

CITY OF OBERLIN, OHIO

ORDINANCE No. 14-15 AC CMS

AN ORDINANCE APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT WITH 3 DEGREES GROUP, INC

WHEREAS, the City of Oberlin, Ohio, ("Municipality") owns and operates an electric utility system for the sale of electric capacity and associated energy for the benefit of its citizens and taxpayers; and,

WHEREAS, in order to satisfy the electric capacity and energy requirements of its electric utility system while achieving reductions in green-house gas emissions, Municipality has heretofore purchased environmentally sound capacity and energy and related services from, or arranged by, American Municipal Power, Inc. ("AMP"), of which Municipality is a member; and,

WHEREAS, certain environmentally-sound capacity and energy purchases include associated Renewable Energy Certificates; and,

WHEREAS, Municipality, acting individually and through AMP desires to sell and purchase Renewable Energy Certificates in order to leverage market value of certain Renewable Energy Certificates for the direct benefit of municipality's electric customers; and,

WHEREAS, Municipality desires to enter into a Renewable Energy Certificate Purchase and Sale Agreement with 3Degrees Group, Inc. a Renewable Energy Certificate Broker; and,

WHEREAS, after due consideration, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein below.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OBERLIN, COUNTY OF LORAIN, STATE OF OHIO, A MAJORITY OF ALL MEMBERS ELECTED THERETO CONCURRING:

SECTION 1. That the Renewable Energy Certificate Purchase and Sale Agreement between the Municipality and 3Degrees Group, Inc., substantially in the form attached hereto, including Exhibits thereto, are approved, and the City Manager of Municipality is hereby authorized to execute and deliver the same with such changes as are not inconsistent with this Ordinance nor materially different from the form attached hereto.

SECTION 2. That the City Manager is hereby authorized to (i) purchase and sell Renewable Energy Certificates through the execution of a confirmation letter, in the form attached as **Exhibit A** to the Renewable Energy Certificate purchase and sale agreement, and (ii) make any determinations and approvals required thereunder, if any, as the City Manager shall deem necessary and advisable.

SECTION 3. Renewable Energy Certificates sold shall be replaced in an amount greater than or equal to the quantity sold.

SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and of any committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading: April 21, 2014
2nd Reading: May 5, 2014 (A)
3rd Reading: May 19, 2014 (E)

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



H. SCOTT BROADWELL
PRESIDENT OF COUNCIL

POSTED: 05/20/2014

EFFECTIVE DATE: 05/19/2014

05-30-14 A10:58 RCVD

**RENEWABLE ENERGY CERTIFICATE
PURCHASE AND SALE AGREEMENT**

THIS RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT ("**Agreement**") is made as of May 20, 2014 (the "**Effective Date**") between 3Degrees Group, Inc. ("**3Degrees**") with its principal place of business at 2 Embarcadero Center, Suite 2950, San Francisco, CA 94111 and the City of Oberlin, an Ohio municipal corporation, ("**Counterparty**") with its principal place of business at 85 South Main Street, Oberlin, Ohio 44074 (each a "**Party**" and collectively, the "**Parties**").

WHEREAS, the Parties wish to buy and sell RECs (as hereinafter defined) on the terms set forth herein;

NOW THEREFORE, in consideration of their mutual covenants herein, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

"**Applicable Standard**" means the state or federal RPS or other mandatory or voluntary standard(s) or set of rules specified in the Confirmation Letter, including any amended or successor versions as of the date of execution of the Confirmation Letter, as well as on the date of Delivery of RECs.

"**Applicable Tracking System**" means the Tracking System specified in the Confirmation Letter, and if no Tracking System is specified in the Confirmation Letter but tradable instruments associated with all or part of the RECs to be delivered are issued by a Tracking System, that Tracking System shall be the Applicable Tracking System for the quantity of RECs associated with those tradable instruments.

"**Attestation Form**" means documentation provided from Seller to Buyer transferring title to the RECs, specifying the Facility, Eligible Renewable Resource, REC quantity, Generation Period and other information with respect to the RECs sold herein as well as declarations made by Seller with respect to such RECs to be completed in accordance with and on the form required under the Applicable Standard or as otherwise specified in the Confirmation Letter.

