including inverters, and review of roof or other applicable site conditions; and*

ix) *Interacting with all Local Units on all issues associated with their Solar Projects.*

- B. Attend regular, special and emergency meetings of the Authority, if required.**
- C. Attend all other meetings and bid related conferences that the Authority, its Commissioners, or other authorized person deems necessary.**
- D. Prepare and/or review of reports and other written documents as requested by the Authority, its Commissioners, or other authorized person.**
- E. Review of all correspondence referred by the Authority, its Commissioners, or other authorized person and prepare correspondence on behalf of the Authority, if requested.**
- F. Interact with applicable Authority and/or County and/or Local Unit personnel and other governmental agencies, as required.**
- G. Provide a range of other specialized renewable energy consulting services which may be needed by the Authority, including any that may be proposed by the proposer in its proposal, given the plan for the Solar Projects outlined above.**