"**Business Day**" means a day on which Federal Reserve member banks are open for business, beginning at 5:00 a.m. and ending at 5:00 p.m. Pacific Standard Time or beginning at 8:00 a.m. and ending at 8:00 pm. Eastern Standard Time.

"**Buyer**" is the Party buying RECs.

"**Compliance Instruments**" means any benefits, attributes, instruments, tracking mechanisms, or rights associated with the generation of one (1) MWh of Energy from a source of renewable energy, as that is defined in a RPS, which may be created distinct from Environmental Attributes and transferred in the form of a certificate, credit, allowance or other indicia of ownership in accordance with and for the purposes of recording compliance with a RPS obligation.

"**Confirmation Letter**" means a Confirmation Letter included as Exhibit A, which is used by the Parties to effect a transaction and constitutes part of and is subject to the terms and provisions of this Agreement.

"**Contract Price**" means the amount payable by Buyer to Seller for each REC as agreed upon in the Confirmation Letter.

"Costs" means the present value of brokerage fees, commissions, and other similar third party transactions costs and expenses reasonably incurred by the Non-Defaulting Party in terminating or replacing any arrangement pursuant to which it has hedged its obligations relating to a Terminated Transaction; and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party, or the entity to which the Non-Defaulting Party had resold the RECs, under the Applicable Standard on account of Delivery not occurring on the Delivery Date, as determined by the Non-Defaulting Party in a commercially reasonable manner.

"Delivery Date" means the date or period during which Delivery shall occur, as specified in the Confirmation Letter.

"Eligible Renewable Resources" mean sources of renewable energy that meet all requirements of the Applicable Standard.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"Environmental Attributes" means those aspects, claims, characteristics and benefits associated with the generation of a quantity of electricity by the Facility, and, in the absence of any withholding of any part thereof by Seller, all of them, including any and all the environmental, power source, and emission characteristics, credits, allowances, emissions reductions, offsets, and benefits, howsoever entitled, attributable to the generation of electricity from the Facility and its displacement of generation from non-renewable energy resources, and includes but is not limited to any avoided emission of pollutants to the air, soil or water such as carbon monoxide (CO) and other pollutants; any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, but do not include (i) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits, unless those credits are required for the REC to comply with the Applicable Standard, (ii) production tax credits and investment tax credits associated with the Facility, (iii) any energy, capacity, reliability or other power attributes from the Facility, (iv) any liabilities, including adverse wildlife or environmental impacts, or (v) unless the Parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a governmental authority and allocated to the Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Facility. If the Facility is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"Facility" or **"Facilities"** means, if specified, the resource(s) designated in a Confirmation Letter from which the Seller will Deliver the RECs, and if not specified in a Confirmation Letter, Facility means the specific resource from which the Seller Delivers the RECs; in either case, the Seller represents the Facility is an Eligible Renewable Resource.

"Federal Government" means the United States Federal Government and all of its authorized agencies and agents.

"Force Majeure" means an event or circumstance which materially adversely affects the ability of a Party ("**Claiming Party**") to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Trade Date and which is not within the reasonable control of, or

the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided by the exercise of reasonable care such as acts of God; fire; flood; earthquake; war; riots; or terrorism that affects one or both Parties. Force Majeure may not be based on (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the RECs; (iii) Seller's ability to sell the RECs to another party on terms superior to Seller's terms herein; or (iv) Buyer's ability to purchase similar RECs from another party on terms superior to the Buyer's terms herein. With respect to a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

"Gains" mean the present value of the economic benefit to a Party, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

"Generation Period" means the calendar year, quarter, or other specified period of time in which the Energy associated with the RECs was generated.

"Interest Rate" is equal to Prime lending rate published under the heading "Money Rates" in the Wall Street Journal on the date of calculation.

"Losses" means the present value of the economic loss to a Party, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.

"MWh" means megawatt-hour.

"Renewable Energy Certificate" or **"RECs"** means the Environmental Attributes, Compliance Instruments, and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities.

"Renewable Portfolio Standard" or **"RPS"** means a local, state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy that is sold or used by specified entities to be generated from sources of renewable energy as defined therein.

"Reporting Rights" means the right to report and register the exclusive ownership of the Environmental Attributes and any Compliance Instruments in compliance with federal, state, or local law, if applicable, and to a federal or state agency or any other party at the Buyer's discretion, and include without limitation those Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

"Reporting Period" means a year or other period of time specified by the Applicable Standard toward which eligible RECs may be applied or claimed.

"Seller" is the Party selling RECs.

"Seller's Choice" means Seller may Deliver RECs from any source, provided the RECs derived from said source meet all other requirements pursuant to the Applicable Standard and this Agreement.

"Settlement Amount" means the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 9.2.

"Time Period" means the Generation Period or Reporting Period specified in the Confirmation Letter.

"Tracking System" means the generation information system, generation attribute tracking system or other system that records renewable energy generation meeting certain requirements of the tracking system and issues tradable instruments associated with that generation.

"Trade Date" means the date of the Confirmation Letter.

ARTICLE 2 TRANSACTION

2.1. Term.

The term ("**Term**") of this Agreement commences on the Effective Date and continues until terminated by either Party upon thirty (30) days' written notice, except that any such termination is not effective until all payments, Deliveries and other obligations of the Parties under this Agreement have been completed.

2.2. Sale and Purchase Obligation.

Seller agrees to provide and Buyer agrees to purchase RECs according to the terms of this Agreement and any Confirmation Letters now or hereafter entered into between the Parties.

2.3. Quantity and Price.

Seller shall sell and Buyer shall purchase RECs in the quantities and at the Contract Prices specified in Confirmation Letters now or hereafter entered into between the Parties.

2.4. Disclosure.

In order to promote the sale of RECs to its customers or potential customers, Buyer is expressly authorized to disclose to third parties Seller's name, REC details as provided in Attestation Form or by the Applicable Tracking System, and the Attestation Form itself, if provided. Any disclosure will exclude such confidential details as price and payment terms unless otherwise required by applicable law. Confirmation Letters under this Agreement may optionally provide that they are subject to Exhibit B, the 3Degrees Media Rights Annex by stating they confer media rights. Buyer is further authorized to, at Buyer's own expense and with Seller's reasonable cooperation, monitor, measure, verify, calculate, disclose and claim for the benefit of Buyer any matter respecting the RECs or any aspects thereof pursuant to any present or future protocol, standard, or guidance.

2.5. Delivery.

On the Delivery Date specified in the Confirmation Letter, Seller shall (i) deliver RECs to Buyer in accordance with the delivery requirements of the Applicable Standard, and (ii) in accordance with the operating rules of the Applicable Tracking System, if there is an Applicable Tracking System, and (iii) including an Attestation Form, if one is specified in the Confirmation Letter ("**Deliver**" or "**Delivery**"). Each Party shall bear its own expenses associated with Delivery. Delivery shall consist of only whole RECs. If, at any time after the Delivery Date, Compliance Instruments, which are part of the RECs transacted under a Confirmation Letter, are created and issued to Seller, Seller shall transfer those Compliance Instruments to Buyer within ten (10) Business Days of the date of issuance of such Compliance Instruments.

2.5.1 Firm Delivery Obligation.

If the Confirmation Letter provides that the RECs Delivery obligation is a "**Firm**" obligation, the Seller shall Deliver the RECs on the Delivery Date, without excuse other than Force Majeure. Unless otherwise specified in a Confirmation Letter, the default Delivery obligation thereunder shall be Firm.

2.5.2 Unit Contingent Delivery Obligation.

If the Confirmation Letter provides that the Seller's Delivery obligation is "**Unit Contingent**", then the actual Quantity Delivered from Seller to Buyer may vary from the quantity specified in the Confirmation Letter due to the performance of the Facility.

2.5.3 Project Contingent Delivery Obligation.

If the Confirmation Letter provides that the RECs Delivery obligation is "**Project Contingent**", then Seller's obligation to Deliver the RECs is excused to the extent that the Facility is not able to generate the Environmental Attributes in the Time Period specified in the Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Facility, or due to other reason(s) as specified in the Confirmation Letter.

2.6 Confirmation.

Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, as modified to support the specific RECs. Upon receipt of such Confirmation Letter, the other Party shall promptly return a written acceptance thereof, which may be a signed copy of the Confirmation Letter.

**ARTICLE 3
REPRESENTATIONS**

3.1. Authority.

Each Party represents and warrants to the other Party that (i) it is a legal entity, duly formed and validly existing and in good standing under the laws of the state of its formation, (ii) it has the full power and authority to execute, deliver, and perform this Agreement and to carry out the transactions contemplated hereby; (iii) its execution and delivery hereof and performance of the transactions contemplated hereunder have been duly authorized by all requisite entity action, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles; (iv) no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by it hereof; (v) none of the execution, delivery and performance by it hereof conflicts with or will result in a breach or violation of any law, contract or instrument to which it is bound; (vi) there are no proceedings by or before any governmental authority, now pending or (to the knowledge of such Party) threatened, that if adversely determined could have a material adverse effect on such Party's ability to perform the Party's obligations under this Agreement; (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and (viii) it is acting for its own account, has made its own independent decision to enter

into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

3.2. Forward Contract Merchant.

Each Party represents that it is a "forward contract merchant" within the meaning of Section 101(26) of the Bankruptcy Code, and this Agreement and all transactions hereunder constitute "forward contracts" within the meaning of Section 101(25) of the Bankruptcy Code and that the remedies identified in this Agreement shall be "contractual rights" as provided for in 11 U.S.C. § 556, as these provisions may be amended from time to time.

3.3. Seller Representations and Warranties.

Seller agrees, represents, and warrants to Buyer that:

- a) All RECs Delivered hereunder shall meet the requirements of the Applicable Standard.
- b) Seller has not sold the RECs to any other person or entity, and that at the time of Delivery all rights, title, and interest in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- c) The Energy generated with the RECs was not and will not be separately sold, marketed, or otherwise represented as renewable energy, clean energy, zero-emission energy, or in any similar manner by Seller or any of Seller's affiliates.
- d) The RECs Delivered hereunder will vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to the RECs (ii) have the right to report and register, as applicable, the exclusive ownership of the RECs with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.

**ARTICLE 4
BILLING AND PAYMENT**

4.1. Billing and Payment Terms.

Buyer shall pay the Contract Price as applicable within fifteen (15) calendar days of the later of (i) the date Buyer receives written, facsimile or electronic notice from Seller to Buyer that RECs have been Delivered, and (ii) the date Buyer receives an invoice from Seller reflecting the total amount due to Seller for the Delivered RECs ("**Payment Date**"). Buyer is not obligated to pay for any RECs that have not been Delivered.

4.2. Late Payments.

Without limiting any other rights provided for herein, all overdue payments shall bear interest from the Payment Date to the date of actual payment at a rate equal to the lesser of (i) 2 percent over the Interest Rate or (ii) the maximum rate permitted by applicable law.

4.3. Disputes.

To the extent a Party, in good faith, disputes any part of an invoice, such Party shall pay the undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall be forwarded to the Party to whom such amount is owed within five (5) Business Days of such determination, along with interest at the Interest Rate for overdue payments from, and including, the Payment Date, but excluding the date paid.

4.4. Taxes.

Each Party shall pay the taxes lawfully levied upon it by any governmental authority.

4.5. Invoice and Payment Instructions.

Payment shall be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as specified below, or as otherwise notified in writing to the party making payment by the party to whom payment is to be made.

Invoices to 3Degrees will be sent to:

3Degrees Group Inc.
2 Embarcadero Center, Suite 2950
San Francisco, CA 94111
Attn: Accounts Payable
Phone: (415) 794-6485
Fax: (415) 680-1561
Email: settlements@3degreesinc.com
With a copy to: ar@3degreesinc.com

Payments to 3Degrees will be sent to:

3Degrees Group Inc.
2 Embarcadero Center, Suite 2950
San Francisco, CA 94111
Attn: Accounts Receivable
Phone: (415) 794-6485
Fax: (415) 680-1561

Wiring instructions:

Beneficiary Bank Name:
New Resource Bank
405 Howard St. Suite 110
San Francisco, CA 94105
(415) 995-8100

Routing/ABA Number: 121044369

Beneficiary:
3Degrees Group Inc.
Account # 2015949

Invoices to City of Oberlin will be sent to:

Oberlin Municipal Light and Power System
289 South Professor Street
Oberlin, Ohio 44074
Attn: Electric Director
Phone: (440) 775-7260
Fax: (440) 775-1546
Email: sdupee@omlps.org

Payments to City of Oberlin will be sent to:

Oberlin Municipal Light and Power System
289 South Professor Street
Oberlin, Ohio 44074
Attn: Electric Director
Phone: (440) 775-7260
Fax: (440) 775-1546

ARTICLE 5 NOTICES

All notices, requests, demands, offers, and other communications required or permitted to be made under this Agreement will be in writing and will be effective only if delivered: (a) in person, (b) by a nationally recognized delivery service, (c) by United States Mail, or (d) by electronic mail, upon confirmation of receipt. Either Party may change its address or contact person(s) for notices by giving notice of such change consistent with this Article.

If to City of Oberlin :

Oberlin Municipal Light and Power
System
289 South Professor Street
Oberlin, Ohio 44074
Attn: Electric Director
Phone: (440) 775-7260
Fax: (440) 775-1546

If to 3Degrees:

3Degrees Group Inc.
2 Embarcadero Center, Suite 2950
San Francisco, CA 94111
Attn: Contracts Manager
Phone: (415) 674-4436
Fax: (415) 680-1561

**ARTICLE 6
GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement is governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of laws principles. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT OR CONFIRMATION LETTER EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, AS WELL AS ANY RIGHT TO CONSOLIDATE ANY ACTION IN CONNECTION WITH ANY MATTER ARISING HEREUNDER WITH ANY OTHER MATTER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

**ARTICLE 7
ATTORNEY'S FEES**

In the event of any suit or other proceeding between any of the Parties hereto with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs (including at the trial and appellate levels) and expenses of investigation.

**ARTICLE 8
DEFAULTS**

A Party is in default ("**Default**") hereunder if that Party (the "**Defaulting Party**") does any of the following (each an "**Event of Default**"):

(a) breach any of its material obligations herein and not cure within five (5) Business Days of receipt of written notice of such breach;

(b) if any representation or warranty made by it herein proves to have been intentionally made to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within five (5) Business Days of written notice; or

(c) if a Party:

(i) makes an assignment or any general arrangement for the benefit of its creditors,

(ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or

(iii) otherwise becomes bankrupt or insolvent (however evidenced).

**ARTICLE 9
REMEDIES UPON DEFAULT**

9.1. Liquidated Damages.

Buyer and Seller agree the amounts that are determined to be due from one Party to the other pursuant to this Article in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.

9.2. Remedies.

Upon an Event of Default by a Party, the other Party (the "**Non-Defaulting Party**") may do any or all of the following: (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("**Early Termination Date**") to accelerate all amounts owing between the Parties and to liquidate and terminate all or less than all Confirmation Letters (each referred to as a "**Terminated Transaction**") between the Parties, (ii) withhold any payments due in respect of this Agreement and any other agreements between the Parties to the extent of its damages pursuant to this Article 9, (iii) suspend performance, and (iv) exercise such remedies as provided herein, including an action for damages (except as limited by Article 9.5). The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). Without being required to do any of the foregoing or set a Termination Payment (as defined below) for all transactions and Confirmation Letters, if either Party does not Deliver any RECs by the Delivery Date as set forth on a Confirmation Letter, the Buyer may treat that Confirmation Letter as being in Default and a Terminated Transaction, without terminating or cancelling any other Confirmation Letters hereunder, and calculate, as a Non-Defaulting party, the amount due from the Seller for such Terminated Transaction, and in such case Seller shall pay such amount within two days of notice from the Non-Defaulting Party.

9.3. Net Out of Settlement Amounts.

The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out (a) all amounts that are due to the Defaulting Party for RECs that have been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Non-Defaulting Party under this Agreement against (b) all Settlement Amount that are due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the "**Termination Payment**") payable by the Defaulting Party. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within two (2) Business Days following notice.

9.4. Calculation Disputes.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

9.5. Limitation on Damages.

The Defaulting Party's liability will be limited to direct, actual damages only, and such direct, actual damages will be the sole and exclusive remedy hereunder. Except with respect to payment of Costs, in no event will either Party be liable to the other under this Agreement for any consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

9.6. Exclusive Remedy.

THE REMEDIES SET FORTH IN THIS ARTICLE 9 ARE THE SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF A DEFAULT OF A PARTY'S OBLIGATIONS TO SELL OR PURCHASE RECS, AND A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS ARTICLE. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE RECS AT LAW ARE HEREBY WAIVED.

9.7. Force Majeure.

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party's giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of five (5) Business Days following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

**ARTICLE 10
STANDARD PROVISIONS**

10.1. Additional Documents.

Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver such documents that may be necessary to carry out the intent and purpose hereof.

10.2. Assignment.

Neither Party shall assign this Agreement, in whole or in part, without the other's written consent, which will not be unreasonably withheld, conditioned or delayed; except that a Party may, without consent (i) pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) assign this Agreement to an affiliate if the affiliate's creditworthiness is equal to or higher than that of the assigning Party; or (iii) assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the assigning Party whose creditworthiness is equal to or higher than that of the assigning Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Any assignment without the requisite prior consent is void ab initio. All of the rights, benefits, liabilities, and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns. By consenting to one assignment a Party will not be deemed to have consented to a subsequent assignment.

10.3. Audit and Inspection.

Seller shall maintain adequate records to assist Buyer in meeting any reporting or registration requirements associated with the RECs. Seller shall provide such records upon reasonable notice from Buyer. If any such examination reveals any inaccuracy in any statement, the Parties shall make the necessary adjustments promptly, and amounts discovered to be so due shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

10.4 Certification.

At Buyer's request and expense, Seller shall reasonably cooperate with Buyer for the purpose of pursuing Facility, and/or REC certification for compliance with any registration by the Buyer of the Facility and/or RECs in a RPS or equivalent program, other than the Applicable Standard, in any jurisdictions and programs in which Buyer may wish to register the Facility and/or RECs. Seller shall provide copies of all information Seller has available or can reasonably obtain as Buyer requires for such registration.

10.5 Confidentiality.

The Parties are expressly authorized to disclose the existence of this Agreement, including the quantity and term of the sale of RECs and Seller's name, REC details as provided in the Attestation Form or by the Applicable Tracking System, and the Attestation Form (if provided). Unless otherwise provided, all other terms of this Agreement, including price and payment terms, are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree to treat such information confidentially; (iii) to the extent required to be disclosed by applicable law or legal process; (iv) to the extent required to be disclosed under the Applicable Standard or other mandatory or voluntary standard; or (v) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially; or (vi) Load Serving Entity ("LSE") which agrees to treat such information confidentially and with whom a Party has an agreement to supply RECs for the LSE's voluntary green power program ("VGPP") and the confidential information is disclosed only upon LSE's request for the purposes of the LSE's evaluation of said VGPP. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of five (5) years following the expiration of this Agreement.

10.6 Counterparts.

This Agreement may be executed by PDF or telefacsimile and in one or more counterparts, all of which taken together will constitute one and the same original instrument.

10.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all previous communications, representations, or contracts, either written or oral, that purport to describe or embody the subject matter hereof. There are no oral understandings, terms, or

conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

10.8 Exhibits.

The exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Agreement and the Confirmation Letter, the terms of the Confirmation Letter shall prevail.

10.9 No Third-Party Beneficiaries.

There are no intended third-party beneficiaries hereof, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

10.10 Severability.

Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

10.11 Survival Rights.

This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

10.12 Waiver, Amendment.

None of the terms or conditions of this Agreement may be amended or waived except in writing and signed by the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance at a later time. Similarly, a Party's waiver of its rights with respect to any Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Default or matter.

10.13 Indemnification.

Each Party will, defend and hold harmless the other Party from and against any losses, costs, damages, demands, penalties, claims, or liabilities made by others arising from or out of any event, circumstance, act or incident arising out of the Parties' obligations under this Agreement, except to the extent arising from such Party's own gross negligence or willful misconduct.

10.14 Change in Law.

If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise revokes or eliminates the Applicable Standard, the Parties hereto agree to negotiate in good faith to amend this

Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

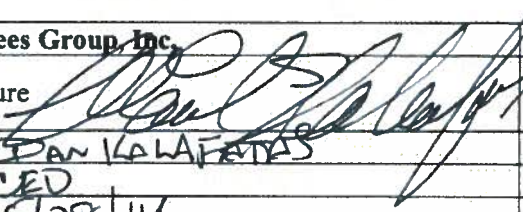
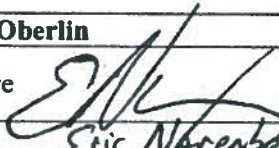
10.15 Recording.

Each Party consents to the recording of its trading, marketing and scheduling representatives' telephone conversations without any further notice. In addition, the Parties agree not to contest the authority of either Party's employees to enter into this Agreement or the Confirmation Letters generated pursuant to this Agreement. Notwithstanding the foregoing, any agreement with respect to the transaction shall be in a writing signed by both Parties.

**ARTICLE 11
SIGNATURES**

Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement on behalf of the Party for whom they sign.

IN WITNESS WHEREOF, the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

3Degrees Group, Inc.	City of Oberlin
Signature 	Signature 
Name DAN LALAFATAS	Name Eric Norenberg
Title CEO	Title City Manager
Date 5/28/14	Date 5/20/14


Approved to Form: 
Oberlin Law Director

EXHIBIT A

Confirmation Letter #1

This Confirmation Letter describes a transaction between Buyer and Seller for the sale, purchase and Delivery of Renewable Energy Certificates ("**RECs**") pursuant to and in accordance with the terms of the Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated May 20, 2014 (the "**Agreement**") and constitutes part of and is subject to the terms and provisions of the Agreement. Provided, that, to the extent there is a conflict between a provision of the Agreement and this Confirmation Letter, the terms of this Confirmation Letter shall control for the purposes of this transaction.

Initially capitalized terms used and not otherwise defined herein are defined in the Agreement.

Basic Commercial Terms:

Trade Date:	
Transaction Reference:	
Seller:	
Buyer:	
Facility:	
Eligible Renewable Resource Type:	
Geography:	
Period Type [Generation, Reporting]:	
Time Period:	
Quantity (MWh):	
Contract Price (\$/MWh):	

Product Specific Terms:

Applicable Standard(s):	
Environmental Attributes retained by Seller, if any:	
Media Rights Conferred [yes, no]	

Delivery Terms:

Delivery Date:	
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	
Applicable Tracking System:	
Attestation Form:	
Buyer Delivery Contact [Name, Email]:	
Seller Delivery Contact [Name, Email]:	

The Parties agree to the transaction set forth herein and each Party represents that the person signing this Confirmation Letter on its behalf is authorized to execute on behalf of the Party for whom they sign.

3Degrees Group, Inc.	City of Oberlin
Signature	Signature
Name	Name
Title	Title
Date	Date

EXHIBIT B

3DEGREES MEDIA RIGHTS ANNEX

This 3DEGREES MEDIA RIGHTS ANNEX is entered into by and between 3Degrees Group, Inc. ("**3Degrees**") and the City of Oberlin ("**Counterparty**") each a "**Party**" and together the "**Parties**"). In consideration of the continued agreement of the parties to purchase and sell Renewable Energy Certificates and otherwise transact pursuant to the terms of the Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated May 20, 2014 (the "**Agreement**"), the Parties agree as follows:

In the course of business, organizations who purchase renewable energy certificates from 3Degrees utilize photographs of the associated renewable energy facilities for print, web, and other materials. In communicating their renewable energy purchase to their constituents, these organizations help increase the appeal of purchasing renewable energy while building the image and desirability of renewable power in general and Counterparty's Facility in particular.

To this end, when a Confirmation Letter confers media rights or is subject to this Exhibit B, Counterparty agrees, upon request, to provide relevant, non-confidential information about the Facility and when available, photographs or other such media related to the Facility. If no such media exists for the Facility, Counterparty agrees to allow 3Degrees access to produce such media at 3Degrees' expense. The information and media provided by Counterparty shall be used by 3Degrees to highlight the positive aspects of the Facility and, all such media may be used by 3Degrees, and shared with and used by 3Degrees' customers or potential customers who are purchasing or considering purchasing Renewable Energy Certificates from Counterparty's Facility.